

Anand Mohan and Etc. Vs. State of Bihar

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Court : Patna

Decided On : Nov-23-2007

Judge : Ghanshyam Prasad and Shyam Kishore Sharma, JJ.

Appellant : Anand Mohan and Etc.

Respondent : State of Bihar

Judgement :

1. Heard the learned Counsel for the appellants as well as the State on point of bail.
2. We have gone through the LCR and considered the submissions advanced by both the parties.
3. This case relates to murder of a young I.A.S. Officer posted at that time at Gopalganj as District Magistrate. All the appellants have been convicted under Sections 302/149, IPC along with other sections and have been awarded death penalty. Having regard to the facts and circumstances of the case as well as nature of the offences, we do not think it proper to release the appellants on bail.
- 3A. Accordingly, the prayer for bail is hereby rejected.
4. I.A. Nos. 1787 of 2007, 1821 of 2007 and 1844 of 2007 have been filed by all the three appellants for direction to the jail authorities not to keep them in cell or solitary confinement and also for a direction to give the appellants who are Ex-

Member of Parliament, Ex-Member of Legislative Assembly and Ex-Minister of the Bihar respectively all the facilities to which they are entitled to.

5. Counter affidavit has also been filed on behalf of the State denying that the appellants were ever kept in solitary confinement or in cell either in Beur Jail or Bhagalpur Jail. They have been kept in high security ward along with other prisoners and they are being allowed to meet other prisoners in ward in day time. One of the appellants Anand Mohan is in Medical College for proper observation and treatment as he is on hunger strike. It has been further stated that appellants are not entitled to get the special facilities as they have been convicted for commission of heinous crime of murder. The jail manual does not permit to extend divisional facilities to such prisoners.

6. Supplementary affidavits have been filed by the appellants with assertion that they have been kept in Cell in solitary confinement in Beur as well as the Bhagalpur Central Jail and false statement has been made in counter affidavit, by the State. It is also stated that in view of provisions contained in the Jail Manual, the appellants being an Ex-M.P. Ex-MLA, and Ex-Minister are entitled to get divisional (higher class) facilities.

7. Be that as it may, here it is important to classify legal position for future guidance and compliance by the jail authority.

8. The well known principle of law is that the convict carrying death punishment is not deemed to be 'prisoner under sentence of death' unless death sentence becomes final, conclusive and beyond Judicial scrutiny. Such convict is handed over to the Jail authority to be kept in safe and protected custody with purpose that he may be available for execution of the sentence eventually confirmed. This custody is different from custody of a convict suffering from simple or rigorous imprisonment. Therefore, he cannot be kept in Cell or solitary confinement which itself is a separate punishment.

9. The question about solitary confine merit or keeping condemned prisoner alone under strict guard as provided in various jail manual has been considered in depth by Constitution Bench of the Apex Court in two decisions reported in : 1978

CriLJ1741 (Sunil Batra v. Delhi Administration) and : 1990 CriLJ1810 (Triveniben v. State of Gujarat). In paragraphs 224 and 225 of the Batra's case, it has been held as follows:

224. What then is the nature of confinement of a prisoner who is awarded capital sentence by the Sessions Judge and no other punishment from the time of sentence till the sentence becomes automatically executable Section 366(2) of the Cr. P.C. enables the Court to commit the convicted person who is awarded capital punishment to jail custody under a warrant. It is implicit in the warrant that the prisoner is neither awarded simple or rigorous imprisonment. The purpose behind enacting Sub-section (2) of Section 366 to make available the prisoner when the sentence is required to be executed. He is to be kept in jail custody. But this custody is something different from custody of a convict suffering simple or rigorous imprisonment. He is being kept in jail custody for making him available for execution of the sentence as and when that situation arises. After the sentence becomes executable he may be kept in a cell apart from other prisoners with a day and night watch. But even here, unless special circumstances exist, he must be within the sight and sound of other prisoners and be able to take food in their company.'

225. If the prisoner under sentence of death is held in jail custody, punitive detention cannot be imposed upon him by Jail authorities except for prison offences. When a prisoner is committed under a warrant for jail custody under Section 366(2) Cr. P.C. and if he is detained in solitary confinement which is a punishment prescribed by Section 73, IPC it will amount to imposing punishment for the same offence more than once which would be violative of Article 20(2). But as the prisoner is not to be kept in solitary confinement and the custody in which he is to be kept under Section 30(2) as interpreted by us would preclude detention in solitary confinement, there is no chance of imposing second punishment upon him and therefore, Section 30(2) is not violative of Article 20.

