

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (Cr.) No. 318 of 2023

Vikash Tiwary @ Bikash Tiwary @ Bikash Nath Tiwary ... **Petitioner**
-Versus-

1. The State of Jharkhand through the Chief Secretary, Ranchi
2. Principal Secretary, Home, Prison and Disaster Management, Ranchi
3. Director General of Police, Special Branch, Ranchi
4. Inspector General (Prison), Jharkhand, Ranchi
5. Deputy Commissioner, Hazaribag
6. Superintendent of Police, Hazaribag
7. Jail Superintendent, Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag

... Respondents

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner	: Mr. Jitendra Shanker Singh, Advocate Mr. Vinay Kumar Tiwary, Advocate
For the State	: Mrs. Moushmi Chatterjee, A.C. to G.A.-V

04/21.08.2023 Heard Mr. Jitendra Shanker Singh assisted by Mr. Vinay Kumar Tiwary, learned counsel for the petitioner and Mrs. Moushmi Chatterjee, learned counsel for the State.

2. This petition has been filed for quashing the letter dated 17.05.2023 issued by the I.G. Prison, Jharkhand by which the petitioner has been transferred from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribag to Central Jail, Dumka.

3. Mr. Jitendra Shanker Singh, learned counsel appearing for the petitioner submits that the petitioner has been convicted in connection with S.T. No.141/2006 arising out of Hazaribag Sadar P.S. Case No.610/2015, corresponding to G.R. No.2325/2015. He further submits that the petitioner is languishing in jail custody for more than 7 ½ years in connection with the aforesaid case and the petitioner is also accused in another cases in the districts of Hazaribag, Chatra, Ramgarh and Ranchi. He also submits that the order of transfer of the petitioner has been passed without approaching

the learned court where the trials are pending and in absence of any order of the learned court, the impugned letter has been issued. He submits that the petitioner has earlier moved before this Court in Cr.M.P. No. 2267 of 2015 for not transferring the petitioner to another jail and the said petition was disposed of and the petitioner was restrained from transfer to another jail. He further submits that the certificate issued by the Superintendent, Loknayak Jaiprakash Narayan Central Jail, Hazaribag contained in Annexure-5/1 of the supplementary affidavit filed on behalf of the petitioner disclosed that the character of the petitioner has been found satisfactory and he is languishing in jail custody for more than 7 ½ years.

4. On the other hand, Mrs. Moushmi Chatterjee, learned counsel for the State submits that there are apprehension of gang war between the petitioner and other group and that is why, in the administrative side, the State has decided to transfer the petitioner to Dumka jail. She further submits that it is an admitted fact that any petition for transfer has not been filed before the learned court where the case is pending.

5. In view of the above submissions of the learned counsel for the parties, the Court has gone through the impugned letter and finds that only reason disclosed in the impugned letter that there is chance of gang war between two groups, however, certificate of the Superintendent of Hazaribag jail suggests otherwise, wherein, it has been disclosed that the character of the petitioner in the jail is satisfactory and he has been languished in jail for more than 7 ½ years. The petitioner has earlier moved before this Court and his transfer was restrained by the order, which was subject matter in Cr.M.P. No.2267 of 2015 which was disposed of vide order dated 08.03.2016.

6. Section 29 of the Prisoners Act, 1900 speaks of removal of prisoners, which reads as under:

"29. Removal of prisoners.—(1) *The State Government may, by general or special order, provide for the removal of any prisoner confined in a prison— (a) under sentence of death, or (b) under, or in lieu of, a sentence of imprisonment or transportation, or (c) in default of payment of a fine, or (d) in default of giving security for keeping the peace or for maintaining good behaviour, to any other prison in the State.*

(2) *Subject to the orders, and under the control, of the State Government, the Inspector General of prisons may, in like manner, provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State."*

7. In the case of ***The State of Maharashtra and others v. Saeed Sohail Sheikh; [(2012) 13 SCC 192]***, Section 29 of the Prisoners Act, 1900 was considered by the Hon'ble Supreme Court and it has been held in paragraphs 23, 25 and 35 as under:

"23. *Reference may also be, at this stage made, to Section 309 of the Code which, inter alia, empowers the court after taking cognizance of an offence or commencement of the trial to remand the accused in custody in cases where the court finds it necessary to postpone the commencement of trial or inquiry. The rationale underlying both these provisions is that the continued detention of the prisoner in jail during the trial or inquiry is legal and valid only under the authority of the Court/Magistrate before whom the accused is produced or before whom he is being tried. An undertrial remains in custody by reasons of such order of remand passed by the court concerned and such remand is by a warrant addressed to the authority who is to hold him in custody. The remand orders are invariably addressed to the Superintendents of Jails where the undertrials are detained till their production before the court on the date fixed for that purpose. The prison where the undertrial is detained is thus a prison identified by the competent court either in terms of Section 167 or Section 309 of the Code. It is axiomatic that transfer of the prisoner from any such place of detention would be permissible only with the permission of the court under whose warrant the undertrial has been remanded to custody.*

