Ranbir Singh Sehgal

Vs

State of Punjab

Criminal Appeal No. 120 of 1961

(CJI B. P. Sinha, J. C. Shah, K. Subha Rao, Raghuvar Dayal, J. R. Mudholkar JJ)

02.11.1961

JUDGMENT

SUBBA RAO, J. –

Both these matters are connected and raise the same questions, and they may be disposed of together.

Ranbir Singh Sehgal, the petitioner in the writ petition, is now a prisoner in the Central Jail, Ambala, in the State of Punjab. He was prosecuted for committing offences in different places. On June 13, 1961, he was convicted by the Additional District Magistrate, Ambala, under s. 5 of the Indian Explosive Substances Act and sentenced to 5 years rigorous imprisonment and to pay a fine of Rs. 2,000/-. The petitioner has preferred an appeal against the said conviction and sentence, and the said appeal is now pending in the High Court of Punjab. On January 30, 1961, the Additional Sessions Judge (II), Ambala, convicted the petitioner under ss. 120-B and 399 of the Indian Penal Code and sentenced him to 7 years rigorous imprisonment and a fine of Rs. 2,000/- under the former section, and to 5 years rigorous imprisonment and a fine of Rs. 2,000/- under the latter section. The petitioner preferred an appeal against this conviction and sentence to the High Court of Punjab and the same is now pending there. The other case are not disposed of and they are still pending in various courts. The petitioner was arrested by the Ambala police on September 14, 1958, and was detained in police custody for a period of about 8 months, and on May 7, 1959, he was transferred to judicial custody at Ambala. On June 13, 1960, he was convicted under the Indian Arms Act, and from that date he is in the Central Jail, Ambala, as a convicted prisoner. On December 15, 1960, the Governor of Punjab ordered that the petitioner should be treated as a 'B' class prisoner. On February 9, 1961, he filed a petition under Art. 226 of the Constitution in the High Court of Punjab at Chandigarh, questioning inter alia his confinement in that prison on the ground that para. 575 of the Punjab Jail Manual whereunder he was confined to a separate cell in the prison, offended Art. 14 of the Constitution, and that in fact discriminatory treatment was meted out to him not for the maintenance of discipline but for extraneous reasons. That petition was dismissed by the said High Court on March 17, 1961, and Criminal Appeal No. 120 of 1961 was filed against the said order by special leave granted by this Court. That apart he also filed the present writ petition (Writ Petition No. 147 of 1961) in this Court under Art. 32 of the Constitution covering the same ground. The prisoner argued his own case. He raised before us two points namely, (1) para. 575 of the Punjab Jail Manual offends Art. 14 of the Constitution in asmuch as it confers arbitrary power on the Superintendent of Jail to deal with a prisoner under the colour of the said provision in a brutal way circumventing other stringent provisions of the Prisons Act and other paragraphs of the Punjab Jail Manual conceived in the interest and fair treatment of prisoners, (2) the Superintendent of Jail, for extraneous reasons on the pretext of disciplinary action, gave him solitary confinement in

a cell since the date he was transferred to that Jail, and thus acted with mala fides : that apart, he discriminated him in the matter of treatment from other prisoners and even from the co-accused, who were convicted along with him, and thus offended Art. 14 of the Constitution.

The first question falls to be decided on the relevant provisions of the Indian Penal Code, the Prisons Act, and the Punjab Jail Manual. There are three types of punishment, namely, (i) solitary confinement, (ii) cellular confinement, and (iii) separate confinement. Solitary confinement means such confinement with or without labour as entirely secludes the prisoner both from sight of, and communication with, other prisoners. The punishment of solitary confinement can be imposed by a court only, and, in view of its dangerous potentialities, stringent conditions are imposed thereon. No person can be sentenced to undergo solitary confinement for more than three months. There is a limit prescribed on the punishment of solitary confinement that can be imposed on a prisoner : it shall not exceed (a) one month, if the term of imprisonment does not exceed six months, (b) two months, if the term of imprisonment exceeds six months, but does not exceed one year, and (c) three months, if the term exceeds one year : (vide s. 73 of the Indian Penal Code). Section 74 of the Indian Penal Code says,

> "In executing a sentence of solitary confinement such confinement shall in no case exceed fourteen days at a time with intervals between the periods of solitary confinement of not less duration than such periods, and when the imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of the whole imprisonment awarded, with intervals between the periods of solitary confinement of not less duration than such periods."

