

(2022) 09 CHH CK 0083

In the Chhattisgarh High Court

Case No : Writ Petition (Criminal) No. 396 Of 2022

Anirudhda Yadav

APPELLANT

Vs

Anirudhda Yadav

RESPONDENT

Date of Decision : 23-09-2022

Acts Referred:

Constitution Of India, 1950 — Article 21
Chhattisgarh Prisoner's Leave Rules, 1989 — Rule 4, 6, 6(a)
Indian Penal Code, 1860 — Section 34, 302
Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(1)(x)

Citation : (2022) 09 CHH CK 0083

Hon'ble Judges : N.K. Chandravanshi, J

Bench : Single Bench

Advocate : Rishi Rahul Soni, Chitendra Singh

Final Decision : Disposed Of

Judgement

1. The present petition has been filed by the petitioner against the order dated 09.3.2022 passed by District Magistrate, Janjgir-Champa, whereby the application for releasing the petitioner/ Convict on parole has been rejected.

2. The petitioner is a Prisoner, who has been convicted for commission of offence under Section 302 read with Section 34 of the IPC and under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and he is languishing in jail since 27.5.2007. He made an application for grant of leave under Rule 4 and 6 of Chhattisgarh Prisoner's Leave Rule, 1989 (henceforth "Rules 1989"). The District Magistrate called report from Superintendent of Police, Janjgir-Champa, who enquired about petitioner through concerned Police Station. After receiving information vide Annexure D3, dated 14.2.2022, learned District Magistrate considered the matter and vide impugned order, rejected the application filed by petitioner holding therein that proposed sureties are residents of different village.

3. Being dissatisfied and aggrieved by that rejection order, petitioner has filed the present petition.

4. Learned counsel for the petitioner would submit that ground for rejection of petitioner's application is not as per the Prisoners Act, 1900 and the Rules 1989. It is further submitted that Sarpanch of Gram Panchayat and even Police authorities have not raised any objection in respect of grant of parole to the petitioner. Even, there is no previous criminal antecedent against him. Looking to the good behavior of petitioner, his application was forwarded by Jail Authority despite that learned District Magistrate has declined to grant parole to him, hence, impugned order deserves to be set-aside and petition may be allowed.

5. On the other hand, learned State counsel supports the impugned order passed by the Collector.

6. Heard learned counsel for the parties and considered the submissions made herein above also perused the material available on record.

7. Having considered the rival contentions put forth by either side, what is relevant at this juncture is that the State, in respect of grant of leave to the prisoners, in exercise of its power conferred upon it, under the provisions of the Prisoners Act, 1900 have enacted rules. The said Rules in the State of Chhattisgarh are known as 'The Chhattisgarh Prisoner's Leave Rules, 1989'. Rule 4 of the Rules 1989, provides with the conditions of leave, which reads thus :-

"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."

8. Rule 6 provides that "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.

9. Note appended with Rule 6(a) provides that while considering the matter, District Magistrate may consult with District Superintendent of Police, who would

also obtain the opinion of Gram Panchayat. Perusal of note attached to Rule 6(a) clearly reflects that there is only one ground on which leave can be refused by the District Magistrate i.e. only in case where he is satisfied that the release of the prisoner is fraught with danger to the public safety and under no other circumstances can the leave be refused as a matter of routine without any cogent reason.

10. The responsibility for the action under Rules 1989 has been entrusted to the District Magistrate, hence, it is expected that such responsibility be complied with considering the object of granting parole.

11. The object of granting parole is to make necessary efforts to rehabilitate a convict prisoner in the main stream of society based on "Karuna" (compassion) as well as on human consideration.

12. In the case of Poonam Lata v M.L. Wadhawan and others (1987) 3 SCC 347, the Supreme Court while highlighting the object of parole has observed that "release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner".

13. Similar matter had come up before the Madhya Pradesh High Court in 2002 and relying upon the aforesaid judgment of the Supreme Court, the Madhya Pradesh High Court in the case of Jeevan Singh Verma Vs. State of M.P. & Others, 2002 (1) M.P.L.J. 347, Hon'ble Justice Dipak Misra, as he then was, while deciding the case after referring to the provisions of the Prisoners Act held as under :

"7. Now the question that falls for consideration is whether the petitioner should be granted the benefit of parole or temporary release. In this context I may profitably refer to the decision rendered in the case of Inder Singh and Anr. v. The State (Delhi Administration) 1978 SCC (Cri) 564 wherein their Lordships emphasized on rehabilitation and quoted a passage from Lewis Moore with approval. The said passage reads as under :

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. I myself have witnessed brutal attacks upon inmates and have suffered a few myself, if he becomes violent. But many a time this restraining has turned into a brutal beating. Does this type of treatment bring about respect and rehabilitation? No.! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is reaction. This is only human nature. And in order for an

inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him."

In the aforesaid case the Apex Court laid emphasis on the concept of 'Karuna' and directed that parole should be allowed to the convicts if they show responsibility and trustworthiness. To quote-

" Parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up."

Thus parole has been treated as a curative strategy keeping in view the human dignity which is the quintessence of Article 21 of the Constitution."

14. In the instant case, application filed by the petitioner for grant of parole has been rejected by the District Magistrate, only on the ground that proposed sureties are residents of different village, whereas Jail Authorities have recommended his application for grant of parole. As per memo dated 14.2.2022 (Annexure D3), in jail, conduct of petitioner is normal, village Sarpanch has also stated no objection to grant leave/ parole to the petitioner. It has also been mentioned that petitioner has no previous criminal antecedent, therefore, Police Authorities have also stated no objection to grant parole to the petitioner despite all this learned District Magistrate has rejected his application which is not as per object and provisions of the Prisoner's Act, 1900 and Rules 1989. Rejection of such application on any of the ground, which is not reasonable, object of framing aforesaid Rules would be frustrated. Hence, in the facts of the case, the petitioner is entitled to be released on parole as per Rules of 1989.

15. Accordingly, the District Magistrate is directed to issue necessary release order granting leave / parole to the petitioner for the period applied for within a period of 15 days from the date of presentation of certified copy of this order. The District Magistrate while allowing the application for grant of parole to the petitioner, may also sought security as provided in Section 4 (e) of the Rules, 1989.

16. In the result, the petition stands disposed of with the above observation/ direction.