RAJIA VS. STATE OF PUNJAB AND OTHERS

CWP Nos.7882, 7226, 6930, 6931, 6933, 7368 and 9126 of 2021

Present: Mr. Amjad Khan, Advocate,
for the petitioner in CWP No.7882 of 2021.

Mr. R. Kartikeya, Advocate,
for the petitioner(s) in CWP Nos.6930, 6931 & 6933 of 2021

Mr. Adarsh Priyadarshi, Advocate with
Mr. Raghav Sharma, Advocate,
for the petitioner in CWP Nos.7226 & 7368 of 2021.

Mr. Saurav Bhatia, Advocate,
for the petitioner in CWP No.9126 of 2021.

Mr. Sahil Sharma, DAG, Punjab.

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"A society that believes in the worth of individual beings can have the quality of its belief judged, at least in part, by the quality of its prison and probation services and of the resources made available to them". This passage has been extracted from a White Paper entitled "People in Prison" published by the British Government in November, 1969.

Many years earlier, precisely on 25.07.1910, Sir Winston Churchill speaking as Home Secretary, said in the House of Commons:

> "*The mood and temper of the public in regard to the treatment of crime and criminals is one of the most unfailing tests of the civilization of any country. A calm dispassionate recognition of the rights of the accused, and even of the convicted criminal, against the State – a constant heart-*

> *searching by all charged with the duty of punishment – a desire and eagerness to rehabilitate in the world of industry those who have paid their due in the hard coinage of punishment; tireless efforts towards the discovery of curative and regenerative processes; unfailing faith that there is a treasure, if you can only find it, in the heart of every man. These are the symbols, which, in the treatment of crime and criminal, mark and measure the stored-up strength of a nation, and are sign and proof of the living virtue in it.*"

The same sentiment was echoed by ***Krishna Iyer, J.*** in ***Sunil Batra (II) vs. Delhi Administration, 1980 (3) SCC 488*** (hereinafter referred to as ***Sunil Batra (II)***). After extracting the above passage from the speech of ***Sir Winston Churchill***, it was remarked;

> "*Truly, this is a perspective-setter and this is also the import of the Preamble and Article 21 as we will presently see. We are satisfied that protection of the prisoner within his rights is part of the office of Article 32.*"

More than four decades have elapsed since then, yet, the true import of the directions of the Supreme Court of India do not seem to have percolated to the Administrators of Prisons, as is highlighted by the facts of this bunch of cases.

This judgment shall decide CWP Nos.7882, 7226, 6930, 6931, 6933, 7368 and 9126 of 2021 as common questions of law arise for decision therein. The facts are also similar, however, for the purposes of precision, the same are being extracted from CWP No.7226 of 2021 titled as

'*Chandan @ Chandu vs. State of Punjab &others'*.

A report was also called for from the Secretary, District Legal Services Authority, Bathinda in this case, which shall be referred to later and this is another reason for extracting the detailed facts from this case.

Before I proceed with the facts, I deem it relevant to notice that each of the petitioners in this bunch of cases, appears to be a professional criminal, as large number of cases have been registered against them, the least being 12 in number against Baljinder Singh @ Billa (petitioner in CWP No.7368 of 2021) and the maximum being 37 against Gurpreet Singh Sekhon (petitioner in CWP No. 6933 of 2021. Four of them are convicted persons, while the remaining three are undertrials, although all of them claim to be undertrials in their respective writ petitions.