Section 29 of the Prisons Act reads,

> "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, and every prisoner so confined in a cell for more than twenty-four hours, whether as a punishment or otherwise, shall be visited at least once a day by the Medical Officer or Medical Subordinate."

Cellular confinement is a punishment which can be imposed on a prisoner by a Superintendent of Jail. A Superintendent of Jail can punish in a suitable case a prisoner by imposing on him cellular confinement for a period not exceeding fourteen days, provided that after each period of cellular confinement an interval of not less than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement. Cellular confinement is defined to mean such confinement with or without labour as entirely secludes a prisoner from communication with, but not from sight of, other prisoners. Separate confinement is defined to mean such confinement with or without labour as secludes a prisoner from communication with, but not from sight of, other prisoners, and allows him not less than one hour's exercise per diem and to have his meals in association with one or more other prisoners. Separate confinement for a period not exceeding three months can be imposed on a prisoner in a suitable case by the superintendent of Jail. (Vide s. 46(8) of the Prisons Act).

Section 47 of the Prisons Act prohibits the combination of cellular confinement with separate confinement so as to prolong the total period of seclusion to which a prisoner shall be liable. Solitary confinement can be given only by a court and the other two by a Superintendent of Jail for jail offences. The provisions conceived in the interest of the physical, moral and mental health of

prisoners impose stringent conditions in carrying out those sentences in order to prevent their abuse. But in the interest of maintaining discipline among the inmates of jail, the Prisons Act and the Jail Manual prescribe rules for a separation of prisoners. The separation of prisoners depends upon the nature of the prisoner, the class to which he belongs and the availability of adequate number of cells. Section 27 of the Prisons Act provides that, (1) in a prison containing female as well as male prisoners, the females shall be imprisoned in separate buildings, or separate parts of the same building, in such manner as to prevent their seeing, or conversing or holding any intercourse with the male prisoners; (2) in a prison where male prisoners under the age of twenty-one are confined, means shall be provided for separating them altogether from the other prisoners and for separating those of them who have arrived at the age of puberty from those who have not; (3) unconvicted criminal prisoners shall be kept apart from convicted criminal prisoners; and (4) civil prisoners shall be kept apart from criminal prisoners. Section 28 of the said Act says.

> "Subject to the requirements of the last foregoing section, convicted criminal prisoners may be confined either in association or individually in cells or partly in one way and partly in the other".

Presumably in exercise of the power conferred on the State Government by s. 59 of the Prisons Act, certain rules were framed for the separation of prisoners and they are contained in the Jail Manual. under para. 571 of the Jail Manual, "all convicts shall, so far as the requirements of labour and the cell accommodation of the Jail will allow, be kept separate both by day and by night." Paragraph 572 deals with the occupation of vacant cells, and para. 573 says that "convicts of the habitual class shall be subjected to the system of separation prescribed in the preceding rules, in rotation." Paragraph 574 provides, "If, at any time, there are more cells in any jail than suffice for the separation of all convicts of the habitual class, prisoners of the causal class shall be confined in cells, both by day and night, in rotation." Then comes the impugned provision, namely, para. 575, which reads :

> "A convict who would ordinarily come under the operation of any of the preceding rules relating to the separation of prisoners, but cannot be confined in a cell by day, by reason that he is required for some jail service, shall be confined in a cell by night."

These rules, along with the provisions of the Prisons Act, form an integrated scheme conceived for the maintenance of discipline of prisoners, and the preferential treatment in the allotment of cells is based upon sex, age, nature of the crime committed and the nature of the prisoners, and also the availability of cells.

The question is whether para. 575 of the Jail Manual offends Act. 14 of the Constitution. The said provision is only in a group of rules providing for the separation of prisoners and it only says that if a prisoner to whom any of the prison rules applies cannot be confined to a cell by day shall be confined in a cell by night. It pre-supposes that the prisoner concerned belongs to the category to whom a separate cell is allotted and, by reason of his being required for jail service, cannot be confined to the cell by day : in such a case it says that he shall be confined to the cell by night. It is only a rule providing for a contingency when a prisoner who should be so confined in a cell both by day and night cannot be confined by day in such a cell. But the objection may be taken to mean that other rules, along with this rule enable a Superintendent of Jail to put a prisoner in a cell offends Art. 14 of the Constitution.