The above view has also been adopted in Triveniben's case (see paras 20 and 21).

10. Thus, from the above discussions of law laid down by the Apex Court the jail authorities are directed not to keep the appellants in Cell or solitary confinement in future under constant guard except for prison offences but in accordance with law and rule laid down in jail manual.

11. So far other part of the prayer is concerned, the learned Counsel for the appellants have submitted that the appellants are either Ex.-MLA or Ex-M.P. or Ex-Minister. They were earlier getting divisional facilities in jail as undertrial prisoner but after conviction, they have been denied the facility even after direction give by the trial Court vide Annexure-A to the supplementary affidavit. For their submission, they have relied upon two letters of the Home Department (Prison), Government of Bihar bearing Letter No. 8/jail dated 6-11-1995 and 23/75-2/Jail dated 11-2-1976.

12. On the other hand, the learned Counsel for the State disputed the submission of the learned Counsel for the appellants and submitted that the appellants have been convicted for serious offence of murder and, therefore, they are not entitled to get higher class facility. It is further submitted that the aforesaid two letters are in respect of undertrial prisoners and not for convicts. In respect of Annexure-A, it is submitted that appellants are not political prisoners. They are convicts in murder cases. Rule 981 of the Jail Manual does not provide for divisional facilities to such convicts.

13. We have gone through the above two letters of the Home Department (Prison) as well as Rule 981 of Bihar Jail Manual. Letter No. 8 dated 6-11-1975 does not apply to these appellants. The letter is in respect of undertrial prisoners. Therefore, appellants being convicts cannot take any advantage of the above letter.

14. So far letter dated 11-2-1976 is concerned, it may be applied to both under trial prisoners as well as convicts. However, in case of convicts it can be extended only under the conditions and procedures laid down in paragraph 4 of the letter. Paragraph 2 of the letter mentions the categories of persons who are entitled to get upper class (divisional facilities). It has been extended to only ex-Ministers, ex-State Ministers or ex-Deputy Ministers including some other persons but not to ex-M.Ps, or ex-MLAs/MLCs. Therefore, appellants Anand Mohan and Prof. Arun

Kumar Singh who are ex-M.P. and ex-MLA are not entitled to take benefit of the above letter.

15. However, appellant Akhlaque Ahmad is said to be ex-State Minister and therefore, he is entitled to get divisional facilities but under the conditions and procedures laid down in paragraph 4 of the letter. The jail authority is directed to take up the matter of providing divisional facility only to appellant Akhlaque Ahmad in accordance with paragraph 4 of the letter in question.

16. So far Annexure-A is concerned, it is not a part of the judgment. Apart from it, the Jail Manual including above letter dated 11-2-1976 does not extend divisional facilities to ex-M.P. or ex-MLC. Therefore, it is of no use to the appellants.

17. However, it is not the end of the matter. The appellants have been lodged in jail for safe keeping. Therefore, in view of observation made in paragraphs 102 and 111 of the decision in Batra's case, they are entitled to get reasonable facilities in daily life like bed, books, newspaper, meeting family members in jail in accordance with Jail Manual like facilities and amenities extended to common prisoners.

18. Relevant portion of Para 102 and 111 of the above judgment are as follows:

102. And once this qualitative distinction between imprisonment and safe keeping within the prison is grasped, the power of the jailor becomes benign. Batra, and others of his like, are entitled to every creature comfort and cultural facility that compassionate safe-keeping implies. Bed and pillow, opportunity to converse with human kind, worship in shrines, if any, games, books newspapers, writing material, meeting family members, and all the good things of life, so long as life lasts and prison facilities exist.

111. The ingenious arguments to keep Batra in solitudinous cell must fail and he shall be given facilities and amenities of common prisoners even before he is 'under sentence of death.

19. A reply to the supplementary affidavit has been filed on behalf of the State with Annexure-1, Annexure-1 is a letter bearing No. 4764 dated 22-11-2007 written by

Superintendent of Special Central Jail, Bhagalpur. It goes to show that all condemned prisoners including these appellants are now getting facilities like other prisoners including game, books, newspaper etc.

20. In the result, with abovementioned directions and observations all Interlocutory Applications filed by three appellants stand disposed of. Let a copy of this order be handed over to Special P.P. for onward transmission to appropriate authorities for compliance and future guidance.

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