

(1993) 10 MAD CK 0010

In the Madras High Court

Case No : Writ Petition No. 17687 of 1993

Nalini and 21 others

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 28-10-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 304

Customs Act, 1962 — Section 108

Prisoners (Attendance in Courts) Act, 1955 — Section 6

Citation : (1993) LW(Cri) 606

Hon'ble Judges : Raju, J;Arunachalam, J

Bench : Division Bench

Advocate : S. Doraisamy, for the Appellant; I. Subramaniam, Additional Public Prosecutor for Respondents, for the Respondent

Judgement

Arunachalam, J.—This writ petition is before us on the directions of the Honourable the Chief Justice, on a reference made by K.S.

Bakthavatsalam, J., to the Honourable the Chief Justice, that this petition may have to be heard by a larger Bench of this Court, since the issue

raised in this writ petition is of some public importance.

2. Petitioners, twenty-two in number, are the accused, alongwith four others, in C.C. No. 3 of 1992 pending on the file of the Designated Court,

Poonamallee. Initiation of prosecution, is under Terrorists and Disruptive Activities (Prevention) Act, 1984 (Central Act 28 of 1987), now widely

known as ""Rajiv Gandhi Murder Case"". The prayer in the main petition is for issue of a declaration or order or direction in the nature of a writ

declaring Rule 530-A of Tamil Nadu Prison Rules as null and void.

3. In support of the prayer in the writ petition, one of the accused, Nalini, has sworn to an affidavit containing the following averments. Most of the

accused in C.C. No. 3 of 1992 are being defended by counsel appointed by Court u/s 304, Cr. P.C. as State Brief Counsel at Government cost,

since they do not have sufficient means. All the Petitioners who were arrested in 1991 continue to be in custody. Initially, when they were in police

custody, they were detained at Greenways Road, Madras, and at sub-jail premises at Poonamallee under the control of Central Bureau of

Investigation. Thereafter, they were lodged at Sub-Jail, Chengalpattu, for more than a year. Subsequently, they were removed to Central Jail,

Salem and they were inmates there for a few months. Meanwhile, the Special Sub-Jail, Poonamallee, was constructed along with Court premises

for the conduct of the impugned trial. In January, 1993, on completion of Special Sub-Jail building, they were brought from Central Prison, Salem,

to Poonamallee Special Sub-Jail.

4. While they were in police custody as well in the Sub-Jail, Chengalpattu and Central Prison, Salem, they were allowed freely to interview their

relatives and also discuss with their counsel, all the time being in close contact. However, in the Special Sub-Jail at Poonamallee, such facility for

free interview has been denied. Interview room looks like a parrot cage. This room measures 8" x 5" and divided into two parts by a partition wall

of 3" height and a fibre glass partition above that, reaching the top, thereby preventing Petitioners from talking to their advocates and relatives in

the Special Sub-Jail premises. Further no furniture is provided in the room and only one advocate can interview at a time. No facility has been

provided for the interviewing advocate. He has to keep the papers only on the floor. No self-respecting person will come again to the jail, for

purpose of interview, after a single experience. In a limited time, all the accused cannot meet their advocates. A high security arrangement is made

in the jail and a third person can neither enter the jail premises, nor is permitted to do so. A thorough checking is made at three points and counsel

are also subjected to such checking. The local police and special police force, C.R.P.F., take care of the security of the prison. Two years after

arrest, no body can expect any danger to the lives of the Petitioners, when compared to the custody with the police or while kept at Sub-Jail,

Chengalpattu or Central Prison, Salem, where they were allowed to move freely with visitors and advocates. When the Petitioners were permitted

to interview freely with their advocates, even when investigation was not completed, there cannot be any reason in not permitting the Petitioners to talk freely with their advocates, especially when the investigation is over and trial is on the anvil.

5. Further averment in the affidavit is that the fibre glass partition had been devised to prevent the Petitioners from instructing their counsel secretly about the conduct of the case. They have been consistently demanding removal of the fibre glass partition. Initially, they did not attach too much of importance for this partition since the enquiry had not commenced. But, from May, 1993 enquiry is in progress. Petitioners made a request to the Presiding Judge of Designated Court through a Petitioner to have this fibre glass partition removed, to enable the Petitioners to talk freely with their advocates. The said petition was forwarded by the Designated Judge to the State Government. No orders were passed by the State Government on that petition. As a last chance, Petitioners preferred a second petition to the Presiding Judge stating that they would not attend Court proceedings on and from 1.9.1993 if the partition was not removed. Since the partition continued to exist, Petitioners commenced boycotting Court proceedings from 1.9.1993. Since the Petitioners absented themselves from Court during enquiry, Public Prosecutor of the Designated Court preferred a petition on 2.9.1993 u/s 267, Code of Criminal Procedure read with Section 6 of the Prisoners (Attendance in Court) Act, for a direction to the second Respondent, namely, Inspector-General of Prisons, Madras, to cause production of Petitioners in Court. Notice was ordered on this petition returnable on 8.9.1993. Meanwhile, on 6.9.1993 some of the Petitioners were beaten up brutally by the second Respondent for refusing to attend Court proceedings. On the same day, the State Government issued G.O. Ms. No. 1346, Home (Prison-V) Department, introducing a new Rule 530- A to Tamil Nadu Prison Rules, 1983 enabling a partition with fibre glass. According to the Petitioners, the above rule is ultra vires of the Constitution and is liable to be struck down as null and void. The affidavit further reads that under Article 22 of the Constitution, every accused person shall have the right to consult and be defended by legal practitioner of his choice. Section 304, Code of Criminal Procedure casts a duty on the Court to appoint a pleader at the expense of the State in the event of such accused not being represented

by a pleader. u/s 40 of the Prisons Act, advocate concerned shall have the right to consult an accused person in close contact. Similarly, Rule 541,

Tamil Nadu Prison Manual, provides for consultation of the advocates in close contact. The right to consult an advocate in close contact is a

fundamental right of any person. That cannot be taken away by an order of the Government. Such a right cannot be infringed in the name of security reasons.

6. The further averment in the affidavit is that under twenty-eight contingencies contemplated u/s 59 of the Prisons Act, 1984, no power is

conferred on the State Government, to make a rule regarding interview with the advocate and providing a fibre glass partition to prevent hearing of

the accused persons with his advocate. Rule 530-A has been framed without authority u/s 59 of the Prisons Act and hence stands vitiated.

7. A detailed counter-affidavit has been sworn to by K. Moorthy, Additional Superintendent, Central Prison, Palayamcottai, on special duty at

Special Sub-Jail, Poonamallee. In the Counter affidavit, the Additional Superintendent has stated that in this Special Sub-Jail, interviews between

the Petitioners and their visitors including advocates, are allowed strictly in accordance with the rules contained in Chapter XXVII of the Tamil

Nadu Prison Manual. The interview room actually measures 9" x 10", divided into two parts with a partition of 6" wall to a certain height from

ground level with fibre glass partition upwards. The size of the visitors' portion of the room and the prisoners' portion of the room is 4.5" x 9.5"

each. He has denied the averment that the interview room looks like a parrot cage. The entrance of both these portions are kept open during

interviews and hence there is light and ventilation. At a time, only one person is allowed to have interview, on security considerations. The averment

that no furniture is provided in the room, is not correct, since the prisoner is provided with a stool to sit and the visitors are provided with chairs.

