

(2003) 01 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : Criminal M.P. (M) No. 440 of 2002

Amrish Rana

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Constitution of India, 1950 — Article 21
Prisons Act, 1894 — Section 13

Citation : (2003) CriLJ 2991

Hon'ble Judges : K.C. Sood, J

Bench : Single Bench

Advocate : Naresh Kumar Thakur, for the Appellant; P.M. Negi, Assistant A.G. (For No. 1), Bimal Gupta, (For No. 2), Rajiv Sharma and Dhaulta, (For No. 3), for the Respondent

Judgement

Kuldip Chand Sood, J.—How course of justice could be derailed, if not thwarted, by an undertrial prisoner with the help or connivance of Jail Officials/Doctors is the focal point, which stares at us calling for immediate remedial measures.

2. It all started with an innocuous bail application filed by Amrish Rana, an under trial prisoner, lodged in sub Jail, Una. The applicant along with others was arrested in a case regisred with Police Station, Una, in terms of FIR No. 489/99, dated 10th September, 1999 for offences punishable under Sections 302, 307, 147, 148, 149, 341, 323, 324, 506, 212, 109, 201 read with Section 120-B of the Indian Penal Code and Section 25 of the Arms Act. In this case the accused were alleged to have killed three persons and injured some other. The accused could only be arrested on 26th September, 1999. Accused-applicant Amrish Rana allegedly killed one Rajiv Kumar by thrusting a sword in his stomach through and through.

3. Petitioner Amrish Rana filed an application, u/s 439 of the Code of Criminal Procedure, for the grant of bail on the grounds that he is in custody for more than 31 months and all the accused, except him and Gurjant Singh, have been

released on bail. The trial has been delayed because Gurjant Singh had undergone a Kidney Operation and is on medical rest in Open Air Jail at Bilaspur.

4. Petitioner alleged that on 18th April, 2002 he along with other co-accused was present, but the trial could not proceed in the absence of Gurjant Singh, who has been prescribed medical rest.

5. When this bail application came up for hearing on 20th March, 2002, learned Assistant Advocate General submitted that the case was listed for 18th March, 2002 before the learned trial Judge at Una, out on that date a telegram was received from the Superintendent, Open Air Jail, Bilaspur to the effect that Gurjant Singh had further been advised rest for four weeks and, there fore, the trial could not proceed.

6. In the circumstances, I directed that Principal, Indira Gandhi Medical College, Shimla, shall constitute a Board which will examine accused Gurjant Singh and, submit a report whether accused Gurjant can stand trial, if not, what would be reasonable time when he could appear in the Court to stand trial at Una.

7. On 10th April, 2002, the report of the Medical Board was received. According to the Board, Gurjant Singh had fully recovered and was fit to stand the trial in the Court at Una. In these circumstances, it was directed that the trial shall proceed in accordance with law and Gurjant Singh shall be produced, by the Jail Authorities, in the Court on 18th April, 2002. The bail petition was, accordingly, disposed of.

8. Another bail application was moved by the petitioner on 29th April, 2002 saying that the trial did not proceed as Gurjant Singh again abstained because of medical advice.

9. This Court on 9th May, 2002, in the circumstances, directed the Superintendent, Open Air Jail, Bilaspur, to file an affidavit as to why Gurjant Singh was not produced before the trial Court on 18th April, 2002 in spite of the directions of this Court. On 23rd May, 2002, when this case came up for hearing, the Superintendent, Open Air Jail, Bilaspur did not file affidavit. Learned Advocate General was requested to assist the Court as "Amicus-curiae" in the matter. "

10. An affidavit was filed by the Superintendent, Open Air Jail, Bilaspur, who maintained that Gurjant Singh was not produced in the Court on the advice of the Medical Officer of the Jail at Bilaspur as also the advice of the Doctor at Indira Gandhi Medical College, Shimla, dated 16th April, 2002. Ultimately, the Doctor at jail as well the concerned Doctor of the Indira Gandhi Medical College, Shimla, were directed to file affidavit(s). The following order was passed on 21st September, 2002 :

