



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 21ST DAY OF JANUARY 2025 / 1ST MAGHA, 1946

WP(CRL.) NO. 549 OF 2023

PETITIONER:

B.G.KRISHNAMURTHY
AGED 48 YEARS, S/O. B.K. GOPAL RAO,
NEMMAR ESTATE, NEAR BUKKADIBYLU,
SHRINGERI TALUK, CHICKKAMAGALURU DISTRICT,
KARNATAKA.
(PRESENTLY UNDERGOING JUDICIAL CUSTODY
AT HIGH SECURITY PRISON AS R.P. NO.144,
HIGH SECURITY PRISON, VIYYUR,
THRISSUR - 680010)

BY SRI.B.G.KRISHNAMURTHY (Party-In-Person)

RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY NATIONAL INVESTIGATION AGENCY (NIA) ,
GIRINAGAR HOUSING COLONY,
GIRINAGAR HOUSING SOCIETY,
KADAVANTHRA, KOCHI - 682020
- 2 STATE OF KERALA,
REPRESENTED BY SECRETARY TO HOME DEPARTMENT,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, 695001
- 3 DIRECTOR GENERAL OF POLICE,
KERALA STATE POLICE HEAD QUARTERS,
VELLAYAMBALAM,
THIRUVANANTHAPURAM - 695010
- 4 SUPERINTENDENT,
HIGH SECURITY PRISON, VIYYUR,
THRISSUR, 680010



SMT. SREEJA V., PUBLIC PROSECUTOR
SMT.DHANYA P. ASHOKAN (SR.), AMICUS CURIAE

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
09.12.2024, THE COURT ON 21.01.2025 DELIVERED THE FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----
W.P.(CrI.) No.549 of 2023
-----**Dated this the 21st day of January, 2025**JUDGMENT**

Petitioner challenges the constitutional validity of Rule 415(3) of the Kerala Prisons and Correctional Services (Management) Rules, 2014 (for short 'the Rules'). Petitioner also seeks the grant of an escort visit to see his mother and close relatives who reside in Chikkamangaluru, Karnataka.

2. Petitioner is facing an indictment under the Unlawful Activities (Prevention) Act, 1967. He was arrested on 10.11.2021 and is facing trial as the 14th accused in S.C. No.2/2021 before the Special Court for the trial of National Investigation Agency Cases, Ernakulam. He hails from Chikkamangaluru in Karnataka. Petitioner's request for permission to visit his mother and near relatives was denied by the Special Court pointing out Rule 415(3) of the Rules which restricts escort visits outside the State of Kerala except for the death of an immediate relative.

3. Petitioner pleads that the denial of escort visit under Rule 415(3) of the Rules to a place outside the State of Kerala is violative of



Article 14 and 15 of the Constitution as it discriminates between 'prisoners born outside Kerala State' and those 'born in Kerala'. It is also pleaded that since the discrimination is based on the place of birth, the said provision infringes the fundamental right under Article 15 and Article 19(1)(d) of the Constitution of India. Petitioner has also alleged that restricting escort visit to places within the State of Kerala except for the death of a near relative is ultra vires the Kerala Prisons and Correctional Services (Management) Act, 2010 (for short 'the Act') as it goes beyond the powers under section 79 of the Act.

4. A counter affidavit has been filed by the second respondent stating that petitioner is involved in 125 cases in Karnataka and 2 cases in Kerala and that he was admitted into the High Security Prison at Viyyur on 10.11.2021 where he is presently lodged. It is further pleaded that Rule 415(2) enables a prisoner who is not eligible for any other leave to be granted permission to visit immediate relatives under a police escort once in six months, but, as per Rule 415(3), such escort visits cannot be permitted to places outside the State except in the case of death of a near relative. Respondents further allege that the Rules have been made for the benefit of society including safety of the Officers and that under Section 79 of the Act, an escort visit can be granted only for a maximum period of twenty four hours.

5. Considering the nature of the issue involved, Smt. Dhanya P.



Ashokan, learned Senior Counsel, was appointed as Amicus Curiae to assist the Court.

