

CASE NO.:  
Appeal (crl.) 1129 of 2004

PETITIONER:  
Kalyan Chandra Sarkar

RESPONDENT:  
Rajesh Ranjan @ Pappu Yadav & Anr.

DATE OF JUDGMENT: 14/02/2005

BENCH:  
N.Santosh Hegde & S.B.Sinha

JUDGMENT:  
J U D G M E N T  
CRIMINAL MISCELLANEOUS PETITION NO. 10422 OF 2004  
IN  
CRIMINAL APPEAL NO. 1129 OF 2004

SANTOSH HEGDE, J.

The respondent herein Rajesh Ranjan @ Pappu Yadav was in judicial custody. Pursuant to the cancellation of bail by this Court, he was charged for offences punishable under Section 302 read with Section 120B of the IPC and was to be kept in Adarsh Jail, Beur, Patna.

When he was supposedly in such judicial custody this Court noticed from Media report that on 4th of May, 2004 he was found addressing an election meeting in a place called Madhepura. Noticing the same, a report was called for from the concerned authorities to apprise this Court on what authority the respondent was found in Madhepura on that day and how he was permitted to address a public meeting.

The reports were received from Home Secretary, State of Bihar, the Investigating Agency (CBI) and the Presiding Officer, Fast Track Sessions Court, Madhepura.

The above reports showed that Fast Track Sessions Court, Madhepura in a pending trial before it had issued a production warrant and pursuant to the said warrant respondent was taken to Madhepura. Report also stated that the said day was declared as holiday, therefore, he was produced before the Jurisdictional Magistrate and was remanded back to custody. The reports did not, however, indicate on what basis the respondent was permitted to address a political meeting while he was still under custody. The averment in the report filed by the CBI shows that the respondent in collusion with the police authorities accompanying him to Madhepura addressed a public meeting and the escort accompanying him took him to various places which the respondent wanted to visit beyond the scope of the production warrant.

The correctness of the issue of the production warrant by Fast Track Court has been directed by us to be investigated by the District & Sessions Judge, Madhepura and the report of the said Judge as well as the explanation given by the Presiding Officer, Fast Track Court is under consideration of this Court and it is not necessary to deal with the same at this stage. Suffice it to note that the respondent had misused the authority of the production warrant issued by the Madhepura Fast Track Court.

During the above inquiry, we also came to know that pursuant to the order of this Court canceling his bail on 12th of March, 2004, we had directed the respondent to be taken into custody but in effect the respondent was never taken to the Jail. When he was arrested after the cancellation of bail and taken to Patna very surprisingly an urgent Medical Board was constituted to examine the respondent which immediately on its constitution and examination of the respondent directed that the respondent required medical treatment at Patna Medical College, hence, directed his stay in the said medical college. Though Patna Medical College Hospital has a separate prisoner cell for their treatment, under the special orders of Doctor concerned and the Superintendent of the hospital, petitioner was accommodated in a special ward. The accommodation provided was not only for the respondent but also for his personal staff and others whose presence with respondent was unauthorised. Reply filed by the Superintendent of Patna Medical College and the concerned Doctor who advised his being kept in a special ward is full of contradiction as to why and who ordered his treatment in a special ward. A separate inquiry is being conducted by this Court in this regard but for the present it will suffice to note that the respondent has sufficient clout or enormous influence for reasons whatever it may be with the administration and staff of the Patna Medical College who are prepared to go out of the way to help the respondent from being kept in the confines of a Jail and in providing unauthorised facilities to the respondent. On coming to know of these illegal facilities granted to the respondent this Court directed his transfer to Beur Jail and to provide him treatment, if need be, in the prisoner's cell there.

In the normal course one would have expected an accused whose bail has been cancelled and who was intending to make an application for grant of bail to behave in a manner not to give any room for the prosecution to contend that he has been misusing the facilities available to him in law while he is in Jail. But it seems, it is not the attitude of the respondent.