It has been averred that the petitioner is perceived as a person with criminal antecedents but in fact, he has been falsely implicated. He is stated to be an undertrial and on account of his criminal antecedents, has been labeled as a gangster. Earlier, he had approached this Court through CRM-M- 13270 of 2016 for grant of protection while being produced in Court as he apprehended threat to his life from rival gangs. The said petition was decided vide order dated 02.09.2016 and certain directions were issued in his favour. He was transferred from High Security Jail, Nabha to Central Jail, Bathinda as it was the intent of the State to collect all alleged gangsters in the said prison and eliminate them systematically. This intent has been deciphered from public statements made by the Jails Minister and the Chief Minister, Punjab. Thus, the petitioner fears for his life. It is also averred that he has been denied various amenities that are

available to ordinary prisoners such as facility of private maintenance i.e. provision of food, clothing, bedding and other necessaries through private sources, cooking facilities, adequate food and water, adequate clothing and newspapers, magazines and television. He is being confined in a cell for 22 hours in a day and is released therefrom only for 02 hours. This amounts to solitary confinement and the same violates fundamental rights. Thus, directions have been sought to grant the necessary facilities at par with other prisoners and as stipulated under the law, as also to protect his life and liberty. Direction be also issued to release him from solitary confinement.

In the affidavit filed on behalf of the State, it has been averred that a total of 34 cases stand registered against the petitioner out of which he has been convicted in three. Six cases were registered against him while he was in judicial custody. Presently, he is undergoing life sentence for commission of dacoity. Being a notorious criminal, he has the propensity to create riotous situations. In the past, the State of Punjab has experienced riots and jail breaks in various prisons. In 2011, there were riots in Central Jail, Kapurthala followed by riots in 2013 in Central Jail, Faridkot. In 2016, some dangerous/high-risk prisoners escaped from High Security Jail, Nabha. In 2017, again there were serious riots in Central Jail, Gurdaspur followed by similar riots in 2019 in Central Jail, Ludhiana. When, prisoners belonging to the same gang are confined in the same jail, they conspire to commit crimes outside jail and thus, continue with their nefarious activities despite being incarcerated. When prisoners belonging to different gangs are housed in the same prison, it results in riots and disorderly conduct. The problem is mainly caused by notorious criminals who operate in gangs and

by terrorists. High security zones have been created in jails yet, mobile phones have been recovered from prisoners. A total of 165 mobile phones were recovered from different high security zones in the State of Punjab despite numerous measures adopted to curb the smuggling of unauthorized items. Thus, the matter was given serious consideration and order dated 23.12.2020 was passed by the Additional Director General of Police (Prisons) [hereinafter referred to as ADGP (Prisons)] directing that prisoners confined in high security zones be released from their cells for two hours during the day (one hour in the morning and one hour in the evening), apart from increased security measures like constant patrolling and rotation of personnel. These directions were issued in exercise of powers conferred by para 515 of the Punjab Jail Manual, 1996. There is an on-going exercise for identification of notorious, hardcore criminals who have *inter alia* committed serious crimes while in jail. The State Government has held meetings on 15.12.2020 and 23.02.2021 at the highest level, presided over by the Cabinet Minister for Jails and decisions have been taken to adopt greater security measures such as creation of communication dead zones, provision of jammers, provision of wire mesh/nylon mesh, assured electricity supply, provision of better intelligence and investigation of jail crimes and shifting of 42 hardcore/notorious prisoners to Central Jail, Bathinda. Keeping in view the criminal antecedents of the petitioner, he has been transferred to Central Jail, Bathinda and has been confined to a cell. He is not being denied the various facilities as has been alleged in the petition. He is provided with food and water duly inspected by the various jail personnel. Food is cooked under

supervision in the jail premises and conforms to the prescribed parameters. He is also permitted to purchase some items from the prison canteen and is provided proper medical facilities. There is facility of using telephone for 15 minutes every day as well as facility of video conferencing for production in Court and for conferring with lawyers. The allegation regarding solitary confinement is completely denied. It is stated that from sunset to sunrise, the petitioner is confined in the inner most area of his cell which also has a space for bathing and ablutions. After sunrise, the prisoner is brought out into another part of the cell in which, arrangement has been made in the roof for provision of sunlight and air. For two hours in a day, the prisoner is locked out (released from the cell).