It is settled law that Art. 14 of the Constitution permits classification, and the said classification must bear just and reasonable relation to the object of the legislation. The object of the said provision is to maintain discipline among the inmates of jail. The classification is made on the basis of sex and the nature of the prisoner and also on the availability of cells. The classification has certainly a reasonable relation to the object sought to be achieved by the legislation; nor can the power conferred on the Superintendent to separate prisoners be said to be arbitrary. The object of the conferment of the said power is very limited, and the provisions clearly lay down the conditions for separation. The power to separate is entrusted to the highest officer in the jail premises, who may ordinarily be expected to act reasonably, objectively and without bias. In these circumstances, we must hold that para. 575 of the Jail Manual in its setting does not offend the provisions of Art. 14 of the Constitution.

The next question is whether in purported exercise of the said power the Superintendent in the present case acted with mala fides and meted out discriminatory treatment to the petitioner and thus offended Art. 14 of the Constitution. In the affidavit filed in the Writ Petition, the petitioner made certain allegations against the Superintendent in respect of his treatment in jail. The said allegations may be summarized thus : The petitioner was transferred to the judicial custody at the Central Jail, Ambala, on May 7, 1959, after protracted police custody of over eight months. On the very day of his arrival in the Jail, the petitioner was locked up in solitary confinement in a cell in the condemned prisoners block and "a lock up period of 24 hours inside the cell was clamped." Though several representations were made by the relatives of the petitioner to the higher authorities, no redress was given to him. He was sought to be kept in the cell for 13 months till June 13, 1960 when he was convicted in one of the cases filed against him. On June 14, 1960, the Superintendent of the Jail again ordered the petitioner to be locked up in complete solitary confinement under para. 575 of the Punjab Jail Manual, and again a confinement of 24 hours inside the cell was "clamped". On December 15, 1960, the Governor of Punjab ordered that the petitioner should be treated as a 'B' class prisoner, and even thereafter he was not transferred to the general ward of the prison where other 'B' class prisoners were kept confined, but he was kept in the same condemned prisoners ward. Though the lock-up period of 24 hours inside the cell was considerably reduced the ban imposed on his association with other prisoners had not been relaxed. The petitioner was not allowed even to meet his co-accused who were in the general ward of the prison. While the other prisoners in the jail including the petitioner's co-accused were given numerous facilities i.e. of association work and recreation he was completely segregated in a cell without any such facilities. The jail authorities adopted this method of torture for ulterior purposes.

The Superintendent of the Jail filed counter affidavit. His answer to the grave allegations may be stated thus : On the very day of his arrival in the jail the petitioner behaved rudely and impertinently towards the jail staff and in a defiant way tried to undermine jail discipline. He was not kept in solitary cell for ulterior motives. He committed 12 jail offences and he was punished for them. After he was convicted he was put in a separate cell and that he was allowed one hour in the morning and one hour in the evening for exercise and also to have his bath outside the courtyard. After he was classified as a 'B' class prisoner, he was given amenities to which a 'B' class prisoner was entitled under the rules, but in the interest of jail discipline he was segregated from other prisoners. The cell in which the petitioner was kept was one of the cells in block of 32 cells out of which only 8 were allocated for condemned prisoners and the rest were utilized for separate confinement for the segregation of hardened and troublesome convicted criminal prisoners. The petitioner was confined in the cell only for the night and he could move about in the open compound of the cell throughout the day.

