
(1992) 03 MAD CK 0008
In the Madras High Court
Case No : Writ Petition No. 13359 of 1991

Perrarivalan

APPELLANT

Vs

The Inspector General of Prisons, Madras and others

RESPONDENT

Date of Decision : 26-03-1992

Acts Referred:

Explosive Substances Act, 1908 — Section 3, 5
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 326, 376
Prisons Act, 1894 — Section 3, 31, 46
Terrorist and Disruptive Activities (Prevention) Act, 1987 — Section 3

Citation : (1992) CriLJ 3125

Hon'ble Judges : Somasundaram, J; K.M. Natarajan, J

Bench : Division Bench

Advocate : Mr. S. Doraisamy, for the Appellant; Mr. G.M. Syed Fasiuddin, Assistant Public Prosecutor, Mr. P. Rajamanickam, Special Public Prosecutor, for the Respondent

Judgement

Somasundaram, J.—The prayer in this writ petition runs as follows :

for the reasons stated in the accompanying affidavit it is prayed that this Hon'ble Court may be pleased to issue a writ of Habeas Corpus or order

or direction in the nature of the writ directing the respondent not to confine the petitioner in a solitary confinement and to provide with all facilities

that are available under the Prisons Act and the Tamil Nadu Prison Manual and to permit the petitioner to be interviewed by the Advocate and the

visitors without making them wait and pass such further or other orders and thus render justice.

2. The case of the petitioner as disclosed in the affidavit filed in support of the writ petition is as follows : The petitioner was arrested by the C.B.I.

in connection with the assassination of the former Premier Minister Thiru Rajiv

Gandhi with charges under Sections 302, 307, 326, I.P.C. and Sections 3 and 5 of the Explosive Substances Act and S. 120B I.P.C. read with Section 3 of TADA Act, 1987. The petitioner was kept in police custody from 19-6-1991 to 15-8-1991 as per the orders of the Chief Judicial Magistrate, Chingleput. He was remanded to judicial custody from 6-8-1991 as per the order dated 16-8-1991 of the presiding Judge, designated court, Madras and admitted in the Special Sub-Jail Chingleput on 16-8-1991. In the Special Sub Jail Chingleput the petitioner is now kept in a separate cell in solitary confinement under lock and key for 24 hours except for the time required for attending the calls of nature and bathing. The solitary confinement of the petitioner in a separate cell is unwarranted and against the principles laid down by the Supreme Court. Solitary confinement can be resorted to only by way of punishment and not otherwise. When the petitioner is detained in prison he will not lose his constitutional rights and is entitled to all the rights guaranteed under the Constitution and therefore keeping the petitioner in a separate cell in solitary confinement for all the 24 hours is unconstitutional and inhumane and the respondents are liable to be directed not to keep the petitioner in solitary confinement for all the 24 hours in a day. The solitary confinement of the petitioner in a separate cell as mentioned above amounts to illegal detention as there is no order from the competent court imposing the punishment of solitary confinement on the petitioner. Section 31 of the Prison Act permits the under-trial prisoners to purchase or receive from private sources food, clothing, bed materials and other necessities. However, the respondents have refused to permit the petitioner to receive food, bed materials and other necessities from private sources. The respondents have no powers to refuse to permit the petitioner to receive the food, clothing and bed materials from private sources particularly when it is permitted u/s 31 of the Prison Act. The Special Sub-Jail, chingleput is full of mosquitoes and bed-bugs. There is no light within the prison cell and no proper air circulation. No modern amenities are provided in the prison. The petitioner is entitled for the supply of magazines periodicals and newspapers. The petitioner is not supplied with the daily newspapers. The further allegations in the affidavit is that the first respondent has issued instructions to the second respondent that advocates cannot be allowed

to interview the prisoner unless they have the vakalath of the particular prisoner in their possession. The first respondent is not competent to issue

such instructions. When the petitioner's Advocate went to meet him on 5-9-1991, the advocate was not immediately allowed to interview the

petitioner and he was made to wait for two hours, outside the jail gate and then only the advocate was permitted to interview the petitioner.