6. The petitioner, as the party in person, argued from the Central Prison, Viyyur, through video conferencing. He submitted that sub-rule (3) of Rule 415 of the Rules violate Articles 14, 15 and 19(1)(d) of the Constitution of India, apart from being ultra vires section 79 of the Act. Petitioner further contended that Rule 415(3) is discriminatory since it violates the mandate of equal protection of laws, as escort visits are being denied to persons like him, on the basis of the place of birth. After referring to section 2(xvi) of the Act, which does not limit escort visits to any area, it was submitted that the rule-making power under section 99 of the Act requires the Rules to be consistent with the statute and that the impugned sub-rule goes against the spirit of the definition of the term escort visit. Petitioner also contended that his mother is unable to travel to Kerala due to old age and hence denying permission to visit his mother, is causing serious prejudice. In the alternative, petitioner also submitted that he be at least shifted to the Central Prison Kannur, which is closer to his native place.

7. After referring to the decisions in **Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Others**, [(1981) 1 SCC 608] and **Sunil Batra (II) v. Delhi Administration** [(1980) 3 SCC 488] it was also contended that, depriving escort visits to the petitioner



is inhuman and disconnects him totally from the society thereby violating even the limited liberty available to him as a prisoner. Referring to statistics, it was pointed out that though 115 escort visits were granted to other prisoners, petitioner has not been granted even a single visit. According to the petitioner, the State, which is bound to protect his fundamental rights, cannot discriminate and deny him even the escort visit, thereby depriving him of the right to communication which includes contacting his family members and other persons as provided in section 36 of the Act. Petitioner also submitted that restricting visits to his family since he hails from outside the State, is a direct intrusion into his fundamental rights as well as his statutory rights.

8. Smt. Sreeja V., the learned Government Pleader on the other hand submitted that petitioner is a remand prisoner who is facing trial for an alleged terrorist act. It was also submitted that there is no violation of any of the fundamental rights of the petitioner under Article 14, 15 or 19(1)(d) of the Constitution. According to the learned Government Pleader the term 'prisoner' as defined in section 2(xxxiv) of the Act includes all prisoners and that Rules were enacted in exercise of the powers under section 99 of the Act. The Rules specifically contemplate an escort visit for 24 hours but only within the State of Kerala. It was submitted that the said provision does not create a total bar for any prisoner on any basis, especially on the basis of place of



birth. According to the learned Government Pleader, it has been enacted as a measure of security, as a policy of the Government and for other practical considerations. The learned Government Pleader further submitted that, petitioner will not be denied escort visit for the purposes mentioned in the Rules, within the State of Kerala, and such geographical regulation will not fall foul of the mandate of Article 14 or Article 15.

9. Smt.Dhanya P.Ashokan, the learned Senior Counsel as the Amicus Curiae submitted that the Rules prescribed sufficient safeguards for the need of the State. According to the learned Amicus Curiae, prisoners' rights are subject to the Rules enacted. However, the right of a prisoner to interact with others, especially his family members, ought to be protected and such rights cannot be totally abrogated. The learned Amicus further submitted that the Rules prescribe even halting at night in a prison when the travel takes more than 24 hours and therefore sufficient safeguards have been provided by the Rules itself to cater to the safety of the Officers and the prisoners. It was further pointed out that the Delhi Prison Rules, 2018 does not create an embargo on the prisoner from travelling outside the State for the purpose of an escort visit.

10. I have considered the submissions advanced.

11. A prisoner - irrespective of his status as a convict or as an



undertrial, is not deprived of his fundamental rights guaranteed under the Constitution of India. The Constitution permits the winds of fundamental rights to breeze through the iron bars of a prison. Of course, those iron bars diminish the frontiers of such rights marginally. Though confinement restricts the extent of the liberty available to a prisoner, he is not denuded of the right to equality, the right to life, and other protective covenants guaranteed under Part III of the Constitution.

12. In **Sunil Batra (II) v. Delhi Administration** (1980) 3 SCC 488, the Supreme Court had articulated that fundamental rights do not flee the person as he enters the prison although they may suffer shrinkage necessitated by incarceration. Thus a prisoner is vested with fundamental rights and other legal rights available to a free person, except those that are incapable of enjoyment by reason of the incarceration. It was also observed in the above decision that 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. Despite the above, it was observed that the aforesaid rights are subject to the requirements of discipline and security. Prisoners are thus entitled to most of the fundamental rights to ensure the protection of their basic human dignity and also to prevent arbitrary state action.

