
(2018) 04 J&K CK 0037
In the Jammu And Kashmir High Court
Case No : OWP No.706 OF 2018

A.K. SAWHNEY

APPELLANT

Vs

STATE AND ORS

RESPONDENT

Date of Decision : 19-04-2018

Acts Referred:

Prisons Act, 1977 — Section 40, 41

Citation : (2018) 04 J&K CK 0037

Hon'ble Judges : ALOK ARADHE

Bench : Single Bench

Final Decision : Disposed Of

Judgement

The petition is admitted for hearing. With consent of the learned counsel for the parties, the matter is heard finally.

In this petition, the petitioner inter alia has prayed for following reliefs:

â??Writ of mandamus directing and commanding the respondents to permit the lawyers/ advocates to meet the undertrial/ accused/ dentenues (in

general) and particularly permit the petitioner and his colleague advocates to meet the accused/ undertrial client Tilak Raj lodged in District Jail Kathua

in the FIR No.10/2018 P/S Hira Nagar investigated by SIT of Crime Branch, Jammu and challan presented before the learned Sessions Judge,

Kathua, and permit interview in a dignified and decent way.

Further to direct the respondent No.1 and 2 to issue general instructions to all the jails in the State of J&K to permit the lawyers/ advocates to meet

the under detention clients without any hindrance, disrespect, and in a decent way by offering meeting in an office or designated place where the

lawyer can set on a chair.Â Â

Facts giving rise to the filing of this writ petition briefly stated are that the petitioner is an advocate having putting in practice more than 44 years at

Bar. On 09.04.2018, a charge sheet was filed and the committal Court fixed the date on 16.04.2018 before the Sessions Judge, Kathua. It is averred in

the writ petition that on 16/04/2018, the petitioner along with Mr. Aseem Kumar Sawhney, Advocate appeared before the Trial Court and filed

Vakalatnama and took the signatures of the client Tilak Raj in the court itself. Thereafter, on 16.04.2018 itself the petitioner and his colleagues

visited the District Jail, Kathua and made an application for meeting the client/detenué, namely, Tilak Raj. However, it is averred in the writ petition

that they were not allowed to enter the SP's office for two hours and the petitioner and his colleagues were informed that they can meet the

accused in the general meeting hall. In the aforesaid factual background, the petitioner has approached this Court seeking the reliefs as stated supra.

When the matter was taken up today, learned Advocate General has entered appearance on advance notice and has invited the attention of this Court

to provisions of Sections 40 and 41 of the Prisons Act, Svt. 1977 and Clauses 34.26 and 43.15 of Manual for Superintendence and Management of

Jails. The aforesaid provisions read as under:

40. Visits 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 person.

41. Search of Visitors.-(1) The Jailor may demand the name and address of any visitor to a prisoner, and when the jailor has any ground for suspicion,

may search any visitor, or cause him to be searched, but the search shall not be made in the presence of any prisoner or of another visitor.

(2). In case of any such visitor refusing to permit herself to be searched, the Jailor may deny him admission; and the ground of such proceeding, with

the particulars thereof, shall be entered in such record as [Government] may direct.

34.26. Unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for

interviewing or otherwise communicating either orally or in writing with their relatives, friends and legal advisers.

43.15. Interviews shall be conducted with full respect to prisoners privacy by keeping them within sight but not within hearing unless there are reasons to do otherwise.

Learned Advocate General fairly stated that the petitioner shall be allowed to meet the accused persons in accordance with the provisions contained in

Sections 40, 41 of the Prisons Act, 1977 as well as Clauses 34.26 and 43.15 of the Jail Manual for Superintendence and Management Of Jails

framed under the Act. The aforesaid statement made by the learned Advocate General is taken on record.

In view of the aforesaid statement made by learned Advocate General, nothing survives for adjudication in this writ petition.

Accordingly, the petition is disposed of along with connected MP.

Copy of this order be supplied to the learned counsel for the petitioner under the seal and signatures of the Bench Secretary/ Reader of this Court.