

A RE : INHUMAN CONDITIONS IN 1382 PRISONS

I.A. No. 26542 of 2018

IN

Writ Petition (Civil) No. 406 of 2013

B DECEMBER 13, 2018

**[MADAN B. LOKUR, S. ABDUL NAZEER AND
DEEPAK GUPTA, JJ.]**

C *Prisons Act, 1894 – Rights of prisoners on death row – Held:*
Convict on death row is entitled to have meetings with his immediate family members, lawyers or even mental health professionals – Such convict is entitled to move within the confines of the prison like any other convict undergoing rigorous imprisonment, however, certain restrictions may be necessary for security reasons, but even then, it would be necessary to comply with natural justice provisions with an entitlement to file an appeal – All other issues left open for consideration by the Justice Amitava Roy Committee – Committee to look into the issues raised in the present application in greater depth – Constitution of India – Arts. 14 and 21.

D
E *Prisons Act, 1894 – s.30 – Prisoner, when a death row prisoner – Held: A prisoner can be said to be a death row prisoner when his sentence is beyond judicial scrutiny and would be operative without any intervention from any other authority.*

Sunil Batra v. Delhi Administration and others (1978)
4 SCC 494 : [1979] 1 SCR 392 – followed.

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G *Sunil Batra (II) v. Delhi Administration (1980) 3 SCC 488 : [1980] 2 SCR 557 ; Kishore Singh Ravinder Dev v. State of Rajasthan (1981) 1 SCC 503 : [1981] 1 SCR 995 ; Frances Coralie Mullin v. Administrator, Union Territory of Delhi (1981) 1 SCC 608 : [1981] 2 SCR 516 ; Rakesh Kaushik v. B.L. Vig (1980) Suppl. SCC 183 : [1980] 3 SCR 929 – relied on.*

Case Law Reference

[1979] 1 SCR 392	followed	Para 5
[1980] 2 SCR 557	relied on	Para 6

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[1981] 1 SCR 995 **relied on** **Para 6** **A**
[1980] 3 SCR 929 **relied on** **Para 8**
[1981] 2 SCR 516 **relied on** **Para 10**

CIVIL ORIGINAL JURISDICTION : Interlocutory Application
 No. 26542 of 2018 in Writ Petition (Civil) No. 406 of 2013 **B**

(Under Article 32 of the Constitution of India)

Gaurav Agrawal, A.C.

A. N. S. Nadkarni, ASG, Ms. Aparna Bhat, Ms. Shivangi Singh,
 Yash V., R. M. Bajaj, Ms. Binu Tamta, R. Bala, Ms. Sushma Manchanda, **C**
 Ms. Suhasini Sen, Ms. Aarti Sharma, G. S. Makker, B. V. Balram Das,
 Raghavendra Mohan Bajaj, Guntur Prabhakar, Ms. Perna Singh, Anil
 Shrivastav, Rituraj Biswas, Satyendra Kumar Srivastav, Shuvodeep Roy,
 Somnath Banerjee, Atul Jha, Sandeep Jha, Dharmendra Kumar Sinha,
 Ms. Hemantika Wahi, Ms. Jesal Wahi, Ms. Puja Singh, Tapesk Kumar **D**
 Singh, Kumar Anurag Singh, Aditya Pratap Singh V.N. Raghupathy,
 Lagnesh Mishra, Parikshit P. Angadi, C. K. Sasi, Ms. Nayantara Roy,
 Ms. Deepa M. Kulkarni, Nishant R. Katneshwarkar, Leisangthem
 Roshmani Kh., Maibam Babina, Ms. Anupama Ngangom, Ranjan
 Mukherjee, K. V. Kharlyngdoh, Daniel Stone Lyngdoh, K. N.
 Madhusoodhanan, Ms. Nitya Madhusoodhanan, T. G. Narayanan Nair, **E**
 Rajesh Srivastava, Mrs. K. Enatoli Sema, Amit Kumar Singh Anindita
 Pujari, Ms. Aarti Krupa Kumar, Amit Sharma, Ankit Raj, Ms. Indira
 Bhakar, Ms. Nidhi Jaswal, Ms. Ruchi Kohli, Ms. Aruna Mathur, Avneesh
 Arputham, Ms. Anuradha Arputham, Ms. Geetanjali for M/s Arputham
 Aruna & Co., Shuvodeep Roy, Rituraj Biswas, M. Yogesh Kanna, Mrs. **F**
 Sujatha Bagadhi, S. Partha Sarathi, P. Venkat Reddy, Prashant Tyagi for
 M/s Venkat Palwai Law Associates, Rajan Kumar Chourasia, Jitendra
 Kumar Tripathi, Harish Pandey, Ms. Rachana Srivastava, Ms. Monika,
 Suhaan Mukerji, Ms. Astha Sharma, Amit Verma, Abhishek Manchanda,
 Ms. Kajal Dalal, Ms. Dimple Nagpal for M/s PLR Chambers, K. V.
 Jagdishvaran, Mrs. G. Indira, V. G. Pragasam, S. Prabu **G**
 Ramasubramanian, S. Manuraj, T. N. Rama Rao, Hitesh Kumar Sharma,
 Mrs. T. Veera Reddy, Advs. for the appearing parties.

