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**(1987) 10 AHC CK 0029**  
**In the Allahabad High Court**  
**Case No : Habeas Corpus W. P. No. 8644 of 1986**

Imtiaz

APPELLANT

Vs

State of U.P.& Ors.

RESPONDENT

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**Date of Decision :** 29-10-1987

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 21, 226

**Citation :** (1987) 10 AHC CK 0029

**Hon'ble Judges :** R.K.Shukla, J and G.K.Mathur, J

**Final Decision :** Dismissed

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## Judgement

R. K. Shukla, J.—Petitioner Imtiaz, a life convict, sent a letter to the High Court from Central Jail, Varanasi, which has been treated as a Habeas Corpus Writ Petition and notice was issued to the State of U. P.

2. Brief facts of the case are that the petitioner is a life convict under Section 326. I. P. C. and is in jail since & 221967. The petitioner was transferred from Central Jail, Bareilly to Central Jail, Varanasi on 25101983 on administrative grounds. The nomination roll of the petitioner for his premature release was sent to the State Government and the State Government after considering the same has rejected it on 1421986 vide Annexure CA1 to the counteraffidavit of Hari Shanker Singh, Superintendent, Central Jail, Varanasi. Thereafter, the petitioner also moved a Habeas Corpus Writ Petition before the Supreme Court of India for his release, which has been rejected by the Supreme Court vide its order dated 1031986. A photostat copy of the same is annexed with the aforesaid counteraffidavit as Annexure CA2. In this order the Supreme Court of India has clearly mentioned that the case of the petitioner will be considered by the State of U. P. during the year 1987.

3. In the instant petition the petitioner has made two grievances. Firstly, that the petitioner is kept in jail for the last 20 years. He is a very poor man of Meerut and his family members and relations are unable to come from Meerut to Varanasi to see him and fulfil his necessary needs in the jail due to poverty.

Therefore, this mental torture of the petitioner should be removed by keeping him either in District Jail, Meerut or Central Jail, Agra or Bareilly near his home town. Secondly, State of U. P. by not granting parole to him is causing mental and social torture to the petitioner. The State of U. P. has denied the aforesaid allegations by filing two counteraffidavits ; one by Sri Hari Shanker Singh, Superintendent, Central Jail, Varanasi and the other by Sri Ganga Prasad Pal, Upper Division Assistant in Home (Jails), Section 3, U. P. Civil Secretariat, Lucknow. In para 4 of the counteraffidavit filed by Sri Ganga Prasad Pal on behalf of the State, it is stated that the petitioner has no right to choose the prison of his choice. However, on any ground, if the convict makes an application it is always considered by the State Government, It has been also stated that the petitioner did not make any application for his transfer from Central Jail, Varanasi to any other Jail. In para 5 of the same counteraffidavit, Mr. Pal has further stated that the petitioner has never applied for the grant of parole. Whenever he chooses to make any application for the grant of such relief, that would be considered on merits of the case.

4. It appears from para 4 of the counteraffidavit of Hari Shanker Singh, Superintendent, Central Jail, Varanasi that the petitioner was transferred from Central Jail, Bareilly to Central Jail, Varanasi on administrative grounds. Mr. Singh has further stated in para 5 of the said counteraffidavit that the petitioner in jail has committed jail offences and his record is also not good. While he was being transferred from Central Jail, Bareilly to Central Jail, Naini, he jumped out of the train and tried to abscond. Consequently he was arrested and sent to jail, inside the jail the petitioner is being provided all the facilities, which are required to be provided under the Jail Manual and he is not at all being tortured or maltreated in any way. Mr. Singh has further stated in para 6 of the aforesaid affidavit that there is no restriction imposed for meeting the petitioner to his family members or any other friend. Referring paragraph 128 of the Jail Manual Mr. Singh has further deposed that the power with regard to the transfer of convict from one prison to another is to be exercised by the State Government and thus the prayer of transfer of the petitioner from one jail to another (Central Jail, Varanasi to District Jail, Meerut) is fully devoid of any merit and the same is not maintainable and is liable to be rejected.