Similarly whenever the parents of the petitioners visited the jail they were also made to wait outside the jail gate for hours together without any

reason whatsoever. With the above averments, the petitioner filed the present writ petition seeking the reliefs indicated in the earlier paragraph of

this order.

3. The respondents 1 and 3 filed a common counter affidavit contending as follows : In the Special Sub-Jail at Chingleput, the persons involved in

the assassination of the former Prime Minister Thiru Rajiv Gandhi are lodged. The petitioner is one among them. There are 12 males and 3 females.

As per Rule 215 of the Tamil Nadu Prison Manual Volume II, the Superintendent of the Prison is authorised to keep certain categories of

prisoners in separate cells. The Special Sub-Jail, Chingleput consists of more than 30 cells which are situated in rows. The petitioner is kept in one

of those cells thereby facilitating communication with other prisoners kept in the adjacent cells in the row. Even though the petitioner is kept in a

separate cell, he is free to attend his daily routines such as bathing, calls of nature, exercise, having breakfast, lunch etc. Even during this time he

can converse with other co-prisoners. However the movement is restricted to the extent it does not affect the overall security of the prison, the

other accused as well as his own security. The detention of the petitioner in a separate cell is permitted by the Rules. Keeping the petitioner in a

separate cell does not mean the solitary confinement as alleged by the petitioner. The petitioner is allowed daily rations as per the scale prescribed

in Chapter XXII of the Tamil Nadu Prisons Manual Volume II. The register maintained in the special Sub-Jail, Chingleput will show the articles

such as eatables like biscuits, fruits plaintains etc., brought by the interviewers are handed over to the petitioner on many occasions. The

Superintendent of the Special Sub-Jail has supplied to the petitioner the necessary bed materials such as cumbly, coramat and bed-sheet at

Government cost. The cells of the special sub-jail, Chingleput have been built according to the dimensions prescribed in the rules and each cell is

properly ventilated. The cells are periodically white-washed to eliminate bugs. Each cell is provided with flush out latrine with water facility. The

prisoners in the special sub-jail, Chingleput are supplied with one Tamil Daily along with any one of the periodicals mentioned in Rule No. 231 of

the Tamil Nadu Prison Manual Volume II (hereinafter called the Rules). Further the petitioners advocate was permitted to interview the petitioner

between 6-15 and 16.45 hours on 5-9-1991 (i.e.) immediately on receipt of the application and after proper enquiry.

4. The respondents 1 and 2 also filed a supplementary counter affidavit with the following averments : The petitioner's segregation in a single cell

has been made with reference to Rule 214 read with 215 of the Rules. During the period of his lodging in the single cell, the petitioner is allowed to

be outside the cell for not less than 6 hours a day (i.e) from 6.00 a.m. to 8.00 a.m. 11.00 a.m. to 1.00 p.m. and 4.00 p.m. to 6.00 p.m. When the

petitioner is outside the cell, he is allowed to communicate with other prisoners and he is allowed as an ordinary remand prisoner all the

concessions admissible to the "B" class prisoners. The further submission in the supplementary counter affidavit is that the liberty of the petitioner is

no way curtailed beyond the limit as contended by the petitioner. The petitioner is kept in the separate cell in accordance with the procedure

established by law and therefore the petitioner is not entitled to any relief in the writ petition.

5. As the learned counsel for the petitioner disputed the averments made by the respondents 1 and 2 in the supplementary affidavit, by order dated

8-11-1991 made in this writ petition, we directed the Chief Judicial Magistrate, Chingleput to inspect the Special Sub-Jail, Chingleput where the

petitioner is now kept and after making necessary enquiry and inspection to submit a report, in respect of the cell in which the petitioner is being

kept. The C.J.M. Chingleput after inspecting the Special Sub-Jail, Chingleput on 15-11-1991 and 18-11-1991 submitted his report dated 21-1-

1991.