Advocates are allowed to interview with these prisoners whenever they make an oral or written application as required in Rule 526(2) of the

Prison Manual (Volume II). Along with his affidavit, he has appended extracts of the Interview Register maintained in this Special Sub-Jail, to

indicate that advocates were having regular interviews with these prisoners. He has denied, that these prisoners, while they were lodged at the

Sub-Jail, Chengalpattu and Central Prison, Salem were allowed to move freely with visitors and advocates. He has pointed out in his affidavit that

under Rule 520 of Tamil Nadu Prison Manual, prisoners shall have to be allowed reasonable facilities for seeing or communicating with their

relatives and advocates with a view to preparation of an appeal or to the procuring of bail or other connected matter. This facility was not denied

and prisoners and advocates continue to avail themselves of this facility.

8. While denying the averment that fibre glass partition was introduced in order to prevent the accused from talking freely with their advocates in

close contact and instruct them secretly, he has stated that intercom facilities have been provided in the interview room, through which the counsel

and the prisoner can discuss matters connected with their case, secretly and instruct counsel with confidence. According to him, the fibre glass

partition was arranged in the interview room, only in the interest of security and safe custody of the prisoners and hence their demand for removal

of fibre glass partition was not entertained. He has admitted that these prisoners had requested removal of fibre glass partition, through the

Presiding Judge, Designated Court. He has added that Rule 530 envisages putting up of screens or wiremesh partition between prisoners and the

persons interviewing them, to prevent the passage or introduction of any prohibited articles between them. This provision was adequate enough

only to manage prisoners under normal circumstances. The present class prisoners cannot be treated as other ordinary prisoners, since they are

much more vulnerable, having involved themselves in the murder of late Rajiv Gandhi. Most of them belong to or closely associated with the

activities of LTTE, a terrorist organisation from Sri Lanka, which organisation has been banned in our country. For successful trial of the case, a

Special Court, with all security arrangements, was built very near the Special Sub-Jail, with direct entrance to the Court Hall from the Special Sub-

Jail. The fibre glass partition in the interview room was one among the other security measures. This partition was there even at the time of

admission of these prisoners. From January, 1993 till August, 1993, interviews between prisoners and their advocates and others were going on

without any protest or grievance either by the prisoners or advocates and others, except one the occasion on 22.1.1993 when one of the counsel

protested about the fibre glass partition. However, later, the same advocate interviewed the prisoners in the months of April, June and July, 1993

without any protest. Once again, the same advocate raised a protest about the fibre glass partition on 2.9.1993. Besides interviewed in the Special

Sub-Jail, Poonamallee, Advocates have interviews with their clients in the Court Hall, on all hearing days, with security guards, standing well

beyond hearing distance.

9. The affidavit further reads that there is information about perceptions of danger from LTTE cadres to prison buildings, prison officials and

subordinates, investigating officials, prosecutors and even to the Court buildings and the Designated Judge. The very lives of these prisoners are in

danger and threats are likely from sources including persons purporting to be their visitors. Such information received from reliable sources, which

are confidential in nature, are open for perusal by this Court. When the protest on the issue of fibre glass partition was raised on 1.9.1993, hearing

process u/s 227 of the Code of Criminal Procedure, had almost reached the stage of termination. According to the deponent, this issue has been

raised at a late stage, on the realisation of the prisoners that the Designated Court was likely to frame charges and proceed further with the trial.

The object of the prisoners was to stall further proceedings in the Designated Court. Danger to the lives of these prisoners may be through passage

of prohibited articles, explosive materials, cyanide capsules, dangerous weapons or poisonous material etc., which can be used in ingenious ways

not capable of being prevented by wiremesh or ordinary type of screen. Hence, in the interest of successful conduct of the trial and to protect the

very lives of these prisoners, any attempt on their lives, has to be thwarted, since it is the duty of the prison staff at all times, to keep the prisoners

in safe custody, while they remain in prison. The two essential ingredients of prisoners' interview that they must be able to see each other and hear

each other in confidence, without compromising security, gets fulfilled, since intercom facilities have been provided for both parties to converse fully

and confidentially, without fear of being overheard. Before and after the interview, it will be open to the visitors to check up the impossibility of any

one else being in a position to listen to the conversation between the visitor and the prisoner or tape the same.

10. The deponent would urge that on 1.9.1993, four accused attended Court and on 2.9.1993, Nalini, who has sworn to an affidavit in the main

writ petition, was also present in Court. Inspector-General of Prisons considered, that Rule 530 was adequate only to manage persons under

ordinary circumstances and hence suggested an additional provision for providing fibre glass partition or any other partition with transparent

material, in the interview room, which could be made under powers vested u/s 5 of the Prisons Act. The deponent has traversed certain other

details in relation to the proceedings in Designated Court in September 1993, regarding which we are not concerned in this writ petition. He has

also adverted to an incident that had occurred in Special Sub-Jail premises on 6.9.1993, when certain prison officials were injured due to attack

on them by the prisoners, while four prisoners also sustained injuries, in the course of the same transaction.

11. The affidavit further reads that Rules 530-A is valid and sustainable in law, since their right to be defended by legal advisers has never been

denied, to these prisoners. u/s 40 of the Prisons Act, question of close contact does not arise. As a matter of fact, the Section provides for proper

restrictions. Similarly, Rule 541 of Prison Rules does not provide for consultation with advocate, in close contact. This Rule also imposes certain

reasonable restrictions. According to the deponent, fibre glass partition is one of the reasonable restrictions towards security and safe custody of

these prisoners. Affidavit further reads that the State Government has power to make any rule generally for carrying into effect the purpose of

Prisons Act. The removal of this partition will be detrimental to the security and safety of the prisoners and is bound consequently to

prolong/hamper the successful trial of the case. The security arrangements for these prisoners have to be strengthened in view of various

information about attempts of LTTE to stall the proceedings in the Designated Court and the acute perceptions of threats to the very lives of these

prisoners. Removal of fibre glass partition will be detrimental to their security. Second Respondent has prayed for dismissal of the writ petition.

12. On behalf of the first Respondent-State of Tamil Nadu, S. Balasubramanian, Deputy Secretary to Government, Home Department, has sworn

to an affidavit adopting the counter-affidavit filed by the second Respondent.

13. Mr. S. Doraisamy, learned Counsel appearing on behalf of Petitioners, contended that rule-making power has to be traced to Section 59 of

Prisons Act, 1894. This section empowers the State Government to make rules consistent with the Act, Under 28 of its Sub-sections. Nowhere in

the First 27 Sub-sections, power has been vested to make a rule as Rule 530-A of Prison Manual, which is now challenged. State Government

cannot make a rule seeking recourse to Section 59(28), which permits generally to make rules for carrying to effect the purpose of the Act, for in

the absence of a specific provision, a general power cannot override lack of specific provision. He then referred to Section 40 of the Prisons Act,

to contend that duly qualified legal advisers have a right to see under-trial prisoners and communicate with them, without the presence of any other

person. This provision, according to learned Counsel, has not been effectually implemented in the present case. He then referred to Rule 541 of the

Prison Manual, which deals with facilities to be granted to unconvicted criminal prisoners and civil prisoners in the matter of interviews and letters.

