

- 04 -

IN THE HIGH COURT OF KARNATAKA, AT BENGALURU

W.P No. _____/2020

ORIGINAL JURISDICTION

Between:

Shri. Amol Kale



... Petitioner

And:

1. STATE OF KARNATAKA
Department of Home Affairs,
Room No.222, II Floor,
Dr. Ambedkar Veedhi,
Bengaluru - 560 001
(Represented by its Additional
Chief Secretary ... Respondent No 1
2. State of Karnataka
Department of Prisons and Correctional Services
9, Seshadri Rd, Racecourse,
Gandhi Nagar,
Bengaluru - 560 009
(Represented by its Director General,
Prisons and Correctional Services) ... Respondent No 2
3. The Superintendent of Prison
Central Jail
BB Keri, Rajendra Nagar,
Mysore - 570001 ... Respondent No 3

MEMORANDUM OF WRIT PETITION UNDER ARTICLE 226, 227
OF THE CONSTITUTION OF INDIA

The Petitioner above named beg to submit as follows:

- 05 -

1. The address of the petitioner for purpose of notice and other correspondence is as shown in the cause title or that of his advocates Sri. Amruthesh N.P and Divya Balehittal, having office at No. 15/1, 1st Floor, 3rd Cross, Sampige Road, Malleshwaram, Bengaluru 560086. divya6dec@gmail.com Ph. 9448460811, 8971782008.
2. The address of the respondents for the purpose of summons and other correspondence is as shown in the cause title.
3. The Petitioner herein is alleged accused persons in Cr. No. 45 of 2018 registered with Upparpet Police station, Bengaluru and further in Cr. No. 221 of 2017 registered with Rajarajeshwari Nagar Police Station, Bengaluru and is now in Judicial Custody in Central Jail, Mysuru.
4. The present petition is filed to issue direction against Respondents to call for reports as to the necessary measures taken by the Respondents to maintain social distancing and medical assistance given to prisoners in Central Jail, Mysuru and other Jail in Karnataka in general and the petitioner in particular

FACTS OF THE CASE

5. It is further submitted that Petitioner was arrested in Cr. No. 45/2018, Upparpet Police Station on 21.05.2018 and Police have filed chargesheet and numbered as CC No. 19618/2018. Now the case is pending before XXXI ACMM, Bengaluru. Later the SIT Police have arrested the Petitioner on 02.06.2020 in Crime No. 221/2017 in Rajarajeshwarinagar Police Station. The SIT Police have filed Chargesheet and numbered as Spl. C. C no. 872/2018 and the case is pending before Prl. City Civil and Session Judge, Bengaluru (CCH 1). That on 16.06.2018, the Petitioner was kept in Judicial Custody in Central Jail,

Bengaluru. That on 23.03.2019 the Petitioner was transferred to Central Jail, Mysuru. Since then he is in Central Jail, Mysuru Judicial Custody as Under Trial Prisoner.

6. As Karnataka Control of Organized Crimes Act is invoked in the case against him, he will not be entitled to the bail on the basis of guidelines issued at the backdrop of Covid Pandemic and conducting of trial seems uncertain also due to Covid Pandemic. In such situation, the petitioner can do nothing except to wait.
7. That due to Covid 19 Pandemic, the Respondent No. 2 had cancelled the permission for visitors and advocates to meet the prisoners as precautionary measures since 20.03.2020.
8. That as the Covid 19 Pandemic started spreading all over India since April, 2020, the Advocate for Petitioner sent a Legal Notice dated 14.04.2020, to the Respondent No. 1, 2 and 3 to take proper care of the health of Petitioner as there is high risk of being infected as Petitioner had already undergone surgery. And in case the Petitioner suffers from corona virus, Petitioner and/or their family members will be entitled to sue the State as well as Respondents individually for criminal and civil remedies including but not limited to initiating legal proceedings against each one of them. Copy of the Legal notice dated 14.04.2020 and e-mail copy is produced herewith and marked as **Annexure A & A1**.
9. That in the month of May, the Advocate for Petitioner got to know through media that in Arthur Road Jail, Mumbai around 158 jail inmates were tested corona positive inside the prison which created a tensed environment among the prisoners as well as their family members. Therefore, the Advocate for Petitioner sent one more e-mail to Bangalore as well as Mysore Central Prisons on 26.05.2020 bringing to their notice about the

conditions in Arthur Jail and as such tragic situation may repeat in Karnataka, hence to take necessary measures as follows:

1. Lay down standard operating procedures for the jail staff - such as
 - a. The staff should change the dress while entering and going out.
 - b. Sanitizing sprays should be used at the gates/doors
 - c. Providing homeopathic medicine 'Arsenic Alba 30' be provided to the jail inmates which is recommended by 'Ayush'.
 - d. Fresh masks, sanitizers, soaps and hot drinking water should be provided to the jail inmates as well as the staff.
2. Strict action may kindly be taken against the jail officers/staff/employees who do not follow the guidelines or fail to compel the prisoners to follow the guidelines/SOPs.

Copy of the Letter dated 26.05.2020 and e-mail copy is produced herewith and marked as **Annexure B & B1**.

10. That on 04.07.2020, the Advocates for the Petitioner came to know that 4 prisoners in Mysore Jail are tested Corona positive and few other prisoners are kept in same prison for Quarantine till the test reports are out.
11. As the Petitioner is kept in the immediate next cell of the prisoners who were tested positive due to which the Petitioner is in immense mental pressure as no proper measures or precautions are taken to protect other prisoners, the Advocate for Petitioner send one more mail to Respondents on 11.07.2020, to exercise due and diligent care ensuring medical and social safety to the Petitioner. Copy of the Letter dated 11.07.2020 and e-mail copy is produced herewith and marked as **Annexure C & C1**.

