

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2024

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CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.28839 of 2024

P.Ananda Kumar

... Petitioner

Vs.

1.The Director General of Police (Prison),
Radha Krishnan Salai Road,
Mylapore, Chennai.

2.The Deputy Inspector General of Prison,
Puzhal-II, Chennai.

3.The Superintendent of Prison,
Puzhal-II, Chennai.

4.The Secretary,
Tamil Nadu and Puducherry Bar Council,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, direction based on the petitioner representation dated 21.09.2024.



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For Petitioner : Mr.S.Kasirajan

For R1 to R3 : Mr.E.Raj Thilak
Additional Public Prosecutor

For R4 : Mr.C.K.Chandrasekar
Standing Counsel
[For Bar Council of Tamil Nadu]

: Mr.R.Krishna Kumar
Secretary [For MHAA]

ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The Writ of Mandamus has been instituted to consider the representation submitted by the petitioner on 21.09.2024.

2. The petitioner is a practising Advocate in the Madras High Court and District Courts. The writ petition was instituted to ensure the facilities to be granted to the unconvicted criminal prisoners and civil prisoners in the matter of interviews and letters.

3. Beyond that it is brought to the notice of this Court that the Prison Authorities have made certain arrangements and improved the facilities



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pursuant to the meeting with the official of the Central Prison, Puzhal, Chennai held on 25.07.2023 at 05:00 P.M. at the Conference Meeting Hall, High Court Heritage Building, Madras.

4. Pursuant to the minutes, certain facilities inside the prison are also provided by the Prison Department. However, frequent complaints have been received by the Courts that the legal practitioners are not permitted to communicate with the undertrial prisoners as per the procedures contemplated under the Tamil Nadu Prison Rules, 1983.

5. In this context, it is relevant to consider Rule 541 of the Tamil Nadu Prison Rules, 1983, which reads as under;

“541. Facilities to be granted to unconvicted criminal prisoners and civil prisoners in the matter of interviews and letters.— (1) Unconvicted criminal prisoners and civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise communicating either orally or in writing, with their relatives, friends, and legal advisers.

[Provided that in respect of accused or under-trial prisoners under the Terrorists and Destructive (Prevention) Activities Act, 1987 (Central Act 28 of



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1987) the relatives and friends, who desire to interview them, shall produce a certificate from the concerned village Administrative Officer or Member of Legislative Assembly of the constituency concerned as to the residence and relationship to such accused or under-trial prisoners.]

(2) Every interview between an unconvicted prisoner and his legal adviser shall take place within sight, but out of hearing of a prison official. A similar concession shall be allowed by the Superintendent in the case of an interview with any near relative of the unconvicted prisoner.

(3) When any person desires an interview with an unconvicted criminal prisoner in the capacity of the prisoner's legal adviser, he shall apply in writing, giving his name and address and stating to what branch of the legal profession he belongs and he must satisfy the Superintendent that he is the bona fide legal adviser of the prisoners with whom he seeks an interview and that he has legitimate business with him.

(4) Any bona fide confidential written communication prepared by an unconvicted criminal prisoner as instructions to his legal adviser may be delivered personally to such legal advisor or to his



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authorised nominee without being previously examined by the Superintendent. For the purpose of this rule, the term, 'legal adviser' means a legal practitioner within the meaning of Legal Practitioners Act, 1879 (Central Act XVIII of 1879).

(5) Civil prisoners may see their friends, relations and legal advisers at such time and under such restrictions as the Superintendent may appoint and the presence of a prison officer shall not be necessary. No Visitor shall be allowed to take within the prison any sweet meats or other eatables without the express permission of the Superintendent.”

6. It is needless to state that an undertrial prisoner cannot be compared with the convicted prisoner. Therefore, the Prison Manual contemplates separate facilities to be granted to unconvicted prisoners and civil prisoners. Reasonable facilities as contemplated under the Prison Manual must be provided by the Prison Authorities and the Government of Tamil Nadu. Lapses, in this regard must be viewed seriously, in view of the recent judgment of the Hon'ble Supreme Court of India in the case of ***Sukanya Shantha vs. Union of India***¹, wherein, the rights of the prisoners are

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elaborately considered by the Hon'ble Apex Court of India. Several guidelines are issued in order to protect the Fundamental Rights of the prisoners inside the prison under various enactments.

7. Rule 541 (2) of the Tamil Nadu Prison Rules, 1983 enumerates that “Every interview between an unconvicted prisoner and his legal adviser shall take place within the sight but out of hearing of a prison official. A similar concession shall be allowed by the Superintendent in the case of an interview with any near relative of the unconvicted prisoner”. The object of the rule is self-evident that the interview must be permitted within the sight of the prison authorities but out of hearing of the prison official.

8. In this context, learned Additional Public Prosecutor appearing on behalf of the respondents 1 to 3 would submit that facilities are already provided and the telephone conversation, which was in existence were removed and now the legal practitioners are permitted to have conversation with the undertrial prisoners directly through facilities already provided.