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A The Order of the Court was passed by

MADAN B. LOKUR, J

B 1. This application for directions and declarations has been filed in which it is prayed, *inter alia*, that prisoners sentenced to death by any court have a right to be treated at par with other convicted prisoners and should be provided all similar facilities as are provided to other prisoners. It is also prayed that solitary confinement of prisoners on death row or their separate and cellular confinement be struck down as unconstitutional.

C 2. We do not think it necessary to go into all the issues raised in the application but find it necessary to place in perspective certain aspects of the rights of prisoners.

D 3. One of the important questions before us is: When could it be said that a convict is under the sentence of death? Could it be said that when the Trial Court convicts a prisoner and sentences him to death, then that prisoner is a death row prisoner? Or, could it be said that when the death sentence is beyond judicial scrutiny, that is after the sentence is upheld by this Court, the mercy petition is rejected and a challenge to the rejection is dismissed, then the prisoner is a death row prisoner?

E 4. It was submitted by the learned *Amicus* that even after the convict is sentenced to death by the Trial Court, he is entitled to be treated and dealt with like any other convicted prisoner and is therefore entitled to the opportunity to work on voluntary basis. The convict is also entitled to other facilities such as participating in educational programmes, vocational training and skill development as well as other institutional facilities available to other convicted prisoners.

F 5. The issue must be considered in a humanitarian and compassionate manner. That apart the law laid down by this Court in ***Sunil Batra v. Delhi Administration and others***¹ is quite clear. It has been held in paragraph 223 of the Report that a prisoner under sentence of death can only mean a prisoner whose sentence of death has become final, conclusive and infeasible and which cannot be annulled and voided by any judicial or constitutional procedure. In other words, a prisoner can be said to be a prisoner on death row when his sentence is beyond judicial scrutiny and would be operative without any intervention from any other authority. Till then, such a prisoner cannot be said to be under a sentence of death in the context of Section 30 of the Prisons Act,

H ¹(1978) 4 SCC 494

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1894. That being the position, as also mentioned in paragraph 101 of the Report, a prisoner is entitled to every creature comfort and facilities such as bed and pillow, opportunity to commerce with human kind, writing material, newspapers, books, meeting with family members etc. A

6. The above view has been reiterated in *Sunil Batra (II) v. Delhi Administration*² in paragraph 42 of the Report and in *Kishore Singh Ravinder Dev v. State of Rajasthan*³ in paragraphs 10 and 13 of the Report. In paragraph 10 of the Report in *Kishore Singh*, it was held that there is no difference between a separate cell and solitary confinement. Therefore, a convict on death row is entitled to move within the confines of the prison like any other convict undergoing rigorous imprisonment. However, certain restrictions may be necessary for security reasons, but even then, it would be necessary to comply with natural justice provisions with an entitlement to file an appeal. B C

