
(2017) 04 AHC CK 0150
In the Allahabad High Court
Case No : 5505 of 2017

Atique Ahmed

APPELLANT

Vs

State Of U.P. And 6 Others

RESPONDENT

Date of Decision : 13-04-2017

Acts Referred:

[Prisoners Act, 1900](#), [Section 29](#) -
Removal of prisoners

Citation : (2017) 04 AHC CK 0150

Hon'ble Judges : Ramesh Sinha, Harsh Kumar

Bench : Single Bench

Advocate : Ravindra Sharma, Khan Saulat Hanif

Judgement

1. The present matter has been nominated by Hon''ble The Chief Justice to this Bench vide order dated 12.4.2017, thus the matter is placed before us.
2. Heard Sri Satish Trivedi, learned Senior counsel assisted by Sri Ravindra Sharma and Sri Khan Saulat Hanif, Sri Chandrakesh Mishra, Advocate holding brief of Sri D.S. Mishra, learned counsel for the petitioner, Sri Ashish Pandey, learned A.G.A. for the State and perused the record.
3. This writ petition has been filed by the petitioner for obtaining a writ, order or direction in the nature of certiorari quashing the State Government order/letter no.-16/2017/881JL/22-3-17-100(4)/2008 dated 31st March, 2017 communicated by Letter No.10237 / Sama- 1(3)/Naini No./2015 dated 31st March, 2017 of Senior Superintendent (H.O) Prison Administration & Reforms Services, Uttar Pradesh dated 31.03.2017 (Annexure No.22 to the Writ Petition) transferring the petitioner from Central jail Naini, Allahabad to District Jail, Deoria and for obtaining a writ, order or direction in the nature of mandamus commanding the respondents and directing them to shift the petitioner back to Central Jail, Naini, Allahabad from District Jail Deoria, during the pendency of this writ petition before this Hon''ble Court.

4. The brief facts relating to the case are that the petitioner is under trial and was prisoner at Central Jail, Naini, District Allahabad and for disciplinary and administrative reasons mentioned in the impugned order dated 31.3.2017 passed by the U.P. Government, he has been transferred from Central Jail, Naini, Allahabad to District Jail, Deoria.

5. Learned counsel for the petitioner contended that the petitioner has been a five terms Member of Legislative Assembly and one term Member of Parliament and carries a well known social and political career and has been very popular, secular and people oriented leader with very broad-base mass support cutting across the caste, class and religion; that Ms. Mayawati, the National President of Bahujan Samaj Party has long standing political animosity against the petitioner and whenever she came to power as Chief Minister for four terms, in all her terms she got the petitioner falsely implicated in several criminal cases; that father of petitioner has already left for his heavenly abode and the wife of the petitioner has to take care of household works and five minor children; that apart from above, the petitioner is a chronic patient of cervical spondylitis and kidney trouble since 1995 and merely for the reason that 34 criminal cases are pending against him, he has been transferred from Central Jail, Naini, Allahabad to District Jail, Deoria by the impugned order; that before passing impugned order, no opportunity of hearing was given to the petitioner and so the impugned order is absolutely wrong, illegal, and arbitrary and against the principles of natural justice; that in view of the law laid down by the Apex Court in the case of "State of Maharashtra and others Vs. Saeed Sohail Sheikh and others, (2012) 4 SCC (Cri) 240, no prisoner can be transferred from one jail to another without a judicial order passed by the court concerned and so also the impugned order is liable to be quashed and a writ or certiorari as prayed is to be issued and since the petitioner has been shifted from Central Jail, Naini, Allahabad to District Jail, Deoria, by a writ of mandamus the respondents be directed to shift the petitioner back to Central Jail, Naini, Allahabad from District Jail, Deoria.

6. Learned counsel for the petitioner has also placed reliance on a decision of Co-ordinate Bench of this Court dated 11.12.2015 passed in Criminal Misc. Writ Petition No.18153 of 2014 "Yogesh and another Vs. State of U.P. and others, 2016 (2) ADJ 296.

7. Per contra, learned A.G.A. supported the impugned order and contended that petitioner claims himself to be a person of very superior class of prisoners having strong political influence; that the petitioner has a long criminal history of as many as 44 criminal cases to his credit including the cases of heinous crimes and since he has long history of criminal antecedents so several persons of his gang/group who have committed crimes with petitioner or at his instructions are also detained in Central Jail, Naini, Allahabad; that the petitioner and his associates are habitual of interfering in jail administration and various influential persons do frequently come for meeting with the petitioner in contravention with the Jail Rules by exerting undue influence on the jail authority; that in the circumstances

for sufficient reasons, the transfer of petitioner was found necessary and appropriate in the interests of justice as well as jail administration of Central Jail, Naini at Allahabad; that by transfer of petitioner, no hardship or prejudice is likely to be caused to the petitioner as there is facility of video conferencing at District Jail as well as the District Courts, Deoria and similarly at Central Jail Naini and District Courts, Allahabad; that the facility of video conferencing has been implemented at the end of every jail and district courts in view of avoiding the risk of escaping of the prisoners/under trials as well as in order to avoid huge expenses which used to be incurred on security as well as conveyance of such prisoners/under trials to and fro Jail to Courts; that the contention of alleged illness of petitioner are false and in any case the due medical assistance, if any, required to the petitioner will be provided by the Jail Superintendent concerned as in case of any other prisoners or under trials; that the judgment passed by the Apex Court in the case of "State of Maharashtra and others Vs. Saeed Sohail Sheikh and others, (supra) is based on the provisions of Jail Manual at Maharashtra which provisions are different from the provisions of U.P. Jail Manual and in view of the provisions of para 138 read with para 409A of U.P. Jail Manual the impugned order is correct and fully justified; that the passing of impugned order does not require opportunity of hearing to the petitioner as the rights or interests of the petitioner have not been decided adversely; that in the case of Ritesh @ Bantu Vs. State of U.P. and others, Criminal Misc. Writ Petition No.5337 of 2015 decided 25.2.2015, reported in 2015 (3) ADJ 665, a Division Bench of this Court considering the provisions of Cr.P.C. and U.P. Jail Manual upheld the validity of order of transfer of petitioner from Ghazipur Jail to Jaunpur Jail after obtaining permission of Secretary, State Government of U.P.; that the above judgment dated 25.2.2015 passed in Criminal Misc. Writ Petition No.5337 of 2015 was not brought before the Bench of this Court in the case of "Yogesh and another Vs. State of U.P. and others" (supra) and was not distinguished by the subsequent order dated 11.12.2015 and in view of the above, the judgment and order dated 25.2.2015 passed in Criminal Misc. Writ Petition No.5337 of 2015 has to prevail; that the writ petition has been filed with wrong and incorrect allegations and is liable to be dismissed.