Immediately after cancellation of bail by this Court respondent had moved a fresh application before the High Court for grant of bail which came to be allowed by the order of the High Court dated 21st September, 2004 and pursuant to the said order of bail the respondent came to be released from Jail. The said order of the High Court granting bail was challenged before this Court by the complainant and the Investigating Agency (CBI) but what happened in between is worth noticing, on 26th of September, 2004 when the respondent was out of Jail because of the bail granted by the High Court, he instead of getting himself treated for the ailment which is complaining of, it is alleged that he was hosting a party for his co-prisoners in the Jail late in the night of that day. While the authorities in the reports submitted pursuant to the directions issued by this Court did not admit that a party was given by the accused on 26th of September, 2004 they did admit that between 9.30 p.m. to 10.00 p.m. on that night the respondent did unauthorisedly visit the Jail contrary to all restrictions on the entry to Jail under the Jail manual. A complaint in regard to this unauthorised entry of the respondent to the prohibited areas of Jail premises is registered and based on the direction issued by the High Court of Patna an investigation is going on in this regard and some of the Jail authorities have been transferred.

On 1-10-2004 this Court while entertaining appeal of the complainant against the grant of bail by High Court directed the respondent to surrender to custody forthwith. Consequent to which he was taken back to custody.

It has also come on record that while in judicial custody the respondent was using cell phone which was seized from him and he was closely interacting with hard core criminals who were undergoing Jail sentence or are under trial prisoners.

The Respondent No. 1 while was in judicial custody has been accused of hatching a conspiracy to murder one Dimple Mehta in relation where to a First Information Report being Purnea Sadar P.S. Case No. 159/2004 has been lodged on 28.9.2004 under Section 302/120B/34 of the IPC and Section 27 of the Arms Act.

It appears from the order sheet dated 25.2.2003 of the Court of Addl. Session Judge \026 XI, Patna that the informant Shri Kalyan Chandra Sarkar had been given the threat by veteran criminals and, thus, the Senior S.P. of Patna as well as S.P. was directed to make proper security arrangement for him and his family members.

Paragraph 3.12 of the report submitted by the Central Bureau of Investigation in response to this court's order dated 2nd December, 2004 is as under:

"3.12 Investigation further reveals that Shri Dipak Kumar Singh, IAS, the Inspector-General of Prisons had on November 1, 2004, forwarded a Report of the Special Branch dated October 30, 2004 that Shri Rajesh Ranjan @ Pappu Yadav was meeting several visitors in the Administrative Block of Beur Jail (not the specified meeting place for visitors to the Jail) and more significantly, that several such visitors, who entered the Jail under the pretext of meeting him (Shri Pappu Yadav) were actually meeting other dreaded hard-core criminals lodged in the Jail. The Inspector-General of Prisons had also urged the Jain Superintendent to allow interviews with prisoners in strict accordance with the provisions of the Jail Manual."

It is now beyond any controversy that such visits by a large number of persons inside the jail is in violation of the provisions of the Bihar Jail Manual and in particular Rules 623, 626-628 thereof. Even upon his election as a Member of Parliament from Madhepura constituency he was not entitled to have such visitors having regard to Special Rules for Division I Prisoners, Rule 1000 which permits interviews only once every fortnight and Rule 1001 which debar political matters being included in the conversation. These rules also stand violated.

Thus, the material recorded hereinabove shows that the respondent has absolutely no respect for rule of law nor he is in any manner afraid of the consequences of his unlawful acts. This is clear from the fact that some of the acts of the respondent recorded hereinabove have been committed even when his application for grant of bail is pending.

The material on record also shows that the Jail authorities at Beur are not in a position to control the illegal activities of this respondent for whatever reasons it may be.

Shri R.K. Jain, learned senior counsel appearing for the respondent submitted that no fault can be found with the respondent for his having been found in Madhepura because he was summoned by a court. But in our opinion, that by itself would not absolve the conduct of the respondent in addressing a political meeting. Even the fact that the respondent entered the Jail on 26th

of September, 2004 when he was out on bail contrary to law, cannot be denied by the respondent. Since, a criminal complaint in this regard is pending consideration. He could not also deny the fact that on 1st of December, 2004 large number of unauthorized persons were found visiting him in the prohibited area of the Jail but his answer to this was that the respondent being an elected member of the Parliament, he had every right to interact with his supporters and if there is any law contrary to such interaction by an elected representative the same should be declared ultra vires. He also submitted being a member of Parliament he belongs to a superior category of prisoner, therefore, the normal rules of Jail manual in regard to right of visitation does not apply to him. These submissions of the learned counsel are not supported by any law, on the contrary has remained to be an argument without any basis. The learned counsel then seriously contended a transfer of the respondent from Beur Jail would violate his fundamental right as declared by this Court in the case of Sunil Batra (II) vs. Delhi Administration (1980 (3) SCC 488), Francis Coralie Mullin vs. Administration, Union Territory of Delhi & Ors. (1981(1) SCC 608) & Inder Singh & Anr. vs. The State (Delhi Administration) (1978 (4) SCC 161).

