

Sanjay Suri and Another

Vs

Delhi Administration, Delhi and Another

Writ Petition (Crl.) Nos. 2546-47 of 1983

(Ranganath Misra, M. M. Dutt JJ)

09.12.1987

JUDGMENT

RANGANATH MISRA, J. -

1. These two applications under Article 32 of the Constitution are in the nature of a public interest litigation. A news reporter and a trainee sub-editor have moved this Court for appropriate directions to the Delhi Administration and the authorities of the Central Jail at Tihar, pointing out features of maladministration within the jail relating to juvenile undertrial prisoners. During the pendency of the proceedings, the court made several orders with reference to juvenile prisoners and undertrials. On October 28, 1983 this Court directed :

When these writ petitions came up for having before us we had certain hesitation in entertaining them because under juvenile prisoners in Tihar Jail where some directions had been given by the High Court and we were anxious to avoid a parallel investigation particularly since in matters of this kind it is desirable that the High Courts should be activated. But since no inquiry into the conditions prevailing in the Tihar Jail, insofar as prisoners in the juvenile ward are concerned, had been ordered and what was ordered was only a limited inquiry relating to medical examination of 7 juvenile prisoners who were directed to be produced in Court, we thought that we would be failing in our constitutional duty if we do not take judicial action and direct the District Judge to visit Tihar Jail for making inquiry into the conditions prevailing in the Tihar Jail insofar as the prisoners in the juvenile ward are concerned. We decided to entrust this task to the District Judge because he is even otherwise visitor at the Tihar Jail and we thought it would be better to send an officer who is ultimately responsible for ensuring proper conditions in the Tihar Jail rather than entrust this work to an outside organisation or agency. We are glad that we made this order because the report made by the District Judge discloses a shocking state of affairs insofar as juvenile prisoners are concerned. The District Judge has interviewed some of the juvenile prisoners in regard to whom he learnt, as a result of inquiry made by him, that they had been subjected to sexual assault by the adult prisoners. The juvenile prisoners who made statements before the District Judge have expressed apprehension that they might get into difficulties and be victimised if their names are disclosed and the District Judge has also suggested in his report that either the names should not be disclosed or if the names of these juvenile prisoners are disclosed, adequate protection should be granted to them. We do not think it would be right not to disclose the names of these juvenile prisoners while supplying copies of the report of the District Judge to the advocates of the parties but we do think it necessary to

provide adequate protection to them. We would, therefore, direct that the following undertrial juvenile prisoners, namely, shall be released immediately in the course of the day on their executing a bond of Rs. 500 each before the Superintendent of Tihar Jail. There are also three convicted juvenile prisoners in the Tihar Jail, namely who have given statements to the District Judge. They should be released forthwith on parole for a period of one month on their executing a bond for Rs. 500 each before the Superintendent of Tihar Jail that they will surrender themselves to the jail authorities on the expiration of the period of one month. The release of these three convicted juvenile prisoners on parole will also be done in the course of the day. We may make it clear that we are making this order for release of the aforementioned juvenile prisoners - undertrial as well as convicted - only with a view to protecting them and we are, at the present moment, not passing upon the correctness or otherwise of the statements made by them.

The learned Additional Solicitor General on behalf of the respondents states that Munshi Rajinder Singh alias Raju will be forthwith transferred from the Tihar Jail and that in any other jail to which he is transferred, it will be ensured that he does not have anything to do at all with juvenile prisoners. This transfer shall also be carried out forthwith. Meanwhile, the Superintendent of Tihar will take steps to ensure that Munshi Rajinder Singh alias Raju is not allowed any access to the juvenile ward and is also not allowed to come into contact in any manner whatsoever with the prisoners in the juvenile ward and this will be the personal responsibility of the Superintendent of Tihar Jail. So far as the warder Onkar Singh (who has also been referred to in the report of the District Judge) is concerned, the learned Additional Solicitor General appearing on behalf of the respondents states that immediate steps will be taken to place him under suspension and in the meanwhile, he will not be allowed to go inside the premises of Tihar Jail. The Superintendent of Tihar Jail will also ensure that no juvenile prisoners is directed to go to Jail will also ensure that no juvenile prisoner or prisoners or to do any work for them including cooking or cleaning.

