
(2018) 07 UK CK 0130
In the Uttarakhand High Court
Case No : Writ Petition (PIL) No. 37 of 2018

Manisha Bhandari

APPELLANT

Vs

State of Uttarakhand & another

RESPONDENT

Date of Decision : 25-07-2018

Acts Referred:

Citation : (2018) 07 UK CK 0130

Hon'ble Judges : K.M. JOSEPH, C.J;SHARAD KUMAR SHARMA, J

Bench : Division Bench

Advocate : Manisha Bhandari, S.S. Chauhan

Judgement

K.M. JOSEPH, C.J.

SHARAD KUMAR SHARMA, J.

1. The issue raised in this writ petition, which is filed in public interest, relates to the legality of order dated 17.07.2017, by which certain restrictions

have been imposed in regard to the visits to the jail. Persons, who are convicted of the offences under Section 307, Dacoity, Theft, Kidnapping,

Ransom and Extortion, criminals and dreaded criminal gangs, who are confined, are classified as one; whereas, persons, who are under-trial in respect

of the very same offences, are classified differently.

2. In respect of the first category, by the said order, it is the complaint of the petitioner, who is a practising Advocate, that the meeting arrangements

have been reduced to twice a month from eight times in a month, which was the previous regime; the days, on which the visits are permitted in

respect of the convicted prisoners, are shown as the second and the fourth Tuesday; the time is shown as from 12:00 p.m. to 04:00 p.m.; the number

of persons, who can visit, is shown as 02; and the period of time for which

they can meet is restricted to 15 minutes. It is, further, stated in the impugned order that the meeting should be held before a local jail official. Most importantly, it is also stated that videography of the complete meeting is also to be done.

3. In regard to persons, who are under-trial in regard to the very same offences, and the persons, who are described as criminals and dreaded criminal

gangs under these sections, who are, apparently, under-trial prisoners and who are not convicted in any other case, in their case, visits are permitted

four times a month. It is permitted on every Tuesday between 12:00 p.m. and 04:00 p.m. The period is again restricted to 15 minutes. A local

Information Officer is to be present at the time of the meeting. Likewise, videography of the complete meeting is also to be done.

4. It is, further, provided in the order that there should be no exchange between the person meeting and the confined prisoner and that there should be

appropriate restriction so that they are unable to touch each other.

5. We have heard Ms. Manisha Bhandari, petitioner in person and also Mr. S.S. Chauhan, learned Deputy Advocate General appearing for the State.

6. Petitioner would point out that, previously, visits were permitted for eight times in a month and there was no such classification done, as is done by

the impugned order. No doubt, a counter affidavit and a rejoinder affidavit have been filed. In the counter affidavit, it is sought to be justified on the

basis of Regulation 703 of the Jail Manual. We have noticed Regulation 703 and we are, prima facie, in agreement with the petitioner that it has

nothing to do with the issue raised in this writ petition. As far as videography is concerned, it is stated that it is done for the purpose of visitorsâ??

record and, after meeting between the prisoner and his lawyer or family members, the privacy of conversation between them is maintained.

7. Petitioner drew our attention to the case-law on the point. Petitioner further pointed out the topography of the State of Uttarakhand and the

difficulties faced by the relatives in travelling over long distances and it is submitted that, if the period of meeting is restricted in the manner provided in

the impugned order, it will cause great suffering.Â

8. We also cannot but remind ourselves of the climatic conditions prevailing in the State of Uttarakhand. Reducing the period of meeting to 15 minutes

in particular and, that too, in respect of relatives, certainly will not be productive

of any useful result. It must be remembered that a person, who is incarcerated, does not stand deprived of all his fundamental rights. It is only such fundamental rights, which are necessarily to be kept in suspension while the incarceration lasts, that can be said to be denied to him by the Constitution. The importance of a prisoner, be it a convict or under-trial, maintaining bonds with the rest of society, particularly in the form of relatives, cannot be lost sight of by the Court.

9. Ms. Manish Bhandari would also point out that the problems faced by the Advocates, who go to meet the prisoners, may be taken into

consideration. Here also, the problem of videography, as also the brief period of time which is made available, is pressed before us. Denial of the right

of the prisoner to meet a lawyer of his / her choice would involve contravention of Articles 21 and 22, runs the argument. In regard to videography,

the petitioner would point out that the Court may also bear in mind that there are already procedures in place, including the provision for CCTV

cameras, by which the concern of the prison authorities about identifying the persons, who go to visit, is already taken care of.

10. Having heard the petitioner and the learned Deputy Advocate General, we are inclined to think that the impugned order must be stayed and it

should be allowed to subsist in the modified form as we direct. Accordingly, we stay the impugned order and direct as follows:

(i) The relatives of the prisoners mentioned in the impugned order, be they convicts or under-trials, will be permitted to visit them four times in a

month. The period of time, for which the visits will last, will stand enhanced from 15 minutes to 30 minutes. We notice, in fact, an amendment is

projected before us, which has restricted the period from 1 hour to 30 minutes and it is, therefore, that, for the time being, we are ordering as above.

During the time the relatives are having their visits, we make it clear that there will be no videography permitted. Instead, it will be open to the

authority to watch the interview, but at a distance so that it would not overhear the conversation between the relatives and the prisoner. For relatives,

for the time being, we make it clear that it shall be understood as meaning spouse, blood relations and also the son-in-law, daughter-in-law and in-laws.

The meeting in regard to relatives will be permitted on Tuesdays. The number of relatives will continue to be 02.

(ii) Coming to the Advocates, learned Deputy Advocate General would assure the Court that they are being permitted to have visits for the purpose of

discharge of their professional duties. We record the same and we further direct that, in the case of the Advocates also, no videography will be done.

It will be, however, open to the authority to be present again in such a manner that, while the authority can watch the proceedings, the authority will

not be within such distance as it can overhear any part of the conversation. Here also, the meeting will be permitted for a period of 30 minutes.

(iii) Besides the above, we also direct that friends of the convicted prisoners or under-trial prisoners should be permitted to have access to the

convicted prisoners or the under-trial prisoners, as the case may be, twice a month (the second and the last Sunday of a month). The period, for which

they can meet, will again be 30 minutes. In respect of the persons approaching as the friends, we permit, both, videography and also an official to be

present, as is already provided in the impugned order.

11. This order will remain in force till the next date of listing.

12. List the case on 24th August, 2018 in the Daily Cause List.