We have perused the above judgments which have been delivered on the facts of those cases.

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.

In D. Bhuvan Mohan Patnaik and Others Vs. State of Andhra Pradesh and Others [(1975) 3 SCC 185], this Court observed that a convict has no right to dictate whether guards ought to be posted to prevent escape of prisoners as the same causes no interference with the personal liberty or their lawful preoccupations.

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.

The matter relating to inter-state transfer of prisoners is governed by the Prisoners Act. Section 3 of the said Act reads, thus:

"(1) "prison" means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include \026

(a) any place for the confinement of prisoners who are exclusively in the custody of the police

(b) any place specially appointed by the State Government under Section 541 of the Code of Criminal Procedure, 1882; or

(c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail;"

A bare perusal of the aforementioned provision would clearly go to show that there does not exist any provision for transfer of an under-trial prisoner. The prayer for inter-State transfer of a detenu came up for consideration before this Court in David Patrick Ward and Another Vs. Union of India and Others [(1992) 4 SCC 154] where in a preventive detention matter the petitioner therein was lodged in Naini Jail at Allahabad. The petitioner made a prayer for his transfer to Tihar Jail, Delhi inter alia on the ground that the Consular Officers had the right to visit a national of the sending State who is in prison or under detention in terms of Article 36 of the Vienna Convention on Consular Relations. The authorities of the Naini Jail having indicated that whenever visits are desired by the officers of the British Consular Relations proper arrangement therefor would be made, this Court refused to concede to the said request. But, this decision is a pointer to the fact that in an appropriate case, such request can also be made by an undertrial prisoner or a detenu and there being no statutory provisions contrary thereto, this Court in exercise of its jurisdiction under Article 142 of the Constitution of India may issue necessary direction.

While it is true that this Court in exercise of its jurisdiction under Article 142 of the Constitution would not pass any order which would amount to supplanting substantive law applicable to the case or ignoring express statutory provisions dealing with the subject as has been held in Supreme Court Bar Association Vs. Union of India [(1998) 4 SCC 409] but it is useful to note the following :

"48\005Indeed, these constitutional powers cannot, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in a statute dealing expressly with the subject."

It may therefore be understood that, the plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties\005and are in the nature of supplementary powers\005[and] may be put on a different and perhaps even wider footing than ordinary inherent powers of a court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents 'clogging or obstruction of the stream of justice. [See Supreme Court Bar Association (supra)]

In Union Carbide Corporation Vs. Union of India [(1991) 4 SCC 584], a Constitution Bench of this Court stated the law thus :

83. Prohibitions or limitations or provisions contained in ordinary laws cannot, ipso facto, act as prohibitions or limitations on the constitutional powers under Article 142. Such prohibitions or limitations in the statutes might embody and reflect the scheme of a particular law, taking into account the nature and status of the authority or the court on which conferment of powers is limited in some appropriate way is contemplated. The limitations may not necessarily reflect or be based on any fundamental considerations of public policy. Sri Sorabjee, learned Attorney General, referring to Garg case<sup>18</sup>, said that limitation on the powers under Article 142 arising from "inconsistency with express statutory provisions of substantive law" must really mean and be understood as some express prohibition contained in any substantive statutory law. He suggested that if the expression 'prohibition' is read in place of 'provision' that would perhaps convey the appropriate idea. But we think that such prohibition should also be shown to be based on some underlying fundamental and general issues of public policy and not merely incidental to a particular statutory scheme or pattern. It will again be wholly incorrect to say that powers under Article 142 are subject to such express statutory prohibitions. That would convey the idea that statutory provisions override a constitutional provision. Perhaps, the proper way of expressing the idea is that in exercising powers under Article 142 and in assessing the needs of "complete justice" of a cause or matter, the apex Court will take note of the express prohibitions in any substantive statutory provision based on some fundamental principles of public policy and regulate the exercise of its power and discretion accordingly. The proposition does not relate to the powers of the Court under Article 142, but only to what is or is not 'complete justice' of a cause or matter and in the ultimate analysis of the propriety of the exercise of the power. No question of lack of jurisdiction or of nullity can arise."

