
(2008) 07 BOM CK 0028
In the Bombay High Court
Case No : Criminal W.P. No. 267 of 2008

Amit Band

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Maharashtra Prisons (Facilities to Prisoners) Rules, 1962 — Rule 1 , 10, 11, 12, 13

Citation : (2009) CriLJ 887

Hon'ble Judges : K.J. Rohee, J;B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : R.M. Daga, for the Appellant; D.M. Kale, APP, for the Respondent

Final Decision : Allowed

Judgement

K.J. Rohee, J.—Rule. Returnable forthwith. Heard finally by consent of parties.

2. The petitioner, who is a Lawyer by profession, seeks a direction to the jail authorities not to insist for Vakalatnama of prisoner, whenever an Advocate intends to take interview of the prisoner.

3. According to the petitioner, whenever an Advocate intends to take interview of the prisoner, the jail authorities insist that the application by the lawyer should be accompanied by Vakalatnama signed by the prisoner. In the additional reply filed on behalf of the jail authorities the said action of the jail authorities is tried to be justified on the ground that Vakalatnama is the proof of the Advocate being bona fide legal adviser of the prisoner. Hence, it is necessary to insist for Vakalatnama of the prisoner whenever the prisoner's lawyer intends to meet the prisoner.

4. In respect of the present controversy, the Maharashtra Prisons (Facilities to Prisoners) Rules, 1962 are relevant. These Rules are comprised in Chapter XXXI, Section 1 Statutory Rules of the Maharashtra Prison Manual. Rule 1 to 17 deal with the facilities of interview with the prisoners. The relevant provisions of Rule

7 read as under:

7(i) Unless the persons desiring interviews are illiterate, applications for interviews shall be in writing. All applications for interviews shall be entered in order of their receipt in a register in Form II.

(ii) Where a legal adviser desires an interview with an unconvicted criminal prisoner (under-trial), he shall apply in writing to the Superintendent stating his name, address, profession and the name of the prisoner and satisfy the Superintendent or any other Officer of the prison specially empowered by the Superintendent in this behalf, that he is the bona fide legal adviser of the prisoner with whom he seeks an interview, and that he has legitimate business with him.

(v) Prior consent of the prisoner shall be obtained before granting an interview with him.

5. A bare perusal of the above provisions would indicate that it is not necessary for the jail authorities to call upon the lawyer at the time of every interview with the prisoner that the lawyer is the bona-fide adviser of the prisoner. Once the jail authorities are satisfied that the lawyer seeking interview with the prisoner is the bona fide legal adviser of the prisoner, the lawyer should be allowed to have interview with the prisoner as many times as permitted under the Rules without insistence for Vakalatnama every time. In this respect, it is also necessary to bear in mind that the jail authorities should not insist for Vakalatnama from the lawyer even once because the statement of the lawyer in the application that he is the bona fide legal adviser of the prisoner can be accepted on verification from the prisoner himself. If such Advocate has some difficulty in personally visiting the jail, he can name his junior Advocate in the application itself and subject to verification of identity of such junior Advocate, jail authorities should permit even such named junior Advocate to meet the prisoner. Thus, there should be no occasion for the jail authorities to insist for filing of Vakalatnama by the lawyer. The identity of the lawyer can be verified from the Identity Card issued to the lawyers by the State Bar Council. Rule 7(v) itself contemplates consent of prisoner for such meeting and that also additionally establishes the identity of Advocate or his junior Advocate.

6. Article 21 of the Constitution of India declares that no person shall be deprived of his life or personal liberty, except according to procedure established by law. Assurance of a fair trial is the first imperative of the dispensing of justice and for that purpose the accused is entitled to legal assistance. Free legal aid is being provided by Governments to poor and deserving accused so as to guarantee a fair trial to him. An Advocate who has already filed Vakalatnama on behalf of an under-trial or convict in appeal needs to take instructions from his client/prisoner. As an Advocate, he is entitled to act on behalf of his client to appear for him in certain circumstance and to plead his case. The prisoner is also entitled to consult his Advocate during such proceedings and also instruct him about further

steps to be taken in the matter. The Advocate representing the prisoner also needs to have appropriate instructions so as to enable him to discharge his obligation of conducting trial or appeal more effectively. The Superintendent of Jail is not a "Court" and hence Advocate does not appear before him on behalf of the prisoner/client. The Advocate is required to have interview with such prisoner only in discharge of his professional obligation. The insistence on Vakalatnama is sought to be justified before us through two affidavits on the ground that it is good proof of identity of Advocate and also his bona fides. We have already expressed our views in this respect above. Rule 7 mentioned above is old provision when State Bar Council were not issuing identity cards to Advocates. Now that the practice and the procedure for issuing identity card is established, identity card issued by the State Bar Council to any Advocate which carries his photograph is the best proof of identity of Advocate and also his bona-fides. The lawyer's declaration that he represents the prisoner in particular case" and consent of prisoner to meet him, therefore, sufficiently safeguard the security of the jail.

7. Thus, in our view, the jail authorities cannot insist for filing of Vakalatnama by the lawyer who seeks an interview when the lawyer makes a statement in the application that he has already filed Vakalatnama for the prisoner in the Court. In view of this position the oral order issued by the Superintendent, Central Prison, Nagpur cannot be sustained. Such an order is patently illegal and deserves to be quashed. Hence, we pass the following order:

8. The petition is allowed. The alleged oral order of the Superintendent, Central Prison, Nagpur is quashed and set aside. The respondents/Jail Authorities are directed not to insist for Vakalatnama of the prisoner when an Advocate engaged by the prisoner or his junior intends to take interview of the prisoner.

9. Rule is made absolute in above terms.