

(2008) 07 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (Criminal) No. 662 of 2005

Court on its own motion

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Delhi Prisons (Prisoner Welfare Fund, Appeals, Petitions, Interviews and Communication) Rules, 1988 — Rule 21, 22, 23, 29

Citation : (2008) 07 DEL CK 0042

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : S.K. Singh, Adv Neeraj Chaudhary, for the Appellant;

Judgement

Manmohan Sarin, J.—The above criminal writ petition, was registered following the suo motu directions by the Court to issue notices in respect of a telecast "Ghoos Mahal & Tihar Saga" shown by the channel "AAj Tak". The said feature disclosed and revealed acts of prison officials showing and giving undue favor to prisoners in breach of the Rules under the Jail Manual. This being inextricably linked with the infraction and breach of Rules under the Jail Manual, had a direct effect on the administration of criminal justice. The Court accordingly took cognizance and directed registration of a criminal writ petition vide order dated 6th May, 2005 and issuance of notices to the Chief Secretary, Government of NCT of Delhi, Director General (Prisons), Delhi, Secretary, Department of Justice, Ministry of Home Affairs, Union of India.

2. During the course of the proceedings, two news items appeared, one in "The Hindustan Times" on 15th September, 2005 and the second in "Times of India" on 16th September, 2005. Both the news items reported incidents involving breach of Jail Rules and discipline. The news item in The Hindustan Times was titled "Bikini show" has Tihar blushing, Recreational event turns into sleaze party; inquiry ordered". As far as this item is concerned, after issuance of notice and filing of replies, the matter had been concluded with The Hindustan Times

recognizing that the programme was in the nature of a cultural programme for recreation and entertainment of inmates and had published a regret. The second new item published in Times of India was under the caption "For Pappu's fans, all roads lead to Tihar". The reference was to Pappu Yadav alias Rajesh Ranjan, who had been shifted to Tihar prison following the judgment of the Supreme Court titled Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, , to which we shall advert later. By this order, we wish to dispose of the notice issued in respect of this news item.

3. The news item was authored by Ms. Megha Suri. It began by stating that Tihar Jail was experiencing a poll buzz. It was not that the inmates were voting for any union election, but with the Bihar polls only a month away, political activists were calling on Pappu Yadav, the Madhepur MP lodged in Jail No. 3 and that there was rush of visitors for him. The news item imputed that there was a stream of visitors and the interviews/Mulakats were granted in excess and in contravention of the Rules. Though the time prescribed was only 30 minutes, he could have all the time he wanted. Further, that his wife, who was an MP, visited him regularly with home cooked food and met him in the office of the Jail Deputy Superintendent. Regarding facilities, it was reported that Pappu Yadav was provided with a television set, a cooler and a special bed having a cushy mattress in his cell. For recreation in the evening, he liked to play Volley Ball with other prisoners etc. The news item also gave the version of the Jail officials, who denied any Mulakats in contravention of the Rules. Jail officials further denied that any special privileges were being provided to him. The special bed had been provided on the recommendation of the Doctors of All India Institute of Medical Sciences and the cooler on the recommendation of the Jail Hospital. Reply affidavits have been filed by the Jail administration. Written submissions have also been filed by Mr. S.K. Singh on behalf of the Times of India and Ms. Mukta Gupta, counsel for Delhi Administration. Ms. Megha Suri, the journalist, has also filed her affidavit.

The stand of the Jail administration has been that the Mulakat and interviews were being granted in accordance with Rule 21, 22 & 23 of the Delhi Prisons (Prisoner Welfare Fund, Appeals, Petitions, Interviews and Communication) Rules, 1988. In terms of Rule 23, the Jail Superintendent was empowered to grant more than the prescribed number of interviews or at shorter intervals, should the situation so warrant. As regards the Mulakat being granted to his wife in the room of the Deputy Superintendent, Jail, it was urged that she was a sitting M.P. and in deference to her status, the interview was being granted in the room of the Deputy Superintendent, Jail. Further, in terms of Rule 29, it was within the powers of the Superintendent to grant an interview at any part of the Jail premises. The provision of hospital bed was stated to be as per the recommendation of the All India Institute of Medical Sciences (AIIMS) who found him to be a patient of Morbid Obesity and Right Thigh Fistula. A special bed was recommended for him. A cooler was similarly provided as per the recommendation of the Board of Doctors of the Jail Hospital on finding him to be

suffering from sun exposure for a long time due to heat/raised temperature. As regards the provision of television, it is stated that TV facility is available in the barracks and cells except in the high security wards.