The learned Additional Solicitor General States on behalf of the respondents that there are a number of juvenile undertrial prisoners whose cases require to be considered for the purpose of releasing them on bail and that he would prepare a chart setting out the names and particulars of these undertrial prisoners and place such chart before the Court on October 31, 1983 for passing appropriate orders

On October 31, 1983, the court made a further order to the following effect :

..... The learned counsel for the respondents will intimate to the court as to which of the 131 juvenile prisoners confined in Tihar Jail whose names are mentioned in the chart handed over by the learned Additional Solicitor General appearing on behalf of the respondents are to be released on bail, having regard to the nature of the offences alleged to have been committed by them and other relevant circumstances which have already been set out by this Court in Hussainara Khatoon cases (Hussainara Khatoon v. Home Secretary, (1980) 1 SCC 81-115 : 1980 SCC (Cri) 23-57). We would also like to know as to what is the procedure being followed by the courts of Metropolitan Magistrates in Delhi when a young accused is produced before them for the purpose of ascertaining whether he is a child or not within the meaning of the Children's Act and if he is not a child and is sent to judicial custody then what is the procedure being followed by the Superintendent of the Tihar Jail for determining whether he is a juvenile within the meaning of Jail Manual where a

juvenile is defined as a prisoner who has not attained the age of 18 years. We are anxious to ensure that no child within the meaning of the Children's Act is sent to the jail because otherwise the whole object of the Children's Act of protecting the child from bad influence of jail life would be defeated. It is also a matter of anxiety for us to see that juveniles between the age of 16 to 18 years who are put in custody in the jail are being kept in separate ward and are allowed to intermingle with adult prisoners because that would also expose them to mal-influences which may prevent their proper rehabilitation

Several other interlocutory orders and directions were given and the Sessions Judge was requested to visit the jail on more than one occasion under order of the court. He made very useful reports. As a result of these exercises taken during the pendency of the writ petitions, on substantial achievement has been that Tihar Jail no more accommodates juvenile delinquents and their jail has been separated. On account of the repeated directions from this Court the jail administration has now been obliged to undertake erection of a separate jail as an additional place for housing juvenile prisoners and undertrials and the construction is coming up, as reported. On account of the exposure, the jail administration has been obliged to place the administration of the jail in the hands of a superior officer.

2. Monitoring the affairs of a jail is a difficult job for this Court but on account of the fact that the Tihar Jail is in the capital of the country and on account of the advantages of publicity available through the media and otherwise, affairs of the jail have received due publicity over the last four years where these matters have been pending before this Court and it is time that we should dispose them of finally.

3. We had called upon counsel for the parties to furnish their suggestions for improvement of the jail administration and pursuant to this direction counsel for the petitioners has given certain suggestions on two instalments. Learned Additional Solicitor General has also joined her in making certain suggestions in that regard. Before we refer to them we think it appropriate to emphasise that those who are in charge of the jail administration from bottom to top must develop the proper approach to deal with the prisoners and undertrials. It is true that a considerable number of hardened prisoners live in the jail and those who have a longer term of sentence to suffer stay on for quite a part of their life behind the prison bars. Longer stay at one place brings in familiarity and familiarity generates a number of human reactions. There is no provision in the jail manuals and, perhaps it is difficult as a rule to adopt, that the long-term prisoners should keep on shifting from jail to jail. Whatever may have been the philosophy of punishment in the past, today the prison house is looked upon as a reformatory and the years spent in the jail should be with a view to providing rehabilitation to the prisoner after the sentence is over. That would not be possible to overnight and, therefore, cannot be deferred to materialise on the date of release. The wrong side has to be given up and the virtuous way of living has to be acquired. Both are difficult processes. Therefore, the prison house, in case the true purpose is to be achieved, has to provide the proper atmosphere, leadership, environment, situations and circumstances for the regeneration. Members of the staff of the jail from bottom to top (we have purposely not said top to bottom) must be made cognizant of this responsibility and that awareness must be reflected in their conduct. Judicial notice can be taken of prevailing conditions in our jails and what we have stated above is still utopian. But if a change has to be brought about it has to start from somewhere and Tihar Jail, in our opinion, is probably most suited for that purpose being located at the seat of the national capital and being under the direct management of the Union of India (through, of course, the Delhi Administration). This can be the institution to set the move in motion.