This rule has a proviso attached to Sub-rule (1) which reads that in respect of accused and under-trial prisoners under the TADA Act, only legal

adviser, close family relatives, namely, father, mother, husband, wife, brother, sister, son and daughter of such prisoner, shall alone be allowed for

interviewing such prisoners. If the prisoner does not have any such close relatives, then distant relatives alone shall have interview, after obtaining

orders of the Government in the Home Department. Under no circumstances, friends shall be allowed to interview the prisoners. Petitioner's

counsel pointed out that a visitor and counsel have certain rights, which cannot be thwarted. He submitted that thirteen accused are represented by

him, while four accused are represented by Mr. Chandrasekaran, Advocate. Of the remaining nine accused, one is represented by Mr. D. Kumar,

Advocate, and the rest by Mr. Ramadoss, Advocate. All of them have been appointed as State Brief Counsel, u/s 304, Cr.P.C. and hence it was

all the more necessary that they must have free access to their clients. He also submitted that if need be, counsel must be allowed to interview two

or three prisoners at a time as, otherwise, the process of obtaining instructions, was bound to be time-consuming. He contended that there was no

need to change the procedure regarding interview in the Special Sub-Jail, Poonamallee, more so when free access to counsel to interview clients,

was allowed at Chengalpattu and Salem prisons. Once the law emphasizes the right of prisoners to have legal aid, free access to counsel to interview the prisoners is a necessary corollary. He urged that the fibre glass partition was bound to deprive privacy and the intercom facility can become inoperative due to power failure or instrument getting out of order. If counsel has to take instructions on the basis of certain documents, which may have to be referred to, fibre glass partition is bound to be a hindrance. As far as other visitors are concerned, he contended that human considerations must prevail and visitors must be allowed to touch the prisoners and vice versa, for then only mutual love could be exhibited. In passing, he submitted that in all other prisons in Tamil Nadu State, except Central Prison, Madras, counsel are made to wait endlessly, when they seek interviews and their presence is not recognised for a considerable length of time. He did not have such a comment to offer about the Special Sub-Jail, Poonamallee. He submitted that counsel should be given preference when he seeks interview with his client and if possible such interview could be arranged in the office room of the Superintendent of Prison. He fairly submitted that counsel should also be frisked and checked before entry in the Special Sub-Jail, Poonamallee, for even without the knowledge of the counsel, planting of some material through them, to gain access into the prison, cannot be ruled out. He argued that a tender child would require affection by touch from the parent prisoner and that cannot be denied. However, to a specific question from Court, he submitted that such a contingency, does not arise in the case of the instant prisoners, for the only prisoner who has a tender child, continues to hold custody of the infant inside the prison premises.

14. Mr. I. Subramaniam, learned Additional Public Prosecutor, while countering the submissions made by Mr. S. Doraisamy, argued, that u/s 59(27), Prisons Act, the State Government has power to make rules in regard to the admission, custody, employment, dieting, treatment and release of prisoners. Therefore, he submitted that a special provision was available to introduce Rule 530-A in the Prison Manual and even otherwise Section 59(28) vests a power for carrying into effect the purpose of this Act and it will be idle to contend, that such power to give effect to the purpose of the Act, cannot be correlated to the power to make Rule 530-A of the Prison Manual, if exigencies so commanded. Mr. I.

Subramaniam also contended, that rule- making power can also be traced to Section 40 of the Prisons Act, which states that due provision shall

be made for the admission for proper times and under proper restrictions into every prison, with whom civil or unconvicted criminal prisoner may

desire to communicate, care being taken so far as may be consistent with interests of justice, prisoners under trial may see their duly qualified

lawyers, without the presence of any other person. He contended that any procedure must be just, and fair and reasonable and such procedure

must take into account the security and safety of prisoners. He pointed out, that an elaborate order was passed by the Designated Court on

5.7.1993, in a batch of criminal miscellaneous petitions at the instance of some of the Petitioners, by virtue of which counsel are permitted to

interview prisoners inside the Court premises, under proper restrictions on all Court hearing days. He submitted that security guards are stationed

at a non-hearing distance from the prisoner and counsel, though they will be under their vision, to avoid transfer of material of any nature. Between

counsel and his client too, there was need to maintain some distance. Counsel will have to obtain permission from the Presiding Judge, before they

choose to interview prisoners, inside the Court Hall. Before the Designated Court, both parties agreed that security guards shall stand stationed 10

feet away from the spot where the counsel and his client engage themselves in interview. Physical contact between counsel and the prisoner shall

stand prohibited. This order passed by the Designated Court, admittedly, has been utilised by defending counsel and Mr. S. Doraisamy fairly

stated that there has been no problem, whatever, in such interviews between counsel and prisoners, inside the Court premises. All that he was

submitting was that inside the Special Sub- Jail premises, counsel must have free access to the prisoners, without fibre glass partition, so that

communication between them would be real and effective.

15. Referring to Rule 530 of the Prison Manual, learned Additional Public Prosecutor submitted that screens or wire-mesh partition, shall have to

be put up, if necessary, between the prisoners and the persons interviewing them, to prevent passage of any prohibited article between them. He

submitted that fibre glass partition will fall under the head screens. He also pointed that under Rule 529, every interview shall take place in a special

part of the prison appointed for the purpose, if possible, at or near the main gate and that is exactly what has been done by providing the interview

room, near the main gate of the Special Sub-Jail, Poonamallee. Both parties, referred to in extenso, the averments made in the affidavit of the

Petitioner or similar factual details which form part of the counter-affidavit of the second Respondent. Learned Additional Public Prosecutor fairly

agreed, that right to consult counsel in privacy, cannot be denied to the prisoner. He contended, that the prisoners belong to a group of

sophisticated terrorists, or in any event, they are sympathisers of such terrorists and hence certain security measures have to be necessarily taken

and therefore existence of fibre glass partition cannot be said to be a hindrance, especially, when quality intercom facility has been provided for

easy and effective conversation, between the prisoner, visitor and counsel. To a question by Court, if any arrangement could be made, for

discussion between counsel and any one of the accused at a particular point of time, based on some document, sans fibre glass, he submitted, that

such contingency is bound to be very rare, since counsel have interview facility with their clients, inside the Court Hall, which has been liberally

utilised by both parties and if need arises, it will be possible to consider sliding of the fibre glass to a limited extent or making some other provision

to have an opening in the fibre glass, to a very limited extent, to facilitate consultation between prisoner and counsel on the basis of any document,

of course, subject to the bona fides involved in the transaction.

16. At this stage, we must state that Mr. S. Doraisamy, on an earlier occasion, while arguing before us in H.C.P. No. 1599 of 1993, in respect of

this same fibre glass partition, contended that the intercom facility had to be made effective so that parties on either side of the fibre glass can not

only hear audibly, but also express their views to be audibly heard at the other end. It was then assured by the learned Additional Public

Prosecutor that there could be no difficulty, whatever, in setting right the intercom system if it were to be defective and the equipment will be

technically checked up, to avoid any complaint of its ineffectivity.