4. We have also heard learned Counsel Mr. S.K. Singh on behalf of Times of India and Ms. Mukta Gupta in opposition. Mr. S.K. Singh has submitted that on a consideration of all the facts and events in their correct perspective, it would become apparent that the authorities were bending backwards to somehow justify the provision of these facilities to the prisoner. He submits that the provision of a hospital bed to Rajesh Ranjan is sought to be justified on account of his being a case of "hypertension with morbid obesity with sleep apnea". Again for cooler, it was claimed that he was suffering from heat and sun exposure and the cell temperature was very warm and condition humid. Mr. Singh submitted that if indeed the above was the situation, the best place for the prisoner would have been the Jail hospital, which was proximate to and near the Cell. Hospital would also have had the provision of the special bed as also cooler. But that was not to be so because had he been shifted to the hospital, he could not have had his stream of visitors. Learned Counsel also mentioned that while on the one hand under trial Prisoner is stated to be suffering from conditions which require a special bed and cooler for heat exposure, yet he is found to be a keen sportsman. As per respondent's affidavit, he plays Volley Ball in the evening. This submission of Mr. Singh is appealing and deserves consideration.

5. Regarding provision of a television in the barracks and cell, he submitted that the two were not comparable as the barracks housed 30-40 inmates. Therefore, provision of a television there was understandable while a cell hardly had 3-4 prisoners and, Therefore, provision of a television therein was a special privilege. Learned Counsel claimed that as per their information, at the relevant time, it was Pappu Yadav's cell alone which had a TV. He submits that the Jail authorities were failing in their duties to strictly go by the directions of the Supreme Court which had transferred the prisoner from the Beur Jail to Tihar to prevent discriminatory favours being granted to him there. He urged that the Jail Authorities at Tihar were improperly exercising their discretion resulting in conferring of undeserved benefit and facilities to the prisoner. Learned Counsel submitted that he has instructions to say that should the situation arise, they would plead justification for the article which had been written bonafide and in public interest. He prayed for the present notice to be discharged.

6. Learned Counsel has referred to several judicial pronouncements in support of his contentions. However, considering the view that we are taking in the matter, it is not necessary to refer to them. The transfer of Rajesh Ranjan from Beur Jail was pursuant to the directions given by the Supreme Court in Kalyan Chandra Sarkar v. Rajesh Ranjan alias Pappu Yadav and Anr.(supra). The Supreme Court had found that while he was supposedly in judicial custody, he was found addressing an election meeting at Madhepura in Bihar. He had been permitted to be taken out of judicial custody pursuant to the production warrant issued by a

Court in Madhepura. However, as the said day was declared to be a holiday, the Magistrate had remanded him back to custody. It was then found that the escort had taken him for addressing the public meeting. Further, the Supreme Court had also noted that when his bail was cancelled and he was directed to be taken to Jail, an urgent Medical Board was constituted which directed his medical treatment at the Patna Medical College though the Patna Medical Hospital had a separate Cell for treatment under special orders of the Doctor and the Superintendent of the Hospital, Pappu Yadav was accommodated in the Special Ward. There were also reports of hosting of parties etc. for prisoners and co-prisoners in Jail.

7. Be that as it may, the Supreme Court reached the conclusion that the concerned authorities especially the Authorities at the Beur Central Jail, were not in a position to contain the illegal activities of the respondent therein, i.e. Mr. Rajesh Ranjan and, Therefore, transferred him out of State. A specific direction given while transferring the respondent to Tihar Jail was as under:

We think it appropriate that the respondent be transferred to Tihar Jail at Delhi and we direct the seniormost officer-in-charge of Tihar Jail to make such arrangements as he thinks is necessary to prevent the reoccurrence of the activities of the respondent of the nature referred to hereinabove and shall allow no special privileges to him unless the same is entitled in law. His conduct during his custody in Tihar Jail will specially be monitored and if necessary be reported to this Court. However, the respondent shall be entitled to the benefit of the visit of his family as provided for under the Jail Manual of Tihar. He shall also be entitled to such categorization and such facilities available to him in law.

8. Having considered the record produced before us, the affidavit filed and the written and oral submissions made by both the counsel and considering the plea of the newspaper that the news item in question had been written bonafide in good faith and in public interest, giving the version of the Jail Authorities. It was written without any malice as also the Newspaper's submission to plead justification for the imputations made, we are of the view that the notice issued need not be pursued further and deserves to be discharged. Ordered accordingly. Further, noting the observations of the Supreme Court as reproduced in para 6 above, we direct the Jail authorities to keep in mind the directions of the Supreme Court that no special privileges are to be allowed unless so entitled at law. Towards this end, the Jail authorities shall have medical examination of Rajesh Ranjan alias Pappu Yadav done forthwith and followed every quarter by an independent Board of Doctors nominated by the Secretary (Health), Government of NCT of Delhi. The said Board after examination of Rajesh Ranjan alias Pappu Yadav, would give its recommendation regarding the treatment as also whether the provision of special bed, cooler and other facilities needs to be continued.

The notice is discharged accordingly with the above directions.