13. Escort visit for prisoners as contemplated under the Act is



provided with the objective of enabling a safe, and timely movement of prisoners to meet the requirements contemplated by the Statute. The term 'escort visit' is defined in section 2(xvi) of the Act to mean 'visit under escort to any place, of a prisoner who is not eligible for emergency leave for a period not exceeding twenty four hours excluding journey time for to and fro', while the term prisoner is defined in section 2(xxxiv) to include an under trial prisoner, a convicted prisoner and even a civil prisoner.

14. In exercise of the powers conferred under section 79 of the Act, the Rules have been enacted. The Act and the Rules thereon, prescribe the various rights available to a prisoner over and apart from the constitutional mandates. Leave is granted to well behaved, eligible convicted prisoners with the objective of their better rehabilitation and re-socialisation as an incentive for good behaviour and responsiveness to correction. The persons eligible for leave and the mode in which it is to be granted are prescribed by the Act and the Rules. Since leave can be availed only by convicted prisoners, as per section 78 of the Act, an undertrial prisoner cannot obtain leave. However, Section 79 of the Act provides succour for prisoners, which includes both convicted and undertrials, who are ineligible for leave, to maintain their basic connection with their family in the form of escort visit. The said provision reads as follows:



"79. Escort visit.—The prisoners who are not eligible for the required kind of leave may be granted permission to visit relatives etc., under escort under such circumstances as may be prescribed in the rules for a maximum period of twenty four hours excluding journey time. In circumstances in which the prisoner has to halt at night en-route, at a place where there is a jail he shall be confined therein and where there is no jail, he shall be kept in the nearest Police lock up."

15. The statute thus provides an opportunity for prisoners who are not eligible for any kind of leave to visit relatives for a period of a maximum of twenty four hours under the escort of the police in the manner prescribed in the Rules. Section 99(xxxv) of the Act confers power upon the Government to make Rules for providing the circumstances under which escort visit can be permitted. While Rule 590 of the Rules, bestows duty upon the police when a prisoner is on an escort visit, Rule 415 of the Rules deals with the circumstances when an escort visit can be allowed to a prisoner. Since the latter of the above said Rules is relevant, it is extracted as below:

"അകമ്പടി സന്ദർശനാനുമതി-(1) അടിയന്തിര അവധിക്ക് അർഹതയില്ലാത്ത വിഭാഗത്തിൽപ്പെടുന്ന തടവുകാർക്ക് പോലീസ് അകമ്പടിയിൽ യാത്രാസമയം ഒഴിച്ചുള്ള ഇരുപത്തിനാല് മണിക്കൂർ നേരത്തേക്ക് അകമ്പടി സന്ദർശനാനുമതിക്ക് അർഹതയുണ്ട്. യാത്രാമധ്യേ ഒരു രാത്രി തങ്ങേണ്ടിവന്നാൽ ജയിലിലുള്ള സ്ഥലത്താണെങ്കിൽ ജയിലിലും ജയിലില്ലാത്ത സ്ഥലത്താണെങ്കിൽ ഏറ്റവും അടുത്ത പോലീസ് ലോക്കപ്പിലും തടവുകാരനെ സൂക്ഷിക്കേണ്ടതാണ് .

(2) ഒരുതരത്തിലുള്ള അവധികൾക്കും അർഹതയില്ലാത്ത വിഭാഗത്തിൽപ്പെടുന്ന തടവുകാർക്ക് അവരുടെ പിതാവ്, മാതാവ്, മാത്ര സഹോദരൻ, പിത്ര സഹോദരൻ/ സഹോദരി, ഭാര്യ, ഭർത്താവ്, മക്കൾ, സഹോദരൻ, സഹോദരി എന്നിവരെ പോലീസ് അകമ്പടിയിൽ സന്ദർശിക്കാനുള്ള അനുമതി നൽകാവുന്നതാണ്. അത്തരത്തിലുള്ള സന്ദർശനാനുമതി ആറുമാസത്തിലൊരിക്കൽ സ്ഥലം പോലീസിന്റെ അനുകൂലമായറിപ്പോർട്ടിന്റെ



അടിസ്ഥാനത്തിലാണ് അനുമതി നൽകേണ്ടത്.

