

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Criminal) No.674 of 2020**

- Sambhu Prajapati Son Of Late Bhrigu Nath Aged About 35 Years R/o Tukudand, Police Station Pratappur, District Surajpur (Chhattisgarh) Presently He Is In Central Jail, Ambikapur, Through Sambhu Prajapati, Son Of Shri Bhuneshwar Prasad, Aged About 52 Years Brother-In-Law (Jija) Of The Petitioner, Resident Of Fundurdihari (Patel Para), Ambikapur, District Surguja (Chhattisgarh)

---- Petitioner**Versus**

1. State Of Chhattisgarh Through The Secretary, Department Of Home (Jail), Mantralaya, Mahanadi Bhawan, Capital Complex, Naya Raipur, Post Office Rakhi, District Raipur (Chhattisgarh)
2. The Collector And District Magistrate Surajpur, District Surajpur (Chhattisgarh)
3. The Superintendent Of Police Surajpur, District Surajpur (Chhattisgarh), District : Surajpur, Chhattisgarh
4. Jail Superintendent, Central Jail, Ambikapur, District Surguja (Chhattisgarh)

---- Respondents

For Petitioner	: Shri VK Pandey, Advocate
For Respondents/State	: Shri Ravi Bhagat, Dy. Govt. Advocate

Hon'ble Shri Justice Sanjay K. Agrawal**Order On Board****04.3.2021**

1. This petition has been filed against impugned order dated 22.8.2020 passed by District Magistrate, Distt. Surajpur by which application of the petitioner for grant of parole has been rejected.
2. Learned counsel for the petitioner submits that no finding has been recorded by the learned District Magistrate that release of the petitioner on leave would be detrimental to public safety and merely on the recommendation of Superintendent of Police, Surajpur rejected the application of the petitioner

for grant of parole, whereas the petitioner is languishing in jail for last 07 years and no single parole has been granted to him, therefore, order impugned deserves to be set aside.

3. On the other hand, learned counsel for the State supports the impugned judgment.

4. I have heard learned counsel for the parties and considered the rival contentions and gone through the records of the case.

5. Before examining the propriety of the order impugned, it is necessary to examine the Rules, known as Chhattisgarh Prisoner's Leave Rules, 1989 framed in exercise of the powers enumerated by Section 31 of the Prisoner's Act, 1900 (No.III of 1900). Rules 4, 5 and 6 of the said Rules, 1989 are relevant for the purpose, therefore, reproduced herein as under:

“4. Conditions of Leave.---- The prisoners shall be granted leave under sub-section (1) of Section 31-A of the Act on the following conditions, namely :--

- (a) He fulfils the conditions laid down in Section 31-A of the Act;
- (b) He has not committed any offences in jail between the date of application for leave and receipt of the order of such leave;
- (c) The releasing authority must be satisfied that the leave may be granted without detriment to the public interest;
- (d) He gives in writing to the Releasing Authority the place or places which he intends to visit during the period of his leave and undertake not to visit any other place during such period without obtaining prior permission of the Releasing Authority in that behalf; and
- (e) He should furnish security to the satisfaction of the Releasing Authority if such security is demanded by the Releasing Authority.

5. Application for Grant of Leave.--- (a) Request from prisoners for leave, under Section 31-A of the Act, shall be made in writing in Form 'F' to the Superintendent of the Jail (hereinafter called Superintendent) at the parade on Monday.

(b) The Superintendent shall personally examine the records of the prisoner making the request for leave and satisfy himself that the prisoner fulfills the conditions for grant of leave.

(c) If the prisoner fulfills the conditions of the leave,

the Superintendent shall report the first request of the prisoner to the District Magistrate of the concerning district where the prisoner resided before conviction.

6. Sanctioning Authority for first leave.--- (a) If the District Magistrate, after making such enquiry as he may consider necessary, is satisfied that the request for grant of leave can be granted without detriment to public interest, he shall issue to the Superintendent a duly signed and sealed warrant in Form 'A' to the prisoner. The District Magistrate shall enter in the warrant the number of days that will be required for the journeys by the shortest practicable route to and from the place at which during his leave the prisoner proposes to reside or if he proposes to visit more than one place, the farthest place from the Jail which he proposed to visit.

Note. --- The District Magistrate is responsible for the proper carrying out of these instructions. He may of course, consult the District Superintendent of Police on the advisability of granting the leave. The Superintendent of Police should also obtain the opinion of the Gram Panchayat of the village, where the prisoner resided before conviction and sent to the District Magistrate alongwith his report. But the responsibility for the action is that of the District Magistrate. He should use his discretion and should refuse to grant leave only in cases in which he is satisfied that release is fraught with danger to the public safety. Security should be demanded only when it is really necessary, for example, when there is reasonable apprehension that the prisoner will break leave. When security is required, the District Magistrate of the place where the surety resides should be asked by the releasing District Magistrate to accept the surety and not call the surety to his own headquarters. If the prisoner intends to visit another district, where his near relatives reside, the concerning District Magistrate shall make necessary enquiries from the District Magistrate of that District before sanctioning the leave.

(b) If the District Magistrate considers that the grant of leave to the prisoner is undesirable in the public interest, he shall intimate his opinion to the Superintendent, who shall inform the prisoner that his request has been rejected."

6. A bare perusal of the aforesaid Rule 4 provides conditions of leave, which would show that before granting leave under sub-section (1) of Section 31-A of the Act; the Releasing Authority is required to be satisfied that prisoner's release would not be detrimental to the public interest as provided under clause (c) thereof. The satisfaction of the Releasing Authority, is, thus, a condition precedent for grant of leave to the prisoner.

7. Reverting back to the case, it is quite vivid that except the Superintendent of Police, no other authority in the enquiry has objected the release of the petitioner on parole. The learned District Magistrate has taken note of the all the steps taken during enquiry, but in conclusion, on the basis of the report of the Superintendent of Police, rejected the application of the petitioner without recording his finding as required under Rule-6 of the Chhattisgarh Prisoner's Leave Rules, 1989 that release of the petitioner is detrimental for public safety. Accordingly, impugned order dated 22.01.2018 passed by the District Magistrate, Distt. Surajpur is hereby set aside. Considering the fact that the petitioner is languishing in jail for 07 years and no parole has been granted to the petitioner till date, it is directed that the petitioner be released on parole for a period as prayed by him in his application, as per the rules and conditions prescribed for release of the prisoners on leave, on his furnishing security to the satisfaction of the concerned Releasing Authority.

8. With the aforesaid condition, the petition is allowed. Let the concerned District Magistrate and the Jail Superintendent, Central Jail, do the needful in the matter within a period of 07 days from the date of receipt of a copy of this order.

Sd/-

(Sanjay K. Agrawal)

Judge