



NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 228 of 2022**

- Kamlesh Kumar S/o Shri Kanhaiya Lal Aged About 37 Years Convict No. 5906/23, Lodged In Raipur Central Jail Raipur, Distt. Raipur (C.G.)

---- **Petitioner****Versus**

- State Of Chhattisgarh Through Secretary Department Of Home, Mantralaya, Naya Raipur, District- Raipur (C.G.)
- Jail Superintendent Central Jail Raipur, District- Raipur (C.G.)
- District Magistrate Gariyaband, Distt. Gariyaband (C.G.)
- Additional District Magistrate Gariyaband, Distt. Gariyaband (C.G.)
- Superintendent Of Police, Gariyaband, Distt. Gariyaband (C.G.)
- Thana In-Charge, Police Station Mainpur, Distt. Gariyaband (C.G.)

---- **Respondents**

For Petitioner : Ms. Deepali Gupta, Advocate on behalf
of Ms. Rajni Soren, Advocate
For Respondents/State : Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice N.K. Chandravanshi**Order On Board****06.9.2022.**

1. The present petition has been filed by the petitioner against order dated 18.3.2021 (Annexure-P/1) passed by respondent No.4/Additional District Magistrate, Gariyaband (CG) whereby the application for releasing the petitioner/convict on parole of 12 days including journey period has been rejected.

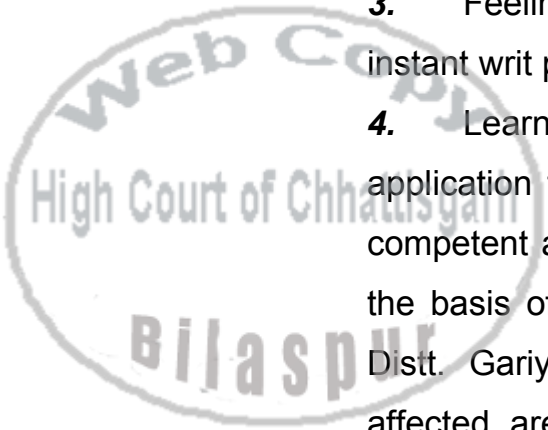
2. The petitioner is a prisoner, who has been convicted for commission of offence under Sections 376(2)(B)(II), 376(2B) and 506B of Indian Penal Code and is languishing in Jail for about 06 years. He made an application for grant of leave under Rule 4 and 6 of the Chhattisgarh Prisoner's Leave Rule 1989 (henceforth 'Rule 1989'). On the said application, the Additional District Magistrate called report from Superintendent of Police,



Distt. Gariyaband, who, in turn, called report from Incharge Police Station Mainpur Distt. Gariyaband, who submitted adverse report stating therein that since the petitioner belongs to naxal affected area, there is possibility that he would abscond after being released on parole. Relying upon the report, which was forwarded by Superintendent of Police, Gariyaband, learned Additional District Magistrate, Distt. Gariyaband by its order dated 18.3.2021 rejected the application reiterating the reasons mentioned by the Incharge Police Station Mainpur Distt. Gariyaband, that on being released, there is possibility of absconding by the petitioner as he belongs to naxal affected area.

3. Feeling dissatisfied and aggrieved against that order, the instant writ petition has been filed.

4. Learned counsel for the petitioner would submit that application for grant of parole/leave has been dismissed by the competent authority without any application of mind and only on the basis of remarks made by Incharge Police Station Mainpur Distt. Gariyaband that since the petitioner belongs to naxal affected area, there is possibility of his absconding, whereas aforesaid objection raised by Incharge Police Station Mainpur Distt. Gariyaband, is not based on any cogent facts and reason. He further submits that victim and Sarpanch of village Mainpur have stated that they have no objection, if the petitioner is granted parole. It is further submitted that Superintendent (Jail), Central Jail, Raipur, after finding other conditions as provided in Section 4 of the Rules, 1989, had forwarded the application filed by the applicant alongwith his recommendation, despite that, the Additional District Magistrate, Gariyaband 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**





& others¹, 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 applicant has been convicted for the offence of rape and has been sentenced for 12 years of imprisonment, therefore, objection raised by the Incharge Police Station Mainpur Distt. Gariyaband, could not be overlooked and on the basis of such objection, learned Additional District Magistrate has rightly declined to exercise his power for grant of temporary release of the petitioner.

6. I have heard learned counsel for the parties and considered their submissions made hereinabove 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 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;

1 Writ Petition (Cr.) No. 29 of 2016, decided on 18.11.2016



(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

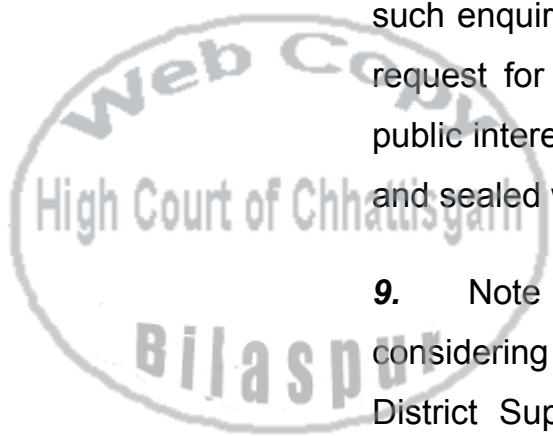
(e) He should furnish security to the satisfaction of the Releasing Authority if such security is demanded by the Releasing Authority.”

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*², 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

² (1987) 3 SCC 347



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 theirfamily 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 Incharge Police Station Mainpur Distt. Gariyaband has made an apprehension that since the petitioner belongs to naxal affected area, there is possibility of his absconding, but he has not stated any reasonable ground for his aforesaid apprehension, rather victim and Sarpanch of the said village have made no objection with regard to grant of parole to the petitioner. It is also pertinent to mention here that Superintendent, Central Jail, Raipur has recommended for grant of parole to the petitioner.

15. Considering aforesaid facts situations, only because the objection raised by the Incharge Police Station Mainpur Distt. Gariyaband, the same could not be used as a absolute barrier 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 Additional District Magistrate is directed to issue necessary release order granting leave / parole to the petitioner for the period applied for within a period of 15 days from the date of presentation of certified copy of this order. The Additional District Magistrate while allowing the application for grant of parole to the petitioner, may also seek 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.

Sd/-

**(N.K. Chandravanshi)
JUDGE**