17. After hearing arguments, we deemed it necessary to visit the prison premises, so that we can form an impression of our own, if the fibre glass

partition is in fact a hurdle between the client and his counsel and further to find

out the effectivity and the secrecy of the intercom system. Both counsel stated, that they have no further arguments to advance and that after our visit to the Special Sub-Jail, we can pronounce our orders.

18. We visited the Special Sub-Jail, Poonamallee, on 19.10.1993 between 2.25 p.m. and 2.50 p.m. in the presence of Mr. I. Subramaniam,

learned Additional Public Prosecutor and Mr. S. Doraisamy, Petitioner's counsel. We tested the effectivity of the intercom arrangement by talking

between ourselves, each at one end. We also visited the room of the Superintendent of Prisons, situated a little interior, from the main prison gate.

19. Though both counsel did state before us on 14.10.1993, when arguments were concluded, that they do not require any further opportunity

after our visit to the Special Sub-Jail, Poonamallee, we deemed it necessary to list this writ petition over again after supplying a copy of our

inspection notes to them to ascertain if they had any further contentions to be advanced. Both counsel, after receipt of our inspection notes, had

nothing special to add to their submissions already made. However, Mr. S. Doraisamy submitted that handling of documents through fibre glass

and using intercom facility simultaneously will be arduous. Inspection notes shall form part of this order.

20. We have audited with care and analysed with concern the divergent contentions placed for our scrutiny by either counsel.

21. Inhuman treatment in prison is certainly a past relic. Gone are the days when freedom fighters, led by Mahatma Gandhi, had faced inhumanity

behind the bars, which made them come out convinced for change in prison conditions. As has been described by Gerald D. Robin of University

of Newhaven, in his "Introduction to the Criminal Justice System", at first glance prisons which are State and Federal institutions, might be mistaken

for hospitals, college campuses, rest homes or country clubs. The wide spectrum approach by Courts to Article 21 of the Constitution is, that a

prisoner is entitled to all his fundamental rights, unless his liberty has been constitutionally curtailed. A prisoner's liberty, in the very nature of things,

is circumscribed by the fact of his confinement. Curtailment of personal liberty in any of its facets, can only be justified in circumstances relating to

the character of the prisoner and his safe custody. Any right claimed must be subject to restriction on the basis of compelling public interest.

Record of prisoners and their potential, cannot be overlooked while considering the demands made by them. Individual rights, some times in

certain circumstances, may have to give way to rights of community and rights of others similarly placed. We are at once reminded of A.G.

Gardner's essay on the Rule of the Road, where the lady holding all her parcels, insisted on her right to walk on the public road, intended for

vehicular traffic. Keeping in view these principles, the Constitution makers had thought of reasonable restrictions and only based on such salutary

approach, Prisons Act and Rules in Jail Manual appear to have been framed.

22. Section 40 of the Prisons Act reads as follows:

40. Visits to civil and unconvicted criminal prisoners"" - Due provision shall be made for the admission, at proper times and under proper

restrictions, into every prison with whom civil or unconvicted criminal prisoner may desire to communicate, care being taken that so far as may be

consistent with the interests of justice, prisoners under trial may see their duly qualified legal advisers without the presence of any other persons.

A plain reading of this Section shows that while allowing visits to civil and unconvicted criminal prisoners, proper restrictions can be made, of

course, so far as may be consistent with the interests of justice, more so, when it concerns meeting between prisoners and their duly qualified legal

advisers. Section 41 of the Act empowers a Jailer to search a visitor, if a need so arose and refusal to permit oneself to be searched can very well

be a ground to deny admission into the prison. u/s 59 of the Prisons Act, State Government has been empowered to make rules consistent with the

Act. This Section contains 28 Sub-sections, of which Sub-Sections 27 and 28 alone will be relevant in the present context. Sub-Sections 27 and

28 read as follows

(27) in regard to the admission, custody, employment, dieting, treatment and release of prisoners: and

(28) generally for carrying to effect the purpose of this Act.

A reading of Sub-Section 27 shows that the State Government may make rules consistent with the Prisons Act, in regard to admission and custody

of prisoners, apart from other facets contemplated therein. It is quite possible to comprehend, that under this Sub-section, State Government, as

pointed out by the learned Additional Public Prosecutor, would be entitled to

frame rules regarding custodial treatment of the prisoner, which could very well take in interviews between prisoners, visitors and counsel. Assuming for a moment that under Sub-Section 27, State Government has no power to make rules, Sub-Section 28, which is all embracing, in our view, does permit the Government to frame rules generally for carrying to effect, the purpose of this Act. The purpose of the Prisons Act was to amend the law relating to prisons in India and to provide rules for the regulation of such prisons. In Sant Saranlal and Another Vs. Parsuram Sahu and Others, while considering Section 27 of Bihar Money-Lenders

Act (3 of 1938), Supreme Court has stated as follows:

S. 27 empowers the State Government to prescribe inter alia the form of the registration certificate and the particulars to be contained in an

application made for the purpose of being registered as a money-lender. It is significant to note that the rule making power given to the State

Government is not expressed in the usual form, i.e. is not to the effect that the State Government may make rules for the purposes of the Act. The

rule making power is limited to what is stated in Cls. (a) to (e) of Section 27 and these clauses do not empower the State Government to prescribe

the limit up to which the loans advanced by a money-lender are to remain outstanding at any particular moment of time.

In the Prisons Act, under Sub-Section 28, we are able to visualise power given to State Government to make rules for carrying to effect the

purpose of this Act, and therefore we are unable to agree with Mr. S. Doraisamy that the State Government has no power to make Rule 530-A in

the Jail Manual u/s 59 of the Prisons Act. Even otherwise, as rightly pointed out by learned Additional Public Prosecutor, such power can be

traced to Section 40 of the Act, which we have extracted earlier, for, under the said section, due provisions shall have to be made for the

admission, at proper times and under proper restrictions into every prison with whom similar unconvicted criminal prisoner may desire to

communicate, of course, consistent with the interests of justice.

23. Therefore, there will be no difficulty in concluding that Rule 530-A of the Tamil Nadu Prison Manual is the outcome of authority vested to

frame such rule and cannot, therefore, be struck down, on the ground of any lack of authority, for promulgation of the same.

24. We have to now consider if Rule 530-A of Tamil Nadu Prison Manual which, according to us, is valid, in any way infringes the fundamental

right of a prisoner to consult his advocate, under the guise of security reasons. It will be necessary to extract Rule 530-A which came into

existence on and from 6.9.1993. It reads:

530-A Security and safety of prisoners: In the interests of the security and safety of prisoners and in order to prevent any attempt on the lives of

the prisoners, partition with fibre glass or any other transparent material may be put up between the prisoners and the persons interviewing the

prisoners.