Despite some criticisms at some quarters as regard the correctness of the decision in Union Carbide (supra), we may notice that in Mohd. Anis Vs. Union of India [(1994) Supp 1 SCC 145] it was held that the power of the Supreme Court under Article 142 (1) cannot be diluted by Section 6 of the Delhi Special Police Establishment Act, 1946.

In State of Karnataka Vs. State of Andhra Pradesh and Ors. [(2000) 9 SCC 572], this Court held:

"It is also true that Article 142 confers wide powers on this Court to do complete justice between the parties and the Court can pass any order or issue any direction that may be necessary"

In State of West Bengal Vs. Sampat Lal [(1985) 2 SCR 256], this Court held:

"In our considered opinion, s. 6 of the Act does not apply when the Court gives a direction to the CBI to conduct an investigation and counsel for the parties rightly did not dispute this position. In this view"

Article 142 vests the Supreme Court with a repository of discretionary power that can be wielded in appropriate circumstances to deliver "complete" justice in a given case. Only Bangladesh (Article 104) and Nepal (Article 88(2)) include similar provisions in their Constitutions.

Article 142 is an important constitutional power granted to this Court to protect the citizens. In a given situation when laws are found to be inadequate for the purpose of grant of relief, the Court can exercise its jurisdiction under Article 142 of the Constitution of India. In *Ashok Kumar Gupta and Another v State of U.P. and Others* (1997) 5 SCC 201 at 250], this Court held :

"[t]he phrase "complete justice" engrafted in Article 142(1) is the word of width couched with elasticity to meet myriad situations created by human ingenuity or cause or result of operation of statute law or law declared under Articles 32, 136 and 141 of the Constitution."

Taking into account the aforementioned legal-framework surrounding the exercise of powers under Article 142, this Court in *Delhi Judicial Services Association Vs. State of Gujarat* [(1991) 4 SCC 406 at p. 462] observed:

"50\005[t]he inherent power of this Court under Article 142 coupled with the plenary and residuary powers under Articles 32 and 136 embraces power to quash criminal proceedings pending before any court to do complete justice in the matter before this Court."

Furthermore, in *Ruchi Agarwal Vs. Amit Kumar Agrawal & Ors.* [2004 (8) Supreme 525], this Court ordered the quashing of an FIR where there was the continuation of the criminal proceeding "would be an abuse of the process of the court" [See also *Mohd. Shamim & Ors. v Smt. Nahid Begum and Anr.* (2005) 1 SCALE 109 at p. 113]

In exercise of its powers under this Article, this Court in *B.N. Nagarajan and Others Vs. State of Mysore and others* [AIR 1966 SC 1942] has also observed that it can grant relief to "appellants [who] have not prosecuted their appeals" but who "in order to do complete justice [\005] should also have the benefit of the judgment given by [the Court]."

In *Union of India and Others Vs. M. Bhaskar and Others* [(1996) 4 SCC 416 at p. 423], this Court has even interpreted the constitutional provision to mean that benefits of a judgment, where appropriate, can even be extended to all similarly placed persons irrespective of whether they are party to the proceedings or not. [See also *E.S.P. Rajaram and Ors. v Union of India and Ors.*, (2001) 2 SCC 186 at p. 193; and, *Deb Narayan Shyam v State of West Bengal*, 2004 (10) SCALE 124 at p.145].

In criminal cases, the Court in *Anil Rai v State of Bihar* [(2001) 7 SCC 318 at p.342], albeit not expressly referring to Article 142, has ruled that a non-appealing accused whose case was identical to that of the appellants was also entitled to the benefit of altered conviction and sentence. A similar ruling is discerned from *Dandu Lakshmi Reddy v State of A.P.* [(1999) 7 SCC 69 at p.76.].

Finally, as observed from the decisions in *Vishaka v State of Rajasthan* [(1997) 6 SCC 241] and *Vineet Narain v Union of India* [(1998) 1 SCC 226], directions issued by this Court under Article 142 form the law of the land in the absence of any substantive law

covering that field. Such directions "fill the vacuum" until the legislature enacts substantive law.

In *Zahira Habibullah Sheikh and Another Vs. State of Gujarat and Others* [(2004) 5 SCC 353], this Court held that the power to transfer a criminal trial from one State to another is within the jurisdiction of this Court under Article 142 of the Constitution. Shri Jain also contended that this Court has no jurisdiction to initiate a suo moto action to transfer the respondent exercising the power under Article 142 of the Constitution. Considering this argument of the learned counsel, we notice that during his long tenure in custody, the respondent has violated the law only two or three times and that he is now a changed man, hence a further opportunity should be given to him before we decide to transfer him from Beur jail. Here, we may remind Mr. Jain that one of the incidents leading to threatening of the I.G. (Prisons) took place after we initiated this inquiry. In that background, we do not think either the number or the gravity of violations committed by the respondent would permit us to accede to such humanitarian plea.

