
(1989) 12 AHC CK 0038

In the Allahabad High Court

Case No : Habeas Corpus Writ Petition No. 807 of 1989

Shiv Ram

APPELLANT

Vs

Jail Administration,U.P.Government

RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1989) 12 AHC CK 0038

Hon'ble Judges : Giridhar Malaviya, J and U.K.Verma, J

Final Decision : Allowed

Judgement

G. Malviya, J.

1. Shiv Ram, a lifeconvict, who was lodged in the Central Jail, Bareilly, had sent this petition, alleging that the convicts were being not supplied items of daily use, such as soap, oil, sugar etc. on controlled rate from the Jail Canteen and when they complained about the same to the Deputy Jailor, the petitioner and also the other convicts were transferred to Varanasi from Bareilly as he was getting illegal gratification from the Canteen officials, some of the transferred detenus at Varanasi were alleged to have been put in solitary confinement and subjected to inhuman treatment. The petitioner has urged that he and the other convicts who were transferred to Varanasi be retransferred to Bareilly as their relatives being poor were not able to meet them due to long distance between Bareilly and Varanasi.

2. On the notice being issued, a counteraffidavit has been filed by Mohammad Ibrahim, Deputy Jailor, Central Jail, Bareilly. While denying the allegations in the petition it was asserted in paragraph 4 of the counteraffidavit that the conduct of the petitioner, Shiv Ram in Jail was unsatisfactory, he in connivance with the prisoners Saroj Kumar, Hanif, Kishore Chandra, Ganga Ram, Chandra Bhal, Vedram, Nanhe, Gopal Ram and Mardan was alleged to have instigated other prisoners to go on strike which had the effect of paralysing the Jail administration and discipline. These persons were, therefore, transferred to the Central Jail,

Varanasi, by an order of the Inspector General, Prisons. U.P. because of their unlawful and illegal activities. It is asserted that the transfer being based on disciplinary ground and the allegations in the petition being false, this petition deserved to be dismissed. The allegation about accepting illegal gratification or profit etc. by the Deputy Superintendent as alleged in the petition was also denied.

3. We have heard Sri Yogesh Agarwal, who has appeared on behalf of the petitioner at the instance of Legal Aid Committee and Sri Prem Prakash, learned Additional Government Advocate.

4. There is no doubt that if there is no discipline in the Jail, it will be impossible for the Jail authorities to maintain Jail in accordance with the provisions of the Jail Manual. The prisoners, in view of the orders and sentence of rigorous imprisonment passed against them are given work which they are supposed to do. If the inmates of the Jail do not work or follow the Jail discipline, the Jail authorities have to compel the prisoners to do work and enforce discipline as is required by the provisions of the Jail Manual. In so doing, the Jail authorities might sometimes not act fairly. As such a balance has to be struck so that on the one hand discipline may be maintained in the Jail and on the other hand the basic amenities to which the detenus are entitled, are made available to them. In this case, it cannot be doubted in the absence of specific denial by the Jail authorities that when the detenus clamoured that they were being denied Cooperative Canteen facility and took recourse to agitation, they were transferred to Varanasi by an administrative order. The petitioners are residents of Bareilly and its adjoining areas. The Jail Manual authorises the detenus to meet their relatives under the conditions prescribed in the Jail Manual. If a person is detained at a place far away from the place of his residence for a considerable period, his relatives may not be able to go and meet them. The convicts while remaining in Jail may have to be consulted by their family members in respect of various matters involving affairs of their family which will not be possible if the convicts are constantly thrown out at a very long distance. As the petitioner and the other convicts named above have been sufficiently punished by keeping there at a long distance from their family members for over a year, it appears desirable now that they should be sent back to the Bareilly Central Jail. It also appears necessary to observe that the petitioner had asserted that prisoners were not being provided items of Jail utility from the Cooperative Canteen of the Jail. This point has not been very specifically denied in the counteraffidavit. Consequently, we also direct that the Supdt. of the Central Jail, shall see to it that the basic amenities to which the prisoners are entitled, are provided to them as per rules, as and when the prisoners want to get them.

5. At the same time, we would also like the petitioner to understand that he and the other convicts are not being kept in the prison to pass time in accordance with their wishes for they have been convicted for committing some offences by courts of law and are required to do rigorous work in compliance with the

direction of the Courts sentencing them under the provisions of law. They are expected to faithfully carry out their part of the duty assigned to them by the Jail authorities as per provisions of the Jail Manual.

6. Consequently, this petition is allowed in part, while maintaining that the transfer of the petitioner from Bareilly to Varanasi was justified, we direct that the petitioner having served enough sentence shall be transferred back to Bareilly Central Jail. The prisoners shall also abide by the directions of the Jail authorities and maintain discipline of the Jail. It is made clear that if the prisoners do not carry out the work which they are bound to do in accordance with the provisions of the Jail Manual it will be open to the Jail authorities to take suitable disciplinary action against them in accordance with the provisions of Jail Manual. It is also made clear that their order does not in any manner take away the right of the Government to transfer the prisoner to some other Jail if the Bareilly Central Jail is overcrowded but it will have to be done in accordance with the provisions of the Jail Manual. The other prisoners named above who were transferred along with the applicant from Bareilly to Varanasi for the same reason may be given the same relief as granted to the applicant.