

(2007) 03 MAD CK 0146
In the Madras High Court
Case No : H.C.P. No. 72 of 2007

Sengodi

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 02-03-2007

Acts Referred:

Prisons Act, 1894 — Section 40, 59

Tamil Nadu Prison Rules, 1983 — Rule 520, 527, 528, 530A, 541

Citation : (2007) 03 MAD CK 0146

Hon'ble Judges : P.K. Misra, J;K. Mohan Ram, J

Bench : Division Bench

Advocate : R. Sankarasubbu, for the Appellant; M. Babu Muthu Meeran,
Assistant Public Prosecutor, for the Respondent

Judgement

P.K. Misra, J.—Heard the Learned Counsel appearing for the parties.

2. The prayer in this Habeas Corpus Petition is to direct the respondents to permit the petitioner to interview the POTA prisoners confined in Central Prison, Puzhal, on Saturday and Sunday in all weeks.

3. Even though the prayer reads as if it is meant for securing opportunity for interview with prisoners detained under POTA, Learned Counsel for the petitioner has submitted that, in fact, similar difficulty is experienced by all undertrial prisoners.

4. The basic grievance of the petitioner is that no interview is being permitted to the advocates on Saturdays and Sundays. Learned Counsel for the petitioner has highlighted the difficulty for the advocates in going to the open jail or central prison on the working days i.e., to say from Monday to Friday, because of their professional commitment in Courts. The further difficulty is on account of the fact that such jail is at a distance of about 20 kms. from the working place of the advocates and it takes a minimum of one hour to reach such place, which compounds the difficulty for the advocates.

5. Learned Counsel for the petitioner has therefore submitted that it would be more convenient if the Advocates are permitted to interview the prisoners on Saturdays and Sundays as those days being non-working days for the Courts.

6. Initially a counter affidavit was filed by the second respondent, namely, the Superintendent of Prisons. It has been stated therein that the distance between Chennai to Puzhal is around 14 kms. Interview of the prisoners can take place from 10.00 AM to 05.00 PM on every working day. Facility of the interview on all working days including holidays is curtailed by G.O.Ms. No. 1806/Home (Prison V) Department, dated 4.7.1996. It is state that, under such circumstances, the Advocates are at liberty to seek interview on all working days and not on holidays. In the additional counter affidavit filed subsequently, reference has been made to Rule 527 of Tamil Nadu Prison Rules, as amended by G.O.Ms. No. 1086 dated 4.7.1996. Similarly reference has been made to Rue 528 and 541 of such Rules. It has been further stated in the counter affidavit that interview room is a sensitive place and at times contraband and objectionable articles are smuggled into the prison surreptitiously. The Government has taken a policy decision with regard to conduct of interviewing the prisoners and, therefore, directed that no interview shall ordinarily be granted on Sundays and Government holidays except under very exceptional circumstances. It has been further stated that Saturday is a Government holiday and also holiday for Courts and there is no need to take out the prisoners for production before the Courts and therefore medical screening of prisoners is organized on these days. Similarly welfare activities like yoga, meditation, moral lectures for different faiths, training in computers, vocational training, AIDS awareness campaign, etc., are organized on such days. Further on week days, police escort is available mainly for the production of prisoners before the Court, but police escort for transfer of prisoners to other prisons, out-hospital, etc., are not available on working days, and therefore such cases are also being attended during Saturdays and Government holidays. That apart, the Superintendent of Prisons, who is the controlling authority of officers of the Sub-Jails visits Sub-Jails. Senior officers in the cadre of Additional Superintendent of Prisons alone are entrusted with the task of conducting interview for POTA prisoners and delegating such work to the officers in the lower rank may undermine the security of the person. In the counter affidavit it is also indicated that interview cannot be permitted on Sundays due to various reasons.

7. The Tamil Nadu Prison Rules, 1983, which has been enacted by the State Government as per the powers conferred u/s 59 of the Prisons Act, contains various provisions covering different aspects relating to the prisoners, including convicted persons as well as undertrial prisoners.

8. Chapter XXVII relates to interviews and communications with prisoners. Rule 520 provides for reasonable facilities to be allowed for interviews and letters. Rule 527 as it originally stood is as follows:

527. Interviews on Prison Holidays.- Interviews shall not ordinarily be granted on

Sundays and prison holidays. The Superintendent shall under very exceptional circumstances, grant interviews on these days, the reasons being recorded in the Jailor's report book.