12. That as the Petitioner is kept in the cell next to the isolation cell, the Petitioner is undergoing fear and mental pressure every single minute and even the other prisoners are hesitating to talk or even walk next to petitioner with the fear of getting infected. This has immensely disturbed the mental health of the Petitioner.
13. The Hon'ble Supreme Court in SUO MOTU WRIT PETITION (CIVIL) NO. 1/2020 in IN RE: CONTAGION OF COVID-19 VIRUS IN PRISONS, on 16.03.2020 directed to issue notice to the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID 19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare. Copy of the Order dated 16.03.2020 is produced herewith as **Annexure D**. Hence this Petition.

GROUNDS

14. That the Advocate for Petitioner had sent 3 mails to Respondent No. 3 prison dated - 14.04.2020, 26.05.2020 and 11.07.2020 to take proper measures for the safety of health of Petitioners and other prisoners in Mysore Jail and to provide the details as to what measures are taken by the Jail authorities as safety measures in Jail for which the Advocate for Petitioners haven't got any reply to any of the mail which shows their carelessness and lethargic attitude.

- 03 -

15. That the Hon'ble Supreme Court has issued directions to all states, authorities, etc. inter alia regarding decongestion of prisons in the wake of the COVID-19 epidemic in Suo Motu Writ Petition (Civil) No.1/2020 In Re: Contagion Of COVID-19 Virus in Prisons. But the Respondent No. 3 has not taken any measures as such for decongestion.
16. That in the wake of the COVID-19, there is a great need for decongesting of overcrowded prisons, correction centers, observation homes and places of safety. While the Apex Court has issued directions to release the prisoners on certain terms and conditions, it is equally imperative to ensure property safety for those prisoners who are inside the prison.
17. That the Respondent no. 3 have no separate isolation cells for prisoners with Covid 19 symptoms and are Quarantined inside the regular cell itself which has strongly created a feeling of insecurity among the other prisoners inside the prison as well as high risk of them being infected.
18. That the Petitioner is kept in cell which is immediately next to the cell where some inmates are kept in quarantine. The Petitioner have problems like low Blood Pressure and had also met with an accident due to which his immunity level has reduced and has high chances of getting infected.
19. Opportunity to seek bail on the basis of Covid Pandemic is not available to the petitioner as Special Act is invoked against the petitioner whereas the conducting of trial also seems to be uncertain. In this background exposure to Corona transmission risk due to neglect on part of Respondents is nothing else but curtailment of fundamental rights of the petitioner and such other jail inmates. There must be some rays of hope for such jail inmates. The Respondents are duty bound to protect the fundamental rights of the petitioner and other jail inmates.

GROUNDS FOR INTERIM PRAYER

20. That the Petitioner is presently in Central Jail, Mysuru where there is only 1 isolation cell which is placed immediately next to the cell where the Petitioner is kept. The Petitioner is experiencing mild throat pain and body ache since 15.07.2020 and has informed the same to Jail authorities. The medical officer without undertaking Covid test, has given some medicines alleged to be some antibiotic to Petitioner which is very serious in nature. The Respondent No. 3 is drastically failing to provide safety measures and Covid test facilities to Petitioner as well as other prisoners. Because of the situation and seriousness in the jail condition arising in Mysuru Central Jail, the Petitioner shall be kept separately in isolation and further shall be shifted to Parappana Agrahara, Central Jail, Bengaluru. In view of the urgency, hence interim prayer may be granted.

PRAYER

Wherefore, it is most respectfully prayed, that this Hon'ble Court be pleased to issue;

- a) Issue a Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus or any other appropriate Writ, Order or direction thereby directing the Respondent authorities to submit compliance reports on the directions issued by the Hon'ble Supreme Court of India in the matter of SUO MOTU WRIT PETITION (CIVIL) NO. 1/2020 In Re: Contagion Of COVID-19 Virus In Prisons as well as the guidelines issued at the backdrop of the Covid 19 Pandemic
- b) Issue a Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus or any other appropriate Writ, Order or direction thereby directing the Respondent No. 2 and 3 to take all precautionary measures to protect the

Petitioner from Covid Pandemic by maintaining social distance and providing urgent and quality medical aid

- c) Issue a Writ of Mandamus or any other Writ, Order or direction in the nature of Mandamus or any other appropriate Writ, Order or direction thereby directing the Respondent No. 2 and 3 to keep the Covid positive prisoners in isolation cell outside the main jail and to undergo his Covid test for all prisoners in the prison as well as provide necessary medicines such as Vitamin C tablets or Ayurvedic medicines etc, masks, sanitizers.
- d) Pass any such other further orders and / or directions inter alia to the Respondents as this Hon'ble Court deems fit for the protection of life and liberty of Petitioner in Respondent no. 3 jail.

INTERIM PRAYER

Pending disposal of this petition, this Hon'ble Court is respectfully prayed to direct the respondent No. 2 to shift the Petitioner back to Central Jail, Bengaluru forthwith as better safeguards are being followed in the said jail and better treatments will be provided if any adverse situation arises. Due to the urgency, the interim payer may be granted in the interest of Justice.

Place : Bengaluru

Date : 18.07.2020


Advocate for Petitioner

Address for Service:

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