4. The work load of superintendence should be distributed in a graded way and the officers should have the direct charge of such divided responsibilities. It is necessary that a large dose of good living should be introduced into jail life. Ordinarily religious teaching would carry a level of elevation in that regard. Ours being a Secular State there may perhaps be an immediate counter-reaction to religion being tolerated anywhere but we never intend to speak of that religion which is enigmatic to the concept of secularism. We refer to the essence of all religions - a factor common to every religion humanism - which is so much necessary to good living. We hope and trust that the jail administration and in particular the Administrator would take into consideration this aspect and try to generate a sense of humanism in these officers and those in the ranks below them so that the prisoners should have direct contact with them and benefit by every contact with those officers in getting round to the right approach in life.

5. It is time to turn to brass tacks. We have come across cases where the warrant, be it for the undertrial or the prisoner, when sent by the court does not indicate the age of the prisoner authorised to be detained in the jail. This is a very wrong practice and is obviously in breach of the direction issued by this Court. We call upon every magistrate or trial judge authorised to issue warrants for detention of prisoners to ensure that every warrant authorising detention specifies the age of the person to be detained. Judicial mind must be applied in cases where there is doubt about the age - not necessarily by a trial - and every warrant must specify the age of the person to be detained. We call upon the authorities in the jails throughout India not to accept any warrant of detention as a valid one unless the age of the person remanded to jail custody is not indicated. It would be lawful for such officers to refer back the warrant to the issuing court for rectifying the defect before it is honoured. Since it will create problems in keeping the undertrial or the prisoner during the intervening period, the judicial officer should realise his responsibility in accepting this direction and giving full effect to it. In exceptional cases, when the warrant is referred back for rectification, the person covered by the warrant may be kept at the most for a week pending rectification and taking responsibility of the situation. On the basis of the age indicated in the warrant, it shall be the obligation of the jail authorities to find out, so far as Delhi is concerned, whether the prisoner covered by the warrant should be detained in the Tihar Jail or in the Juvenile Jail.

6. Though the place of stay has now been segregated, there is possibility of contact between the hardened criminals and the juvenile delinquents if there is no proper segregation in assignment of work. We direct that due care shall be taken to ensure that the juvenile delinquents are not assigned work in the same area where regular prisoners are made to work. Care should be taken to ensure that there is no scope for their meeting and having contacts.

7. We direct that steps should be taken to shift the warders at the end of every three years. This is a principle which had been accepted in the Punjab Jail Manual (Chapter VI, Rule 273). Delhi Administration has a difficulty in doing so in a real way because it has only one jail and may have one more when the other jail under construction comes up, but there is no other place to which warders can be transferred. The Administration should take note of the situation; the rules should be changed and the warders may either be interchanged with some other category of service working outside the jail or a common Union Territory service could be set up to permit the same. Such transfer will indeed be helpful in restoring discipline in the jail.

8. The Visitors' Board should consist of cross-sections of society; people with good background, social activities, people connected with the news media, lady social workers, jurists, retired public officers from the judiciary as also the executive. The Sessions Judge should be given an acknowledged position as a visitor and his visits should not be routine ones. Full care should be

taken by him to have a real picture of the defects in the administration qua the resident prisoners and undertrials.

9. Overcrowding in jails is a regular feature. As against a sanctioned capacity of 2023, on the average 4000 prisoners are lodged in the Tihar Jail. We hope and trust that this aspect will be kept in view, though from a practical point overcrowding may to a reasonable extent have to be tolerated. We hope with the commissioning of the new jail, pressure in this regard to some extent would be reduced.

10. The writ petitions are disposed of with these directions. There would not be no order for costs.

11. We place on record our appreciation of the services rendered by the petitioners by bringing the matter before the court.

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