
(2019) 02 CHH CK 0254
In the Chhattisgarh High Court
Case No : WPCR No. 215 Of 2018

Hemnarayan

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 18-02-2019

Acts Referred:

Chhattisgarh Prisoner's Leave Rules, 1989 — Rule 4, 6
Constitution Of India, 1950 — Article 21

Citation : (2019) 02 CHH CK 0254

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Sunil Pillai, Shivali Dubey

Final Decision : Allowed

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the rejection of prayer for release the petitioner on parole. It is been contended that the prayer for release on parole

has been rejected which has not been communicated to the petitioner in writing.

3. Learned counsel for the petitioner submits that the petitioner was entitled for parole as per the rules and in the return of the State it is stated that

though the grant of temporary release of the petitioner is for 12 days was forwarded through the Jail Superintendent, Central Jail, Bilaspur, wherein

the District Magistrate, District Janjgir-Champa sought a report in respect of the petitioner from the Superintendent of Police, District Janjgir-Champa.

In turn the Superintendent of Police, Janjgir-Champa directed the SHO, Police Station Malkharoda, District Janjgir-Champa to get a report, who in

turn submitted a report, whereby an objection was made that the petitioner if is released then the law and order situation may arise and the petitioner

may threaten to the family members of the deceased and may further abscond.

4. Having considered the rival contentions put forth on behalf of either side what is relevant at this juncture is that the State Government has enacted

specific rules 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.

The said Rules in the State of Chhattisgarh are known as 'The Chhattisgarh Prisoner's Leave Rules, 1989'. 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;

and

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

5. Similarly, Rule 6 of the Rules of 1989 deals with the powers conferred upon the sanctioning authority while considering the application for grant of

leave, which again for ready reference is reproduced hereinbelow :

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 concerned 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. If we take into consideration the Note attached to Rule 6(a) 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.

7. Taking into the facts & circumstances of the present case since along with the reply no document is on record to establish those points that the

release of the petitioner may lead to law and order situation and if this submission is accepted it will defeat the very purpose of the Rule itself. Further

no communication & reason is before the Court to evaluate the facts but the fact remains that the parole of the petitioner has been rejected, which is the end point of the discussion.

8. In *Dadu alias Tulsidas Vs. State of Maharashtra*, 2000 (8) SCC 437, the Supreme Court held as under :

6. Parole is not a suspension of sentence. The convict continues to be serving the sentence despite granting of parole under the statute, rules, jail

manual or the Government Orders. "Parole" means the release of a prisoner temporarily for a special purpose before the expiry of a sentence, on the

promise of good behaviour and return to jail. It is a release from jail, prison or other internment after actually being in jail serving part of sentence.

9. 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.

8. The facts of the present case have to be judged on the basis of aforesaid enunciation of law. By the impugned order the District Magistrate has concurred with the opinion of the Superintendent of Police and rejected the prayer for temporary release. The reason ascribed is that the petitioner is likely to commit similar nature of offence. It is not shown on what foundation such an opinion has been expressed. It is not reflected in the impugned order that the convict has any criminal antecedent or has been a drug peddler. The order does not indicate that the convict was a member of any organized group involved in the transaction. The convict is the only son and his mother is ill. In support of the illness of the mother Annexure P-2 has been brought on record. Refusal to grant parole or temporary release on a spacious plea that he will get himself involved in similar nature of crime, without indicating any kind of antecedent or any other essential facts is likely to cause trauma in a prisoner which is against the curative measure. Thus I am of the considered opinion that the order passed vide Annexure P-1 is vulnerable and deserves to be lanced in exercise of extraordinary jurisdiction of this Court and I so do.

Consequently it is directed that the respondents shall extend the privilege of temporary release/parole as per law to the son of the petitioner.

10. In the light of the aforesaid discussions in the given facts and circumstances of the case, it is directed that the rejecting the application of the petitioner to grant parole cannot be accepted and neither any communication is on record nor any other document is on record to support the same has been filed. Under the circumstances, as a consequence, the case of the Petitioner for grant of temporary leave/parole is again ordered to be placed before the concerned District Magistrate who in turn in consultation with the Superintendent of Police and also keeping in view Rule 6 of the Rules,

1898 in this regard, shall pass afresh order within a period of 30 days from the date of presentation of the certified copy of this order and thereafter

shall communicate the result in writing to the petitioner.

11. The petition accordingly stands allowed.