"From the affidavits of the Superintendent, Open Air Jail, Bilaspur, Dr. D.K. Verma and Dr. Brij Kishore Pandey, it appears that the Superintendent, Open Air Jail, Bilaspur sent the applicant Gurjant Singh to I.G.M.C. Shimla, for his examination

on the advice of Dr. Pandey vide his letter dated 15th April, 2002 (Annexure-C with the affidavit of the Superintendent, Open Air Jail, Bilaspur). The Superintendent, Open Air Jail, Bilaspur, specifically requested the Medical Superintendent that the report of the Medical Board, constituted by the directions of this Court, declaring Gurjant Singh fit to stand trial be brought to the notice of the Medical Officer who was to attend the said accused. It, however, transpires that this report was not brought to the notice of Dr. Verma, who examined accused Gurjant Singh on 16th April, 2002. This happened in spite of the delivery of this letter to the Senior Medical Superintendent, I.G.M.C., Shimla by the escort of the accused.

In the circumstances, it is directed that the Senior Medical Superintendent, I.G.M.C. Shimla shall file an affidavit, within three weeks from today, detailing his version of the entire incident.

A copy of this order shall be sent to the Senior Medical Superintendent, I.G.M.C. Shimla, immediately by the office of the Advocate General.

Mr. Rajiv Sharma, learned counsel for respondent No. 3, prays for and is permitted to file supplementary affidavit within that period.

Copy Dasti on usual charges" .

11. It is ironical that in spite of the directions of this Court and report of the medical Board that accused Gurjant Singh was fit to stand trial at Una, he was not produced by the Superintendent, Open Air Jail. Bilaspur on the advice of the Medical Officers concerned who took a stand that they were not aware of the report of the Medical Board.

12. On 19th December, 2002, this Court observed that the Court proposes to issue certain directions to avoid such lapses in future. Learned counsel were requested to assist the Court in the matter and make suitable suggestions in that regard. The Secretary (Home) to the Government of Himachal Pradesh was directed to file an affidavit stating what action the State proposes to take so that such lapses do not reoccur.

13. Certain suggestions were filed by Mr. Rajiv Sharma, learned Senior Advocate for respondent No. 3. These suggestions were adopted by the other counsel. Learned Assistant Advocate General also stated that the State also concur with the suggestions given by Mr. Sharma.

14. It is noticed that Chapter-III of the Prisons Act, 1894 provides for the duties of the Officers of the Jail including Medical Officers. Section 13 specifically lays down that Medical Officer shall have charge of the sanitary administration of the prison.

15. Section-II of the Jail Manual deals with the general duties of Medical Officer of the Jail. Para-100 of the Jail Manual lays down that any direction, which the Medical Officer may think fit to give in respect of the treatment of any prisoner

shall be entered on the history-ticket of the prisoner concerned. Any other direction which a Medical Officer choose to give in respect of a prisoner shall be entered by such Medical Officer in his register.

16. Chapter-XL of the Jail Manual deals with the Medical Administration. Para 1050 mandates that in every prison a hospital or proper place of reception of sick prisoners shall be provided as contemplated u/s 99 of the Prisons Act. Under Para 1051 every prisoner who complains of any illness is to be examined by the Medical Officer of the Jail and it is for such Medical Officer to decide whether such prisoner is to be placed under observation, treated as an out-patient or admitted to hospital.

17. Para-1054 provides that a bed-head ticket shall be maintained in respect of each prisoner in which full particulars of the history of patient, disease and treatment shall be recorded.

18. It appears that the relevant provisions of the Prisons Act and the Jail Manual were ignored by the Superintendent, Open Air Jail, Bilaspur and the Doctor concerned in the Jail. It was the duty of the Medical Officer of the Prison to maintain proper medical record of the prisoner concerned. It was the duty of the Jail Authorities to enter each medical event in the bed-head ticket while the prisoner is being taken out to Indira Gandhi Medical College, Shimla for further examination on various occasions. The recommendations of the Medical Board, it appears, were not recorded on the bedhead ticket of Gurjant Singh when he was brought to Indira Gandhi Medical College, Shimla, for examination for reasons not fathomable from record.

19. I do not propose to fix responsibility in this particular case, which is left to the Additional Director General of Prisons and Secretary (Home) to the Government of Himachal Pradesh.