5. The allegation that the petitioner is a very poor man and his family members and relations are unable to come to meet him at Varanasi, has not been denied on behalf of the State in any of the counter affidavits filed. There are provisions regarding days and hours for interview, deposit of articles or cash at interviews, place of interviews, number of persons at the interview, supervision of interview time allowed for interviews and refusal for interview between paragraphs 701 to 709 of the U. P. Jail Manual. According to para 705 of the said Manual, the petitioner shall be permitted while in jail to use only such articles as he is allowed to have under the rules. If a convict is kept in a jail at such a long distance where his family members, relatives and friends cannot go due to poverty to meet him or provide him basic necessities of life, which are

permissible under the Jail Manual, whether any relief can be given by the High Court in the exercise of its power under Article 226 of the Constitution.

6. Mr. Prem Prakash, learned Deputy Government Advocate vehemently urged that High Court has no power to issue direction in its exercise of powers under Article 226 of the Constitution to keep any prisoner in any particular jail. According to him, a life convict can be kept any where in the country ? and his family members, if they so like, they may go and see him. He has further contended that a life convict cannot claim such privileges, which may be enjoyed by detenu under the National Security Act. In support of his contention he relied on a decision of the Supreme Court in the case of A. K. Roy V. Union of India, AIR 192 SC 710.

7. Article 21 of the Constitution of India runs thus : "No person shall be deprived of his life or personal liberty except according to the procedure established by law". What is the meaning of words "life" and "personal liberty" used in Article 21 of the Constitution. The question which often arises for our consideration whether Article 21 relating to right to "life" is limited only to protection of limb or faculty or does it go further and embrace something more. The right to "life" includes the right to live with human dignity and all that goes along with it, namely, the bare necessities of life such as adequate nutrition, clothing and shelter over the head and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings. Every act which offends against or impairs human dignity would constitute deprivation "pro tanto" of the right to live and it would have to be in accordance with reasonable, fair and just procedure established by law which stands to test of other fundamental rights. Therefore, obviously, any form of torture or cruel, inhuman or degrading treatment would be offensive to human as constitutional valid under Articles 14 and 21, unless it is reasonable, fair and just. The same consequence would follow even if this problem is considered from the point of view of the right to personal liberty enshrined in Article 21, for the right to have interviews with members of the family and friends is clearly part of personal liberty guaranteed under that Article. The expression "personal liberty" occurring in Article 21 has been given a broad and liberal interpretation in Maneka Gandhi's case, AIR 1978 SC 597 and it has been held in that case that the expression personal liberty used in that Article is of the widest attitude and it covers a variety of rights which go to constitute the personal liberty of a man and it also includes rights which have been raised to the status of distinct Fundamental Rights and given additional protection under Article 19.

8. The term "personal liberty" used in Article 21 of the Constitution may be briefly summed up as the right to do as one pleases with law. It is not a unbridled licence but "regulated freedom". There is difference between "independence" and "liberty". If a citizen does a thing what law forbids, he would not legally be possessed of liberty. Webster in his work Vol. II observed that "liberty" is creation of law; it is a legal and refined idea, the offspring of high

civilization which the savage never understand and never can understand. Our Constitution has specifically named freedom of liberties but it is impossible to enumerate all dignity and constitute an in road into this right to live and it would, in this view, be prohibited by Article 21 unless it is in accordance with procedure prescribed by law, but no law which authorises and no procedure which leads to such torture or cruel, inhuman or degrading treatment can ever stand the test of reasonableness and nonarbitrariness it would plainly be unconstitutional and void as being violative of Articles 14 and 21. It would thus be seen that there is implicit in Article 21 the right to protection against torture or cruel, inhuman or degrading treatment which is enunciated in Article 5 of the, Universal Declaration of Human Rights and guaranteed by Article 7 of the International Covenant on Civil and Political Rights. This right to live which is comprehended within the broad connotation of the right to "life" can concededly be abridged according to procedure established by law and therefore, when a person is lawfully imprisoned, this right to live is bound to suffer attenuation to the extent to which it is incapable of enjoyment by reason of incarceration. The prisoner of detenu obviously cannot move about freely by going outside the prison walls nor can he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and, therefore, as a necessary component of the right to life he would be entitled to have interview with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends can be upheld liberties and, therefore. Article 21 was enacted as a sort of residuary article protecting all liberties which a person might need to secure happiness. The individual has natural and human rights over which the State has no authority and as the natural primary fundamental unit group of society has right as such which the State cannot control. At the same time the State is the guardian of the common good and that the individual, as a member of society and the family, as a unit of society has duties and obligation to consider and respect the common good of that society. In this view of the matter applicability of natural justice and judicial review to prison discipline may have beneficial effects. Divisional Courts "hands off" Doctrine of English Prison has gone under change there as well as here also. In Prem Shanker's case, AIR 1980 SC 1535 our Supreme Court has observed that handcuffing of a person is prima facie inhuman and, therefore, unreasonable, overharsh and at the first blush arbitrary; Thus, Article 21, after Landmark decision in Menka Gandhi's case followed by Sunil Batra's case [AIR 1978 SC 1675] is the sentuary of human values prescribes fair procedure and forbids barbarities, punitive or procedural.

