



IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (DIRECTION) NO. 4715 of 2021

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	Yes
2	To be referred to the Reporter or not ?	Yes
3	Whether their Lordships wish to see the fair copy of the judgment ?	No
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	No

NARAYANSAI AASHARAM HARPALANI

Versus

THE STATE OF GUJARAT & ORS.

Appearance:

MR ASHISH M DAGLI(2203) for the Applicant(s) No. 1

NOTICE SERVED for the Respondent(s) No. 2,3

MR HARDIK A DAVE, PP WITH MR. H K PATEL, APP for the Respondent(s) No. 1

CORAM:HONOURABLE MR. JUSTICE HASMUKH D. SUTHAR

Date : 16/08/2024

ORAL JUDGMENT

1. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed to provide him a personal laptop/ ipad/Computer with word processor facility and printer and permit him to put the views of the same within the time slot fixed by the



authority and also prayed to quash and set aside/modify the communication dated 05.02.2021 (at Annexure-C) with regard to use of mobile and the same may be granted on suitable and terms within the time slot fixed by the authority.

2. Heard Mr. Ashish M. Dagli, learned counsel for the Petitioner – convict and Mr. Hardik A. Dave, learned Public Prosecutor assisted by Mr. H.K. Patel, learned APP for the respondent State and its authorities.

3. **RULE.** Learned APP waives service of Rule on behalf of the respective respondents. Considering the facts and circumstances of the case, this matter is taken up for final disposal forthwith.

4. The petitioner is a life convict in the offence being C.R.No.I-31/2013, registered in the year 2013 at Jahangirpura Police Station for offences under Sections 376(2)(c), 377, 354, 344, 357, 342, 323, 504, 506(2), 120-B, 212, 153 and 114 of Indian Penal Code, 1860 and sentenced life imprisonment. Over and above the same, other two offences are also registered against the Petitioner, which are as under:-

(i) FIR being C.R.No.I-37/2013 registered at DCB Police Station, Surat, for the offence under Sections 213, 214, 217



and 120(b) of the Indian Penal Code, 1860 and Sections, 7,8,9, 12 and 12 of the Prevention of Corruption Act. Pursuant to the said offence, trial proceedings are still pending.

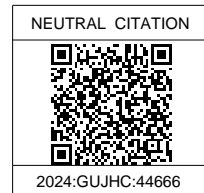
(ii) FIR being C.R.No.I-243/2015 registered at Sanoli Khurd Sardar Panipat Police Station, Haryana, for the offence under Sections 307 and 34 of Indian Penal Code, 1860. Pursuant to the said offence, charges are not framed and is pending for framing of charge.

5. Learned counsel for the petitioner has submitted that, the petitioner is a good writer and prior to his incarceration, he had written 19 books, which are sold online through a website; after his arrest and while being in jail since 2013-14, he has published 5 more books in Hindi and has thereby utilized his free time in jail. For this purpose, he needs a personal laptop and computer desktop on his own cost, so that they can be used by the petitioner inside the prison for producing a huge volume of document of his own and his father's cases which collectively runs into 50,000 of pages approximately. He has further submitted that the petitioner also needs to consult his lawyer/s during the course of hearing of the cases; he wishes to prepare his own cases and wishes to give notes to his lawyers and to consult/communicate with his lawyers qua his different cases. Even against the father, mother and sister of the



petitioner, many cases have been registered, due to which, his aged father is in jail and mother and sister are on bail. He has further submitted that, to coordinate with every situation since multiple cases and some cases are also in States other than Gujarat, it would be very essential to correspondence and communicate on his own as well as to keep himself updated with regard to the cases to succeed in. He has further submitted that, mother of the petitioner is aged about 78 years and father is aged about 82 years, who is in Jodhpur Central Jail and both are suffering from life threatening diseases. Mother of the petitioner cannot walk and is mostly bedridden and number of times, she has to get admitted in hospital during emergency situation.