Since the matter pertains to rights of prisoners, this Court directed the Secretary, District Legal Services Authority, Bathinda to submit a report regarding the allegations made by the petitioner. Report dated 31.03.2021 has been submitted, according to which, the inmates of the high security zone are being confined in separate cells. The high security zone comprises four blocks and houses a total of 39 inmates. Each block houses 4/6/8 inmates depending upon the capacity. These inmates are locked out jointly for one hour in the forenoon and one hour in the afternoon. Further, the inmates are being provided with necessary clothing, bedding/utensils and other articles but to a restricted extent. Newspapers were being provided at own expense and as per choice whereas books were being provided from the library. This report is based upon statements of the respective petitioners and the Jail Superintendent. Various instructions/directions issued by the concerned authorities have been relied

upon by the Jail Superintendent while getting his statement recorded. These are Standing Order No.1/17, letter dated 04.10.2019, letter dated 12.12.2019, letter dated 18.09.2020 and letter dated 29.09.2020 followed by direction dated 23.12.2020. Each of these is being briefly referred to. On 04.01.2017 Standing Order No.1/17 was issued by the office of ADGP (Prisons). This standing order is regarding custody of dangerous prisoners in separate high security zones and classification of prisoners as such is provided based upon the offences of which they are accused, being security threats, having history of escape, recommended by the local police for lodging in high security zone, habitual offenders and other sufficient reasons found by the competent authority. The said standing order also lays down the procedure for management of high security zones *inter alia* denying facility of private cooking, staggered lockouts etc. Letter dated 04.10.2019 was addressed by the Under Secretary, Jails to the ADGP (Prisons) after the Minister for Jails inspected the Roop Nagar Jail on 16.09.2019. He states that the Minister had directed that gangsters confined in high security jails be kept in single cells. Letter dated 12.12.2019 addressed by the ADGP (Prisons) to various Jail Superintendents regarding curtailment of facilities provided to inmates of high security zones makes it clear that directions were issued that a single inmate be kept in one cell and that there is no obstruction to visibility inside. Stoves/angithis for warming/cooking of food were not to be permitted. The ADGP (Prisons) then issued letter dated 18.09.2020 to all Jail Superintendents in the State of Punjab expressing concern over recovery of mobile phones from high security zones compelling review of preventive operations. By virtue of this

review, it was stipulated that no cooking facility was to be permitted in high security zone and all cooking materials and equipments were to be removed, CCTV coverage of the entire zone be maintained, TVs and electrical equipment to be removed from the cells so that there is no facility available for recharging of mobile phones, electrical wiring be concealed and switches be provided outside the cells, electrical fittings be regularly inspected for tampering and provision of essential and limited items only to the inmates. Thereafter, he issued letter dated 29.09.2020 to Jail Superintendents regarding items of personal clothing permitted to be kept by inmates of high security zone. Ultimately, letter dated 23.12.2020 was issued regarding release for two hours in a day.

From the aforementioned communications and high level meetings held on various dates, it becomes evident that the matter of prison security and discipline has been engaging officials of the State at the highest level. The intelligence wing of the police has collected information regarding convicts and undertrials who are notorious and have natural tendencies to breach discipline while in custody and also commit crimes. The information has been shared with the Prisons Department on the basis of which certain individuals have been identified and have been classified as dangerous/notorious/hardcore prisoners. Various measures have also been adopted to make the high security zones impregnable and instructions have been issued from time to time regarding incarceration of prisoners classified as security risks. These directions include confining such prisoners singly in a cell, non-provision of cooking facilities, non-provision of TV sets and electrical points, supply of restricted items of food and

clothing (this implies that restricted items can be purchased from canteen stores brought inside high security zones and items of clothing to be kept and provided are as per list). Further, the inmates are removed from their cells in a staggered manner.