(3) തടവുകാരന്റെ വളരെ അടുത്ത ഒരു ബന്ധുവിന്റെ മരണം ഒഴിച്ചുള്ള ഒരു സാഹചര്യത്തിലും കേരള സംസ്ഥാനത്തിന് പുറത്തേക്ക് അകമ്പടി സന്ദർശനം അനുവദിക്കാൻ പാടുള്ളതല്ല.”

16. The above-extracted rule stipulates that an escort visit can be granted for a period of twenty-four hours for prisoners who are not eligible for emergency leave. Those who are not eligible for any kind of leave can, however, be granted permission to visit the immediate family members or relatives named in Rule 415(2) of the Rules, once in six months, on the basis of favourable police reports. Nevertheless, sub-rule (3) carves out an exception that, except in the case of death of an immediate relative, an escort visit cannot be permitted for movement outside the State of Kerala. The aforesaid sub-rule (3) is assailed by the petitioner as infringing his fundamental rights.

17. Petitioner, who hails from Karnataka, asserted that he is entitled to an escort visit once in every six months to visit his mother as provided in Rule 415(2) of the Rules. However, since he hails from Karnataka, his mother resides there and it being outside Kerala, he is being denied liberty on the basis of Rule 415(3) of the Rules. Petitioner contended that the denial is on account of his place of birth thereby rendering the provision itself arbitrary and violative of Article 14 and 15 of the Constitution of India.

18. From a reading of sub-rule (3) of rule 415, it is discernible that



a restriction is imposed against the grant of an escort visit which requires travel beyond the geographical limits of Kerala, except in the case of the death of an immediate relative. The guarantee of equal protection under Article 14 insists that all persons similarly situated must be treated equally. However, the said principle or the guarantee of equal protection does not prevent the State from applying different laws to persons who stand in dissimilar situations. The guarantee also permits the State to provide a reasonable classification in the matter of granting a privilege or a benefit. The intendment of Article 14 has been summarised by the Supreme Court by observing that while Article 14 forbids class legislation, it does not forbid reasonable classification. To satisfy the test of reasonable classification, two conditions are required to be satisfied which are, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from those that are left out of the group, and (ii) that differentia must have a rational nexus with the object sought to be achieved by the statute or provision in question. Reference to the decisions in **State of West Bengal v. Anwar Ali Sarkar** [1952 SCR 284] and **Budhan Choudhry and Others v. State of Bihar** [AIR 1955 SC 191] are relevant in this context.

19. Though discrimination is frowned upon, as noted earlier, Article 14 does not prevent the State from creating a classification founded on



an intelligible basis. As long as there is a nexus between the basis of classification and the object of the Act or the provision under consideration, the classification cannot be regarded as arbitrary or violative of Article 14 of the Constitution. Amidst the various basis of classification, geographical or territorial limits have been held to be a valid base. Reference to the decisions in **Purushotham Govindji Halai v. B. M Desai and Others** (AIR 1956 SC 20) and **Parisons Agrotech Private Limited and Another v. Union of India** (2015) 9 SCC 657 are relevant in this context.

20. On a reading of Rule 415(3) of the Rules, it is evident that the State has deemed it appropriate to restrict the right to an escort visit to be confined within a geographical limit. In the aforesaid provision, there is no reference to place of birth. On the other hand, the provision only contemplates that an escort visit shall not be granted to any prisoner to visit a place beyond the geographical limit of the State of Kerala except when death occurs in the family of the prisoner. There is nothing in the Rules which indicates that the restriction is confined to persons on the basis of their place of birth. In fact, irrespective of the place of birth of a prisoner, the restriction on an escort visit will apply. In other words, a person born in Kerala will also not be entitled to an escort visit outside Kerala. The Rules do not stipulate the place of birth as the criteria for classification. Notwithstanding the place of birth, a prisoner is eligible to



be considered for the grant of an escort visit within the State of Kerala. Thus the classification is not on the basis of place of birth but is on a prescribed geographical limit.

21. The geographical limit for an escort visit has been prescribed in the Rules for various reasons. Practical considerations like distance, security of the persons accompanying the prisoner, financial implications, and other factors have a bearing. Unless the restriction imposed is shown to be inherently unreasonable or totally discriminatory, this Court would be loath to interfere. In fact, the provision does not create an absolute restriction for an escort visit even outside the State. Rule 415(3) of the Rules permits an escort visit outside the State in the event of the death of an immediate relative. Thus, there is no absolute restriction as such.

