
(2003) 08 PAT CK 0065
In the Patna High Court
Case No : Crl. W.J.C. No. 224 of 2003

Abdul Wahid alias Jhunna Mian

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-08-2003

Acts Referred:

Citation : (2004) 2 RCR(Criminal) 215

Final Decision : Partly Allowed

Judgement

1. The petitioner is an under-trial prisoner in Bagaha Sub-Jail in connection with Sagaha P.S. Case No. 47/ 2002. He has approached this Court with three fold, grievance. He is aggrieved by his cellular confinement. He also complains of being kept in fetters. Lastly, he submits that he is being denied audience with his lawyers and relatives and friends as and when he desires.

2. As far as the second grievance is concerned, the admitted position now is that fetters have been removed and therefore so far as that part of the relief is concerned, the same stands redressed by the respondent authorities.

3. The core question which arises for consideration relates to petitioner's cellular confinement. The fact that the petitioner is being kept in cell is not disputed by the respondents. What they say is that the confinement is solitary. According to them, the petitioner is a hard core criminal involved in as many as 17 cases of murder, dacoity and extortion pending against him. It is said that he has formed a group of criminals, he tried to kidnap the Head Warder Sri Prabhu Singh, and also created law and order problem inside the jail. He was shifted to Muzaffarpur Jail on administrative ground to maintain law and order inside the Jail. The respondents thus aver that the petitioner has been kept in separate confinement due to security reasons.

4. We heard Shri Baxi S.R.P. Sinha on behalf of the petitioner and Shri S.D. Yadav, Government Advocate, on behalf of the respondents.

5. Shri Sinha submitted that the point at issue is covered by a Bench decision of

this Court in Ramesh Kumar Singh "Rakesh" v. State of Bihar 1927 PLJR 178, wherein the Court made distinction between cellular confinement and separate confinement and held that on the ground of separate confinement a prisoner cannot be kept in cell. The Court also held that cellular confinement can be awarded to a condemned prisoner and/or as punishment for prison offences". It cannot be justified on ground of security. The plea of the petitioner, if would appear, is fully covered by the said decision and the writ petition to this extent is fit to succeed. However, in view of the significance of the question involved, we would like to refer to the relevant provisions of the prisons Act, 1894 and the Bihar Jail Manual, and also to some of the decisions of the Apex Court on the point. Before we do so, we may notice the contentions of the Government Advocate. Placing reliance on Rule 854 of the Jail Manual he submitted that the rule permits putting restrictions on under-trial prisoner so far as the same is consistent with the maintenance of order and discipline in the Jail. In our opinion the provision rather aims at preserving the rights of under-trial prisoners which is evident from the words, an unconvicted criminal prisoner shall be subjected to "as little interference" as is consistent with the maintenance of order, and discipline. The latter part of the rule would indicate that the rule refers to living conditions of the prisoners. Learned Government Advocate referred to the case of Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi, particularly the observations in paragraphs 15 of the judgment. The judgment was rendered in the context of request made by the prisoner to provide more amenities. The Supreme Court noticed that the petitioner had already been awarded conviction in two cases and having regard to his past conduct held that he could not be allowed the desired amenities. The decision has no relevance in the present case. The facts of the case were entirely different and the prisoner had already been awarded conviction in two cases and, therefore, could not be regarded as under-trial prisoner.

6. Before we refer to the provisions of the Prisons Act, we may observe that though convection and confinement of an accused in jail brings certain restrictions on his fundamental rights, such as, right to free movement in the country, he is not denuded of all the fundamental rights which he otherwise possesses. The following observation in the case of D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others, succinctly culls out the legal position.:-

"Likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law."

In subsequent decisions the right to life under Article 21 of the Constitution has been explained to mean "right to live with dignity". In the case of Charles Sobraj Vs. Supdt. Central Jail, Tihar, New Delhi, too the Court had observed.

"Imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III

enjoyed by a free citizen. Article 21, read with Article 19(1)(d) and (5), is capable of wider application than the imperial mischief which gave it birth and must draw its meaning from the evolving standards of decency and dignity that mark the progress of a mature society. Fair procedure is the soul of Article 21, reasonableness of the restriction is the essence of Article 19(5) and sweeping discretion degenerating into arbitrary discrimination is anathema for Article 14."

Thus any restriction which may be put on the rights of an under-trial prisoner has to be reasonable and consistent with Article 14 of the Constitution. Further, no restriction can be imposed except as permissible in law. This is what the clause "except according to procedure established by law" in Article 21 mandates.

7. Adverting now to the Prisons Act it would appear that Section 27 of the Act provides for classification of the prisoners into four categories for the purpose of their confinement, as under :--

- (a) Female prisoners,
- (b) Prisoners below the age of 21 years,
- (c) Un convicted criminal prisoners, and
- (d) Civil prisoners.