The aforementioned measures have been adopted/are being enforced to maintain prison discipline and prevent crime syndicates from operating within prisons. Measures such as making jail premises inaccessible to wanderers, provision of adequate measures to secure prisons from external intrusion, creation of communication dead zones, installation of electronic equipment like jammers, security measures in tiers and increased surveillance through patrolling, CCTV cameras etc. need to be commended. Steps taken to ensure that mobile phones cannot be recharged after being smuggled in, also need to be commended. However, although general directions have been given to Jail Superintendents to review measures so that mobile phones are not smuggled into high security zones, no information has been provided regarding steps taken/to be taken against jail personnel who facilitate such smuggling. Security measures can be imposed only up to a limit and this limit is placed by Fundamental Rights guaranteed under Articles 14, 19 and 21 of the Constitution of India, which are available even to prisoners. Simultaneously, strict measures need to be adopted against jail personnel so that those, guilty of aiding the criminals are punished in an exemplary manner. Such steps, based on available information, appear to be lacking in their quest for improving jail discipline and making prisons crime free. Instead, the authorities have gone overboard and have violated valuable Fundamental Rights of the prisoners. Intention

behind the act is immaterial as the act fails the test of reasonableness.

It is now well settled that prisoners are human beings despite their liberty having been curtailed. They may not enjoy all rights and freedoms guaranteed by the Constitution of India, yet, basic rights and liberties are available to them which are the rights guaranteed by Articles 14, 19 and 21 of the Constitution of India. Court process restricts the liberty of prisoners but the same courts also have the duty to monitor that the liberty is not restricted beyond the bounds of law. While doing so, the Courts do not become administrators of prisons, but act as the guardians of fundamental rights to which even a prisoner is entitled. In ***Sunil Batra vs. Delhi Administration, 1978 (4) SCC 494*** (hereinafter referred to as ***Sunil Batra (I)***), the Supreme Court of India in the words of ***Krishna Iyer, J.*** observed:

> "*Necessary sequitur is that even a person under death sentence has human rights which are non-negotiable and even a dangerous prisoner, standing trial, has basic liberties which cannot be battered away*."

The above was elaborated upon in '***Charles Sobraj vs. Supdt. Central Jail, Tihar, 1978 (4) SCC 104***':"It is now well-settled, as a stream of rulings of Courts proves, that deterrence, both specific and general, rehabilitation and institutional security are vital considerations. Compassion wherever possible and cruelty only where inevitable, is the art of correctional confinement. When prison policy advances such a valid goal, the Court will not intervene officiously."

A middle ground has been found between the '*hands off*'

doctrine and the '*take over*' theory.

In the above backdrop, the arguments raised by counsel for the petitioner may be noticed. The common argument in all these cases is that facilities provided by various provisions of the Punjab Jail Manual 1996 (hereinafter referred to as Jail Manual) have illegally been denied. Support has been drawn from paras 713, 716, 718, 719 and 828 of the Jail Manual. It has been argued that the petitioner is being denied proper food, water and clothing. He is also not being permitted access to usual necessaries of life and is denied the facility of newspapers and magazines. Community television is also prohibited. That apart, right to life under Article 21 of the Constitution of India is being violated by keeping him in solitary confinement. Taking this argument forward, reliance has been placed upon Sections 73 and 74 of the Indian Penal Code and Para 547 of the Jail Manual to submit that solitary confinement is a punishment which can only be imposed by a Court. A watered-down punishment by way of separate confinement or cellular confinement can be imposed for committing a prison offence. The prison administration by itself cannot confine a prisoner in solitary. Reliance has been placed upon ***Sunil Batra (I) (supra), Sunil Batra (II) (supra), Kishore Singh Ravinder Dev and others vs. State of Rajasthan, 1981 (1) SCC 503***. The administrative transfer from one jail to another jail has been attacked by placing reliance upon ***State of Maharashtra and others vs. Saeed Sohail Sheikh and others, 2012 (13) SCC 192,*** although no such prayer has been made nor there are pleadings to this effect.