22. In this context, reference to the decision in **Minor P. Rajendran v. State of Madras and Others** [(AIR 1968 SC 1012)], is relevant. In the said case, a district-wise allocation of seats reserved for the general pool was challenged on the basis that it was violative of Article 15. Negating the challenge, the Supreme Court observed that place of birth was nowhere mentioned in the Rule and the nativity of the candidate was not dependent upon the place of birth. Further, in the decision in **Kumari Chitra Ghosh and Another v. Union of India and Others** [AIR 1970 SC 35], the challenge was raised against the



reservation of seats on the basis of residence, alleging that it is violative of Article 15 of the Constitution on the ground of discrimination based on place of birth. However, the Supreme Court held that the Government cannot be denied the right to decide from what sources the admission has to be made, which is essentially a question of policy and depends inter alia on an overall assessment and survey of the requirement of residence of a particular territory and other categories of persons for whom it is essential to provide facilities for medical education. The court also observed that the financial burden is borne by the Government and hence it is entitled to lay down the criteria for eligibility.

23. Parallels can be drawn from the above two decisions to the present case. Apart from there being no reference to the term 'place of birth' in the impugned Rule 415(3), the practical aspects of providing an escort visit outside the State is a matter which falls within the policy of the Government. When a prisoner has to be escorted beyond the territory of Kerala, the safety of the officers accompanying the prisoners, and the practicality of the number of personnel to be deployed to accompany such prisoners, apart from the financial burden on the State are all matters which will have to be necessarily borne in mind while taking such a decision. The limited resources of the State in the matter of accompanying personnel, transportation, distance and finances are all challenges that the police will have to address if unrestricted escort visits



are granted. These practical considerations have a significant role in the policy formulated by the State regarding the restrictive grant of an escort visit. Such considerations have found a way into the statute book and in the absence of any apparent arbitrariness or malafides, no cause arises for any interference.

24. In this context, this Court cannot ignore the practical difficulties of providing escort visits for 24 hours every six months, if, for example, the immediate relatives of a few prisoners lodged in Kerala are residing in remote areas of one of the northernmost States of the country. In such situations, providing an escort visit to all such prisoners, for 24 hours every six months would lead to chaos in prison management. Therefore, Rules, which are based on formulations of policy, that restrict such rights, ought not to be interfered with by the Court unless it is so explicitly discriminatory.

25. In the instant case, as mentioned earlier, nowhere does the Rule stipulate that a person born outside Kerala will be denied an escort visit. On the other hand, it only creates a geographical limitation or a regulation in the grant of an escort visit. Such geographical restrictions and regulations being based on sound policy of the State, this Court does not find it offensive to any of the fundamental rights under Articles 14, 15 or 19 of the Constitution of India. The object of an escort visit is to provide an opportunity for the prisoner to interact with his family



members, in situations when he is not eligible for any kind of leave. However, the said opportunity must be within the limits of the State's capacity. By creating a geographical restriction for an escort visit, the State cannot be said to have infringed any of the constitutional mandates.

26. Apart from the above, the contention that Rule 415(3) of the Rules is ultra vires the Act is also not legally tenable. Section 99(xxxv) of the Act empowers the Government to make rules regarding the circumstances under which an escort visit can be permitted. Rule 415 refers to the circumstances in which an escort visit can be granted and sub-rule (3) restricts it to within the geographical limits of Kerala State. The said restriction cannot be held to be ultra vires the Act. Thus there is nothing inconsistent with the statute and hence the impugned provision is legally valid.

27. The alternative submission of the petitioner that he may be transferred from the high-security prison at Thrissur to the Kannur Central Prison, where his family would find it more convenient to visit him, cannot be accepted. On instructions it was informed that a high-security prison is not available at Kannur and hence the said request cannot be acceded to.

28. Before concluding, this Court records its appreciation for the able assistance rendered by the learned Senior Counsel Smt. Dhanya P.



Ashokan, as Amicus Curiae.

Considering the circumstances discussed above, I find no merit in this writ petition, and it is dismissed.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

/True Copy/

PS to Judge