6. Mr. S. Doraisamy the learned counsel for the petitioner reiterated before us the contentions raised in the affidavit filed in support of the writ

petition and submitted that keeping the petitioner in a separate cell and restricting his movements amount to solitary confinement and such measure

of solitary confinement can be imposed only by a competent court of law under sections 73 and 74 of I.P.C. or as a punishment for prison

offences and not otherwise. The learned counsel for the petitioner further contended that the petitioner is an under-trial prisoner, and the act of the

respondents putting the petitioner in a separate cell and restricting his movements amounts to solitary confinement and illegal detention and,

therefore, the respondents should be directed not to keep the petitioner in a solitary confinement in a separate cell. In support of his contention, the

learned counsel for the petitioner placed reliance on the following decisions of the Supreme Court.

1. Sunil Batra Vs. Delhi Administration and Others etc., ;

2. Sunil Batra Vs. Delhi Administration and Others etc., ;

3. Rakesh Kaushik Vs. B.L. Vig, Superintendent, Central Jail, New Delhi and Another,

On the other hand, the learned Additional Public Prosecutor appearing for the respondents 1 and 2 and Mr. Rajamanickam, the learned counsel

appearing for the 3rd respondent submitted that as per Rule 215 of the Rules, the Superintendent of Prison is authorised to keep certain categories

of prisoners in separate cells. The learned Counsel for the respondents further submitted that the petitioner is put in a separate cell to ensure proper

security for the petitioner himself, and by keeping the petitioner in separate cell, the liberty of the petitioner is in no way curtailed; that the petitioner

is allowed to be outside the cell for not less than six hours a day and when he is outside the cell he is allowed to communicate with other prisoners

and is also allowed as an ordinary remand prisoner all the concessions admissible to the "B" Class prisoner; that the petitioner is kept in a separate

cell in accordance with the procedure prescribed under Rule 215 referred above and that keeping the petitioner in a separate cell does not amount

to solitary confinement.

7. To appreciate the rival contentions of the parties, it is necessary to refer Rule 215 of Tamil Nadu Prison Manual Volume II, which deals with

occupation of vacant cells and the said Rule runs as follows :

215. Occupation of vacant cells :-

Whenever in any prison, all the cells are not occupied by prisoners undergoing separate or cellular confinement as a prison punishment or solitary

confinement on warrant, or by prisoners under sentence of death, lunatics or lepers, the vacant cells shall ordinarily be occupied in the following

order, namely :

(a) by adolescents, if they are adolescents in the prisons and there are no sufficient means of separating them by night in the adolescent ward;

(b) by approvers whom under the orders of a court, or in the opinion of the Superintendent, it is desirable to keep apart;

(c) by prisoners of any class who, in the opinion of the Superintendent, are of a bad or desperate character or who have escaped or attempted to

escape from lawful custody or whom it is considered desirable for any other reason to keep apart from others :

(d) by prisoners convicted u/s 376 or Section 377 of the Indian Penal Code (Central Act XLV of 1860)

(e) by prisoners of the habitual class; and

(f) by other prisoners.

Explanation (1) : Separation under this rule is distinct from cellular and separate confinement, and it is a disciplinary measure only and not a

punishment, it shall not have irksome conditions attached to it other than such as are necessary to secure the ends in view.

In view of Rule 215 referred above, the respondents 1 and 2 have the power in appropriate cases to keep the under-trial prisoners like the

petitioner in a separate cell. In para 6 of the counter affidavit, the respondents 1 and 2 have enumerated the factors which necessitated the keeping

of the petitioner and the other accused involved in the assassination of former Prime Minister Thiru Rajiv Gandhi in separate cells in following terms

:

(i) to avoid their mingling with other Criminals and remand prisoners at Central Prison, Madras.