7. Paragraph 10 reads as follows:

“10. We cannot agree that either the Section or the Rules can be read in the absolutist expansionism the prison authorities would like us to read. That would virtually mean that prisoners are not persons to be dealt with at the mercy of the prison echelons. This country has no totalitarian territory even within the walled world we call prison. Articles 14, 19 and 21 operate within the prisons in the manner explained in *Sunil Batra (I)* [Under Article 32 of the Constitution], by a Constitution Bench of this Court. It is significant that the two opinions given separately in that judgment agree in spirit and substance, in reasoning and conclusions. Batra in that case was stated to be in a separate confinement and not solitary cell. An identical plea has been put forward here too. For the reasons given in *Sunil Batra (I) case* [Under Article 32 of the Constitution] we must overrule the extenuatory submission that a separate cell is different from solitary confinement. **The petitioners will, therefore, be entitled to move within the confines of the prison like others undergoing rigorous imprisonment.** If special restrictions of a punitive or harsh character have to be imposed for convincing security reasons, it is necessary to comply with natural justice as indicated in *Sunil Batra (J) case* [Under Article 32 of the Constitution]. Moreover, there must be an appeal not from Caesar to Caesar, but from a D E F G

²(1980) 3 SCC 488

³(1981) 1 SCC 503

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A prison authority to a judicial organ when such treatment is meted out.” (Emphasis supplied by us).

8. In paragraph 13 of the Report in *Kishore Singh*, it was directed that the rulings of this Court in the cases of *Sunil Batra* and *Rakesh Kaushik v. B.L. Vig*⁴ on prison administration be converted into rules and instructions forthwith so that violation of prisoners’ freedom can be avoided and habeas corpus litigation may not proliferate. Paragraph 13 of the Report reads as follows:

“13. We find that the old rules and circulars and instructions issued under the Prisons Act are read incongruously with the Constitution especially Article 21 and interpretation put upon it by this Court. **We, therefore, direct the State Government of Rajasthan — and indeed, all the other State Governments in the country — to convert the rulings of this Court bearing on Prison Administration into rules and instructions forthwith so that violation of the prisoners’ freedoms can be avoided and habeas corpus litigation may not proliferate.** After all, human rights are as much cherished by the State as by the citizen.” (Emphasis supplied by us).

9. In our opinion, the decisions of this Court have quite clearly defined when a prisoner could be said to be on death row and have also taken care of the rights of prisoners on death row as well as those who are a security risk. No further elucidation is necessary.

10. With regard to the entitlement of a prisoner on death row to have meetings and interviews with his lawyers or members of his immediate family or even mental health professionals, we are of opinion that such meetings and interviews should be permitted. We follow the view expressed by this Court in *Frances Coralie Mullin v. Administrator, Union Territory of Delhi*⁵. In paragraph 8 of the Report, it was specifically noted by this Court, after referring to the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights that as a part of the right to live with human dignity, a prisoner is entitled to have interviews with members of his family and friends and no prison regulation and procedure to the contrary can be upheld as being constitutionally valid under Articles 14 and 21 of the Constitution unless it is reasonable, fair and just. Similarly, there cannot

⁴1980 Supp SCC 183

⁵(1981) 1 SCC 608

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be any doubt that a prisoner must be entitled to have discussions with his lawyers so that he has effective legal representation and access to justice as well as remedies for justice. In our opinion, the law laid down by this Court in *Frances Coralie Mullin* would be equally applicable to death row prisoners for meeting mental health professionals for a reasonable period of time with reasonable frequency so that their rights can be adequately protected at all stages.

11. We make it clear that we have only reiterated the law laid down by this Court over several decades and which is based not only on the provisions of our Constitution but is also in conformity with international instruments. As held by this Court, the rights of prisoners as enunciated by this Court would be available not only in a particular State but would be available to them in all the States and Union Territory Administrations across the country. Accordingly, the State Governments and Union Territory Administrations must modify the prison manuals, regulations and rules accordingly.

12. We request the Justice Amitava Roy Committee to look into all the issues raised in the application in greater depth in addition to its Terms of Reference.

13. Since we are leaving all other issues open for consideration by the Justice Amitava Roy Committee, the applicant is at liberty to assist the Justice Amitava Roy Committee in this regard.

14. The application is disposed of.