

(2022) 10 CHH CK 0004

In the Chhattisgarh High Court

Case No : Writ Petition (Criminal) No. 604 Of 2021

Madhavi Das @ Pammi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 10-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21
Chhattisgarh Prisoner's Leave Rules, 1989 — Rule 4,6, 6(a)
Indian Penal Code, 1860 — Section 302

Citation : (2022) 10 CHH CK 0004

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

Bench : Single Bench

Advocate : Rajeev Kumar Dubey, Gurudev I. Sharan

Final Decision : Disposed Of

Judgement

1. The present petition has been filed by the petitioner against order dated 01.9.2021 (Annexure-R/1) passed by the Deputy Collector, Korba (CG) whereby the application for releasing the petitioner/convict on parole has been rejected.
2. The petitioner is a prisoner, who has been convicted for offence under Section 302 of Indian Penal Code and is languishing in Jail since long. She made an application for grant of leave under Rule 4 and 6 of the Chhattisgarh Prisoner's Leave Rule 1989 (henceforth 'Rule 1989'). On the said application, the District Magistrate called report from the concerned Superintendent of Police, wherein it has been stated that if petitioner is granted leave then some unavoidable incident may happen and on the basis of that report the concerned District Magistrate, rejected the application reiterating the objection raised by the Police.
3. Feeling dissatisfied and aggrieved against that order, the instant writ petition has been filed.
4. Learned counsel for the petitioner would submit that petitioner is in jail since 01.2.2018 and after fulfillment of all necessary ingredients required in Prisoner's

Act, 1900 and Rule 1989, she had applied for grant of leave/ parole which was dismissed by the Competent Authority without any application of mind and only on the basis of objection raised by the Police Authority. Whereas in impugned order Annexure R1, it has specifically been mentioned that sureties are ready to keep petitioner in their control and the concerned Ward Councilor has also not made any objection for grant of parole to the petitioner. It is further submitted that Superintendent (Jail), Central Jail, after finding other conditions as provided in Section 4 of the Rule, 1989, had forwarded the application filed by the petitioner alongwith his recommendation, despite that, the District Magistrate, Korba has dismissed the application without considering the object of granting parole to jail inmates and as has been observed by Supreme Court in various cases and also the observations of Coordinate Bench of this Court in the matter of Rakesh Shende v. State of Chhattisgarh & others Writ Petition (Cr.) No. 29 of 2016, decided on 18.11.2016, wherein it has been held that all aspects of criminal justice fall under the umbrella of Articles 14, 19 and 21 of the Constitution of India and, therefore, impugned order deserves to be set aside and the petition may be allowed.

5. On the other hand, learned counsel for the State controverted the submissions made by counsel for the petitioner. He would submit that since petitioner has been convicted for heinous offence i.e., under Section 302 of the I.P.C. and Police is under suspicion that if she is granted leave then some unavoidable incident may happen, therefore, learned District Magistrate has declined to exercise his power for grant of temporary release of the petitioner.

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

7. 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 power 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 Rule, 1989'. Rule 4 of the Rules of 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 offence 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 Rule 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 for grant of leave/parole filed by the petitioner has been dismissed only on the ground that Police has raised objection that if petitioner is granted parole then some unavoidable incident may be caused but it has not been mentioned in impugned order that what reason has been mentioned by the Police in respect of their aforesaid suspicion / probability. Whereas impugned order Annexure R1 itself contains that sureties are ready to keep petitioner in their control during period of parole / leave and after completion of period of parole/leave they are also ready to send her in jail. It has also been mentioned in impugned order that the concerned Ward Councilor has also submitted no objection for grant of parole to the petitioner.

15. Considering aforesaid facts situations, only because the objection raised by the Police, the same could not be used as a legal bar to grant leave to the petitioner, which is right created under Section 4 & 6 of the Rules, 1989, as has been stated in preceding paragraphs. Rules of 1989 have been enacted with certain object, therefore, application for grant of parole should be considered bearing in mind to those objects. Rejection of such application on any of the ground, which is not reasonable, the object of framing aforesaid Rule would be frustrated. Therefore, in the facts of the case, the petitioner is entitled to be released on parole as per Rules of 1989.

16. Accordingly, the District Magistrate is directed to issue necessary release order granting leave / parole to the petitioner for the period applied for as per

aforesaid Act/ Rules 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.

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