5.1 He has further submitted that, case papers related to the petitioner's case run into thousands of pages and therefore, request was made to the jail authority to provide laptop and computer and also the facility of STD/PCO to enable him to communicate with his lawyer and families. He has also submitted that, the petitioner may be allowed a personal secured sim-card locked mobile handset so that in a monitor way, he can communicate with his lawyers, family and well wishers. Moreover, during difficult times of pandemic when visits of lawyers, family and



friends have been suspended, it is need of the hour to develop ways of frequent and smooth communication systems for prisoners to interact with their family and lawyers. He has also submitted that the petitioner being a convict is entitled to avail his fundamental rights of freedom of speech and writing as provided under Article 19(1) and right to life and liberty under Article 21 of the Constitution of India. He has father submitted that the petitioner has been in the socio spiritual services since four decades of his life and he is also successful author of so many books written by him on social and spiritual subjects and therefore also, he is entitled to make a productive utilization of his time in jail by writing books, articles and research based writing. He has further submitted that, earlier the petitioner has published as many as 19 books and while in jail, he also got published 5 books. He has further submitted that the governments in other countries like UK, USA and Scotland have given similar facilities to their prisoners. The Governments of UK and Scotland have provided their prisoners with mobile phones in every cells, virtual visits by video link and limited internet access for education purposes to their prisoners.

5.2. It is also submitted that, an application made earlier in this regard, which was replied by the Jail Superintendent on 5th



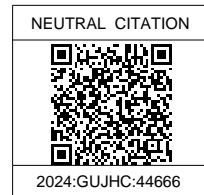
February 2021 (**Annexure-C**) that, in view of the provisions of Jail Manual and The Prisons Act, 1894, more particularly Sections 42, 45 and 45(12), permission to use mobile phones cannot be granted. The authority by assigning reason that, the petitioner is a convict for the offence under Section 376 of Indian Penal Code, 1860, and therefore such prisoner and prisoners of other sections of such type of serious offence are not allowed to use STD/PCO booth situated in jail premise and his application was not entertained.

5.3. Learning counsel for the petitioner has further submitted that merely the petitioner being a prisoner or a convict cannot be denied his fundamental rights under Articles 14, 16, 19 and 21 of the Constitution of India; that the petitioner is a highly spiritual person and wishes to remain in contact with other spiritual personalities and wishes to derive knowledge with the help of such devices like laptop, Ipad and computer. It is also submitted that, in fact, prior to the arrest of the petitioner, the petitioner was involved in many spiritual activities and was also associated with many spiritual personalities and therefore, he prays for a device that can help him to enrich his spiritual association and knowledge. It is also submitted that having bulky papers inside the barrack, will be a very difficult to manage. Recently, the Government got Aadhar



card of certain prisoners, who are inside the jail. Even the website e-prison was also launched for the benefit for the prisoners. He also submitted that, in jail as against 3000 prisoners, there are only 10 STD booths available from where communication is allowed to be made for only 5 minutes in a week for the convicts. But, all the STD booths are not in functional condition.

5.4 Lastly, learned counsel for the petitioner has relied on the judgments of the Honorable Supreme Court delivered in the cases of **Sunil Batra Vs. Delhi Administration, reported in (1978) 4 SCC 494**, wherein it has been held that, the prisoners are still “person” entitled to all constitutional rights unless their liberty has been constitutional rights curtailed by procedures that satisfy all the requirements of due process. **Further, in case of Sunil Batra Vs. Delhi Administration, reported in (1980) 3 SCC 488**, the Hon'ble Supreme Court has held that, “convicts are not by mere reason of the conviction, denied of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison house entails by its own force, the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to practice a profession. A man of profession would the stand stripped



of his right to hold consultations while serving out his sentence but the constitution guarantees other freedoms like the right to acquire Hold and dispose of property for the exercise of which incarceration can be no impadiment like wise even a Convict is entitle to the precious right guaranteed by article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.” Relying on the judgments of **State of Andhra Pradesh Vs. Challa Ramakrishna Reddy, reported in 2000 (5) SCC 712** and **Sube Singh Vs. State of Haryana, reported in 2006 (3) SCC 178.** , it is submitted that, according to the definition under the “Prisoners Act”, there is a convict, there is an under-trial prisoner and there is a civil prisoner, who may be a detenu under preventive detention law. None of these three categories of prisoners lose their fundamental rights on being placed inside a prison.