On behalf of the State, it has been argued that Section 5 of the

Prisons Act, 1894 (hereinafter referred to as Prisons Act) gives the Inspector General the power of general control and superintendence over prisons. This power has been translated into the power to issue directions by para 515 of the Jail Manual. Thus, various directions have been issued for maintenance of discipline and control in the jails. These directions are legal and valid. Allegations regarding non-provision of various facilities have been rebutted on the basis of report dated 31.03.2021 of the Secretary, District Legal Services Authority, Bathinda. The petition has been termed as mala fide because the illegal activities have been brought to a standstill. Various measures have been adopted after due deliberation at the highest level and for improving prison discipline. ***Sunil Batra (II) (supra) and Saeed Sohail Sheikh (supra)*** are sought to be distinguished on the basis of ***Asha Ranjan vs. State of Bihar and others, 2017 (4) SCC 397*** by submitting that ***Sunil Batra (II)*** was a case of brutal assault by a Head Warder which resulted in the filing of a habeas corpus petition, which is not case here. Reliance has also been placed upon ***State of Maharashtra vs. Dr. Praful B. Desai, 2003 (4) SCC 601, Mr 'X' vs. Hospital 'Z', 1998 (8) SCC 296, State of Haryana vs. Ram Mehar and others, 2016 (8) SCC 762***. The argument regarding transfer being illegal and impermissible has been contested on the basis of Section 29 of the Prisons Act and para 658 of the Jail Manual.

The issue regarding administrative transfer from one jail to another is being taken up first. As noticed earlier, there are no pleadings laying down the ground work of such a plea nor any prayer in this regard has been made. Merely raising a point at the time of arguments is not

sufficient for consideration of the same. Suffice to say that the judgment of ***Saeed Sohail Sheikh (supra)*** would need to be read after taking into consideration para 658 of the Jail Manual. I refrain from examining the issue, leaving it open to the petitioner to file a separate petition, in case, he is still aggrieved after the decision of this case.

The next issue that arises is whether the prison authorities are justified and competent to classify a prisoner based upon his proclivities. Section 59 of the Prisons Act empowers the State Government to make rules consistent with the Act. In exercise of such powers, the Jail Manual has been framed, this being the updated version. Para 3 (q) defines dangerous prisoner. The same is extracted below:

> (q) "*Dangerous prisoner" means, any prisoner declared to be such by the Superintendent with reference to the character of such prisoner in pursuance of the provisions of Section 56 of the Prisons Act, 1894.*"

Its plain reading makes it clear that the Jail Superintendent may declare any prisoner as such, however, in pursuance of Section 56 of the Prisons Act.

Section 56 is regarding confinement in irons and is reproduced hereunder:

> "***56. Confinement in irons*** *-- Whenever the Superintendent considers it necessary (with reference either to the state of the prison or the character of the prisoners) for the safe custody of any prisoners that they should confined in irons, he may, subject to such rules and instructions as may be laid down by*

the Inspector General with the sanction of the State Government, so confine them."

This provision is regarding confinement of a prisoner in irons. In the pleadings of the state, the petitioner has been alternatively described as dangerous/notorious/hardcore prisoner. Thus, it is evident that the term dangerous prisoner, 'has been used in a loose sense and not in the sense of para 3(q) (supra) which restricts the term to prisoners to be confined in irons. This conclusion is supported by para 495 and 496 of the Jail Manual occurring under Chapter 16 pertaining to classification and separation of prisoners. The sub-heading is 'classification of prisoners' and comprises the aforestated para 495 and 496 only. They provide that prisoners may be classified on the basis of criminal record, violent and aggressive tendencies, person being an escape or discipline risk etc.' However, the classification has to be done by a committee comprising of Superintendent or Deputy Superintendent, Medical officer and Welfare Officer. In the instant case, the classification has been done at the highest levels. Yet, the exercise of such a power by the prison administration without recourse to judicial scrutiny may render the same uncanalized and arbitrary, thus, violating Article 14 of the Constitution of India. The petitioner and other similarly situated persons would thus have the liberty of challenging their classification by presenting an appropriate petition before the Court under whose warrant they have been remanded to custody. The power to classify is thus upheld with the above caveat.

