

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR

&

THE HONOURABLE MR. JUSTICE SHAJI P.CHALY

FRIDAY, THE 18TH DAY OF NOVEMBER 2022 / 27TH KARTHIKA,

1944

WP(C) NO. 30827 OF 2022

PETITIONER

PRASOON SUNNY

AGED 29 YEARS

S/O SUNNY KOOTTALA, KOOTTALA HOUSE, EDANAD,
CHOWARA P.O. - 683571.

(PARTY-IN-PERSON)

BY ADV PRASOON SUNNY (Party-In-Person)

RESPONDENTS

- 1 STATE OF KERALA
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY,
HOME DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 DIRECTOR GENERAL OF PRISON & CORRECTIONAL
SERVICE,
PRISONS HEADQUARTERS, POOJAPPURA,
THIRUVANANTHAPURAM, KERALA, PIN - 695 012.
- 3 THE SUPERINTENDENT,
DISTRICT JAIL, THRIKKAKKARA, KAKKANAD, PIN -
682 037.
- 4 DISTRICT LEGAL SERVICE AUTHORITY
ERNAKULAM
IS IMPEADED AS ADDL. R4 AS PER ORDER DATED
18/10/2022 IN WP(C).

SRI.TEK CHAND V. Sr. GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 18.11.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

S. Manikumar, CJ

Considering the averments in the writ petition and the prayers sought for by the petitioner, on 28.09.2022, we passed the following order :

"In this writ petition Mr. Prasoon Sunny, party-in-person, has sought for the following reliefs:

- (i) Issue a writ of Mandamus directing the respondents to strictly provide adequate and necessary facilities for holding meetings of prisoners and their legal counsel in a private and secure environment in the jails of Kerala.
- (ii) Issue a writ of Mandamus directing the respondents to ensure that all meetings of prisoners with their legal counsel and near relatives are held beyond the earshot of jail officials as provide under the prison statutes;
- (iii) Issue a writ of Mandamus directing the respondents to consider Exts. P3, P4 and P5 representation;
- (iv) Issue a Writ of Mandamus directing the 2nd respondent to implement Ext P-6 order in letter and spirit and file an action taken report before this Hon'ble Court;
- (v) Issue any other Writ, direction or order which this Hon'ble Court deems fit in the facts and circumstances of this case.

2. Short facts leading to the filing of the writ petition are; The petitioner, a practicing advocate of this Court, and other Subordinate Courts in Ernakulam, is seriously aggrieved by the non-availability of privacy for advocate-client interviews as provided under the prison statutes. According to the petitioner, petitioner appears for one Mr. Arun Vijayan, accused in SC No. 418/2021 under section 323, 324, 326 and 302 of IPC pending before the Second Additional Sessions court, North Paravur. The accused was remanded to judicial custody at District Jail Kakkanad.

3. It is submitted by the petitioner that Section 40 of The Prison Act, 1894, Section 47 of The Kerala Prisons and Correctional Services (Management) Act, 2010 and Rule 827 (2) of the Kerala Prisons and Correctional Services (Management) Rules, 2014 mandate that privacy should be given to the learned counsel and his client while taking instructions. But, it is found that there is no privacy while consulting with the client as the meeting place provided is right next to the jail warden, who is always near the client listening to all the conversations. Since it is a common place for other visitors, there are also other persons to hear the conversation between the petitioner and client.

4. Even though the State of Kerala, represented by the Additional Chief Secretary, Home Department, Thiruvananthapuram - 1st respondent, has issued a letter to the Director General of Prison & Correctional Service, Prison Headquarters, Poojappura, Thiruvananthapuram – the 2nd respondent, directing him to take immediate steps to provide necessary facilities as per prison statutes, no steps were taken by the 2nd respondent. Hence, this Writ Petition.

5. Material on record discloses that the petitioner has sent Exhibit P1 representation dated 22.6.2021 to the Superintendent, District Jail, Kakkanad; Exhibit P2 is a letter dated 16.08.2021 of the Director General of Prisons & Correctional Services, Poojappura, Thiruvananthapuram, addressed to Mr. Prasoon Sunny, Aluva, which reads thus:

“No 02 -1742/2021/PrHQ Date: 16/08/2021

From

Director General of Prisons & Correctional Service

To

Adv.Prasoon Sunny,
Koottala House,
Edanadu, Chovvara Post,
Aluva -683 571

Sir,

Subject: Jails - Jail Headquarters - General Section - The representation submitted by Adv.Prasoon Sunny regarding basic infrastructure facility for the interaction of Counsel with the inmates of jails without the presence of any others.