The affidavit and the counter-affidavit disclose the following admitted facts : The cell in which the petitioner was and is confined is one of the cells in the block of 32 cells out of which 8 cells are used for condemned prisoners. The cell has a small separate enclosure of its won. From the date the petitioner entered the prison, that is, on May 7, 1959 till he was convicted, that is, on June 13, 1960, when he was an under-trial prisoner, the was separately confined to a cell. Though the Superintendent vaguely says that the petitioner was not locked-up in a solitary cell, he practically admits that the petitioner was given separate confinement in a cell as punishment for jail offences committed by him. Though he denies that the petitioner was kept in a cell for 24 hours, he does not say what facilities were provided for him to move about or mix with other prisoners. The statement of offences committed by the petitioner and the punishments inflicted on him filed by the Superintendent does not contain any details and is thus vague. Section 12 of the Prisons Act enjoins on a Superintendent to maintain a punishment book, and s. 51 thereof requires him to enter the details therein. But the statement before us does not strictly comply with that section; and it is represented in court that no other register is maintained in the jail. The statement, vague as it is, shows that even on the first day of imprisonment, the petitioner was kept in a separate cell and the offence alleged to have been committed by him is that he was rude and impertinent. The subsequent entries show that the petitioner attempted to break articles and even struck his head against wall or door. These acts of the petitioner appear to us to be more due to the effect of the inhuman and discriminatory treatment given to him even when he was an under-trial prisoner rather than a conscious attempt on his part to commit any jail offences. Be that as it may, we are not concerned at this stage whether the petitioner had committed those offences for those were committed at a time when he was an under-trial prisoner with which we are not now directly concerned. The facts remain that even as an under-trial prisoner from the date he entered the premises of the jail, he was segregated from other prisoners and kept in a separate cell.

Now coming to the second period, that is, the period commencing from the date he was convicted till he was classified as a 'B' class prisoner, that is, from June 14, 1960 to December 15, 1960, the petitioner alleges that he was kept in solitary confinement as before throughout 24 hours of the day. In the counter-affidavit of the Superintendent it is not denied that the petitioner was kept in a separate cell, but it is stated therein that he was given one hour in the morning and one hour in the evening for exercise and also he was allowed to have his bath outside the courtyard of the cell. The Superintendent does not state that he allowed the petitioner to communicate with others or to talk to other prisoners. It is not stated whether he was allowed for exercise to go out of the separate enclosure of the cell or whether he was allowed to mix up with other prisoners or to talk to them. During this period, the petitioner did not commit any jail offences and, therefore, his separate confinement in a cell could not be a punishment for an offence, but only for the maintenance of discipline in the jail and for convenience of accommodation. There is nothing on the record to suggest that he was guilty of any indiscipline during this period. If so, his confinement in a separate cell for a period of six months without allowing him to communicate with others is a punishment of either cellular confinement, separate confinement or solitary confinement. The restrictions imposed on the prisoner on the pretext of separate allotment of a cell ignored even the limitations on the said confinements prescribed by s. 73 of the Indian Penal Code or s. 46 of the Prisons Act. The confinement of the prisoner in a separate cell in the manner it was done was certainly illegal.

Coming to the third period after he was classified as a 'B' class prisoner, the petitioner says that he was kept in the same condemned prisoners' block with the exception that the lock-up period of 24 hours inside the cell was considerably reduced, but the ban imposed on his association with other prisoners was not relaxed. The Superintendent does not say that the petitioner was allowed to communicate or to speak with other prisoners. He also admits that the petitioner was confined to the

cell only in the night and that he can move about within the open compound of the cell throughout the day; to put it in other words, the Superintendent admits that the petitioner is confined in a cell with a small separate enclosure and that the prisoner can only move in that enclosure in the morning. This kind of confinement is either a solitary confinement or cellular confinement, for it secludes the prisoner from communicating with or from the sight of other prisoners. If it is not a solitary confinement, it would certainly be a cellular confinement. Even in a separate confinement as a punishment the prisoner should be allowed to have one hour's exercise per diem and to have his meals in association with one or more prisoners. The Superintendent, therefore, acted illegally in confining the prisoner in the manner he did, and he is not entitled to do so under the rules prescribed for separation of prisoners. It may also be mentioned that during this period, there is no allegation that the petitioner's conduct was otherwise bad.

It is said that the confinement is neither solitary, cellular or separate, for he is allowed to go to courts. The fact that a prisoner is to be sent to a court on summons has no bearing on the question whether the confinement is legal or not. On the facts disclosed in the case, we have no doubt that, for one reason or other, which is not clear from the record, the petitioner was discriminated from other prisoners and, under the colour of the rules for separation, was illegally confined in a manner not authorized by law.

Before closing we would like to make some general remarks. The modern development of criminology has revolutionized the system of treatment of convicted prisoners. The old brutal treatment has given place to more humane one. The concept of vengeance by society and of the deterrence is fast disappearing and is being replaced by the concept of correction and rehabilitation.