6. Learned Public Prosecutor Mr. Hardik A. Dave for the respondents has vehemently opposed present petition and contended that, prisoner has no absolute right to claim such electronic gadgets in a jail. The petitioner is indulged in illegal activities and earlier, had called for hunger strike and provoked other elements against the jail administration. Time and again,



facility of PCO call also was stopped and he was kept in high security cell and his telephone service facility was stopped for three months. Further, he submitted that, even the petitioner was caught having mobile and battery unofficially in his cell and for that, one jail proceedings has been initiated. Further, on 05.01.2024, mobile and charger were found from the possession of the petitioner and for that, his jail visit facility service was stopped. His jail conduct is also not good. Time and again, he is punished for disobeying jail rules. Even the Hon'ble Supreme Court has dismissed his furlough application assigning various reasons and considering the cumulative effect to public tranquility.

Considering the aforesaid facts and conduct of the petitioner, this is not a case where Court can exercise jurisdiction. However, the authority no doubt is duty bound to provide facilities as per provisions of Jail Manual and therefore, present petition being devoid of merit, deserves to be dismissed.

7. Having heard learned counsel appearing for both the sides and perusing the material placed on record, it appears that, FIR being C.R.No. I-31/2013, was registered against the Petitioner in the year 2013 at Jahangirpura Police Station for offences under

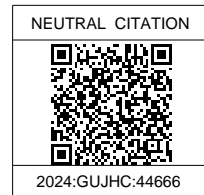


Sections 376(2)(c), 377, 354, 344, 357, 342, 323, 504, 506(2), 120-B, 212, 153 and 114 of Indian Penal Code, 1860, wherein, charges were framed and the Sessions Court vide judgment dated 30.04.2019 convicted the petitioner and sentenced for the offence under (i) Section 376(2): life imprisonment together with a fine of Rs. 1,00,000/-, and in default, simple imprisonment of one year; (ii) Section 377: life imprisonment together with a fine of Rs. 1,00,000/-, and in default, simple imprisonment of one year; (iii) Section 354: three years' rigorous imprisonment together with a fine of Rs. 25,000/-, and in default, simple imprisonment of six months; (iv) Section 504: one year's rigorous imprisonment together with a fine of Rs. 5,000/-, and in default simple imprisonment of three months; (v) Section 506(2): three years' rigorous imprisonment together with a fine of Rs. 5,000/- and in default, simple imprisonment of one month; (vi) Section 508: one year's rigorous imprisonment together with a fine of Rs. 5,000/- and in default, simple imprisonment of one month; (vii) Section 323: six months' rigorous imprisonment together with a fine of Rs. 500/- and in default, simple imprisonment of one month; The Petitioner was directed to pay compensation of Rs. 5,00,000/- under Section 357 (3) of the Code of Criminal Procedure 1973, to the prosecutrix.



All sentences were directed to run concurrently. Further, other two offences are also registered against the petitioner.

8. The petitioner herein by this petition has prayed to provide him a personal laptop/Ipad/Computer with word processor facility and printer and permit him to put the views of the same within the time slot fixed by the authority and also prayed to quash and set aside/modify the communication dated 05.02.2021 (at Annexure-C) with regard to use of mobile. It appears that, one Mr. B.A.Vichve, Managing Trustee, NSSL Trust, Motera, Sabarmati, Ahmedabad, on behalf of the petitioner had made an application and sought permission for the petitioner to use mobile phone in jail mainly on the ground that, as the petitioner is engaged in social and welfare activities, he needs to talk with trustees and other persons from jail. The said application came to be rejected by Jail Superintendent, Lajpore Central Jail, Surat, vide communication dated 05.02.2021 stating that the use of mobile phone is prohibited in jail, which even otherwise amounts to breach of Sections 42 and 45(12) of The Prisons Act, 1894 and as per the Circular No.JLK/172008/4225/J dated 07.01.2014, issued by Home Department, Gujarat State, PCO facilities in jail are made available for the prisoners to talk with their families, but the prisoners, who are convicted under Section 376



and other serious offences, are debarred to use PCO booth.

