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HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 642 of 2021**

- Shivkumar Verma S/o Omkar Verma, Aged About 43 Years R/o Village Anyanawagaon, P.S. Dongargarh, District Rajnandgaon Chhattisgarh.....Through Nearest Friend Shyamu Yadav, S/o Milan Yadav, Aged About 35 Years, R/o Indira Nagar, Ward No. 08, Dhaur, Selud, Durg, District Durg Chhattisgarh

---- Petitioner**1. Versus**

1. State Of Chhattisgarh Through Its Principal Secretary, Department Of Home (Jail) Mahanadi Bhavan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh.
2. The Jail Superintendent Central Jail Durg, District Durg Chhattisgarh.
3. The District Magistrate, Rajnandgaon, District Rajnandgaon Chhattisgarh.
4. The Superintendent Of Police, Rajnandgaon, District Rajnandgaon Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. C.R. Sahu, Advocate.
For State	:	Mr. G.I. Sharan, G.A.

Hon'ble Smt. Justice Rajani Dubey, J.**Order on Board****09.12.2021**

1. Heard.
2. The present petition has been filed under article 226 of the Constitution of India challenging the order dated 05.02.2021 passed by the District Magistrate, Rajnandgaon (C.G.), whereby the application filed by the

petitioner under Chhattisgarh Prisoner's Leave Rule 1989 for grant of leave (parole) has been rejected.

3. The petitioner is a prisoner who has been convicted for the offence under Sections 147, 148, 149, 427, 302 and 452 of the Indian Penal Code and is languishing in jail since 03.07.2012. He made an application for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989 but the said application was rejected by the District Magistrate, Raigarh vide order dated 05.02.2021. Feeling dissatisfied and aggrieved against that order, the instant writ petition has been filed.
4. Mr. C.R. Sahu, learned counsel appearing for the petitioner would submit that the impugned order is arbitrary, illegal and against the law as the application has not been considered in touchstone of the Rules. As the petitioner fulfills all conditions and eligibility required for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989, he is entitled to be released on parole. It is next contended that there is no clinching material available on record to show that the release of the petitioner on leave is fraught with danger to public safety, therefore, in the interest of justice, the impugned orders to be set aside and the petition deserves to be allowed. In support of his argument, learned counsel for the petitioner placed reliance on the decisions of this High Court in the matter of **Rakesh Shende Vs. State**

of Chhattisgarh & Ors. in WPCR No. 29/2016 and Chatur Verma V. State of C.G. and others in WPCR No.319/2021.

5. Mr. G.I. Sharan, learned Government Advocate appearing for the State/Respondents has supported the impugned order and submits that the report of Superintendent of Police is against the petitioner.
6. Heard counsel for the parties and perused the material available on record.
7. It is clear from the material available on record that petitioner filed an application before the District Magistrate, Rajnandgaon, and the learned District Magistrate forwarded it to the Superintendent of Police and the Superintendent of Police, in turn, made inquiry and submitted his report on 15.01.2021 (Annexure R/3), which shows that objection has been raised by the complainant party that if the petitioner is granted parole, there is every possibility of committing maarpeet with her. There is recommendation of Superintendent of Police, Rajnangaon, not to release the petitioner on 10 days parol. A report dated 08.01.2021 of S.H.O. Police Station Dongargarh, District Rajnandgaon, (Annexure R/1) has also been annexed, which shows that the petitioner has no criminal antecedent and he is not habitual offender.
8. This Court in the matter of **Rakesh Shende Vs. State**

of Chhattisgarh & Others in **Writ Petition (Cr.) No. 29/2016** vide order dated 18.11.2016 held in paras 22 & 23 as under:-

“22. As noticed herein above, the power of parole has been conferred by the rules to the District Magistrate and the post of District Magistrate is manned in the State of Chhattisgarh by a member of Indian Administrative Service. Therefore, the District Magistrate is required to exercise the power to consider the application for grant of parole. He has to take into consideration the object and need to grant parole to the convicted prisoners by applying their mind and come to a conclusion judiciously. The order passed by the District Magistrate in the instant case would show the complete non-application of mind, as by a cyclostyle order only name and number of prisoner has been inserted and it has been signed by the Additional District Magistrate. The manner in which the order has been passed by the District Magistrate in a mechanical manner is suggestive of betrayal of the confidence which the rule making authority reposed in the District Magistrate in conferring upon him to exercise the power to grant parole.

23. At this stage, it would be appropriate to notice the following binding observation made by the Supreme Court in the matter of **Tarlochan Dev Sharma v. State of Punjab & Others**¹

“16..In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key

1 (2001) 6 SCC 260

positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties or in the exercise of power conferred on him act otherwise than in his best judgment except when he is acting under the direction of his official superior..."

10. In Annexure R/1, it is reported by S.H.O. that except this case no other criminal case is pending against the petitioner. It has not been shown in both the Annexures (Annexures R/2 & R/3) that convict has any criminal antecedent or he is a hardened criminal and is likely to involve in similar nature of offence.
11. Looking to the Annexures R/1, R/2 & R/3 and principles and observation of the Hon'ble Supreme Court in the case of **Tarlochan Das(Supra)**, I am of the considered opinion that the order passed by the District Magistrate (Annexure P/1) deserves to be quashed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India and is

accordingly quashed. It is directed that the respondents shall consider the case of the petitioner to grant of him the privilege of release/parole in accordance with law indicated principles laid down in the matter of **Rakesh Shinde (Supra) & Tarlochan Das (Supra)** within forty five days from the date of production of a copy of this order.

12. The writ petition is allowed to the extent indicted hereinabove. There shall be no order as to costs.

Sd/-

(Rajani Dubey)
Judge

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