Before we scrutinise the impact of this newly made rule, it will be relevant to have a quick look at Rule 530 of the Prison Manual. This Rule relates

to prevention of passages of prohibited articles during interviews. Under this rule, screen or wiremesh partition shall be put up, if necessary,

between the prisoners and the persons interviewing them, to prevent passage or introduction of any prohibited articles between them. The word

"screen" is stated to mean, according to Chambers Everyday Dictionary Revised 1980 Edition, ""that which shelters from danger or observation,

that which protects from heat cold, or the sun; an enclosure or partition in churches"". Obviously, the word "screen" found in Rule 530 of the Prison

Manual can include a fibre glass partition, the only limitation being that it should not prevent observation of each other from different ends of such

partition. As far as wiremesh partition is concerned, it is directly covered under Rule 530 of the Prison manual. Even without introduction of Rule

530-A, it would have still been possible for the prison authorities to have put up screens under Rule 530 which, to our minds, can very well include

the transparent fibre glass partition. Rule 530-A appears to have been framed as a measure of abundant caution, keeping in view the security and

safety of prisoners. There cannot be a discordant note, that every prison must have to adopt security measures, commensurate with the need,

keeping in view the potential of the prisoners as well as their safe custody. While narrating the facts, we have extracted certain portions of the

counter-affidavit sworn to by the Additional Superintendent, on special duty, at the Special Sub-Jail, Poonamallee, wherein he had stated that there

was information about perceptions of danger from LTTE cadres, not only to prison

buildings, prison officials and subordinates, investigating officials, Prosecutors and even to the Court buildings and the Designated Judge, but also for very lives of these prisoners and that threats to their lives were likely from any source including persons purporting to be their visitors. Information received by the State Government, which is confidential in nature, was produced before us, for our scrutiny. It is only in this background, keeping in view the security and safety of prisoners, State Government which, undoubtedly, has rule-making power, chose to introduce Rule 530- A in the Tamil Nadu Prison Manual, to prevent any attempt on the lives of the prisoners. The object apparently was to prevent possible danger to the prisoners, through possible interviewers, in the guise of visitors.

25. Even under Rule 541, unconvicted criminal prisoners and civil prisoners shall have to be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing with their friends, relatives and legal advisers. Every such interview between an unconvicted prisoner and his legal adviser, shall have to take place within sight, but out of in any of prison officials. A proviso was added to Sub-rule (1) under Rule 541, which states that in respect of accused and under- trial prisoners under the Terrorists and Disruptive Activities (Prevention) Act, 1984 (Central Act 28 of 1987), only legal adviser and close family relatives, namely, father, mother, husband, wife, Brother, sister, son and daughter of such prisoner, shall alone be allowed for interviewing such prisoners. If the prisoner does not have any such close relative, then distant relatives alone shall be allowed to have interview, after obtaining orders of the Government in the Home Department. Under no circumstances, friends shall be allowed to interview the prisoner. We were told by Mr. S. Doraisamy that this proviso is under challenge in yet another writ petition, restricted, of course to non-allowing of friends to interview prisoners. In this writ petition, we are not concerned with the said issue. Prisoners in this writ petition, do therefore have right of interview with their legal adviser and close family relatives, described under the proviso. As we have seen already, u/s 40 of the Prisons Act as well as under Rule 541 of the Prison manual, it is always possible to impose proper restrictions at proper times for interviews and

communications between prisoners, their legal advisers and relatives who come in as visitors. Since reasonable restrictions can always be imposed depending upon circumstances, it will not be possible for us to agree with the contention of Mr. S. Doraisamy that the right to consult, the legal adviser by the prisoner, had been sought to be infringed in the guise of security reasons, by putting into the Prison Manual/New Rule 530-A. We are not prepared to hold that Rule 530-A is ultra vires of the Constitution, on this score.

26. We have now reached the stage, to address ourselves as to whether the right of the prisoner to consult his legal adviser has been thwarted or given a goby by erecting a fibre glass partition in terms of Rule 530-A. No one can dispute that a prisoner has a right to consult his legal adviser and that right cannot be denied. Under Article 22 of the Constitution, any person arrested or detained, shall not be denied the right to consult and to be defended by a legal practitioner of his choice. Similarly, under Article 21, no person shall be deprived of his personal liberty, except according to procedure established by law. Mr. Doraisamy contended that Article 19(1)(d) also stood offended to which we are not able to agree on facts, Petitioners have been arrested for alleged commission of certain grave offence and in pursuance of procedure established by law, they are now under-trial prisoners stationed in the Special Sub-Jail, Poonamallee. Though Article 14 was also stated to be violated, obviously no serious arguments were advanced, due to lack of scope to elaborate it.

27. During the course of arguments, Mr. S. Doraisamy, was able to visualise that visitors in general seeking interviews with prisoners and legal advisers in particular, needing interviews with those prisoners, cannot be put on a par or treated as belonging to the same category. In the counter-affidavit by second Respondent, a specific averment has been made that the Petitioners cannot be treated as other ordinary prisoners since they are much more vulnerable due to their involvement in the murder of the late Rajiv Gandhi and more so because, most of them belong to LTTE, a terrorist organisation from Sri Lanka, which stands banned in our country. It has also been stated in the counter-affidavit, that putting up of screens of wiremesh partitions, contemplated under Rule 530 of the Tamil Nadu Prison Manual to prevent passage or introduction of any prohibited

articles between the prisoners and interviewers, was found not sufficient which needed erection of a fibre glass partition and this security measure

was in existence even at the time of admission of these prisoners in January, 1993. Expatiating further, second Respondent in his counter-affidavit

has affirmed that danger to the lives of these prisoners may be through passage of prohibited articles, explosive materials, cyanide capsules,

dangerous weapons or poisonous material etc., which can be used in ingenious ways not capable of being prevented by wiremesh or screen. On

the basis of intelligence information available to the State Government, we cannot easily brush aside, the statement made by the second

Respondent, in his counter-affidavit, of possible danger to prisoners and the prison itself and its officers through a variety of means, which cannot

be fully anticipated or thoroughly listed. Keeping in view the possible existence of such danger, which it would impossible to completely rule out

altogether we will have to examine minutely if the restrictions sought to be imposed, during interviews by visitors in general, or legal advisers in

particular, are not reasonable and have the effect of eroding on the right of the prisoner concerned.

28. Since putting up of a fibre glass partition between the prisoner and his counsel or visitor and its justification, does not appear to have come up

for scrutiny by Courts earlier, counsel on either side took pains to place some literature from United States and some other countries, generally

focusing about the inside look of prison working. From all these pamphlets, the following information is capable of being gathered. Visitors are

strictly monitored and in many such institutions no contact is allowed between the visitors and the prisoners. Prisoners may be strip-searched, both

before and after visits and the visitors may be subjected to (1) pat downs, (2) frisks to discover any contraband materials that may be taken into

the visiting room. In some prisons, visitors talk with prisoners through glass barriers or by telephone.