9. Even learned Public Prosecutor has pointed out that, in the jail, STD/PCO are available and as per the time slot, visits are allowed. Even as per various Circulars dated 07.01.2014, 27.03.2020 and 23.04.2020 issued by the State Government, use of mobile in jail is prohibited and time slots are also allotted. But due to two subsequent circulars dated 27.03.2020 and 07.05.2021, it is clarified that, convict or under-trial prisoners, who are involved in antisocial activities, activities against the State, terrorist activities, ransom, who are involved in offence of more than one offence, gang rape, rape, acid attack, TADA, POTA etc. are debarred from using PCO Booth facilities. Here in the case, the petitioner is a convict for the offence unde Section 376 of Indian Penal Code, 1860 and other offences. Further, Circular dated 09.12.2021, State Government, e-visits are also implemented and earlier bar imposed vide Circular dated 07.01.2014 is subsequently lifted and Standard Operating Procedure (SOP) is fixed and pursuant to said SOP, e-visit is also permitted for all under-trial prisoners and convicts. Perusing the aforesaid Circulars, it appears that the respondent authorities have taken sufficient care of human rights and basic needs of convicts and under trial prisoners.



10. It is pertinent to note that, said application was filed by a third party on behalf of the petitioner and in the impugned petition, Circulars issued by the State Government are nowhere challenged by the prisoner or convicts. However, keeping in mind the provisions of Jail Manual as well as circulars, as use of mobile is prohibited in jail, said application was turned down, more particularly considering the provisions of Sections 42, 45 and 45(12) of The Prisons Act. Hence, no case is made out to quash the communication dated 05.02.2021

11. Learned counsel for the petitioner has submitted that the petitioner is having fundamental rights and he is involved in social and welfare activities and he has written 19 books and from jail, he got published 5 more books and for research purpose, he is in need of mobile/Ipad/Tablet/Computer etc. However, it is required to be mentioned that, earlier without such electronic gadgets or any restrictions or interruption on the part of jail administration, the petitioner has published 5 books from jail and no such grievance has raised by the petitioner that his rights being curtailed or jeopardized by jail administration and his fundamental rights. The convict has right and merely he is detained in a custody, is not a



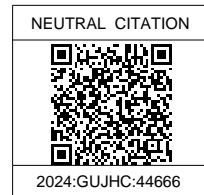
ground to deprive from his fundamental rights and treated as non-human. Here, it is not a case where basic human rights of the petitioner like right to human dignity, basic minimum needs such as adequate diet, health, medical care and treatment, access to clean and adequate drinking water, access to clean and hygienic conditions of living accommodation, sanitation and personal hygiene, adequate clothing, bedding, to engage legal practitioner of his choice etc. It is the duty of the convict to obey all lawful orders and instructions issued by the competent prison authority and to obey all Prison Rules and Regulations and follow all restrictions imposed by the State Authority. Here, in the instant case, it is not a case where the respondent authority has denied such basic fundamental rights and basic human rights of the petitioner.

12. The petitioner wants to use his personal mobile and other electronic equipment for his personal use in a cell. To allow such request and accord permission to keep such articles in a jail, which is nothing, but amounts to violation of jail manual and The Prisons Act. Section 40 of The Prisons Act provides for visits to prisoners. Section 41 provides for Search of visitors. Section 42 provides for offences in relation to prisons. Section 43 provides for power to



arrest for the offence under Section 42, whereas Section 45 provides for prison offences and Section 59 provides for power to make Rules. As per Section 45 (12), receiving, possessing or transferring any articles is an offence. Here to possess such aforesaid articles are prohibited and if such permission is given, which indirectly give permission to the petitioner to commit breach or violate the Prison Rules and Jail Manual. If the petitioner is provided mobile and internet facilities, then there is strong apprehension that, he may contact his followers and outsiders, which may result into break the public peace. Even Jail Manual restricts visit of prisoner and visitors also subject to search and under surveillance for the security purpose. If permission is given to use mobile in jail, which is nothing, but indirectly by-pass the jail rules and regulations and therefore, such permission cannot be acceded to.