(ii) It cannot be ruled out that the militant groups belonging to L.T.T.E. may send some of the hardcore militants as remand prisoners to Central

Prison, Madras so as to eliminate the main accused in the above case.

(iii) Even the accused concerned in the case may try to harm or eliminate or threaten others, against giving evidence in the above case.

(iv) In short, after the death of Sivarajan and Subha in Bangalore this accused among others are most vulnerable to infiltration from any quarters

through L.T.T.E. supporters and hence to ensure exclusiveness and power security thereon that they were kept in Special Sub-Jail, Chingleput

where special security infrastructure are already available.

We are inclined to accept the above four factors enumerated in para 6 of the counter affidavit as valid and relevant factors which lead to the

keeping of the petitioner and the other accused in separate cells. In these circumstances it has to be held that the petitioner is kept in a separate cell

only in accordance with the procedure prescribed in Rule 215 of Tamil Nadu Prison Manual Volume II.

8. The next question we have to examine is whether keeping the petitioner in a separate cell in exercise of the power under Rule 215 of Tamil

Nadu Prison Manual Volume II amounts to solitary confinement. Sections 73 and 74, I.P.C. deal with solitary confinement as a judicial punishment

for an offence committed. A separate confinement and cellular confinement are punishments contemplated under sections 46(8) and 46(10) of the

Prisons Act 1894 for prison offences. In other words, solitary confinement is a judicial punishment governed by the provisions of the Indian Penal

Code and separate or cellular confinement are punishments governed by provisions of the Prisons Act 1894. Explanation-1 to Rule 215 of Tamil

Nadu Prison Manual Vol. II extracted above says that separation under Rule 215 is distinct from cellular and separate confinement and it is only a

disciplinary measure and not a punishment. Therefore, keeping the petitioner and other accused in separate cells is a disciplinary measure in order

to avoid their mingling with other criminals and remand prisoners in the Central Prison, Madras or to ensure the proper security to the petitioner,

himself in exercise of the powers under Rule 215 of the Tamil Nadu Prison Manual Vol. II, will not amount either to solitary confinement or

separate or cellular confinement.

9. In *K. Velambal v. State of Tamil Nadu* W.P. No. 4623/79 batch dated 6-10-1980 : 1981 Cri LJ 1506, a Division Bench of this Court had

occasion to consider validity of keeping the convicts who were undergoing sentences of the imprisonment imposed by competent criminal courts, in

separate cells. The Division Bench took the view that the prisoners undergoing

sentences of imprisonment were kept in separate cells in whose cases, only for maintaining the discipline within the prison and it will not amount to either solitary confinement or cellular confinement or separate confinement and such prisoners can be validly kept in separate cells by the authorities in exercise of the powers under Rules 213 and 214 of Tamil Nadu Prison Manual Vol. II. In arriving at such conclusion, the Division Bench relied on the following observation of the Supreme Court in *Sunil Batra Vs. Delhi Administration and Others etc.*, :

..... But the necessary concomitants of the fact of incarceration, the security of the prison and safety of the prisoner are to be kept in the forefront. Not that the court would ever abdicate its constitutional responsibility to delineate and protect the fundamental rights but it must simultaneously put in balance the twin objects underlying punitive or preventive incarceration It is all the more so because a convict is in prison under the order and direction of the Court. The Court has, therefore, to strike a just balance between the dehumanising prison atmosphere and the preservation of internal order and discipline the maintenance of institutional security against escape and the rehabilitation of the prisoner. if discipline needs it the authority shall be entitled to and the prisoner shall be liable to separate keeping within the same cell"" the prison system shall not except as incidental to justifiable segregation or the maintenance of discipline, aggregate the suffering inherent, in such a situation.