Though our jail administration is moving with times, it is not keeping pace with advanced countries. A statute may reflect the modern trend and may contain salutary provisions for fair treatment of prisoners; but in practice much depends upon the Superintendent, who is expected to implement them in the spirit in which they are conceived. A Superintendent of a jail may be a good disciplinarian, but it is not enough : he should also be a humanitarian possessing conscience and having an awareness that to his care is entrusted an abnormal class of society deserving more a sympathetic approach and sincere attempt at rehabilitation than that of vindictiveness. In this case, the Superintendent, as we have already stated, not only did not carry out the spirit of the rules but also broke the letter of the law and illegally placed the petitioner practically in solitary confinement from May 7, 1959 up to date.

In the result we hold that the confinement of the petitioner in a separate cell in the manner it is being done in this case is illegal and we direct the respondent to confine the petitioner in the prison in strict compliance with the provisions of the Prisons Act and the rules made thereunder. It is for the Government to consider, in the circumstances of this case, whether it is a fit case for transferring the petitioner to some other jail.

Writ Petition No. 147 of 1961 is allowed to the said extent, and there will be a similar order in Criminal Appeal No. 120 of 1961.

RAGHUBAR DAYAL, J. –

I have had the advantage of perusing the judgment prepared by my learned brother, Subba Rao J., and agree with him that paragraph 575 of the Punjab Jail Manual does not offend the provisions of the Constitution.

I however do not agree that there had been any illegal confinement of the appellant.

The appellant was admitted to the jail as an undertrial prisoner for offences under s. 19 of the Indian Arms Act and under s. 5 of Indian Explosive Substances Act and the allegation was that he was concerned in a conspiracy with others to muder certain persons and to create disorder and anarchy in India. He behaved rudely and impertinently on admission into jail and showed a defiant attitude. In these circumstances, according to the affidavit of the Superintendent of the Jail, the appellant was ordered to be kept in cell under paragraph 569-A of the Jail Manual to maintain jail discipline. The entry in the punishment register, in this connection, states in the column meant for noting the offences : 'He is very rude and impertinent. He has defiant attitude and tries to undermine the jail discipline.' I am of opinion that it was not necessary for the jail authorities to make a more detailed note in the register with respect to the various acts committed or words spoken by the appellant on the occasion.

Section 51 of the Prisons Act Provides what is to be recorded in this punishment book and requires to be recorded, among other matters, the prison-offence of which the prisoner is guilty. It does not require a detailed account of the actions of the prisoner which constituted the prison-offences. The description of the offences committed, suffices for the purpose of this register. The entry is not made for the purpose of adjudication of the offences or for the purposes of the appellate authority, if any. It is just a record of the conduct of the accused and the action taken. The Superintendent, in this case, did not inflict any punishment of solitary confinement or separate confinement on the appellant for his conduct. He simply ordered that the appellant be kept in a cell under paragraph 469-A of the Jail Manual.

There had been eleven other occasions when the appellant committed prison offences. Those offences and the action taken there are also mentioned in the punishment register and a copy of those entries has been filed in Court. What I have said in connection with the nature of the entry in connection with the incident on the day of admission, applies equally to the other entries mentioned above.

The Superintendent has denied the allegations made by the appellant that he was kept in a separate cell, not in the interest of the jail discipline, but for ulterior motives or under orders of a vindictive Government. There is no material on the record to suggest that the Superintendent of the jail was actuated, in passing the order for keeping the appellant in a separate cell, by any consideration other than that of the interests of jail discipline. Therefore, the mere fact that the appellant was kept in a separate cell from the moment of his admission in jail does not indicate malafides on the part of the jail Superintendent.

The appellant was kept segregated in a separate cell after his conviction as well, in view of paragraph 575 of the Jail Manual. He was allowed an hour in the morning and an hour in the evening for exercise. He was allowed to have a bath in the court-yard outside the cell. The fact that the Superintendent did not state in his affidavit that he allowed the petitioner to communicate with others or to talk to other prisoners or that the appellant was allowed to mix up with other prisoners or to converse with them, does not necessarily mean that he disallowed any such thing or that, if he did so, the Superintendent acted against rules of law. The Superintendent denied that the appellant's request to meet Hari Das was disallowed. There is no allegation that he had not been afforded the facilities which are to be provided to a prisoner or to a B-class prisoner kept in a cell and therefore there was on occasion for the Superintendent to state about matters not complained of.