Thereafter comes the issue of denial of facilities/amenities. The petitioner alleges that he is given food and water which is unfit for

human consumption. Permission to cook food has been denied as also to purchase food stuffs from the canteen. Appropriate clothing is also not made available. There is no facility of reading newspaper and magazines nor is there any provision for community watching of television. He is not even permitted to meet friends and relatives and there is apprehension of danger to life. Various provisions of the Jail Manual referred to by the learned counsel for the petitioner are reproduced;

> *"**713. Maintenance from private source.** - An unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector- General."*
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> *"**716. Supply of food etc. to unconvicted criminal prisoners.** - (1) Every unconvicted criminal prisoner may, unless in any case the Superintendent otherwise directs, be supplied with food, clothing, bedding and other necessaries by his friends at such hours as the Superintendent may, from time to time, fix in that behalf.*
>
> *(2) Every article supplied under clause (1) shall -*
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> *(a) be delivered to the Deputy Superintendent or other officer appointed by the Superintendent for that purpose, and*
>
> *(b) be examined, before it is made over to such prisoner, either by the medical officer or the Medical*

Subordinate."

*"**718. Purchase of articles.** - All articles purchased for any unconvicted criminal prisoner other than those issued from jail supplies, shall be purchased through or under the orders of the Deputy Superintendent."*

*"**719. Permission to cook his own food.** - Claims for permission to cook are not recognised, but such a privilege may be granted at the discretion of the Superintendent."*

*"**828. Supervision of food-stuffs and water-supply.** - It shall be the duty of the Superintendent, the Medical Officer and the Deputy Superintendent at all times to satisfy themselves respectively, that -*

(a) pure and wholesome water is provided for consumption by the prisoners, and that a supply of such water is at all times freely available to every prisoner for drinking purposes;

(b) every article at any time issued, or intended to be issued, for the food of any prisoner is of the prescribed quantity and quality, and is good, wholesome and fit for human consumption;

(c) every article of food supplied to any prisoner in a cooked state, or which requires to be cooked before being so supplied, is properly and cleanly cooked in such manner as to be wholesome and reasonably palatable;

(d) every article of food, whether cooked or uncooked, is subjected to proper examination and inspection before it is issued for consumption to any prisoner.

(e) all food-stuffs at any time obtained and stored in the jail are frequently inspected, and that all articles which are unwholesome or in any respect unfit for human consumption, are forthwith rejected and are not issued for the use of prisoners; and

(f) That proper places for the convenient and orderly distribution and suitable utensils and other appliances for the consumption of food, are duly provided."

An un-convicted criminal prisoner has the right to maintain himself from private sources, however, subject to rules approved by the Inspector General. As noticed hereinabove, the petitioner is a convict and not an undertrial and thus, he does not have the right provided by paragraph 713. Those amongst the petitioners, who have still not been convicted, only are entitled to claim this right. The right is sourced in Section 31 of the Prisons Act. However, the same is subject to rules approved by the Inspector General. Section 31 is also reproduced hereunder,

"*31. Maintenance of certain prisoners from private sources.— A civil prisoner or an unconvicted criminal prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours, food, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by the Inspector General*."

The above makes it clear that the right is not absolute. Rules referred to in this provision can only mean administrative instructions to be issued from time to time. The narration of this case shows that on account of the petitioners having been classified as dangerous/notorious/hardened criminals having the tendency to smuggle in prohibited articles through cooking utensils and material, have been denied this facility. The same is a reasonable restriction and thus, denial of the facility, even to undertrials, is justified. The petitioner and others similarly situated are being permitted to purchase restricted items from the prison canteen as is evident from the affidavit on behalf of the State to which there is no rejoinder. This is also borne out from the report dated 31.03.2021 submitted by the Secretary, District Legal Services Authority, Bathinda.