10. Now, we have to examine the question whether by keeping the petitioner in separate cell, he is denied of any of the facilities that are available to under-trial prisoners under the Prisons Act and the rules of the Tamil Nadu Prison Manual Vol. II and whether on the facts and circumstances of the present case it can be said that the petitioner is kept in solitary confinement for 24 hours all together in a day. In the supplementary counter affidavit filed on behalf of the respondent, it is stated that during the period when the petitioner is lodged in a separate cell he is allowed to be outside the cell for not less than 6 hours a day, i.e., from 6-00 a.m. to 8-00 a.m., 11-00 a.m. to 1-00 p.m. and 4-00 p.m. to 6-00 p.m. and it is further stated in the supplementary counter affidavit that during the time when the petitioner is outside the cell he is allowed to communicate with

other prisoners and is also allowed as an ordinary remand prisoner all the concessions admissible to the B Class prisoners. As already pointed

out, the C.J.M., Chingleput pursuant to the direction given by us on 8-11-1991, inspected the special Sub-Jail, Chingleput and submitted a report,

in respect of the location of the special sub-jail and the cell where the petitioner is kept. The perusal of the report of the C.J.M., Chingleput dated

21-11-1991 shows that the petitioner is not under solitary confinement as alleged by the petitioner. With regard to the location and other physical

features of the Special Sub-Jail and the cells in the Sub-Jail, the C.J.M. has stated as follows :-

I submit that as shown in the rough sketch No. 1, there are totally 43 cells situated in two rows in "L" shape, out of which 22 cells are on the

Southern side and 21 cells are on the Western side. The petitioner is being kept in one of the above 22 cells on the southern side. The cells in

which the prisoners are kept are changed daily for security purpose and no prisoner is kept in a cell for more than one day. There are compound

walls on the western side and southern side of the above "L" shaped construction of the cells. The above compound walls and other important

points in the entire prison are under strong security arrangements of the armed forces who are vigil for 24 hours.

I submit that as shown in the sketch No. 1, there is a open yard in front of the "L" shaped row of the cells and in the above open yard there are

small constructions namely office, Store rooms, kitchen, Dormitory room, Latrine, Motor room and well. Further by the side of the Varandah

portion of the Western row of the cells and in some portions near the entrance, crotons and flower plants have been raised so as to add to the

peaceful atmosphere of the inmates.

I submit that the Eastern most 2 cells in the Southern row of the cells have been converted into closed bath room and store rooms respectively.

There is a open bath room with side walls on the northern and western side in the varandah portion of the southern row of the cells. The verandah

portions which lie in front of the southern and western cells measures 255 c.m. in width. Each and every cell uniformly has a length of 360 c.m. and

width of 252 c.m.

I submit that as shown in the sketch No. 2, there is a open flush out latrine in

each cells in its back portion. There is a small wall at a height of 50 c.m. separating the Flush out portion from the remaining portion of the cell. The portion in between the above flush out wall and the front wall of the cell extends to 252 c.m. The above flush out latrine measures 124 c.m. in length and 108 c.m. in width. There is a ventilator having 105 c.m. in length and 50 c.m. in width near the upper portion of the back side wall of each cell. Each cell is having a iron door extending to 200 c.m. in length and 70 c.m. in width. The above door is made up of a iron frame which contains 5 iron bars in the length wise and 3 iron bars in the breadth wise having empty spaces in between the iron bars to receive light and air into the cell.

11. The C.J.M. has also stated in his report that the petitioner is not in a solitary confinement in a separate cell under lock and key for all the 24 hours. The C.J.M. in his report further says that since the prisoners kept in the special Sub-Jail, Chingleput were arrested under the provisions of the TADA Act and 302, IPC, they are allowed to move within the cells and on the varandah portions only, under reasonable restrictions for security purposes. The C.J.M. in his report further says as follows :

The Additional Superintendent of Prison represented before me that the prisoners are not allowed to join together in more than five members at a time for the reasons that they always have a tendency of escaping from the custody and that hence they are allowed to come out and move on the varandah only by batch of 5 prisoners at a time.