13. So far the petitioner is concerned, his jail conduct is also not good. Time and again, he was caught in jail keeping and using mobile illegally and for that, prison offences are also registered. Nonetheless, he had called for hunger strike from jail and provoked inmates and breached the public peace and such activities were done in connivance and in collusion with unscrupulous elements. If



permission to use mobile phone is given in jail, which may put on peril a national security. Sometime, prisoners hatch conspiracy and in connivance of unscrupulous elements and by designing systemic plan, convict or under-trial prisoner may try to attack or disrupt the law and order. Considering the aforesaid reasons, use of electronic instruments in jail is impermissible. Even otherwise, on the case on hand, jail conduct of the petitioner is also not good. The Hon'ble Supreme Court has also rejected furlough application of the Petitioner considering the following aspects :-

“(a) The Jail Superintendent had given a negative opinion on the furlough application as the respondent had engaged in illegal activities inside the jail, including keeping a mobile phone and making contacts outside the jail;

(b) The respondent if released on furlough may violate law and order;

(c) The opinion of the Assistant Commissioner of Police 4 was sought on the grant of furlough and he had raised objections for the following reasons:

(d) During the investigation of the offence, the Deputy Commissioner of Police 5, had guided a team to arrest the respondent and had disclosed her official cell phone details to the media to solicit information from the public regarding the whereabouts of the respondent. On 16 October 2013 and



18 October 2013, the DCP received phone calls from a person claiming to be a 'sadhak' of the respondent, threatening to kill the DCP if she continued to search for the respondent. On investigation, it was revealed that he was a resident of Madhya Pradesh and an FIR was registered against him

(e) The administrator of the ashram in Surat visited the respondent and the respondent gave a chit to him in his handwriting for giving a bribe of Rs. 1 crore. The administrator of the ashram and others gave a bribe to the police officers, medical officers and judicial officers to weaken the case against the respondent. An FIR against these persons was registered. In case the respondent is released on furlough, he may continue such offensive acts;

(f) In order to break the morale of the complainant, her husband, who was a witness in the trial, was assaulted with a lethal weapon on 28 February 2014. A complaint, ICR No. 50/2014, was registered under [Sections 307](#) and [188](#) of the IPC against persons connected with the respondent. While these persons have been arrested, they continue to attract a huge crowd of followers in India and may commit offensive acts in the future. The respondent may also threaten the husband of the complainant or other witnesses if he is released on furlough;

(g) A complaint, ICR No. 31/2014, was registered under [Sections 324](#) and [114](#) of the IPC and [Section 135](#) of the Gujarat Police Act 1951, against two unknown persons for assaulting and injuring one Rakesh Jayantilal Patel, a witness



in the Asaram case, on 10 March 2014 on his head with a weapon;

(h) A complaint, ICR No. 69/2014, was registered under [Sections 307, 326\(A\)](#), and [114](#) of the IPC against two persons who claimed to be sadhaks of Asaram for assaulting and injuring one Dinesh Bhagchandani, a witness in the Asaram case, on 16 March 2014 by throwing acid on him and attempting to murder him;

(i) A complaint, ICR No. 133/2014, was registered under [Sections 307](#) of the IPC, [Sections 25\(1\)\(A\)\(B\)](#) and [27](#) of the Arms Act 1959, and [Section 135\(1\)](#) of the Gujarat Police Act 1951, against one unknown person for assaulting and injuring one Amrut Prajapati, a witness in the Asaram case, on 23 May 2014 by firing a revolver with the intention of causing death. The witness suffered severe injury and died during treatment;

(j) The offences against the witnesses in Asaram's case and in the respondent's case were committed by one Pravin Vakil. The offences against these witnesses increased after this accused visited the respondent in jail on 15 February 2014. Thus, there is a possibility of the involvement of the respondent in the commission of these offences;

(k) An FIR, CR No. 243/2015, was registered under [Sections 307, 452, 120B](#), and [34](#) of the IPC and [Section 25\(1\)\(a\)](#) of the Arms Act 1959, for assaulting one Mahendra Chavala, a witness in the case against the respondent. The respondent was passively involved in the said incident; and



(l) In connection with the investigation of the case against the respondent, 42 bags were seized from the flat of a sadhak. Pursuant to the direction of the High Court, the bags were handed over to the Income Tax Department. A raid was conducted by the Income Tax Department on sadhaks staying across the country and crores of rupees worth of properties had been seized. Most of these investments were on behalf of the respondent and his father, Asaram. During the investigation, an Inspector was threatened of being murdered and a complaint was lodged;