9. However, Mr.R.Krishna Kumar, Secretary of Madras High Court



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Advocates Association and Mr.S.Kasirajan learned counsel for the petitioner

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would submit that the facilities prevailing as of now is found to be inconvenient to the legal practitioners to converse with the undertrial prisoners. Certain modifications are required, so as to ensure free and effective conversation with the undertrial prisoners. The arrangements presently available is causing inconvenience to the legal practitioners, since they have to bow down steeply and speak with the prisoners, which they found it very difficult and the communications are not properly reaching to the undertrial prisoners, allowed in the opposite side of the barricade provided. Therefore, suitable alternations to be made in the barricade enabling the legal practitioners to converse with the undertrial prisoners either by standing near the barricade or in sitting posture. The Prison Authorities must ensure that the interview between an unconvicted prisoner and legal adviser shall take place out of hearing of the Prison Official.

10. Though the learned Additional Public Prosecutor made a submission that the facilities are already made available, it is disputed by Mr.R.Krishna Kumar, Secretary of Madras High Court Advocates Association and Mr.S.Kasirajan, learned counsel for the petitioner. Thus, we



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direct the 1st respondent to ensure that the facilities as contemplated under the Prison Manual must be provided effectively to the legal practitioners and the undertrial prisoners enabling them to get legal assistance, which is a basic right enunciated under the Constitution of India. Such a facility must be ensured in all prisons across the State of Tamil Nadu.

11. Rule 541(4) of the Tamil Nadu Prison Rules, 1983 emphasis that “Any bonafide confidential written communication prepared by an unconvicted criminal prisoner as instructions to his legal adviser may be delivered personally to such legal adviser or to his authorised nominee without being previously examined by the Superintendent. For the purpose of this rule, the term ‘legal adviser’ means legal practitioner within the meaning of Legal Practitioners Act, 1879 (Central Act XVIII of 1879)”.

12. The purpose and object of the Rules is to ensure that the harassment, ill-treatment, if any caused to the undertrial prisoners inside the prison, it is to be communicated to the legal adviser for the purpose of initiation of appropriate actions. It is a valuable right conferred to the undertrial prisoners, which cannot be taken away or diluted by the Prison



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Authorities at any circumstances. In the event of not protecting the rights of the undertrial prisoners inside the prison, there is a possibility of abuse of powers by the prison authorities, which is commonly made before the Courts in many number of cases.

13. The Tamil Nadu Prison Rules, 1983 contemplates procedures to be followed by the Prison Authorities, and it is to be scrupulously followed. In the event of any violation, the Authority, who committed such violation is liable for prosecution and disciplinary proceedings under the Tamil Nadu Government Servants Conduct Rules, 1973 or under relevant Law.

14. Sub Rule 4 to Rule 541 must be effectively implemented by the Prison Authorities, so as to ensure that the undertrial prisoners are able to express and communicate their difficulties, violations, harassment, ill-treatment or otherwise, if any occurred inside the prison. It is made clear that the purpose and the object of the Rules at no circumstances be diluted, since the Hon'ble Apex Court in the judgment cited supra reiterated the rights of the prisoners elaborately and any violation by the Prison Authorities are to be viewed seriously.



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15. Regarding other facilities sought for by the petitioner and the Madras High Court Advocates Association, it is made clear that the legal practitioners must be treated with dignity by the Prison Officials and equally the legal practitioners, visiting the prisoners in prison also must respect the Prison Authorities / Public Servants, while performing their duties in a lawful manner.

16. Mutual respect between the legal practitioners and Prison Authorities are of paramount importance to vindicate the grievances of the prisoners before the Court of Law. Both the Prison Authorities and the legal practitioners are working in tandem for the benefit of the prisoners and to redress their grievances and to defend their cases before the Courts in the manner known to Law. In the process of defending the case and while securing instructions and conversing with the prisoners, mutual respect between the Prison Authorities and legal practitioners are to be maintained. Further, the Prison Authorities are expected to provide all reasonable facilities to the legal practitioners as contemplated under the Prison Manual and considering present day needs and requirements.



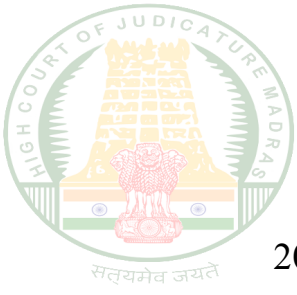
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17. Since the Prison Rules were notified in the year 1983, several developments took place thereafter. Therefore, the facilities provided should be on par with the current day prevailing situation, enabling the legal practitioners to perform their duties peacefully and effectively to defend the case of the prisoners in the manner contemplated under Law.

18. The respondents are directed to comply with the above directions as clarified by us in the aforementioned paragraphs and submit a compliance report before this Bench in form of an affidavit stating about the facilities already provided and the facilities proposed to be provided for the benefit of the legal practitioners and the undertrial prisoners. Facilities proposed to be provided must be provided in a time bound manner, which is to be stated in the compliance report.

19. With the above observations and directions, the Writ Petition stands disposed of. No costs.



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20. Registry is directed to list the matter before this Bench on 29.10.2024, under the caption “For Reporting Compliance”.

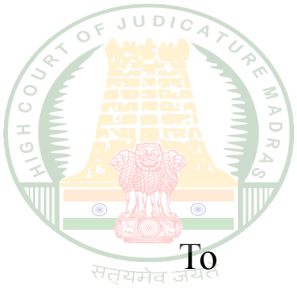
[S.M.S., J.] [V.S.G., J.]
15.10.2024

Index : Yes
Neutral Citation : Yes
Speaking order / Non-speaking order

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Note: 1. Registry is directed to list the matter before this Bench on 29.10.2024, under the caption “For Reporting Compliance”

2. Registry is directed to issue order copy on 18.10.2024.



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To

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