Para 716 of the Jail Manual is regarding supply of food etc. to un-convicted criminal prisoners. As stated hereinabove, the petitioner does not fall in this category and is thus not entitled to the benefit. The undertrial petitioners may claim this right but they also cannot succeed as the same is subject to directions issued by the Superintendent. On account of the classification of those petitioners who are undertrials, the Superintendent has directed otherwise and such a direction deserves to be upheld.

The same logic and reasoning applies also to the facility of purchase of articles enshrined in para 718. The said paragraph, in any case, does not confer any absolute right and is again available only to un-convicted criminals. The facility of cooking own food is a privilege as is evident from the wording of para 719. Grant of such a privilege is discretionary and in the case of the petitioner, the discretion has been

exercised against him for valid and germane reasons. This also deserves to be upheld.

Food stuffs provided to the inmates as well as supply of water to them are required to be inspected and supervised by the Superintendent and the Medical Officer of a jail to ensure that the same is fit for consumption. It should be wholesome, properly cooked and suitable utensils are to be provided for proper distribution. In the reply affidavit of the State, it has been stated that proper inspection and supervision is being maintained and the same has been corroborated by the report dated 31.03.2021 of the Secretary, District Legal Services Authority, Bathinda. There is, thus, no reason to believe otherwise and it appears that an argument has been raised just for the sake of doing so.

The final issue is regarding alleged solitary confinement. There is no dispute that each of the petitioners is being confined in a separate cell for 22 hours in a day. They are released from their respective cells for one hour in the forenoon and one hour in the evening. Is this solitary confinement?

In ***Sunil Batra (I)***, the petitioner was a convict sentenced to life imprisonment. He was being confined in a single cell with a small yard attached. The inmate could not see other prisoners nor could the other prisoners see him and there was no communication with anyone else. He was permitted to exercise for half an hour in the morning and evening in the yard enclosure. The Court inspected the cell and found that the same had a cemented floor with no bed, furniture or windows. Light percolated through a ventilator with iron bars and the cell was used for bathing as well as for

answering the call of nature. In front of this room, there was a small verandah with pucca walls and iron gates separating each side from a similar verandah in front of the adjoining cell. While the petitioner was in the verandah, he could communicate with others who were similarly kept. Such confinement was held to be quasi-solitary and impermissible in law. Section 30(2) of the Prisons Act was read down, the reasoning being that such an inmate is indefinitely kept in quasi-solitary confinement because no time period can be laid down for decision of appeals etc. against the sentence/conviction. The same is illogical as even the legislature while providing for punishment of solitary confinement had restricted the same to small lengths of time as is evident from Sections 73 and 74 of the Indian Penal Code. Further, it was held that such a confinement amounts to imposing an additional punishment which is not legally permissible. When a prisoner is confined out of sight and out of communication with other prisoners, it affects his psyche and torments him mentally. Thus, it is an extreme form of torture rendering the same inhuman and violative of the rights of a prisoner under Article 21 of the Constitution of India. If a prisoner has to be so confined may be because of violent proclivities, disease and the like, he is required to be given an opportunity of hearing.

In ***Sunil Batra (II)***, the petitioner was physically assaulted by the Head Warder with the intention of extorting money. He inserted a wooden baton in the anal cavity of the prisoner and caused serious injury. After discharge from hospital, he was kept in a punishment cell. It was held that confinement in a punishment cell was akin to solitary confinement. Such harsh isolation from society for long periods cannot be inflicted except

by following a fair procedure. Judicial appraisal is necessary in such cases.