12. The C.J.M., on enquiry from the petitioner, one Subha Sundaram, Bhuvaneswaran and the additional Superintendent of Prisons understood that the prisoners are allowed to have free movements in the cell and on the varandah portion for more than one hour in the morning to attend the calls of nature and to have bathing hair cutting and interviews and similar free time is allowed to them after mid-day meals and in the evening time after meals. After inspecting the special Sub-Jail, Chingleput and making enquiries, the C.J.M., observed as follows :

Therefore it is not the situation that the prisoners are kept under solitary confinement in the separate cell without allowing them to have contacts with each other. Further the petitioner did not made any representation before me that he is kept under any solitary confinement without having any

access with the other inmates of the prison. On 15-11-1991 at the time of my visit to the petitioner's cell, he was having his hair cutting in another cell allotted for the purpose.

With regard to the maintenance and up-keep of the jail premises and the treatment accorded to the prisoners, the C.J.M. observes as follows :

The entire prison including the cells in which the prisoners are kept is well maintained and kept sufficiently clean. From my visit, I understand that

the prisoners are free and happy under the present prevailing conditions and amenities in the jail and there is no murmur or complaint from the

prisoners with regard to the facilities provided to them as per the available rules. Further I understand that the Jail authorities are maintaining good

relation with the prisoners and it appears that the prisoners are satisfied with the facilities provided to them.

In page 7 of his report the C.J.M. has stated that there is sufficient light and air circulation for each cell through the ventilator available in each cell.

On verification, the C.J.M. found each cell is provided with flushout with a water-tap facility and that there is no need to keep any pot in the cell

for collecting urine. On enquiry, the C.J.M. also found that the petitioner is purchasing Hindu newspaper daily at his cost and the prison is

supplying Dinamani Newspaper. When the C.J.M. inspected the Sub-Jail on 15-11-91 he found that the petitioner was having interview with his

mother and on verification of the interview register maintained by the prison, the C.J.M. found that the petitioner received the weekly, magazines,

Kumutham, Anantha Vikatan, Kalkandu and also the books ""Tales of all the times, Robinson Crusoe, The Brave and the fair"" from his mother. The

C.J.M. further ascertained from his mother. The C.J.M. further ascertained from the jail records that the advocates and visitors were allowed by

the prison authorities to have interview with the petitioner and other prisoners on all working days except on Sundays and Jail holidays. He found

from the jail records that on 5-9-1991 and 12-10-1991 the petitioner's counsel had in interview with the petitioner and some other prisoners.

After inspecting the jail and on hearing the representations from the prisoners and prison authorities the C.J.M. opined as follows :

What I am able to gather is that there is nothing for the petitioner to get aggrieved against the present facilities provided to him in the prison in

which he is kept under custody, that the petitioner is not under any solitary confinement, that all the facilities that are available under Prisons Act

and the Tamil Nadu Prison Manual are already provided to the petitioner by the Prison authorities and that the respondents have already permitted

the petitioner as per the Jail rules to be interviewed by his Advocates and visitors without unnecessarily making them wait.

13. In view of the position of law as stated above and the factual position which stands exposed from the report of the C.J.M., Chingleput dated

21-11-1991, we cannot accept the case of the petitioner that he is kept in a solitary confinement and there is no warrant to countenance any of the

contentions of the learned counsel for the petitioner. The report of the C.J.M. goes to show that the petitioners counsel as well as the relatives of

the petitioners were permitted to interview the petitioner periodically. The three decisions of the Supreme Court referred to above and relied on by

the learned counsel for the petitioner are not helpful to him because the facts of the present case are different and are clearly distinguishable.

Therefore, the petitioner is not entitled to any relief in this Writ Petition and the writ petition is liable to be dismissed. Accordingly it is dismissed.

No costs.

14. Petition dismissed.