20. Nevertheless to avoid re-occurrence of such lapses which impede trial of a criminal case and to ensure that trial is held as per schedule, it will be appropriate to issue following directions :

(a) The Superintendent of all Jails and Medical Officers attached with those Jails shall ensure that as and when an under trial prisoner/inmate of Jail is brought to Civil Hospital for treatment and examination, necessary entries and all medical events are recorded in bed-head ticket. The bed-head ticket and record maintained in the Jail shall be sent along with the under trial prisoner/ inmate of Jail for the perusal of the Doctor who is to examine such under trial prisoner/ inmate of Jail.

(b) Every effort should be made to provide medical facility in the Jail Premises and it should only be on rare occasions when the under trial prisoner/inmate of Jail cannot be treated or diagnosed that he should be taken out of Jail for further examination in a Civil Hospital. In such event the Jail Medical Officer shall record all particulars, his opinion in terms of Para-1054, on the bed-head ticket of the

prisoner.

(c) The Doctor who examines such prisoner/inmate of Jail in the Hospital shall invariably record whether the under trial prisoner/inmate of Jail is fit to face trial in the Court or not, if not, reasons must be recorded by the concerned Doctor.

(d) No Medical Officer shall issue Certificate to any under trial prisoner/inmate of Jail in a casual manner just prescribing the medical rest. Such Doctor must certify whether under trial prisoner/inmate of Jail is fit to face trial.

(e) The Jail Authorities shall inform the Superintendent of concerned Medical Institutions in advance of the fact of the under trial prisoner/inmate of Jail being sent to the Institution for medical examination so that the under trial prisoner/inmate of Jail is medically examined and treated without any delay in the Hospital Premises. The Medical Superintendent of the concerned Institution or the Senior Medical Officer, as the case may be, shall name the Medical Officer who is to examine such under trial prisoner/inmate of Jail.

(f) The Superintendent or Medical Officer of the Jail shall make endeavour that the medical investigations of an under trial prisoner/inmate of Jail are undertaken in the local Hospital instead of Hospital at long distance. Only the investigations which are not available at local or District Hospital should be undertaken in the Indira Gandhi Medical College, Shimla.

(g) The name of the Doctor, who examines the under trial prisoner/inmate of Jail during the follow up treatment shall be recorded in Capital Letters along with designation.

(h) In cases involving heinous crimes Jail Authorities may request the District Magistrate, who in turn shall request the Chief Medical Officer concerned to depute a Medical Officer for the examination of the under trial prisoner/inmate of the Jail in Jail itself.

(i) All the Sessions Judges in the State of Himachal Pradesh shall, on their periodical inspection of Jail, peruse medical record maintained for each under trial prisoner/ inmate of Jail and make observation whether such record has properly been maintained or not.

(j) A female under trial prisoner/inmate of Jail shall invariably be examined by a Lady Doctor as far as possible, and only if a Lady Doctor is not available, the female under trial prisoner/inmate may be permitted to be examined by a Male Doctor.

(k) In complicated cases where the under trial prisoner/inmate of Jail had undergone surgeries, a Medical Board be constituted by the Medical Superintendent of all the District Civil Hospitals to examine whether such under trial prisoner/inmate of Jail can face the trial or not.

(l) The recommendations made by the Medical Board shall be recorded on the bedhead ticket and brought to the notice of the examining Doctor by the Jail

Authorities as and when the under trial prisoner/inmate of Jail is brought before such Doctor for post operative treatment.

(m) Every Doctor who examines any under trial prisoner shall record a Certificate whether under trial prisoner/inmate of Jail is fit to face trial in the Court or not. Such Certificate must be recorded on the bedhead ticket.

(n) The Chief Secretary to the Government of Himachal Pradesh shall issue suitable directions to all the Superintendents of Jail through Additional Director General of Prisons, Medical Officers and all other concerned authorities in the employment of the State to follow the above directions in letter and spirit.

21. The petition is, accordingly, disposed of.

22. An authenticated copy of the directions shall be sent by the Registry to the Chief Secretary to the Government of Himachal Pradesh, all the Sessions Judges in Himachal Pradesh and Additional Director General of Prisons for immediate compliance.