8. Upon hearing learned counsel for respective parties and perusal of record and before proceeding further, we find it appropriate to reproduce the provisions of paras 138 & 409A of U.P. Jail Manual as under:- "138. Transfer of convicts for local or disciplinary reasons.- The Superintendent may recommend the transfer to another jail, of any prisoner whose detention in the prison is considered to be in expedient for local or disciplinary reasons or for any other sufficient cause, to the District Magistrate. The District Magistrate may order for transfer of such prisoners, to the neighbouring district. The reason for transfer, should always be communicated to the District Magistrate and the Superintendent of the jail of the district, to which the prisoner is transferred and should also be recorded on the history ticket of the prisoner concerned. The Inspector General of Prisons shall be informed of such transfers. The Superintendent shall recommend to the

Inspector General of Prisons for the transfer of prisoner to be transferred to the district other than neighbouring districts.

409-A. Except as provided in this Chapter, the rules in the Jail Manual applicable to superior and ordinary classes of convicts shall apply to superior and ordinary classes of under trial prisoners also."

9. Section 29 of The Prisoners Act, 1900 reads as under:- "[29 Removal of prisoners.- (1) The [State Government] may, by general or special order, provide for the removal of any prisoner confined in a person-

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour, to any other prison in [the State].

(2) [Subject to the orders, and under the control, of the State Government,] the Inspector-General of Prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State."

10. From the facts available on record, it is not disputed that the petitioner is involved in number of criminal cases such as cases of murder, attempt to murder, kidnapping, abduction, dacoity, land grabbing etc. which number according to him is 34 while according to the State is 44. Every accused claims to have been falsely implicated in any case against him and it is highly improbable the false implication of an influential person, who has been M.L.A. for five times and M.P. for one time. The disciplinary and local reasons for transfer of petitioner from Central Jail, Naini, Allahabad to District Jail, Deoria, given in the impugned order are sufficient and the petitioner not disputed the correctness of the facts mentioned therein. From the material on record, it transpires that being an influential person, having long criminal history of 44 cases the petitioner who claims himself to be from a very superior class on account of his being five term M.L.A. and one term M.P. has several associates of him at Central Jail, Naini, Allahabad and used to interfere in jail administration of jail, in contravention of jail rules, for meeting with local and other influential persons and is capable of exerting undue influence on the jail authorities in seeking special privilege/treatment to him (on account of his belonging to very superior class) as against any other under trial from ordinary class. It may not be disputed that merely for the reason that the petitioner has been M.L.A. and M.P. for number of times may not put him above the law and under the provisions of law a person with criminal antecedents involved in several matters is to be treated like any other under trial accused or prisoners.

11. It is pertinent to mention that in Writ Petition No.6719 (MB) of 2002

"Raghuraj Pratap Singh @ Rajja Bhaiya and others Vs. State of U.P. And others, decided on 11.12.2002, the Division Bench of this Court upheld the correctness, legality and validity of the order of transfer, transferring the prisoners from District Jail, Lucknow to District Jail, Banda and District Jail, Jhansi respectively and refused to interfere with the orders of transfer impugned in the writ petition.

12. It is also be noted that in Writ Petition (Crl.) No.132 of 2016 "Asha Ranjan Vs. State of Bihar and others" and Writ Petition (Crl.) No.147 of 2016 "Chandrakeshwar Prasad Vs. Union of India and others", vide judgment and order dated 15.2.2017, upon filing of Criminal Misc. Writ Petition No.1710 of 2016 at a subsequent stage considering the criminal antecedents of M. Shahabuddin ordered transfer of M. Shahabuddin beyond the State and directed the State of Bihar to transfer the third respondent, M. Shahabuddin from Siwan Jail, District Siwan to Tihar Jail, Delhi and hand over the prisoner to the competent officer of Tihar Jail after giving prior intimation of his transfer in Delhi with further direction that the authorities escorting the third respondent from Siwan Jail to Tihar Jail would strictly follow the rules applicable to the transit prisoners and no special privilege shall be extended and that transfer shall take place within a week and thereafter the trial in respect of pending trials shall be conducted by video conferencing by the concerned trial court.

13. In view of the discussions made above, we are of the considered view that the petitioner on account of his having been M.L.A. for five terms and M.P. for one term, may not seek any privilege for being from some superior classes and above the law and considering the circumstances under which the impugned order to transfer the petitioner from Central Jail, Naini, Allahabad to District Jail, Deoria, has been passed, we find that the above order does not require any interference. Learned counsel for the petitioner has failed to show any sufficient ground for issuance of writ of certiorari or mandamus as prayed and the writ petition being devoid of merits is liable to be dismissed, and, therefore, we are not inclined to interfere with the order of transfer impugned in the writ petition.

14. The writ petition is dismissed, accordingly.