

(2022) 04 CHH CK 0037

In the Chhattisgarh High Court

Case No : Miscellaneous Criminal Case No. 523 Of 2021

Girish Kumar Markam

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-04-2022

Acts Referred:

Chhattisgarh Prisoner's Leave Rules, 1989 — Rule 4, 6, 6(a), 6(b)
Prisoners Act, 1900 — Section 31

Citation : (2022) 04 CHH CK 0037

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Rajni Soren, Ashutosh Mishra

Final Decision : Disposed Of

Judgement

Heard.

1. The present petition is against the order dated 10.03.2021 whereby the application to release the petitioner on parole has been rejected by the Additional District Magistrate, Raipur.

2. The admitted facts are that the petitioner stands convicted for the offence u/s 302, 34 of IPC and is in jail since 24.07.2013. He filed an application for release on parole, which was forwarded by the Superintendent, Central Jail Raipur and the opinion was obtained from the Superintendent of Police and enquiry was conducted wherein no objection was made by the local residents wherein the petitioner used to stay. However, the Superintendent of Police, Town Inspector, New Rajendra Nagar recommended not to release the petitioner and apprehension was made that if the petitioner is released on parole on the basis of old animosity he would cause further damage and assault to the victim and the family members of the victim, eventually the application for release on parole of the petitioner was rejected.

3. Learned counsel for the petitioner would submit that earlier the parole

application was allowed initially in the year 2018, but he was not released for the reason that surety could not appear. She further submits that the petitioner is entitled to be released as per the C.G. Prisoner's Leave Rule 1989 (hereinafter referred to as "the Rule, 1989") and the application of the petitioner ought not to have been rejected at the threshold only on the ground of apprehension. She further referred to case laws laid down in *Dadu alias Tulsidas s. State of Maharashtra*, (2000) 8 SCC 437; *Inder Singh v. The State (Delhi Administration)* 1978 SCC (Cri) 564 and *Jeevan Verma Vs. State of M.P.* 2002 (1) MPLJ 347 and would submit that in view of the principles laid down by the Supreme Court, the application of the petitioner for grant of parole ought to have been allowed.

4. Learned State Counsel would submit that the State in exercise of power conferred under Section 31 of the Prisoners Act 1900 and the Rules made thereunder which are known as the Chhattisgarh Prisoners Leave Rules 1989 and eventually the rejection order has been passed. It is further contended that as per the information received, an affidavit was filed on earlier occasion in WPCR No. 389 of 2021 (*Dhaneshwar @ Nanu Vs. State*) wherein it is stated that during the period from March 2020 to 10th March 2022, total 39 convicts/prisoners were granted parole and they did not surrender and remained absconding after completion of prescribed period of parole. It is further contended that in the affidavit filed in such case it is disclosed that total 21 convicts/prisoners, who were not inclined to surrender after completion of their parole period, have been admitted in jail with the help of police force. The affidavit further disclosed the fact that during the period of parole, 11 convicts/prisoners again committed offence, for which, FIRs have been registered and it further disclosed the fact that prisoners were released from Central Jails of Bilaspur, Ambikapur, Jagdalpur, Durg, Raipur.

5. What is relevant here at this juncture is that the State Government has enacted specific Rules known as "The Chhattisgarh Prisoner's Leave Rules, 1989 in respect of grant of leave to the prisoners in exercise of its powers conferred upon it under the provisions of the Prisoners Act, 1900. Rule 4 of the Rules of 1989 deals with the conditions of leave. For ready reference the said clause is reproduced herein below :

"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;

(e) He should furnish security to the satisfaction of the Releasing Authority if such security is demanded by the Releasing Authority."

6. If we take into consideration the Note attached to Rule 6 (a) & (b), it clearly reflects that there is only one ground on which leave can be refused by the District Magistrate and it is 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 cogent reasons. Further perusal of Rule 6 also clearly depicts that before the District Magistrate takes a decision on the application for grant of temporary leave he has to consult the District Superintendent of Police who in turn has to obtain the opinion of the Gram Panchayat of the village where the prisoner resides. Rule 6(b) contemplates that 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.

7. As has been held by Supreme Court in *Dadu alias Tulsidas Vs. State of Maharashtra*, 2000 (8) SCC 437, the parole is not a suspension of sentence and the convict continues to be serving the sentence despite granting of parole under the statute, rules, jail manual or the Government orders.

8. Here in this case the application of the petitioner has been rejected only on the apprehension that he may cause further assault to the family of the victim and on what basis the said opinion was arrived at is not clear and prima facie it appears that the rejection is against the rules which are existing for grant of parole but this Court cannot ignore the facts mentioned in affidavit which has been submitted by the State. The copy of the order dated 16.03.2022 passed in WPCR No. 318/2021 was produced wherein these facts have been recorded and the the Court cannot ignore the fact that it was stated by the Law Officer, Central jail, Raipur which was recorded on earlier occasion that during the period of March 2020 to 10th March, 2022, total 39 convicts have been granted parole and no-body has returned of their own after completion of period of parole. Thereafter 21 convicts were arrested with the help of Police and out of them, 11 have again committed offence while they were on parole, for which, FIRs were registered. Though the mistakes done by other prisoners cannot be passed on to the present petitioner, but considering the fact that the petitioner has been convicted for heinous offence and is serving the life sentence, the practical aspect of the matter cannot be completely side-lined that once the parole is granted, there is a tendency that the accused/ convict would be at liberty as appears from the number of previous defaults and this message might have spread among the convict people to get released in the garb of parole. So to release the convicts on parole, a balance has to be arrived at to maintain the social safety of general public and right of convicts.

9. Therefore, the state would be within its domain to re-examine the application of each individual prisoner/ convict other than reasons of conviction after inquiring all the ancillary incidental aspects by evaluating the background of convicts and ensure/put-forth further safe-guard for his return and good behavior during parole. Further the State while allowing the application for grant of parole, may also impose the following conditions upon the prisoner and its surety :

(A) Conditions to be imposed upon surety while allowing the application for parole :

1

Surety should not have any criminal antecedents.

2

Surety should be from prisoner's family or close relatives (If there is no family member or close relative capable of taking surety, affidavit to this effect should be taken from in person standing as surety)

3

Amount of surety should not be less than Rs.50,000/-

4

Forfeiture of security amount, in case the prisoner absconds.

(B) Conditions to be imposed upon the prisoner while releasing him on parole :

1.

(a)

Prisoner shall inform Kotwar/Sarpanch (in case Prisoner is visiting village during parole) about his reaching the village and shall give his attendance daily before Kotwar/Sarpanch;

(b)

In case prisoner is visiting Municipal area, he shall inform Ward members/ Corporator about his arrival and shall also give daily attendance before him during the period of leave;

2.

In case of failure on the part of prisoner to mark his attendance before Kotwar/ Sarpanch/ Ward member/ Corporator, they shall immediately inform the nearest Police Station about non-appearance/ Absence of the prisoner;

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nearest Police Station about non-appearance/ Absence of the prisoner;

10. Accordingly it is ordered that the respondent State may reconsider the application of the petitioner for grant of parole and shall take into account the direction given supra.

11. With the aforesaid observation, the petition stands disposed of.