29. The Australian perspective is that, the first aim of classification must be the identification of high risk prisoners. This has been attempted by

reference to a prisoner's offence and/or sentence, to his past criminal record or through some speculation about the likelihood of future criminal

behaviour or escape. These factors need have to be subjected to thorough investigation. In the United States, maximum security prisons are walled

fortresses of concrete and steel and house the most serious, most aggressive and most incorrigible of offenders. Most Maximum security prisons

have a common design. Prison "Green Haven" built as a military prison during world war II and acquired by New York in 1949, was designed to

be an "escape-proof" institution. The emphasis on "escape-proof" measures in these institutions, also includes "tool-proof" steel construction,

multiple lock devices, frequent shakedowns (searches) and counts, infrared sensing devices and closed-circuit T.V. More modern maximum

security prisons are beginning to move away from the construction of these double and triple security patterns and particularly the massive outside

walls, due to their prohibitive cost. In their place, they are increasing the use of sophisticated technological intrusion devices. Again, on prison

facilities in United States, the following passage is found:

Prison also have visiting rooms, but visits by family members and friends are rigidly controlled and each institution has different policies regarding

the number and length of the visits each inmate is permitted

In practice, access to Courts encompasses both access to counsel and legal assistance and access to legal material. In United States, legal

correspondence between the inmates and their lawyers, gets protection, in view of the trustworthiness and their particularised interest in

communicating with inmates and the lower security risks involved. Therefore, prison authorities may not intercept, delay, withhold, censor or

inspect correspondence with lawyers unless there are exceptional circumstances that threaten institutional order. A recent Supreme Court decision

in the United States authorised prison officials to open and read mail from lawyers, because the need to detect contraband outweighed the

prisoner's First Amendment right to unmonitored communication with counsel. In general, however, the trend is clearly towards unrestricted

communication with Courts, Attorneys and public officials, unless it is required to be otherwise, in a given situation or contingency.

30. The aforesaid material does project, the imposition of plausible restrictions direly needed in a given set of circumstances for the words

reasonable restrictions being a relative factor" are bound to attain special or significant meaning on the peculiarity of facts.

31. At this juncture, it will be apt to refer to certain decisions cited before us,

though the propositions laid down therein are not in dispute and cannot also be disputed. In *Madhav Hayawadanrao Hoskot Vs. State of Maharashtra*, emphasis was laid on the right of a prisoner to have legal aid. V.R. Krishna Iyer, J., speaking on behalf of the Bench stated thus:

In the present petition, the party, though preferred legal aid by the Court, preferred to argue himself. Even so we uphold the right to counsel not in the permissive sense of Article 22(1) and its wider amplitude but in the peremptory sense of Article 21 confined to prison situations.

In *Sunil Batra Vs. Delhi Administration and Others etc.*, D.A. Desai, J., for himself and on behalf of three other Judges, stated as hereunder:

Undoubtedly, lawful incarceration brings about necessary withdrawal or limitation of some of these fundamental rights, the retraction being justified

by the considerations underlying the penal system (see *Eve Pell v. Procunier* (1974) 41L.Ed. 495 atp.501).

This case also took note of arguments advanced about humanism imparted by interviews and letters.

32. In *Sunil Batra Vs. Delhi Administration and Others etc.*, the following observations were made:

Visits to prisoners by family and friends are a solace in insulation; and only a dehumanised system can derive vicarious delight in depriving prison

inmates of this humane amonity. Subject, of course, to search and discipline and other security criteria (emphasis supplied by us), the right to

society of fellowmen, parents and other family members cannot be denied in the light of Article 19 and its sweep..... We hold, subject to

considerations of security and discipline, that liberal visits by family members, close friends and legitimate callers, are part of the prisoners' kit of

rights and shall be respected.

With regard to interview by lawyers, Supreme Court stated that lawyers nominated by the District Magistrate, Sessions Judge, High Court and the

Supreme Court, will be given all facilities for interviews, visits and confidential communication with prisoners, subject to discipline and security

considerations.

33. In *Kadra Pahadiya v. State of Bihar*, AIR 1981 SC 939 Supreme Court, underlined the right of under-trial prisoners, to be provided with a

fairly competent lawyer at State expense.

34. In Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Bhagwati, J., after referring to Mrs. Maneka Gandhi Vs.

Union of India (UOI) and Another, , stated that it is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his

liberation, through the court's process, that he should have legal services available to him.

35. Not only the statutes, but also enunciation of law by Supreme Court, spotlight affording of all facilities to counsel, for interviews with prisoners,

subject of course, to discipline and security considerations.

36. While arguing a few weeks ago H.C.P. No. 1599 of 1993 Arputham v. Inspector General of Prisons, Madras and another (1993 L.W. (Crl.)

29 J.S./S.N. preferred in respect of the 17th Petitioner, which related to the existing fibre glass partition as well, though not a prayer for declaration

of Rule 530-A as null and void, Mr. S. Doraisamy then contended that he was not challenging installation of a fibre glass partition in view of G.O.

Ms. No. 1346, Home (Prison-V) Department, dated 6.9.1993, but pleaded for directions to prison authorities to provide proper intercom facility

inside the special Sub-Jail; since the available equipment was defective, for the interviewer and the interviewed were not able to hear each other

clearly. Though we have concluded, that Rule 530-A cannot be held to be ultra vires, null and void, we are still bound to consider the submission

of Mr. S. Doraisamy that intercom facility now provided can cease to be functional under certain circumstances. He pointed out that either due to

electricity failure or the instrument getting out of order, effectivity of interview between the counsel and the prisoner, could get hampered. In the

event of electricity failure, which is not bound to be long, that cannot be urged as a ground for removal of the fibre glass partition. In the event of

total electricity failure, though such a contingency is bound to be rare, fairness would demand, that a denovo interview should be sought on another

occasion. Instrument getting out of order, can be no ground for removal of fibre glass partition, for it will be the duty of the prison authorities not

only to maintain the existing instruments in perfect order so that there could be no complaints about audibility, they are bound to keep a spare set

of instruments ever ready for installation in the event of defects in the existing instruments, thwarting the interview process between the prisoner and

the counsel. We have narrated earlier, on the basis of our inspection, that the intercom system does not have any external connection and that the said facility provided in the interview room, can easily be removed by disconnecting the wire connection available in the said room itself, for no other external connection binds them. In the event of defective functioning of the existing intercom facility, spare instruments can always be fitted in within a very short span of time, for all that would be required would be to connect the instruments with the wire connections already available in the interview room. We also found for ourselves that the existing intercom facility in the interview room is perfectly in order and is quite audible and its effectivity cannot be reasonably doubted or challenged. We also found that the fibre glass partition does not hinder, the voice of persons on either side being heard, at the other end, though probably the tone may have to be in a slightly higher pitch. This we are mentioning only by the way for the intercom facility now available neither affects the privacy between the counsel and the prisoner, nor does it prevent effective communication between them. While considering the right of persons to be enquired u/s 108 of the Customs Act, to have the presence of a counsel during interrogation, one of us (Arunachalam, J) in Senior intelligence Officer, Directorate of Revenue Intelligence, Madras v. V.M. Prem Kumar and V.M. Ravi (1990 L.W. (Cri.) 247) held that though persons to be enquired u/s 108 of the Customs Act were not in the position of an accused or suspect and were not even arrested, it would be advisable for the Department to permit the presence of lawyers during such examination or interrogation, taking such precautionary measures as may be considered necessary to keep the confidential nature of the statements as well as the secrecy of the enquiry. The prosecution also must keep in mind that if the presence of the lawyer during examination or interrogation was refused, the ultimate statements recorded will become questionable as not voluntary and as statements obtained under duress, making them not reliable in any proceeding. It is almost the converse proposition which is involved in this writ petition. For security reasons, as stated by the Designated Judge, during interviews between counsel and prisoners inside the Court hall, with his permission, on hearing days, there will be necessity for the prison officials to keep themselves at some distance without affecting the privacy between the client and the counsel and at the same time, be at a

visible distance, to afford the needed security, in the case of present class/ prisoners whose vulnerability has led to the need of erecting a fibre glass

partition in the interview room. Two things appear to be necessary, when an interview takes place between counsel and his client. One is visibility

and the second is audibility. If both these purposes can be achieved, with the existence of the fibre glass partition which of course stand achieved

now, it cannot but be a tall claim by the Petitioners, that interviews between them and their counsel stand hampered due to such partition.