A plan of the cell as well as photographs have been made available to me through the good offices of the learned State Counsel. The plan shows that the cell in which the inmate is confined from sunset to sunrise and which also contains the area for bathing and ablutions measures 16'-3" X 12'-1½". It contains a cemented platform meant for sleeping and has two ventilators in the rear wall. It is separated from the second portion of the cell measuring 16'-3" X 7' which has a cut out measuring 10'-6" X 4' in the roof. These two parts are separated by a wall with an iron door with iron rods. The second part of the cell opens into a 6' wide corridor which has windows barred by steel mesh, iron rods and iron doors with iron bars on either side. A couple of windows are also provided in the wall separating the first part of the cell from the second part of the cell which also have iron bars and steel mesh with provision to close the same from outside by a steel door like structure. Two fans are provided in each cell apart from a ceiling light and CCTV camera. View of the cell is un-obstructed and adequate lights seems to be available. However, the fact remains that an inmate is confined in the first part of the cell or the inner most part from sunset to sunrise and for the remaining part of the day, except two hours, in the second part measuring 16'-3" X 7'. For all this period, he has no company except for the odd prison staff which comes by on rounds. He is not able to see any other human being and thus, conversation with fellow beings is out of the question. There is no facility of common messing. Except for one hour in the morning and one hour in the evening, the inmate is all by himself with his solitude and there is no limit

on the period for which he will be so confined. Such confinement is not strictly solitary confinement but can be called quasi-solitary because the inmate is deprived of human company for extended lengths of time and such confinement has been held to be extremely harsh and violative of basic human rights which remain the entitlement of every prisoner according to ***Sunil Batra (II)***. It can thus not be justified even on grounds of maintenance of discipline and order and curtailment of crime. A prisoner remains a person and cannot be reduced to animal existence [these words have been taken from ***Sunil Batra (II)***]. Such treatment completely discards the rehabilitative aspect of punishment, which is a major component in the philosophy of sentencing in every developed society. It is evident that the letter of law laid down in the path breaking judgments of ***Sunil Batra (I)*** and ***(II)*** is still to be fully assimilated and implemented. Hope expressed of replacing outdated prison law with more enlightened prescriptions, still remains a hope.

The ground situation in this case is a little peculiar. On one hand, lies the danger of continuing crime and jail violence and on the other hand, lies the demand of human rights and constitutional rights. The action of confinement of individual prisoners in individual cells for most part of the day and for limitless periods is impermissible and has been held so. However, the result of such a direction would be the immediate release of notorious/hardened/dangerous criminals into ordinary prison life which may be a recipe for disaster. The threat held out by the actions of such desperate persons is real and cannot be ignored. The prison administration has already taken steps to make the areas of confinement communication dead

zones and has beefed up security. Electronic means of surveillance and of suppressing communication of any sort have also been employed. Therefore, I see no reason to fear the petitioner and other similar prisoners to the extent of depriving them of their basic rights. The prison administration can surely come up with suggestions which would make the custody conform to the law of the land while meeting the security concerns. For example, the identified prisoners could be housed in separate barracks instead of cells where provision is also made for messing. Members of rival gangs could be confined in different barracks and the system of staggered lockouts could be retained. Confinement to cells be restricted from sunset to sunrise and period of lockouts be increased, however, within the confines of high security zones. The final decision of course, would rest with the prison administration, but is always open to judicial scrutiny.

Since I have attempted to balance public interest against private interest, reference to the judgment in ***Mr. 'X' (supra)*** is not considered necessary. For the same reason, the judgment in ***Ram Mehar (supra)*** also need not be referred to. The judgment in ***Dr. Praphul B. Desai (supra)*** is irrelevant and not applicable to the controversy in this case as the same pertains to the permissibility of recording evidence of a witness through video conference. The judgment in ***Asha Ranjan (supra)*** is also superfluous and not attracted in the facts of this case. The said matter pertains to powers of the Supreme Court under Article 32 of the Constitution of India to transfer an undertrial to a prison outside the State of Bihar.

The quasi-solitary confinement is held to be illegal and

violative of the Rights guaranteed under Article 21 of the Constitution. The writ petition is partially allowed but not finally disposed off.

List again for further proceedings on 19.07.2021. The State of Punjab may apprise this Court of the measures intended to be adopted.

01 July, 2021 **(SUDHIR MITTAL)**
'Ankur' **JUDGE**