
(2019) 03 CHH CK 0115
In the Chhattisgarh High Court
Case No : WPCR No. 33 Of 2018

Hemshankar

APPELLANT

Vs

State Of Chhattisgarh And Ors

RESPONDENT

Date of Decision : 13-03-2019

Acts Referred:

Chhattisgarh Prisoners Leave Rules, 1989 — Section 4
Constitution Of India, 1950 — Article 21

Citation : (2019) 03 CHH CK 0115

Hon'ble Judges : Goutam Bhaduri, J

Bench : Single Bench

Advocate : Sunil Pillai, Sunil Verma, Akash Pandey

Judgement

Goutam Bhaduri, J

1. Heard.

2. The present petition is against the different orders which eventually culminated by rejection of leave on 15.11.2017, filed as Annexure R-7, whereby the application for release of the petitioner on parole has been rejected.

3. Perusal of the record shows that the present petition was filed for rejection of application of release on parole dated 28.11.2016, which is filed as Annexure P-1. Subsequently when the reply was filed, it revealed that after rejection of parole in the year 2016, subsequent applications were made by the petitioner at different period of time, which stood rejected and the last rejection was made on 15.11.2017. Perusal of the document filed along with the reply shows that after rejection of first application for release on parole on 28.11.2016 (Annexure P-1), another application was made in the year on 08.03.2017, the same was recommended, however, the communication of the Superintendent of Police was forwarded to the District Magistrate vide Annexure R-2 dated 14.04.2017, wherein it was stated that the petitioner has been convicted in a major offence, therefore, he may not be released, consequently his application for release was

rejected on 24.05.2017, however, it appears that the same was not communicated to the petitioner. Subsequently, another application for parole was moved on 05th of October, 2017, the same was recommended, however, while the enquiry was made, it was revealed that Purman Sahu and Neelu Sahu, who were named as surety, refused to take the surety and the statement of the village Sarpanch and other persons were recorded, who also objected for release of the petitioner. The reason was communicated to the District Magistrate by the Superintendent of Police on 02.11.2017 and eventually the District Magistrate dismissed the application for leave on parole on 15.11.2017 vide Annexure R-7 by holding that the petitioner has been convicted under a major crime.

4. Learned counsel for the petitioner submits that the release of the petitioner could not have been rejected on the ground as enumerated. He would further submit that the petitioner is ready and willing to furnish the surety. If the sureties are furnished, then the only thing which is to be evaluated that the release of the petitioner is fraught with any danger. He further submits that if such circumstances do not exist, the petitioner is entitled for release as Chhattisgarh Prisoners Leave Rules, 1989 (hereinafter referred to as Rules, 1989) was framed with a different objective.

5. Per contra, learned State counsel opposes the arguments and submits that the rejection of leave was basically and primarily on the ground that the sureties have withdrawn to indemnify the State and the rejection was further coupled with the fact that the release was not recommended due to law and order problem.

6. 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."

7. If we take into consideration the Note appended 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 feels 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. Rule 6(a) and the note appended thereto read as under:

"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.

8. In the light of the aforesaid principles, if the orders are perused along-with the documents filed along-with the return, the reasons assigned for rejection on parole is not supported by the principles laid down. The reasons have been assigned that if the petitioner is released, it may cause danger in the society.

9. 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."

10. 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."

11. Considering the reasons assigned and the principles laid down in the Act by the different Court, in the opinion of this Court, an application for parole cannot be rejected in the facts of this case for all the time. Accordingly, it is directed that the petitioner may be released on parole as has been applied for a limited period according to the application after compliance of surety which has been normally followed. However, the petitioner shall not visit the village Charoda as it has been stated that some of the villagers have objected to the release of the petitioner. The petitioner may reside any other village nearby.