37. Mr. S. Doraisamyt fairly stated, that extensive interviews between prisoners and counsel have been made possible by the Designated Judge,

inside the Court Hall on all hearing days, if required and neither the prisoners, nor the counsel have any grievance on this score. It was also not

disputed, that during such interviews, counsel have enough opportunity to take instructions from one or more of the prisoners at one time, even on

the basis of documents relied upon by the prosecution or any other documents which have any bearing, on the shaping of defence.

38. It is therefore clear, that inside the jail premises, in the interview room, not only the visibility and the audibility between counsel and prisoners

have been effectively secured, but also communications and clarifications, whenever needed, from the prisoners, has made available in the Court

Hall itself, be it on the basis of documents or otherwise.

39. It will, therefore, be not appropriate to contend, that the right of the prisoner, to have legal aid and consultation with the lawyer of his choice,

has either been denied to the prisoner or unreasonably restricted, without justifiable cause.

40. Fibre glass partition has been in existence from January, 1993 and except on some stray occasions, its existence does not appear to have

hampered free communication between counsel, visitors and prisoners. Of course, the deponent to the writ affidavit, has stated that in the initial

stages no objection was taken to the existence of fibre glass partition, since trial had not commenced, but the need has now arisen to question such

existence, since the enquiry has commenced and the prosecution and the defence are engaged in advancing arguments on the feasibility of framing

charges or otherwise.

41. We have elaborately discussed the pros and cons of the matter and have

concluded, that the claimed hindrance of the fibre glass partition affecting communication between the prisoner and the counsel, is more imaginary than real.

42. However, Mr. S. Doraisamy vehemently submitted, that on certain occasions, on non-Court hearing days, it may be necessary for the counsel to interview the prisoners on the basis of certain documents and on such occasions, existence of fibre glass partition was bound to intrude, in the process of passing on of documents to the prisoner and obtaining instructions on the basis of such documents. There is always the possibility of the document being passed on through the prison authorities to the prisoner's side of the interview room, before oral communication could be resorted to, over the intercom equipment. However, the prosecution was fair enough in realising, that in such a contingency, which may be a few and far, some arrangement of sliding the fibre glass partition either to a limited extent or providing a safe and secure opening in the said fibre glass partition, again, of course, limited to dire necessity, to facilitate discussion between counsel and the prisoner, on the basis of certain documents, may have to be made.

43. We are able to visualise, that the need for such interviews between prisoners and counsel on non-hearing days, is bound to arise only on rarest of rare occasions and cannot be a regular ritual, for a counsel before seeking an interview of such a nature, would have bona fide satisfied himself about such a need. Even on such occasions, it may be possible, for the counsel, to seek the permission of the Designated Judge, before the hearing commences or after its termination, to have interview with his clients, on the basis of documents which have come into existence either later on which had not passed through the turnpike of discussion earlier. In any event, not wanting bona fide communication between counsel and the prisoner, to be hampered on such occasions, we are of the opinion that as suggested by the prosecution, a limited opening in the fibre glass partition can be provided so that this raging issue could have a reasonable solution.

44. It will not be fair, but necessary too, as rightly conceded by counsel, that on every occasion before the counsel steps into the interview room, he has to undergo frisking and checking not only of his person, but also

documents and articles in his possession, which exercise, as rightly argued by Mr. S. Doraisamy, would be a safety precautionary measure for the counsel himself. Needless to add, that frisking or checking is bound to be more intense, when any document has to be passed on to the prisoner, for the purpose of discussion on its basis, by counsel, of course, in rarest of rare occasions. After such interview gets terminated, on special occasions, when a limited opening is provided in the fibre glass partition, the prisoner before he or she leaves the interview room, is bound to be checked threadbare by prison authorities, as a safety measure, before he or she is put back in the cell, in their respective places. Before seeking such special interviews, leading to limited opening in the fibre glass partition, the counsel is bound to intimate the prison authorities fairly in advance, so that this extraordinary facility could be afforded. Taking into consideration the vulnerability of the prisoners as well as the rioting that had taken place inside the prison on 6.9.1993 during the course of which some prison officials and prisoners were injured, we are unable to accede to the request made by Mr. S. Doraisamy, that on certain occasions counsel must be permitted to interview more than one prisoner at a time, with the limited opening in the fibre glass partition, to avoid wastage of time. The potential of the prisoners in a group, or even in company with another, cannot escape our attention and whenever such collective instructions are needed, it will have to be restricted inside the Court Hall, on hearing days, with the permission of the Designated Judge. To reiterate, if circumstances so demand, counsel can always plead before the Designated Judge to commence hearing a little late, after affording them opportunity for interview with their respective clients, or terminate the proceedings a little earlier during lunch on interval, to afford obtaining instructions on the basis of documents or otherwise. We must state that Mr. S. Doraisamy was totally fair, when he admitted that the system of communication permitted by the Designated Judge between prisoner and his counsel has worked out well and continues to be quite effective under normal circumstances. We must also add a note of caution, that interviews between prisoner and counsel on special occasions with the limited opening in the fibre glass partition, will have to stand restricted to counsel on record who appear for that particular prisoner and not for every

counsel, who does not represent the said prisoner.

45. On the basis of the averments made in the counter-affidavit of second Respondent, which appear tenable, that there is lurking danger to the lives of prisoners and it may also be possible to pass on prohibited articles, explosive material, cyanide capsules, dangerous weapons or poisonous material to the prisoners through the interviewers, we have to hold that the restrictions now placed for interview, are totally reasonable and it cannot be argued that such restrictions tend to infringe upon the legitimate rights guaranteed to the prisoner.

46. It is no doubt true that all counsel representing one or other of the accused have been appointed u/s 304, Code of Criminal Procedure It was brought to our notice by State's counsel, that counsel appointed at State expense, were so appointed on specific requests made by prisoners themselves, pinpointing those advocates. It may be so. It practically makes no difference if a counsel is engaged by prisoners themselves or at the cost of the State, for counsel defending the accused have a right to interview their clients. No special privilege can be claimed by counsel, since they have been appointed as State Brief Counsel, nor any reduction in privileges can be conceived of, if they happen to be counsel engaged privately, by the parties themselves. As we had occasion to mention earlier, on the basis of literature available on the subject, it is normally presumed that lower security risks are involved, in view of trustworthiness of members of legal fraternity and their particularised interest, in communicating with prisoners for the purposes of the conduct of trial. Any rule has an exception and in United States, this was recognised by the Supreme Court, when it authorised prison officials to open and read mail from lawyers since the need to detect contraband outweighed the prisoner's right to unmonitored communication with counsel. This, of course, will be a question of fact, needing attention when circumstances so warrant.

47. When counsel are permitted to interview a single prisoner on the basis of any document, with limited and necessary opening in the fibre glass partition, it will be needless to state, that proper security arrangements will have to be made outside the interview room, of course, taking care that such security men are not within hearing distance of the prisoner and the

counsel. It will also be open to prison authorities to censor the documents on which instructions are sought to be obtained by counsel, only in the event of prior reliable information needing such censoring, for then the need to detect non-permitted material would certainly outweigh the prisoner's right. This facet, we are mentioning more as an abundant caution than as a normal rule.

