

(2022) 03 CHH CK 0019

In the Chhattisgarh High Court

Case No : Writ Petition (Criminal) No. 684 Of 2021

Pradeep Sarthi

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 11-03-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Indian Penal Code, 1860 — Section 34, 302

Citation : (2022) 03 CHH CK 0019

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Shakti Raj Sinha, Akash Pandey

Final Decision : Allowed

Judgement

1. Heard.

2. The present petition has been filed under article 226 of the Constitution of India challenging the order dated 06.09.2021 passed by the District Magistrate Koriya, Baikunthpur, District- Koriya (C.G.) whereby the application filed by the petitioner under Chhattisgarh Prisoner's Leave Rule 1989 for grant of leave (parole) has been rejected.

3. The petitioner is a prisoner who has been convicted for the offence under Section 302, 34 of the IPC and is languishing in jail since 3 years and 9 months. He has made an application for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989 but the said application was rejected by the District Magistrate, Koriya (C.G.) vide order dated 06.09.2021. Feeling dissatisfied and aggrieved against the said order, the instant writ petition has been filed.

4. Mr. Shakti Raj Sinha, learned counsel appearing for the petitioner would submit that the impugned order is malafide, arbitrary in nature and also contrary to law as the application has not been considered in touchstone of the Rules. Respondent authorities ought to have allowed the application of the petitioner

looking to the pith and substance for grant of leave under Chhattisgarh Prisoner's Leave Rule 1989, he is entitled to be released on parole. It is next contended that petitioner is in jail since 3 years and 9 months and respondent authorities ought to have considered the statement of the villagers and also the sureties which show that no objection has been made by them if the petitioner is released on temporary leave, therefore, in the interest of justice, the impugned order may be set aside and the petition be allowed. In support of his argument, learned counsel for the petitioner has placed reliance in the matter of Rakesh Shende Vs. State of Chhattisgarh & Ors. passed in WPCR No. 29/2016 by this Court.

5. On the other hand, learned State counsel has supported the impugned order and denied all the adverse allegations made by the petitioner.

6. Heard counsel for the parties and perused the material available on record.

7. It is clear from the material available on record that the petitioner has filed application before the District Magistrate, Koriya, Baikunthpur, District- Koriya (C.G.) and the learned Magistrate, Koriya (C.G.) called a report from the Superintendent of Police Koriya and also called a report from the Tehsildar Manendragarh on the proposed release of the petitioner.

8. On the basis of report submitted by SHO, Jhagrakhand, the Senior Superintendent of Police, Koriya vide memorandum dated 14.07.2021 did not endorse the release of the petitioner on the ground that release of the petitioner is detrimental to public peace.

9. This Court in the matter of Rakesh Shende Vs. State of Chhattisgarh & Others in Writ Petition (Cr.) No. 29/2016 vide order dated 18.11.2016 held in paras 22 & 23 as under:-

"22. As noticed herein above, the power of parole has been conferred by the rules to the District Magistrate and the post of District Magistrate is manned in the State of Chhattisgarh by a member of Indian Administrative Service. Therefore, the District Magistrate is required to exercise the power to consider the application for grant of parole. He has to take into consideration the object and need to grant parole to the convicted prisoners by applying their mind and come to a conclusion judiciously. The order passed by the District Magistrate in the instant case would show the complete non-application of mind, as by a cyclostyle order only name and number of prisoner has been inserted and it has been signed by the Additional District Magistrate. The manner in which the order has been passed by the District Magistrate in a mechanical manner is suggestive of betrayal of the confidence which the rule making authority reposed in the District Magistrate in conferring upon him to exercise the power to grant parole.

23. At this stage, it would be appropriate to notice the following binding observation made by the Supreme Court in the matter of Tarlochan Dev Sharma v. State of Punjab & Others (2001) 6 SCC 260.

"16. In the system of Indian democratic governance as contemplated by the

Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give way or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a government servant. No government servant shall in the performance of his official duties or in the exercise of power conferred on him act otherwise than in his best judgment except when he is acting under the direction of his official superior..”

10. Looking to the Annexure P/1 and report submitted by Superintendent of Police, Koriya (C.G.) and principles and observation of the Hon'ble Supreme Court in the case of Trilochan Das(Supra), I am of the considered opinion that the order passed by the District Magistrate (Annexure P/1) deserves to be quashed in exercise of jurisdiction of this Court under Article 226 of the Constitution of India and is accordingly quashed. It is directed that the respondents shall consider the case of the petitioner to grant him the privilege of release/parole in accordance with law and principles laid down in the matter of Rakesh Shinde (Supra) & Trilochan Das (Supra) within forty five days from the date of production of a copy of this order.

11. The writ petition is allowed to the extent indicated hereinabove. There shall be no order as to costs.