

(1998) 03 AHC CK 0143
In the Allahabad High Court
Case No : Criminal M.W.P. No. 475 of 1998

Om Prakash Srivastava alias Babloo Srivastava	APPELLANT
Vs	
State of U.P. and Others	RESPONDENT

Date of Decision : 20-03-1998

Acts Referred:

Constitution of India, 1950 — Article 21
Penal Code, 1860 (IPC) — Section 120B, 302
Prisons Act, 1894 — Section 27, 28, 29, 40
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3(1)

Citation : (1998) 2 ACR 1098

Hon'ble Judges : S.K. Phaujdar, J; J.C. Misra, J

Bench : Division Bench

Advocate : A.N. Mulla and G.K. Srivastava, for the Appellant; Amarjit Singh and A.G.A., for the Respondent

Judgement

S.K. Phaujdar and J.C. Misra, JJ.—The present Petitioner is lodged in Naini Central Jail in relation to Criminal Case No. 3 of 1994 pending before the designated court under the T.A.D.A. Act at Kanpur Nagar with a charge for an offence u/s 302/120B, I.P.C., P.S. Cantt., district Allahabad. A co-accused, K. K. Saini, has been charged u/s 3(1) of the T.A.D.A. Act as also u/s 302, I.P.C. The Petitioner was apprehended at Singapore and was brought to India after an extradition proceeding in 1995. For certain period, he was detained in Tihar Jail, New Delhi, for another case and he had been transferred to Naini Central Jail, Allahabad, in January, 1997.

2. It is the grievance of the Petitioner that he is being detained as an ordinary prisoner and was lodged in a cell with the co-accused, K. K. Saini, without any freedom to move to any of the wards outside the cell. It was alleged that while in Tihar Jail, the Petitioner was given "B" class status under Rule 38 of the Delhi Jail Manual. He was, however, denied the superior class facility in Naini Central Jail. He asserted that his status was different from the other undertrial prisoners in the jail and for him, the provisions of International Law and the law on

extradition would be applicable. He referred to the order of extradition as per Annexure-"1" to the writ petition.

3. The Petitioner further asserted that he had never been convicted in any criminal case till date. He came from a respectable family, his father being an Engineer and brother an Officer in the Indian Army. The Petitioner himself is a Law Graduate. It is stated that he moved an application before the State Government through the District Magistrate, Allahabad, in July, 1997. The representation was not decided and the Petitioner moved a writ petition before the High Court for grant of superior class status and the High Court directed in the said Writ Petition No. 41997 of 1997 that the representation be decided within six weeks. The order of the High Court is annexed at Annexure-"6" to the writ petition. It was further asserted that the District Magistrate, without application of his mind, recorded an order dated 31.12.1997 rejecting the prayer of the Petitioner for the status of superior class prisoner. This order was depicted as arbitrary and mala fide.

4. The Petitioner also put forward a grievance that he was languishing in jail in solitary confinement and no one was allowed to visit his cell and he was not even allowed to leave the cell. He was also been deprived of fundamental rights guaranteed under Article 21 of the Constitution, although he was never convicted of any prison offence. He made a prayer for a writ of certiorari to quash the order of the District Magistrate dated 31.12.1997 and for a writ of mandamus to grant superior class, and a further direction for not being put up in solitary confinement.

5. Through a supplementary affidavit, the Petitioner added that he was not given the opportunity to meet anybody except his counsel and that too after written permission of District Magistrate which usually took an inordinate length of time. His relatives were also not allowed to see him. Even the counsel were allowed to see him only in presence of the Deputy Jailor and Inspector of local Intelligence, which was violative of the provisions of Section 40 of the Prisons Act, 1894. He alleged further that although other undertrial prisoners in the jail were allowed to watch Television (in short "T.V."), but the facility was denied to him. He asserted in this supplementary affidavit that he was in cellular confinement, which could be awarded only as a measure of punishment.

6. The Respondents filed counter as well as supplementary counter-affidavits and to that a rejoinder-affidavit was filed by the Petitioner asserting, however, no new fact.

7. There had been two counter-affidavits on behalf of the Respondents, both were filed by the Jailor of the Central Jail, Naini, Allahabad. The jailor asserted that the Petitioner was involved in at least seven cases involving serious charges. He is a hardened criminal and could be apprehended at Singapore and thereafter could be brought back to India only after extradition proceedings. Looking to the background of cases, the State Government thought it proper to keep the