9. Such rule has been amended by G.O.Ms. No. 1086 dated 4.7.1996 and in the place of expression "Government holidays" has been inserted. It is not disputed that before such amendment Saturday was not considered as prison holiday. At present Saturday is considered as a Government holiday and therefore because of such amendment, as per Rule 527, interview was not ordinarily be granted on Sundays and Government holidays, which include Saturdays. However, Rule 527 empowers the Superintendent of Prisons to grant interviews on these days for the reasons to be recorded in the Jailor's report book. Rule 528 empowers the Superintendent to fix the days and hours at which all interviews should be allowed . In exercise of such power as conferred under Sections 527 and 528, the Superintendent appears to have posted a notice that no interview shall be allowed on Saturday and Sunday. Rule 541 refers to facilities to be granted to unconvicted Criminal Prisoners and Civil Prisoners in the matter of Interviews and letters. Rule 541 is extracted hereunder:

541. Unconvicted criminal prisoners and civil 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, and legal advisers.

10. Before proceeding further, it is necessary to notice the decisions of this Court throwing light in the matter. In 1993 L.W. (Crl.) 606 (Nailini and 21 Ors. v. The State of Tamil Nadu, rep. by The Secretary to Government, Home (Prison) Department and Anr.), the prayer was for a declaration that Rule 530-A of the Tamil Nadu Prison Rules, which was incorporated with a view to regulate the prisoners facing trial in the murder case of Rajiv Gandhi, as null and void. While considering the validity of such rules, the Division Bench had occasion to analyse Rule 541 and had observed as follows:

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.

Ultimately, in paragraph 53, the Division Bench formulated certain principles. For the purpose of the present case, the relevant points are extracted:

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

(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, 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, Sub-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.

From the aforesaid decision, the importance of conducting interview between the prisoner and the counsel has been emphasised.

11. In 1996(1) MWN (Cr.) 279 (Dr. M. Karunanidhi and Ors. v. State of Tamil Nadu, rep. by The Secretary to Government, Home (Prison) Department and Ors.), introducing a proviso to Rule 541, imposing certain restrictions relating to undertrial prisoners under TADA, was in question. While highlighting the rights of the counsel to interview the prisoners, by following the ratio of the earlier

decision, the Division Bench had quashed such amendment.

12. In *Sunil Batra Vs. Delhi Administration and Others etc.*, , it was observed:

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 amenity. Subject, of course, to search, and discipline and other security criteria, the right society of fellow-men, parents, and other family members cannot be denied in the light of Art. 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.

13. In *Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna*, the Supreme Court recognized the right of a prisoner to avail legal services as an essential ingredient of reasonable, fair and just procedure. Similarly in *Kadra Pahadiya v. State of Bihar*, AIR 1981 SC 939 , the Supreme Court recognized the right of under-trial prisoners to be provided with a fairly competent lawyer at State expense.

14. The basic purpose in giving opportunity to the Advocates to meet the prisoners is obviously to prepare for the defence of the under-trial prisoners. It is therefore expected that all such facilities should be geared up towards providing adequate opportunity.

15. It is well known that advocates, being professionals, are expected to remain present in Courts during Court hours and, obviously, it would be more convenient for such professionals to go and meet the prisoners on non-working days, so far as the Courts are concerned, so that they can devote more time for discussion with the prisoners on such non-working days. On the other hand, we are also conscious of the practical difficulty in allowing the interviews on all days, including Saturdays and Sundays, in which case, the Officials cannot avail the weekly off day.

16. In the course of hearing, the learned Additional Public Prosecutor has suggested that in case this Court is of the opinion that interviews should be permitted on Saturdays, then, it may be between 10.00 a.m. and 12.00 noon.

17. Having regard to all these aspects, interest of justice will be served, by giving the following directions:

So far as the interviews on Sundays are concerned, the existing practice and convention can be followed and we do not intend to lay down any other guidelines for the same. As far as the interviews on Saturdays are concerned, we feel, as a normal rule, any advocate should be permitted to have such interviews on Saturday between 10.00 a.m. and 01.00 p.m. and, only in exceptional circumstances, the request for interview should be declined, by giving adequate reasons. It goes without saying that all necessary precautionary measures relating to security arrangements are to continue as per the existing norms, in

the course of interview.

18. Subject to the aforesaid directions, observations and clarification, this Habeas Corpus Petition is disposed of.