

ITEM NO.8+12

COURT NO.3

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRLMP. 17101/2016 in Writ Petition(s) (Criminal) No(s). 132/2016

ASHA RANJAN

Petitioner(s)

VERSUS

STATE OF BIHAR AND ORS.

Respondent(s)

(for seeking shifting of Respondent No.3 to Tihar jail and office report)

WITH

WP (Cr1) No.147 of 2016

(With appln.(s) for exemption from filing O.T.)

Date : 24/10/2016 This application was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE DIPAK MISRA
HON'BLE MR. JUSTICE AMITAVA ROY

For Petitioner(s) Mr. Kislay Pandey, Adv.
Mr. Ankur Gogia, Adv.
Mr. Rishi Kapoor, Adv.
Ms. Amiy Mishra, Adv.
Ms. Manju Jetley, AOR

Mr. Dushyant Dave, Sr. Adv.
Mr. Prashant Bhushan, AOR
Mr. Rohit Kumar Singh, Adv.

For Respondent(s) Mr. Tushar Mehta, ASG
Mr. T.N. Razdan, Adv.
Mr. P.K. Dey, Adv.
Mr. Shamir Shanjanwala, Adv.

Mr. Manish Kumar, Adv.
Mr. Gopal Singh, AOR

Mr. M. Shoeb Alam, AOR
Ms. Fauzia Shakil, Adv.
Mr. Ujjwal Singh, Adv.
Mr. Mojahid Karim Khan, Adv.

Ms. Abha R. Sharma, AOR
Mr. Dhirendra Singh, Parmar, Adv.
Mr. Susheel Tomar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

As the prayer in CRLMP No. 17101 of 2016 in Writ Petition (Crl) No. 132 of 2016 and Writ petition No.147 of 2016 are same, they are taken up together.

We have heard Mr. Dushyant Dave, learned senior counsel along with Mr. Prashant Bhushan and Mr. Kislay Pandey, learned counsel for the petitioners, Mr. Manish Kumar, learned counsel for the State of Bihar, Mr. P.K. Dey, leaned counsel for the Central Bureau of Investigation and Mr. M. Shoeb Alam, learned counsel appearing for the respondent no.3.

Be it stated, one Mr. Chandrakeshwar Prasad has preferred the writ petition under Article 32 of the Constitution of India that his two sons, namely, Girish and Satish were abducted and murdered for which the 3rd respondent was convicted and sentenced to imprisonment for life. The appeal against the said conviction and sentence is pending before the High Court. It is also averred in the petition that the third son of the petitioner, namely, Rajiv Roshan has also been murdered and in the said case the respondent no.3 is an accused.

Mr. Dushyant Dave, learned senior counsel, would contend that the third son has been done to death two days prior to giving evidence in court in respect of trial of his other two brothers. Mr. Pandey, learned counsel who has filed the Criminal Miscellaneous Petition would submit that the 3rd respondent is facing 45 criminal cases which are pending for trial. It is the admitted position that 44 trials are pending in the State of Bihar and one in the State of Jharkhand. It is painfully addressed by learned counsel for the petitioners that if the respondent no.3 is

allowed to remain in the jail of District Siwan (Siwan jail), the distress and the agony of the family of the petitioners would know no bound.

Mr. Dushyant Dave, learned senior counsel has drawn our attention to a two Judge Bench decision in Kailash Chandra Sarkar vs. Rajesh Ranjan Alias Pappu Yadav & Anr. [(2005) 3 SCC 284]. Learned senior counsel commended us to paragraphs 21 and 23 of the judgment which we think profitable to reproduce :-

21. The fundamental right of an undertrial prisoner under Article 21 of the Constitution is not absolute. His right of visitations as also other rights are provided in the Jail Manual. The Respondent as an undertrial prisoner was bound to maintain the internal discipline of the jail. Such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable restrictions on such right. The provisions of the Bihar Jail Manual or other relevant statutes having not been declared unconstitutional, the Respondent was bound to abide by such statutory rules.

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23. Therefore, in our opinion, a convict or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it. If the factual situation requires the transfer of a prisoner from one prison to another; be he a convict or an undertrial. Courts are not to be a helpless bystander when the rule of law is being challenged with impunity. The arms of law are long enough to remedy the situation even by transferring a prisoner from one prison to another, that is by assuming that the concerned Jail Manual does not provide such a transfer. In our opinion, the argument of the learned counsel, as noted above, undermines the authority and majesty of law. The facts narrated hereinabove clearly show that the respondent has time and again flouted the law even while he was in custody and sometimes even when he was on bail. We must note herein with all seriousness that the authorities manning the Beur jail and the concerned doctors of the Patna Medical College

Hospital, for their own reasons, either willingly or otherwise, have enabled the respondent to flout the law. In this process, we think the concerned authorities, especially the authorities at the Beur Central Jail, Patna, are not in a position to control the illegal activities of the respondent. Therefore, it is imperative that the respondent be transferred outside Bihar.

Relaying on the said dictum, it is urged that when a person goes beyond the bounds of law and becomes a history-sheeter, the Court is required to pass appropriate orders, regard being had to the societal necessity. According to Mr. Dishyant Dave and Mr. Prashant Bhushan, if the 3rd respondent is allowed to be a catalyst or a motivator in the crimes by operating from jail, the justice for which the victims in 45 cases are crying would face incurable hazard and jeopardy.

Mr. Pandey, in his turn, would submit that the third respondent has been successfully instrumental in committing the crime while in jail or while he is out from jail even for a minimum period of time.

Learned counsel for the State would submit that the shifting of respondent no.3 from Siwan jail to Tihar jail in Delhi is between this Court and the 3rd respondent and he will not argue on that except stating that presently the trials are going on inside the Siwan jail and, therefore, this Court may take note of the same.

Per contra, Mr. Dushyant Dave, would contend that the trial can be held through video-conferencing so that the rights of an under trial are not affected.

We have noted these submissions so that they can be addressed on the subsequent date.

Issue notice.

As Mr. Manish Kumar has already entered appearance on behalf of the State, no further notice need be issued.

Mr. P.K. Dey, learned counsel accepts notice on behalf of the Union of India and he submits that he does not need to file a reply.

As Mr. Shoeb Alam has entered appearance on behalf of respondent no.3, no further notice need be served.

Copy of the writ petition be served on learned counsel for all the respondents in course of the case.

Reply by the State and the respondent no.3 be filed within four weeks hence. Rejoinder affidavit, if any be filed within three days thereafter.

Let the matter be listed on 28.11.2016 for final disposal

(Gulshan Kumar Arora)
Court Master

(H.S. Parasher)
Court Master