48. We must also state that only one counsel can interview a single prisoner at one point of time in the interview room, and if collective instructions are required, that process must be relegated to the Court Hall on hearing days. It is easily possible for different counsel to have different times of interview fixed in advance, to facilitate communication with their respective clients.

49. We are unable to agree that close contact between counsel and the prisoner at touching distance is a right guaranteed by Constitution, which cannot be infringed. The words "close contact", have been added by Mr. S. Doraisamy and we are unable to trace them to any provision in law.

This close contact theory, appears to have arisen, since Mr. S. Doraisamy was vehement in contending, that visitors must be allowed to touch the

prisoners and vice versa, for then only mutual love could be exhibited. As we have already stated, defending counsel stand on a different footing

from other visitors. Visitors can be permitted to meet the prisoner in the interview room only with the fibre glass partition. We are unable to agree

that prisoners and visitors must be permitted to touch each other during interviews in the present set up, for the apprehension of prison authorities is

that there is sufficient possibility, of passing on to the prisoners, through visitors portion, explosives and other risky material, in the event of touching

being allowed. We are now concerned with the vulnerability in the Special Sub-Jail, Poonamallee, and the Prison

Rules are quite elastic and depending upon the proper time and proper circumstances, they can always be tightened up or relaxed. As we have

noticed earlier, the question of any tender child needing affection by parental touch during interview between visitor and prisoner, does not arise, as

fairly conceded by Petitioner's counsel. As far as visitors other than advocates defending the prisoners are concerned, the fibre glass partition will

have to exist and in so far as defending counsel are concerned, we have already

detailed as to the circumstances under which there could be some relaxation by partial opening of the fibre glass partition. We are unable to hold, that monitoring of conversation between the visitor and the prisoner by prison authorities will have to be stopped, for on information, confidential in nature, placed before us, such monitoring appears to be absolutely necessary. As we have observed earlier, this monitoring will not be resorted to when interview takes place between counsel and the prisoner, except under rare circumstances, on specific intelligence information, when counsel shall be apprised of the need to monitor the talks between the prisoner and himself. This contingency may not normally arise and, if at all, may be far and few, for we are conscious that the dignity of the legal profession will have to be respected and certain amount of trust will have to be acceded to, for betrayal by Bar, if at all, is bound to be very rare.

50. In passing, we are bound to observe, since an argument has been advanced, that in all prisons in the State of Tamil Nadu, when counsel seek interviews with prisoners, they should be given preference and should not be made to wait endlessly, without even a place to sit. Learned Additional Public Prosecutor stated, that suitable instructions will be issued to prison authorities on this aspect through the Inspector General of Prisons. We are unable to accede to the request of Mr. S. Doraisamy that interviews between the prisoner and the counsel in the Special Sub-Jail, Poonamallee, can be arranged in the office room of the Superintendent of the said Prison. The office room of the Superintendent, Special Sub-jail, Poonamallee, is situated, quite some distance away from the main entrance and virtually is part of the prison, and appear to be unroutable for interviews. We are satisfied that interviews can comfortably be held in the existing interview room which abuts the main prison gate. Learned Additional Public Prosecutor, even while we were inspecting the interview room, submitted that arrangements will be made to provide a fan in that portion of the interview room, where counsel and visitors will be seated and also agreed to provide a small table to help counsel, to keep their documents, during the course of communication with prisoners. We are sure that these facilities would be made available promptly, even before the next interview between counsel and prisoners, get scheduled to take place, after pronouncement of this order. In the presence of Mr. I.

Subramaniam and Mr. S. Doraisamy, we have suggested to prison authorities, to enclose safely, the high tension wires and meters found in the prisoner's side of the interview room, and State's counsel affirmed, that it shall be so done, on war footing basis, forthwith. As much as the prison authorities and the State, the Court is also equally concerned with the safety of the prisoners. If prisoners need furniture to sit in the interview room, during interviews, it shall be provided by the prison authorities.

51. If counsel, pass through frisking and checking process, naturally visitors cannot be exempted from this salutary procedure.

52. The only instance, which has been brought to our notice, is the existence in some of the maximum security prisons in United States, of glass

barriers between prisoners and visitors and communication between them, being through telephone. It is therefore apparent that exigencies also

decide the modalities to be adopted and there cannot be any hard and fast rule for universal application or apedantic approach in the matter.

53. Keeping in view, that Courts will have to strike a just balance between the right of the prisoner and the preservation of internal order, discipline

and maintenance of institutional security against threat to lives and escape attempts by prisoners, in the background of community as well, the final

picture which emerges out, can be formulated as follows:

(1) The State Government has power under Ss. 40 and 59 of the Prisons Act, to introduce Rule 530-A in the Tamil Nadu Prison Manual and the

said rule cannot be struck down as ultra vires of the Constitution or null and void, on any reasonable basis.

(2) A distinction will have to be made regarding interviews between defending counsel and prisoners and prisoners and other visitors.

(3) Visitors can have interviews with prisoners in the interview room only with the existence of fibre glass partition. They will have to be frisked,

checked and monitored before interviews, and if need arises, after interviews as well. Visitors will not be permitted to touch the prisoners.

Obviously, such touching is not feasible due to existence of fibre glass partition.

(4) Defending counsel normally shall interview prisoners, one at a time on either side, through fibre glass partition, conversation between them

being through intercom facility, which shall be maintained without any defect and effectively, by prison authorities at all times.

(5) In the event of an emergent need for communication between counsel and prisoner on non-court hearing days, a single prisoner and a counsel

can engage themselves in interview, on the basis of documents which need mutual reading, through an opening in the fibre glass partition or sliding

of the fibre glass partition, to the extent necessary and sufficient for the said purpose. The prisoner will be searched before and after the interview

and similarly the counsel will have to undergo the process of frisking and checking before and after conclusion of such special interviews.

(6) Counsel shall continue to have interviews with prisoners in Court Hall, with the permission of the Designated Judge, on hearing dates, either

individually or collectively with the prisoners, subject, of course, to security arrangements, which are now in existence, and admittedly not causing

any hindrance, for effective communication, between counsel and client, for the security men are stationed within vision of interviewer and the

interviewed, but at non-hearing distance. In the event of a dire need, with the permission of the Designated Judge, Court sitting time can be

modulated to facilitate interview in Court Hall, between client and defending counsel.

(7) Interviews between visitors and prisoners can be monitored through a third intercom instrument kept in the prisoner's side of the interview

room, as is being done now, but such monitoring shall not be done, when defending counsel interview prisoners, the only exception being, when

specific intelligence material is available needing such monitoring, in which event, counsel shall be apprised of such monitoring, in advance.

(8) Neither the visitor nor the counsel, will be allowed to touch the prisoner under any circumstances, at least so far as the present exigencies, exist.

(9) Whenever circumstances so demand, documentary communication, if any, between counsel and prisoner can be censored, for the need to

detect passing of incriminating material would certainly outweigh the prisoner's right to unmonitored communication with counsel.

54. This writ petition is disposed of accordingly.