The section says that these classes of prisoners shall be kept in separate confinement. The under-trial prisoners described as "unconvicted prisoners" in the section are thus to be treated as one class and there cannot be a further classification amongst them except as provided in the Prisons Act. The relevant provisions in this regard are Section 45 which contain the description of the "prior offences" and Section 46 which provides for punishment for such offences. It may be mentioned here itself that description of "prison offences" in Section 45 is not exhaustive. Section 59 empowers the State Government to "define acts which shall constitute prison-offences"). The punishments include "separate confinement for any period not exceeding three months" under Sub-section (8) and "cellular confinement for any period not exceeding fourteen days" under Sub-section (10). In other words, for committing prison offences an under trial prisoner can be awarded punishment of separate confinement or cellular confinement but not for any period exceeding three months and fourteen days respectively. It is relevant to mention that Section 47 of the Act permits imposition of two punishments enumerated in Section 46, but subject to certain exceptions as mentioned therein. One of the exception vide Sub-section (3) is that cellular confinement cannot be combined with separate confinement so as to prolong the total period of seclusion to which the prisoner may be liable. A combined reading of Sections 46 and 47 leaves no room for doubt that separate confinement and cellular confinement are two distinct things and they cannot be given the same meaning. It may be recalled that the stand of the respondents is that for security reasons the petitioner has been kept in separate confinement, but in a cell. Confinement in cell amounts to cellular confinement which is

different from separate confinement and, therefore, if the authorities for security reasons want to keep the petitioner in a separate confinement they cannot keep him in cell which amounts to cellular confinement.

8. Reference may also be made to Section 49 of the Prisons Act which provides that except by order of a Court of justice no punishment other than the punishments specified in the foregoing sections shall be inflicted on any prisoner, and no punishment shall be inflicted on any prisoner otherwise than in accordance with the provisions of those sections. From a simple reading of this section too it is clear that apart from the punishment which may be awarded by a Court of justice, the punishments referred to in Section 46 of the Act can be awarded in accordance with the provisions of the Jail Manual. There cannot be any doubt that cellular confinement is punitive in nature and, therefore no under trial prisoner can be kept in cellular confinement without being punished for having committed a prison offence.

9. It is an admitted position that the petitioner has not been awarded any punishment for committing any prison offence enumerated in Section 45 or other prison offences which may have been prescribed by the State Government in exercise of rule making-power u/s 59. In the above premises, we have no doubt in our mind that the petitioner's cellular confinement, treating it as solitary confinement, is not in accordance with law and, therefore, he is entitled to be taken out from the cell and kept in ward. We may observe in this connection that if the petitioner is considered to be a "security risk" to the prisoners at large inside the jail, the jail authorities are not powerless to deal with him otherwise than by keeping him in cellular confinement. It is a purely administrative matter, and for failure to take effective administrative measures they cannot be allowed to take recourse to punitive measures such as cellular confinement of an under-trial prisoner. We accordingly direct the respondents to immediately keep the petitioner in a ward, like other under trial prisoners, subject to the restrictions which may be imposed consistent with security of the prisoners at large inside the jail and the provisions of the Prisons Act or the Jail Manual.

10. Coming to the other grievance of the petitioner that he is being denied audience with his lawyers, friends and relatives at will, as and when he likes, it is difficult to accede to the prayer Section 40 of the Prisons Act, apart from the Jail Manual, permits restrictions on visits to under-trial prisoners. Section 40 reads as under :--

"40. Visit to civil and unconvicted criminal prisoners. -- Due provision shall be made for the admission, at proper times and under proper restrictions into every prison of persons with whom civil or unconvicted criminal prisoners may desire to communicate, care being taken that so far as may be consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other persons."

The words "under proper restrictions" and, again, "so far as may be consistent

with the interests of justice" would convey that no under-trial prisoner can claim absolute right nor any outsider, be he a practising lawyer or friend of the prisoner can claim such right to have audience with each other as and when they like. The visiting hours are regulated by rules and orders issued by the jail authorities from time to time, and no prisoner can claim any special privilege merely because he is involved in a number of cases. Of course, in special cases and situations under-trial prisoner may be granted audience with his lawyers even during un-scheduled hours. But then that will be a purely administrative matter which has to be left to the discretion of authorities concerned. So far as the relief sought by the petitioner is concerned, in the manner and to the extent he wants audience with his friends and relatives, as and when he desires, cannot be granted. We accordingly, decline to pass any positive order in favour of the petitioner on this point.

11. In the result, the writ petition is allowed in part, in the manner mentioned above.