The mere fact that a person is kept in a separate cell will not make his confinement solitary, cellular or separate, though the difference between it and any of them be not appreciable.

Section 27 of the prisons Act provides for separation of prisoners. If there happens to be only one prisoner of a particular category, he is necessarily to be kept separate from others. His being kept alone from other prisoner and his not being allowed to mix with other prisoners will not be called solitary or cellular or separate confinement. It is just an incident that he happens to be the only prisoner of a particular category and had therefore to be kept separated from all other prisoners in the jail.

Section 28 allows convicted criminal prisoners to be confined either in association or individually in cells or partly in one way and partly in the other. The discretion is with the Superintendent of the Jail. The Act contemplates an individual prisoner to be kept in a cell.

It is clear from the provisions of paragraphs 571 to 575 of the Jail Manual that the rules contemplate convicted prisoners to be kept separate. Paragraph 571 of the Jail Manual provides that all convicts, subject to cell accommodation and requirements of labour, be kept separate both by day and by night, and justifies the segregation of the appellant as a convicted criminal in a separate cell. Paragraphs 572, 573 and 574 lay down the order in which convicted prisoners are to be selected for being kept separate in cells when each of them cannot be so kept. All these provisions are consistent with what is enacted in s. 28 of the Prisons Act.

Paragraph 575 reads :

> "A convict who would ordinarily come under the operation of any of the preceding rules relating to the separation of prisoners, but cannot be confined in a cell by day, by reason that he is required for some jail service, shall be confined in a cell by night.
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> Note 1 - Separation under paragraph 571 to 575 is distinct from 'solitary' confinement and 'separate' confinement inflicted as a punishment under section 46 of the Prisons Act, and is restricted merely to the separation of individual prisoners either by day or night for purposes of jail management; such separation is not to have any irksome conditions attached to it.
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> Note 2 - Paragraphs 571 to 575 are of general application. If, in the opinion of the Superintendent, the presence of any convict in association with others, is detrimental to good order and discipline or is likely to encourage or lead to the commission of any offence, such convict should be kept separate, in preference to others of his class."

These provisions provide an exception to the provisions of paragraphs 571 to 574 and allow the convicted prisoner to be kept in a cell during night only instead of both by day and by night, in case he cannot be confined in the cell by day for reasons that he be required for jail service. Note 1 makes it clear that keeping prisoners separate in view of the provisions of paragraphs 571 to 575 is not 'solitary' or 'separate' confinement which can be inflicted as punishment and is merely separation of the prisoner for purposes of jail management.

Further, Note 1 enjoins that no irksome conditions be attached to such separation. We are not shown that any such conditions were attached to the order for keeping the appellant in a cell.

Note 2 further empowers the Superintendent of the Jail to keep a convict separate if he be of opinion that his association with others of his class is detrimental to good order and discipline in the jail. The Superintendent states in his affidavit that he was of such opinion.

The entire scheme of the Act and the rules is that ordinarily a prisoner should be kept separated from others and that it is only in view of limitations of providing separate cells for each prisoner that prisoners of a particular category are kept together in a large hall. The order classifying the appellant as a B-class prisoner further necessitated his being kept separate from other prisoners.

There is no provision in the Act or the rules that a prisoner kept in a cell be specially allowed to associate or mix with other prisoners.

The main grievance of the appellant is that he was not allowed to associate with his co-accused, even for purpose of consultation with respect to the defence to be put up and the grounds to be taken in the appeal. The whole object of keeping convicted prisoners segregated in jail is defeated if they are allowed to meet and discuss matters even when they are under special orders for being kept separate on account of their conduct being considered detrimental to jail discipline. If it was really necessary for the appellant to have consultations with his co-accused for the purpose of the case, it was open to him to obtain orders of the Court and facilities for such consultations, if considered necessary, could have been given just as facilities are provided for accused for consult their counsel.

I am therefore of opinion that the Jail authorities committed no discriminatory or illegal act against the appellant in keeping him in a separate cell. I would therefore dismiss both the writ petition and the appeal.

BY COURT.

In accordance with the opinion of the majority, the Writ Petition and the Appeal are allowed to the extent indicated in the majority judgment.

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