25. *The forensic debate at the Bar was all about the nature of the power exercisable by the court while permitting or refusing transfer. We have, however, no hesitation in holding that the power exercisable by the court while permitting or refusing transfer is "judicial" and not "ministerial" as contended by Mr Naphade. Exercise of ministerial power is out of place in situations where quality of life or the liberty of a*

citizen is affected, no matter he/she is under a sentence of imprisonment or is facing a criminal charge in an ongoing trial. That transfer of an undertrial to a distant prison may adversely affect his right to defend himself but also isolate him from the society of his friends and relations is settled by the decision of this Court in Sunil Batra (2) v. Delhi Admn. wherein this Court observed: (SCC p. 510, para 48)

"48. Inflictions may take many protean forms, apart from physical assaults. Pushing the prisoner into a solitary cell, denial of a necessary amenity, and, more dreadful sometimes, transfer to a distant prison where visits or society of friends or relations may be snapped, allotment of degrading labour, assigning him to a desperate or tough gang and the like, may be punitive in effect. Every such affliction or abridgment is an infraction of liberty or life in its wider sense and cannot be sustained unless Article 21 is satisfied. There must be a corrective legal procedure, fair and reasonable and effective. Such infraction will be arbitrary, under Article 14 if it is dependent on unguided discretion, unreasonable, under Article 19 if it is irremediable and unappealable, and unfair, under Article 21 if it violates natural justice. The string of guidelines in Batra set out in the first judgment, which we adopt, provides for a hearing at some stages, a review by a superior, and early judicial consideration so that the proceedings may not hop from Caesar to Caesar. We direct strict compliance with those norms and institutional provisions for that purpose."

35. *Applying the above principles to the case at hand and keeping in view the fact that any order that the Court may make on a request for transfer of a prisoner is bound to affect him prejudicially, we cannot but hold that it is obligatory for the court to apply its mind fairly and objectively to the circumstances in which the transfer is being prayed for and take a considered view having regard to the objections which the prisoner may have to offer. There is in that process of determination and decisionmaking an implicit duty to act fairly, objectively or in other words to act judicially. It follows that any order of transfer passed in any such proceedings can be nothing but a judicial order or at least a quasi-judicial one. Inasmuch as the trial court appears to have treated the matter to be administrative and accordingly permitted the transfer without issuing notice to the undertrials or passing an appropriate order in the matter, it committed a mistake. A communication received from the prison authorities was dealt with and disposed of at an administrative level by sending a communication in reply without due and proper consideration and without passing a considered judicial order which alone could justify a transfer in the case. Such being the position the High Court was right in declaring the transfer to be void and directing the re-transfer of the undertrials to Bombay jail. It is common ground that the stay of the proceedings in three trials pending against the respondents has been vacated by this Court. Appearance of the undertrials would, therefore, be*

required in connection with the proceedings pending against them for which purpose they have already been transferred back to the Arthur Road Jail in Bombay. Nothing further, in that view, needs to be done by this Court in that regard at this stage."

8. On perusal of section 29 of the Prisoners Act, 1900, it transpires that removal of any prisoner under the same is envisaged only at the instance of the State Government in cases where the prisoner is under sentence of death, or under, or in lieu of, a sentence of imprisonment or transportation, or in default of payment of a fine, or in default of giving security for keeping the peace or for maintaining good behaviour, to any other prison in the State. Thus, it is clear that transfer can take place under condition (a) to (d) only of Section 29 of the Prisoners Act, 1900. There is no doubt that State Government can take decision on administrative side which required to be approved by the concerned court. In the cases of such exigencies, decision of shifting a prisoner can be made but that is in accordance with law. Rule 770(b) of the Jail Manual, speaks of power of Inspector General on sufficient ground of shifting of the prisoner from one jail to another jail. Rule 770(b) of Jail Manual is quoted hereinbelow:

"(b) Long-term prisoners on admission to District Jails, who are certified fit to travel by the Medical Officers may be transferred to the affiliated Central Jails, irrespective of their age.

Nothing in this rule contained, shall be deemed in any way to interfere with the power of the Inspector General for sufficient reason, in his discretion, by general or special order to direct that any class or class of prisoners shall be confined in or transferred to any jail or class of jails"

9. In the case in hand, the prayer of not transferring the petitioner to another jail was earlier allowed by this Court in Cr.M.P. No.2267 of 2015 vide order dated 08.03.2016. The certificate annexed in the supplementary affidavit, which has been issued by the Superintendent of the Hazaribagh

jail suggests that nothing adverse has been found against the petitioner and in view of that, the prayer made in this petition is allowed. Accordingly, the letter dated 17.05.2023 issued by the I.G. Prison, Jharkhand is quashed.

10. If such exigency is there, liberty is reserved with the respondent-State to file appropriate petition before the learned court where the case is pending, which shall be decided by the learned court in accordance with law.

11. Accordingly, this petition is disposed of in above terms.

(Sanjay Kumar Dwivedi, J.)

Ajay/