9. Our Constitution has given some rights to even prisoners such as right to consult and engage a lawyer, right to legal aid and speedy trial etc. Similarly there are time honoured provisions in the Jail Manual and practice to allow the prisoners to meet their relations and friends periodically according to the aforesaid Jail Manual Rules. The meeting of prisoners with his relations and friends should not be curtailed directly or indirectly without justified reasons. If it

is curtailed without showing any justifiable reasons the High Court can certainly interfere in exercise of its power under Article 226 of the Constitution and may issue required directions to the Government and Jail authorities concerned. The following observations of the Supreme Court in the case of A. K. Roy v. Union of India and another (supra) provide good guidelines about the exercise of power under Article 226 of the Constitution, if the reasons for transfer are not justifiable or arbitrary :

"Besides, keeping a person in detention in a place other than the one where he habitually resides makes it impossible for his friends and relatives to meet him or for the detenu to claim the advantage of facilities like having his own food. The requirements of administrative convenience, safety and security may justify in a given case the transfer of a detenu to a place other than that where the ordinarily resides, but that can only be by way of an exception and not as a matter of general rule. Even when a detenu is required to be kept in or transferred to a place which is other than his usual place of residence, he ought not to be sent to any faroff place which, by the very reason of its distance, is likely to deprive him of the facilities to which he is entitled. Whatever smacks of punishment must be scrupulously avoided in matters of preventive detention."

10. Similarly, in the case of Mrs. Geetinder Kaur v. State of Punjab and others, AIR 1985 SC 1409, speaking for the Court Hon"ble Justice R.S. Pathak, as he then was, has observed as under :

"The place of detention is a matter for the administrative choice of the detaining authority and a court would be justified in interfering with that decision only if it was in violation of any specific provision of the law or was vitiated by arbitrary considerations and mala fides."

11. The aforesaid observations of the Supreme Court do not affect the merit of the observations, because they were made regarding a detenu under National Security Act. If a man is a life convict it is not always desirable without justifiable reasons that he should be arbitrarily kept in such a jail, where his family members and friends are deprived of to see him due to their poverty. Therefore, we reject the argument of the learned Deputy Government Advocate that the High Court has no power to review even arbitrary orders in any circumstances. But we want to make it quite clear that if there are justifiable reasons to transfer prisoner far away in a distant jail, the High Court will not interfere in such situation, because Para 128, Chapter VII of the U. P. Jail Manual provides as under :

"128. Transfer of convicts from one prison to another. The transfer of convicts from one prison to another within the state shall be directed by the Inspector General, subject to the orders and the Control of the State Government."

12. In the light of the above observations of S. C. when we proceed to examine this Habeas Corpus writ petition on merit, we find that the petitioner was transferred from Central Jail, Bareilly to Varanasi on administrative grounds and

while he was being transferred from Central Jail, Bareilly to Central Jail, Naini he jumped out of the train and tried to abscond, but he was arrested and sent to jail. It is also clear from the counteraffidavit as aforesaid that the petitioner has also committed several offences inside the jail and his record is also not good. The learned Deputy Government Advocate has further contended that there is likelihood that the petitioner may start to lead his gang of dacoits from inside jail, if he is put in jail at Agra, Bareilly or Meerut. But there is no such assertion in any one of the counteraffidavits filed before us. On the other hand in paragraph 4 of the counteraffidavit filed on behalf of the State, it is stated as aforesaid, that although the petitioner has no right to choose the prison of his choice, but however, when a convict makes an application to the State Government on any ground, it is always considered by the State Government. It has also been stated therein, as aforesaid, that the petitioner did not make any application for his transfer from Central Jail, Varanasi to any other jail or for grant of parole. In such a situation we are of the opinion that it is not a fit case to pass any order or direction in exercise of power under Article 226 of the Constitution. The petitioner may, if so advised, move the State Government and the State Government may decide it on merit.

13. In view of the above discussions this Habeas Corpus Writ Petition has no merit and is dismissed. A certified copy of this judgment must be sent to the petitioner in jail at an early date preferably within ten days.