

(2010) 05 DEL CK 0219

In the Delhi High Court

Case No : Writ Petition (Criminal) 795 of 2010

Court on its Motion

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 25-05-2010

Acts Referred:

Citation : (2010) 05 DEL CK 0219

Hon'ble Judges : Dipak Misra, C.J.; Madan B. Lokur, J

Bench : Division Bench

Advocate : None, for the Appellant; Pawan Sharma for Govt. of NCT of Delhi and B.K. Gupta, Director General (Prisons), Tihar Jail, for the Respondent

Final Decision : Disposed Off

Judgement

1. On the basis of a report submitted by the Chief Metropolitan Magistrate the present writ petition was instituted. The report of the learned Magistrate disclosed a shocking state of affairs which pertain to the use of the cell phones in Tihar Jail despite the jammers and CCTV cameras having been installed in the said jail.

2. It is worth noting that a status report was called for from the State, and on the basis of the direction on the previous occasion a status report has been filed. To appreciate the factual scenario in completeness, we reproduce the relevant portion of the status report:

5. That the prisoners who are involved in offences against the State, terrorist activities, MCOCA, NSA, PSA and otherwise involved in multiple heinous offences such as robbery dacoity, murder, kidnapping for ransom etc. are kept in the high security/special security wards of the jail under strict surveillance. The high security wards are being manned round the clock by the personnel drawn from Tamil Nadu Special Police who are keeping a close watch over the activities of prisoners so that no one may indulge in any unauthorized activity. In addition the CCTV cameras have been installed in the cells of the high security wards to keep

surveillance over their activities.

6. That in addition to the CCTV cameras, X-Ray scanners, Door Frame Metal Detector, Hand Held Metal Detector have been provided at all the access point and in the "deodhies" of the jails for proper screening of all the articles brought by the prisoners so that no one may smuggle any prohibited articles inside the prison hidden in eatables or other articles passed over to them by their visitors.

7. That the Tamil Nadu Special Police has been deployed in the "deodhi" (entrance) of all the jails for searching and frisking of all the prisoners, staff, visitors and articles brought by them. The Tamil Nadu Special Police has been deployed to discount any nexus between the prisoners and the jail staff. The standard operating procedure has been circulated to the staff deployed on searching and frisking so that these may be conducted in proper and effective manner.

8. That as regard report of Ld. CMM, Delhi regarding operation of mobile phones and other irregular activities in Tihar Jail it is submitted that the convict Chander Parkash S/o. Durjan Singh has submitted in his application that he was in possession of a mobile phone inside jail No. 3 and can get recovered the same. A search was conducted by Sh. Sanjeev Yadav, ACT, Special Cell on the direction of Ld. CMM, Delhi and under the guidance of convict Chander Parkash but no mobile phone or SIM Card was recovered from the ward. Further, on no occasion mobile phones were recovered from high security ward of Central Jail No. 3 in the year 2008 & 2009. It may be mentioned that high security ward of Central Jail No. 3 is fully covered with mobile phone jammer and infact one more mobile phone jammer has been installed which covers ward No. 4 & 5 of jail No. 3.

9. It may be mentioned that few mobile phones were seized from the prisoners of other wards where mobile phone jammers are not installed. The report in this regard was submitted to the Court of Ld. CMM, Delhi on 4.1.2010.

10. That it is found that some inmates are using body cavities to smuggle prohibited articles including mobile phones inside the jail and in this regard it is relevant to mention that on 23.12.2009 one cell phone was recovered from body cavity of a prisoner Mohd. Irashad in the deodhi of District Jail, Rohini.

11. That the prison administration is in the process of installing two more mobile phone jammers so that all the jails are covered by these jammers. Further, the existing jammers are being upgraded to cover 3G technology.

12. The surprise searches are being taken by the staff on regular basis and if any illegal item is found, then action as per provisions of Delhi Jail Manual is being taken against the prisoners from whom the illegal item is recovered and also the action against the concerned staff is being taken.

3. We may further note with profit that this Court, on earlier occasion, had directed the Director General (Prisons), Tihar Jail to remain personally present today. Pursuant to the said direction, Mr. B.K. Gupta, Director General (Prisons),

Tihar Jail is present.

4. Before delving into and dwelling upon the issue in question, we may state that the learned Magistrate, who got an inquiry conducted, has submitted the report. On a scrutiny of the report it is perceptible that there are number of calls made from cell phones in Tihar Jail. The perusal of the report really creates a sense of perplexity, nay, shock. On a query being made why the status report has not categorically and unequivocally stated that the inmates of the jail should not be allowed to carry mobiles/cell phones to the jail, Mr. Sharma, learned Counsel for the State only could state that steps are being taken how to check the use of such phones. Needless to emphasise, such kind of a check would come in the curative compartment. On being further asked why they are not taking preventive measures to stop the carrying of cell phones to the jail, Mr. Gupta, the Director General (Prisons) stated that they would make all endeavour so that the inmates are not permitted to have the cell phones and the visitors also would not be allowed to carry the cell phones inside the jail.

5. We are absolutely conscious communication is the essential part of life. Even an under trial prisoner and a convict have the right to communicate and also the desire. But, a pragmatic one, there has to be discipline in the jail. We have been apprised there are visiting hours fixed by the authorities and the visiting place is demarcated. Thus, there is a provision for the meeting and communication.

6. Secondly, we have been apprised by Mr. Gupta that there are landlines from which the inmates can make conversation after taking due permission and they are allowed to communicate. Hence, communication which is the essence of life is satisfied. Mr. Gupta has fairly stated the possibility of abuse of the cell phones can never be brushed aside. It is common knowledge that there have been cases where the convicts or the under trial prisoners are operated from the jails to galvanize and accentuate the crimes. Crime cannot be allowed to be perpetuated by the inmates. Everyone expects to have an orderly society. A civilized society expects good governance which means an adequate law and order situation, and peace. True it is, reformation in jail and humane values cannot be ostracised or marginalized but in the name of such values criminality cannot be allowed to have the mushroom growth having the base in the jail. That is impermissible.

7. We must state with appreciation that Mr. Gupta has realized the same and has assured this Court that all cell phones shall be confiscated and kept in the safe custody to be handed over to the convict or under trial prisoner on his release. Appropriate steps should be taken in this regard within three days from today.

8. Before parting with the case we are reminded that in a democratic body polity "might" cannot be treated as "right". No one has the authority to send a chill in the spine of an innocent or weak man. The jail administration has a role, a major one, to see that no inmate facilitates any kind of criminality in the society. When the society is terrorized, the civilization corrodes. It is duty of all concerned to nourish and foster a civilized society. That is the imperative role of every citizen.

No one can afford to abdicate the responsibility. Ergo, no authority should conceive the idea of creating any remora.

9. With the aforesaid directions, the writ petition stands disposed of.

10. A free copy of the order be handed over to Mr. Sharma in course of the day to do the needful in the matter.