14. Based on the aforesaid facts and circumstances of the case, the apprehension of disruption of public peace and tranquility, the conduct of the petitioner, and the report submitted by the Deputy Superintendent of Jail, Lajpore Central Jail, Surat, the Hon'ble Supreme Court rejected the petitioner's furlough application. Additionally, considering the petitioner's conduct in jail, facilities provided to him were suspended as a form of punishment. For possessing unauthorized items such as a mobile phone, battery, and tobacco, the petitioner was placed in a separate high-security cell. Furthermore, his canteen services and visitation rights were also suspended for one month. The petitioner's conduct indicates a misuse of his liberty, and allowing him to possess personal items such as a laptop, computer, or iPad in jail could potentially lead to



further misuse and breaches of public tranquility. It is important to note that, the petitioner has no absolute right to possess such prohibited items while incarcerated. Considering the petitioner's conduct and history-sheet, the interest of society must be prioritized. The protection of society from crime and criminals is more important than the personal gain of the offender. The underlying principle of criminal justice is to achieve social justice, rather than individual justice. In a serious case like this, it is prudent and advisable, in the overall interest of society and victims, to deny such permission. Be you ever so high the law is always above you and no one is above the law. Therefore, no case is made out for granting such permission to use personal laptop, iPad etc. in cell or in a high security zone of jail.

15. Apropos, it would not be out of place to mention that, we are living in digital era and we have to embrace the technology. Even e-court project also, envisions e-visit and judicial system must be more accessible, efficient and equitable for all individuals, who are seeking justice on part of judicial system and for that, implemented various projects i.e. e-court, hybrid hearing, e-services, e-filing etc. and appropriate infrastructure is also developed. Hence, this is high time for the jail administration also to adopt an embrace the



technology and create digital environment in a jail and spread awareness among the inmates qua availability e-services and to establish e-seva kendra or e-corner in jail and also provide vocational training to inmates.

16. Even, the Hon'le Apex Court in case of **Anuradha Bhasin Vs. Union of India**, reported in **(2020) 3 SCC 637**, has been pleased to hold that, Article 19(1)(a) embodies the fundamental right of speech and expression and this right includes the right to make any expression through medium of internet subject to reasonable restrictions. The Hon'ble Apex Court has emphasized the term "reasonable", which is limited to following aspects (i) the sovereignty & integrity of the nation (ii) Security of State and (iii) friendly relation with the foreign state (iv) Public order, decency, morality or (v) contempt of Court, defamation and (vi) incitement to an offence and in *Suo Motu* Reference No.4/2021, directed to provide internet facility in a jail for implementation of fast and effective service (FASTER) of writ and notices. Even during Covid-19, e-visits were allowed. Even under reformatory approach, the State has taken appropriate steps and started to provide vocational training to the convicts/under-trial prisoners. But, present petitioner is not entitled for such facilities looking to his conduct



and offence, for which, he is convicted. Further, other two offences are also registered against the petitioner.

17. However, this Court is of the opinion that, it would be improper to paint all prisoners with same brush. As Hon'ble Supreme Court in the case of **Mohammad Giasuddin Vs. State of A.P, reported in (1977) 3 SCC 287**, held that, "***Every saint has a past and every sinner has a future***". Even father of Nation - **Mahatma Gandhi** had stated that, "***crime is outcome of the deceased mind and jail must have an environment of hospital for treatment and care***".

18. Considering the aforementioned facts and with a view to improve the future for inmates and prisoners, we have adopted a reformative approach, including the implementation of open-air prisons and vocational training programs. Additionally, we have updated and introduced model Jail Manual. Hence, it is a high time for the State Government to implement the project, the State Government should consult experts to determine how internet access can be controlled effectively, using hardware-based firewalls or other advanced fool-proof technology to prevent circumvention by tech-savvy users and to form comprehensive exhaustive



guidelines and SOP for providing limited internet access to UTP/convicts for the purpose to enrich their knowledge and research purpose considering the educational credentials of convicts/UTPs under the surveillance of jail authority, with a liberty to discontinue such facilities in case of misuse.

19. With the above observations and direction, present petition being devoid of merit, is hereby **dismissed**. Rule is discharged. Let copy of this order be sent to Home Department, Gujarat State and Inspector General (Prison), Gujarat State in reference to observations made in para -18.

Sd/-

(HASMUKH D. SUTHAR,J)

SUCHIT