Learned counsel for the respondent contended that if the respondent is transferred out of Bihar, it would defeat his right for a fair trial in as much as he will not be in a position to attend the proceedings and instruct his counsel effectively. He also contended that respondent has a right in law to be present in the trial against him. It was his further contention that sending the respondent from Bihar would keep him away from his family which would be a negation of his basic human right.

It is true in a normal trial the Criminal Procedure Code requires the accused to be present at the trial but in the peculiar circumstances of this case a procedure will have to be evolved it will not be contrary to the rights given to an accused under the Criminal Procedure Code but at the same time protect the administration of justice. Therefore, as held by this Court in the case of *State of Maharashtra vs. Dr. Praful B. Desai*, (2003 (4) SCC 601) and *Sakshi vs. Union of India & Ors.* (2004 (5) SCC 518), we think the above requirement of the Code could be made by directing the trial by video conferencing facility. In our opinion, this is one of those rare cases wherein a frequent visit from the place of detention to the court of trial in Bihar would prejudice the security of both the respondent and others involved in the case. Apart from being a heavy burden on the State exchequer.. It is in this background the CBI has submitted that the prisons at Chennai, Palayamkottai Central Jail, Vellore Central Jail, Coimbatore Central Jail all in the State of Tamilnadu and Mysore Central Jail in the State of Karnataka has video conferencing facilities. Therefore the respondent can be transferred to any one of those Jails.

While it is true that it is necessary in the interest of justice to transfer the respondent out of State of Bihar, we are required to keep in mind certain basic rights available to the respondent which should not be denied by transferring the respondent to any one of the Jail suggested by CBI. It will cause some hardship to the wife and children of the respondent who we are told are normally residents of Delhi. His wife being Member of Parliament and two young children going to school in Delhi. Taking into consideration the overall fact situation of the case, we think it appropriate that the respondent be transferred to Tihar Jail at Delhi and we direct the seniormost officer-in-charge of Tihar Jail to make such arrangements as he thinks is necessary to prevent the reoccurrence of the activities of the respondent of the nature referred to hereinabove and shall allow no special privileges to him unless the same is entitled in law. His conduct during his custody in Tihar Jail will specially be monitored and if necessary be reported to this

Court. However, the respondent shall be entitled to the benefit of the visit of his family as provided for under the Jail manual of Tihar. He shall also be entitled to such categorization and such facilities available to him in law.

We also direct that the trial of the case in Patna shall continue without the presence of the appellant by the court dispensing such presence and to the extent possible shall be conducted with the aid of video conferencing. However, in the event of the respondent making any application for his transfer for sole purpose of being present during the recording of the statement of any particular witness same will be considered by the learned Sessions Judge on its merit and if he thinks it appropriate, he may direct the authorities of Tihar Jail to produce accused before him for that limited purpose. This, however, will be in a rare and important situation only and if such transfer order is made the respondent shall be taken from Tihar Jail to the court concerned and if need be detained in appropriate Jail at the place of trial and under the custody and charge of the police to be specially deputed by the authorities of Tihar Jail who shall bear in mind the factual situation in which the respondent has been transferred from Patna to Delhi.

As stated above the respondent shall be entitled for the visitation rights of his family members as provided under the Tihar Jail manual. It shall be strictly followed and will be confined to only such persons who are entitled for such visit.

In compliance of this order, we direct the State of Bihar to transfer the respondent from Beur Jail, Patna to Tihar Jail, Delhi and hand over the prisoner to the authorized officer by prior intimation to Tihar Jail authorities of his arrival in Delhi. The authorities escorting the respondent from Patna to Delhi shall strictly follow the rules applicable to the transit prisoners and no special privilege should be shown, any such act if proved, will be taken serious note of. The respondent shall be transferred to Tihar Jail from Patna within one week from the date of this order. A copy of this order shall forthwith be communicated to the Home Secretary, Government of Bihar, Superintendent of Beur Adarsh Jail and the Inspector General, Prisons, Tihar Jail. We further direct all authorities civil and judicial shall act in aid of this order of this Court as contemplated under Article 144 of the Constitution of India.