

(2023) 05 CHH CK 0015

In the Chhattisgarh High Court

Case No : Writ Petition (Criminal) No. 123 Of 2023

Anildas @ Anil Manikpuri

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-05-2023

Acts Referred:

Chhattisgarh Prisoner's Leave Rules, 1989 — Rule 4, 6, 9, 9(2), 11, 12

Citation : (2023) 05 CHH CK 0015

Hon'ble Judges : Ramesh Sinha, CJ; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Lukesh Kumar Mishra, Madhunisha Singh, Avinash Singh

Final Decision : Allowed

Judgement

1. The petitioner's application for grant of leave (parole) has been rejected by respondent No. 3- Collector-cum-District Magistrate, Kondagoan (C.G.) by order dated 25.11.2022 (Annexure P/1) on the recommendation of the concerned Superintendent of Police holding that the petitioner's release is likely to lead quarrel and dispute by the petitioner with the victim's family and petitioner is likely to commit cognizable offence.

2. Learned counsel for the petitioner would submit that Rule 4 of the Chhattisgarh Prisoner's Leave Rules 1989 (in brevity 'the Rule, 1989') as well as Rules 6, 9, 11 & 12 of the Rules, 1989 have not been considered by the District Magistrate while deciding the petitioner's application for grant of leave on parole and it was rejected summarily, therefore, the order passed by the District Magistrate dated 25.11.2022 (Annexure P/1) is liable to be set aside and the writ petition deserves to be allowed.

3. Learned State counsel would support the impugned order and oppose the prayer made by learned counsel for the petitioner.

4. We have heard learned counsel for the parties, considered their rival submissions made herein-above and perused the impugned order and the

material available on record.

5. In order to decide the petitioner's application it would be appropriate to notice the relevant provisions contained in Rule, 1989 which state 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 fulfills 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.

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 send to the District Magistrate along with 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.

9. Conditions for release on leave.— After satisfaction regarding prisoner's eligibility for leave, Competent Authority shall release such prisoner on leave on the following conditions :-

(1) During the period of his leave, he shall not go to any place other than those places which have been mentioned in his leave application.

(2) During his leave he shall neither commit any crime nor involve in any such act that may have its bearing on public interest.

(3) After spending his leave he shall present himself at the jail from where he was released, but in the event of accident, disease, natural calamity, such prisoner can surrender himself at any other nearest Police Station with proper ground.

Note :- Provided that no prisoner shall claim leave as a right for leave granted under these rules]

11. Arrest of a prisoner in event of breach of conditions.— (1) If any prisoner does not present himself on the evening of fixed date of his return, he shall be treated as prisoner at large and an FIR shall be registered against him at the Police Station in whose jurisdiction concerning jail (where prisoner was expected to surrender) is situated, and concerned Station House Officer shall put up challan against escaped prisoner. Station House Officer shall initiate necessary actions as per provisions contained in Sections 82 and 83 of Criminal Procedure Code and information regarding such actions shall be sent to Jail Superintendent by him.

(2) If negligence regarding registering the FIR in case of such offence has been shown by police in spite of having received information from Superintendent of Jail under Rule 11 of the Madhya Pradesh Prisoner's Leave Rules, 1989, Police Superintendent shall inform Inspector General of Prisons after registration of such crime of the concerned Police Officer under Section 221 of Criminal Procedure Code.

(3) In the event of escape of prisoner during the period of leave, case shall be registered against the guarantor at concerned Police Station for abetment.

(4) In the event of escape of prisoner during leave Jail Superintendent shall submit application before the Court of Tahsildar for initiating actions regarding forfeiture of his security as well as attachment of guarantor's assets. On this application, Tahsil Court shall take necessary actions for attachment of assets.

12. Penalty for overstay.— If the prisoner returns to the jail of his own accord

after the date fixed for his return he shall be admitted to the jail and the prisoner's return and the reason for the delay shall be reported immediately to the District Magistrate of the district in which the jail is situated, for his orders where the prisoner should be prosecuted. If it is not considered to prosecute, the Superintendent should hold an enquiry and may for good and sufficient reasons, award one of the following punishments :-

(a) Formal Warning.

(b) Forfeiture for a period not exceeding 3 months privileges of interview, receiving and sending letters.

(c) Degradation from higher to lower grade.

(d) Forfeiture of 5 days remission for each day's overstayal on leave which shall not exceed total period of his sentence inclusive of unexpired period of sentence."

6. A careful perusal of the aforesaid provisions would show that the petitioner's application for grant of parole is to rejected when the petitioner's release on parole is detriment to public interest; and, as such, the District Magistrate is required to consider the opinion of the concerned Superintendent of Police on the advisability of granting the leave but the responsibility for action is that of the District Magistrate and he has to 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. In Rule 9 of the Rules, 1989, sufficient safeguard has been provided for release on leave in shape of Rule 9 (2) that he shall not commit any offence during the period of parole and in Rule 11 of the Rules, 1989, steps to be taken in the event of breach of conditions have been prescribed, whereas Rule 12 of the Rules, 1989, provides penalty for overstay. All these provisions have not been considered by the learned District Magistrate and summarily rejected the application basing its order on the recommendation made by the Superintendent of Police, making the order vulnerable.

7. In that view of the matter, the order passed by respondent No.3-Collector-cum-District Magistrate, Kondagaon (C.G.) dated 25.11.2022 (Annexure P/1) is quashed and the District Magistrate, Kondagaon (C.G.) is directed to consider the petitioner's application afresh in the light of the aforesaid rules and pass a reasoned and speaking order within a period of six weeks from the date of production of a copy of this order after considering the petitioner's application as per rules.

8. The writ petition is allowed to the extent indicated herein-above.