

(2022) 12 CHH CK 0049
In the Chhattisgarh High Court
Case No : Writ Petition (Criminal) No. 972 Of 2022

Yadram Banjare

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-12-2022

Acts Referred:

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

Citation : (2022) 12 CHH CK 0049

Hon'ble Judges : Sanjay K. Agrawal, J; Rakesh Mohan Pandey, J

Bench : Division Bench

Advocate : Deepali Gupta, Animesh Tiwari, Avinash Tiwari

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. The petitioner (convict) has preferred this writ petition calling in question the order dated 01.08.2022 (Annexure-P/1) passed by Additional District Magistrate, Gariyaband whereby his application for grant of leave/parole has been rejected.

2. Ms. Deepali Gupta, learned counsel for the petitioner submits that the District Magistrate, who is competent authority to consider the application for grant of parole, has not applied its mind and simply on a proposal given by the In-charge Officer of the Collectorate, relying upon the report of Superintendent of Police, the application has been rejected, which is totally unsustainable and bad in law.

3. On the other hand learned counsel for the State supported the impugned order.

4. We have the learned counsel for the parties. Considered their rival submissions made herein above and went through the record with utmost circumspection.

5. Since the submission put forth on behalf of the petitioner is that the District Magistrate, who is competent authority to consider the application for grant of

parole, has not applied its mind, it would be appropriate to notice the impugned order, which reads thus:

A careful perusal of the impugned order would show that the Office of District Magistrate placed a note before the In-charge Officer of the Collectorate, stating that the elder brother and step-father of the deceased had made strong objection on release of the petitioner on parole and, furthermore, the Superintendent of Police, Gariyaband has also made objection on release of the petitioner on parole. The said note was placed before the In-Charge of the Collectorate and he also enclosed that as per the recommendation of the Superintendent of Police, the release of the petitioner on parole is not proper, therefore, it is would not be appropriate and expedient to allow the application, which has further been accepted by District Magistrate by writing "as proposed". Accordingly, the application has been rejected.

6. Rule 6 (a) of the Chhattisgarh Prisoner's Leave Rules 1989 (for short the "Rules of 1989"), provides that 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.

7. In the instant case, the District Magistrate has only asked for the report of Superintendent of Police and thereafter relying upon the said report and without recording its satisfaction that release of the petitioner is detrimental to the public interest, rejected the application on the note prepared by the In-charge of the office of Collectorate. He ought to have applied its mind and ought to have recorded its satisfaction that the request for grant of leave is detrimental to the public interest. No such finding has been recorded and only on one line order "as proposed" the application for grant of leave/parole has been rejected.

8. The Supreme Court in the matter of Inder Singh and another v. State (Delhi Administration) AIR 1978 SC 1091 has held that "parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up" As such, parole has been considered as a part of human dignity which is included in Article 21 of the Constitution of India.

9. As apparent from the record, the District Magistrate has failed to apply its judicial mind in light of Rule 6 of the Rules of 1989 and the application filed by the petitioner for grant of leave/parole has been rejected by District Magistrate in just one line by the impugned order dated 01.08.2022, which is liable to be and is hereby set aside. Accordingly, the matter is remitted back to the District Magistrate, Gariyaband (C.G.) to pass order afresh on the application filed by the petitioner for grant of leave/parole in accordance with law within 30 days from the date of receipt of copy of this order.

10. The writ petition is allowed to the extent indicated hereinabove.

11. A copy of this order be sent to the Principal Secretary (Home) for circulating

this order amongst all the District Magistrates in the State for information and necessary action.