
(2002) 05 RAJ CK 0054
In the Rajasthan High Court
Case No : Criminal Appeal No. 809 of 1998

Mangu Khan and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2003) 3 RCR(Criminal) 475 : (2003) 2 RLW 1078

Hon'ble Judges : Shiv Kumar Sharma, J;F.C. Bansal, J

Bench : Division Bench

Advocate : V.R. Bajwa, for the Appellant; S.S. Rathore, Public Prosecutor, for the Respondent

Judgement

Sharma, J.—We proceed to adjudicate upon the instant application of the appellant Jamil Khan (life convict) seeking transfer from Central Jail Bharatpur to Distt. Jail Alwar in the back drop of this humanistic proposition that conviction of a crime does not render one a non-person whose rights are subject to the whim of the prison administration. A prisoner does not shed his basic constitutional rights at the prison gate.

2. It is contended by the appellant in the application filed u/s 482 Cr.P.C. read with Article 226 of the Constitution of India that his wife Rajbi, along with his four children which the appellant Jamil has, one is a boy of seven years and other three are girls younger to the boy. Of lately Smt. Rajbi has not been keeping good health and she seems to be suffering from T.B. Since the appellant has been kept at Central Jail Bharatpur, it is difficult, any impossible for his indisposed wife to travel all the way to Bharatpur which is at a distance of about 100 kms. in the company of her children, to see the appellant. Smt. Rajbi faces grave hardship specially in the wake of financial constraints. Village Chandoli is only 15 kms. away from Alwar and if the appellant is transferred to District Jail Alwar, it would be very convenient for his family to see him in Jail.

3. In the reply submitted by the Superintendent Central Jail Bharatpur it has been averred that the appellant was not entitled to seek transfer from the Central Jail to District Jail in view of Circular dated April 22, 1993 issued by the Director General Prisons which provides that all the life convicts shall be kept in Central Jails but in exceptional cases only Director General of Prisons was empowered to make a departure of the said direction and transfer a prisoner to any jail. In a detailed affidavit, Mr. Rajendra Kumari Jail Superintendent District Jail Alwar however deposed that as many as five life convicts viz. Variyam Singh, Sher Singh, Samay Singh, Chandra Bhan and Rishi Pal Nagar were transferred to District Jail Alwar.

4. After having heard the rival submissions we find that a prisoner has a right to life enshrined in Article 21 of the Constitution and it means something much more than just physical survival. Their Lordships of the Supreme Court in *Francis Coralie v. Union Territory of Delhi* (1), indicated that as part of the right to live with human dignity a prisoner is entitled to have interviews 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 can be upheld as constitutionally valid unless it is reasonable, fair and just. In yet another case of *Om Prakash v. State of Haryana* (2), Hon"ble Supreme Court observed as under.

"It is represented by counsel for the appellant that the convict may be kept in the District Jail, Gurgaon so that his wife and child may be able to meet him occasionally. We think that in such cases human considerations are important and family ties must be preserved instead of dehumanising attitudes and distances being inflicted. We are sure the authorities will take this compassionate view and keep him in the District Jail Gurgaon."

5. Put with the prisoner's constitutional right to life, "security reasons" cannot be lost sight. Circular dated 22.4.993 issued by the Director General Prisons although contemplates that for security reasons it will not be safe to shift such convicts who are facing incarceration for a period of more than 10 years and life convicts but it is silent on the question as to why those reasons are not required for the convicts who are facing incarceration for a period of less than ten years. We are thus of the opinion that the application filed by life convict seeking transfer from Central Jail to District Jail should be processed through the Director General Prison, who shall examine the each case considering security reasons but taking the compassionate view as envisaged by the Hon"ble Supreme Court in *Om Prakash v. Stale of Haryana* (supra).

6. In so far as the Instant application is concerned we are inclined to transfer the appellant Jamil Khan from Central Jail Bharatpur to Distt. Jail Alwar initially for three months only.

7. We therefore dispose of the instant application in the following terms.

(i) Appellant Jamil Khan (life convict) shall be transferred temporarily i.e. for a period of three months from the Central Jail Bharatpur to District Jail Alwar.

(ii) In the event of seeking permanent transfer appellant Jamil Khan shall have to file an application under Clause (6) of the Circular dated April 22, 1993 before the Director General Prisons who shall expeditiously decide it by a reasoned order considering the security reasons but taking a compassionate view as indicated by the Hon"ble Supreme Court in Om Prakash v. State of Haryana (supra).

8. Let copies of this order be transmitted to Director, General Prisons, Superintendent Central Jail Bharatpur and Superintendent Distt. Jail Alwar.