Petitioner in a safer jail custody and that was the reason for his transfer from Kanpur Jail to Naini Central Jail. His representation, for the status of superior class prisoner, was rejected by the District Magistrate. In the supplementary counter-affidavit, it was stated that there had been a direction by the District Magistrate, Kanpur, while the Petitioner was in Kanpur Jail, that no interview may be allowed with the Petitioner without proper sanction from the District Magistrate and this was done for the security of the Petitioner as he was wanted in a number of criminal cases and the administration apprehended that harm could be caused to him by way of poisoning or the like. It was stated that the Petitioner was not kept in solitary confinement but for the purpose of safety, he was kept in the Cell Block which was provided to high security prisoners. It was further asserted that his counsel, viz., S/Sri Gaurav Kumar Srivastava and A. N. Mulla, had been meeting the Petitioner in jail and two more Advocates, viz., S/Sri Sanjay Kumar Srivastava from Delhi, and D. P. Singh from Lucknow were also visiting the Petitioner in jail without any restriction, subject to only with the permission of the District Magistrate. It was stated that putting up the Petitioner in the Cell Block was not an infringement of the fundamental right of the Petitioner. The Prisoners Act, 1894, in Chapter v. of the Act, covers discipline of prisoners. Section 27 speaks about separation of prisoners as male and female ones and prisoners above and below the age of 21 years. It further requires that unconvicted criminal prisoners are to be kept apart from convicts. Section 28 says that subject to the aforesaid restrictions, convicted criminal prisoners should be confined either in association or individually in cells or partly in one way and partly in the other. Section 29 requires that no cell shall be used for solitary confinement unless it is furnished with the means of enabling the prisoner to communicate at any time with an officer of the prison. The U. P. Jail Manual in Clause 409A states that except as provided in Chapter XVIII, the rules in the Jail Manual applicable to the convicts shall apply to the undertrial prisoners also. This suggests that if a convict could be kept individually in a cell, there is no reason why an undertrial could not be so kept. The Petitioner, initially, described his confinement as a solitary confinement, but subsequently he had stated that it was a cellular confinement. The affidavit of the Respondents, however, indicate that he has been kept in the Cell Block along with the co-accused, K. K. Saini, and there being a provision for such an arrangement, it may not be stated that he is being lodged in the Cell Block by way of punishment without any prison offence. Sufficient reasons have been advanced by the Respondents as to why such a measure has been taken in respect of the Petitioner and the affidavit indicates that it was for the security of the prisoner himself that this arrangement has been made. What is proper for the administration would be determined by them only and the Court would interfere only if there is a violation either of fundamental rights or of statutory rules or if there is arbitrariness in any action. The provisions, as quoted above, indicate that such confinement is not without jurisdiction. Reasons have been stated as to why the Petitioner has been lodged in the Cell Block and the action may not, therefore, be described as arbitrary or mala fide. Subject to guarantee of other fundamental rights that the

Petitioner may claim, although in custody only his being placed in the Cell Block, may not be deemed to be a denial of a fundamental right guaranteed under Article 21 of the Constitution.

8. As regards status of the Petitioner as a superior class prisoner, we may again refer to the provisions in the Jail Manual and in this respect, we may look to the representation made by the Petitioner for such status. It was addressed, according to the writ petition, to the State Government through Respondent No. 2 (the District Magistrate, Allahabad) in July, 1997. There had been an earlier writ petition to enforce a decision on this representation and a direction was given upon the District Magistrate alone to decide the representation within a particular time frame. Thereafter the District Magistrate only was requested by a letter by the counsel for the Petitioner to dispose of the representation of the applicant. This order was passed on 31.12.1997.

9. We may again refer to Clause 409A of the U. P. Jail Manual which provides that the rules regarding convicts would be applicable to undertrial prisoners also. Reference may be made to Clause 691 of the U. P. Jail Manual which permits a prisoner to make an application addressed to the State Government through the District Magistrate for admission to the superior class. Clause 279 empowers the Court to recommend that an accused be given a particular class. If it is the Court of Session or a Magistrate, recommendation is to be made to the District Magistrate for an accused who is facing an enquiry or trial before the Court of Session or Magistrate. High Court may also make a recommendation to the State Government if an appeal or revision is pending in respect of that accused. The pendency of a writ petition for the status of superior class prisoner may not be deemed to be an appeal or revision in respect of the criminal case and as such the High Court may not issue any direction or recommendation in terms of Clause 279 of the U. P. Jail Manual. Clause 280 (2) authorises the District Magistrate, on his satisfaction that the prisoner's education, character and antecedent, the nature of offence committed and the motives therefore justify a superior class treatment, to give the status to a prisoner and in case he does so, the District Magistrate is required to furnish the details to the State Government. Clause 280 (4) empowers the State Government, even on its own motion, to accord superior class to a prisoner upon satisfaction that his education, character and antecedents, the nature of the offence committed and the motives therefore justify the same. The order of the District Magistrate is to be recorded not only on the social status of the prisoner but also on the nature of the crime committed. If a District Magistrate had considered the case and had rejected the prayer for giving superior class to the Petitioner, that by itself may not be a ground for interference in a writ petition as nothing was stated about how the order was mala fide. Even if the District Magistrate had refused the status, as claimed, the State Government could have been approached and it could have taken a decision irrespective of the opinion of the District Magistrate. Nothing is there on record to show that the State Government had been approached. Concerning the status, therefore, we are convinced that no interference may be

made subject to the only observation that it would be open for the Petitioner to approach the State Government under Clause 280 (4) of the U. P. Jail Manual. Concerning interview, specific provisions are there for undertrial prisoners in Chapter XVIII of the U. P. Jail Manual, as such the general provisions in Chapter XXVI (convicts) may not be applicable, Clause 457A provides that undertrial prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing, with their relatives, friends or legal advisers. Clause 457C, however, directs that it would be competent for the District Magistrate to restrict interviews in relation to any particular undertrial prisoner and if such restrictions are there, the same ought to be strictly complied with and intending interviewers would be informed to such order. So far interview by legal advisers are concerned, the right has been guaranteed by Clause 457D of the U. P. Jail Manual. It is the allegation that even at the time of interview with the lawyers, officials remain present. This allegation, however, has not been accepted. Concerning facilities of T.V., etc., it was asserted by the jailor that the Petitioner has also been given the facilities.

10. Upon the above considerations, we are unable to accede to the prayers concerning class of the Petitioner and concerning his confinement in the Cell Block and the writ petition stands dismissed so far those prayers are concerned. Regarding interview and other facilities, the writ petition stands allowed with the direction that if at all any prayer for interview comes, it will be dealt with according to clauses 457A, 457C and 457D of the U. P. Jail Manual, subject to any restriction imposed by the District Magistrate taking care to the general security and safety of the Petitioner. Regarding interview with the lawyers, it is directed that the officials must keep a proper distance from the legal adviser and the Petitioner at the time of interview, so that confidentiality of their conversation may not be affected.