Reference: The representation submitted by Adv. Prasoon Sunny on 05/07/2021.

It is hereby acknowledge to the jail authorities that they have to ensure that the interview with the under trial prisoner and his legal counsel should be in the vicinity of the jail officer, but should be beyond the audibility range of the jail superintendent as prescribed in Rule 827(2) of Kerala Prisons and Correctional Services (Management) Rules, 2014.

Yours Faithfully

Sd/-

S. Santhosh

Deputy Inspector General of Prisons(HQ)
For the Director General of Prisons &
Correctional Services."

6. Exhibit P3 is a letter dated 6.1.2022 addressed to the Additional Chief Secretary, Home Department, Kerala by petitioner, to provide adequate facilities in prison as per the provisions of law. Exhibit P4 is a letter addressed to the Director General of Prison & Correctional Service, Thiruvananthapuram. Petitioner has also sent a letter dated 6.1.2022 to the Superintendent, District Jail, Kakkanad to provide facilities as per the provisions of law.

7. Material on record discloses that acting on the representation dated 5.7.2021 and 6.1.2022, the Additional Chief Secretary to the Government, Home(B) Department, Thiruvananthapuram, has sent Exhibit P6 letter dated 27.04.2022 to the Director General of Prisons and Correctional Services, Thiruvananthapuram, directing to stick to the rule positions as regards the facilities to be provided in terms of Rule 827 of the Kerala Prisons & Correctional Services (Management) Rules, 2014. Exhibit P6 dated 27.04.2022 is reproduced hereunder:

“GOVERNMENT OF KERALA

Home (B) Department

No.B1/216/2021-HOME

27-04-2022, Thiruvananthapuram

The Additional Chief Secretary to Government

The Director General of Prisons and Correctional Services, Thiruvananthapuram.

Sir.

Sub: Home Department-Prisons - Ensuring privacy to advocates while talking to prisoners inside prisons- Reg.

Ref: 1.Petitions of Adv.Prasoon Sunny Dated:05.07.2021 & 06.01.2022

2.Letter No.G2-17423/2021/PrHQ Dated:24.03.2022 of Director General of Prisons and Correctional Services

I am to invite your attention to the reference cited. Petitions are being received in Government alleging that Jail authorities are not adhering to Rule 827 of Kerala Prisons & Correctional Services (Management)Rules, 2014 and not providing adequate facilities while Advocates and other visitors meeting with their clients/relatives languishing in Jails. Hence I am to instruct you to stick to the rule positions in this regard and take immediate steps to provide necessary facilities as per rule 827 of Kerala Prisons & Correctional Services (Management) Rules, 2014 to advocates and other visitors.

Yours Faithfully,

SNEHALATHA K.
UNDER SECRETARY

For Additional Chief Secretary to Government.”

8. Mr. Tek Chand – learned Senior Government Pleader, is directed to take notice and get instructions on the facilities, which are to be provided to the lawyers and visitors in prison, in terms of the statutory provisions, cited supra.

Post after 10 days.”

2. Thereafter taking note of the averments in the counter affidavit filed by the Superintendent, District Jail, Kakkanad, 3rd respondent herein, further orders were passed on 18.10.2022.

Averments made in the counter affidavit are reproduced:

"3. It is submitted that on receipt of the representation submitted by the petitioner, the 2nd respondent as per letter dated 16.08.2021 directed the 3rd respondent to ensure implementation of Rule 827(2) of the Kerala Prisons and Correctional Services (Management) Rules, 2014 (hereinafter referred to as, the Rules of 2014). In deference to the directions of the 2nd respondent, 3rd respondent gave directions to all the officers working under him to comply with the mandate of Rule 827(2) of Rules of 2014.

4. Thereafter the petitioner has raised another allegation that the Prison Officer behaved in an indifferent manner and has not permitted to sit and converse with his client on 31.12.2021. It is also submitted that the afore averments in the writ petition are incorrect and not true to facts. On 31.12.2021, Covid-19 protocol was being implemented in a strict manner, as per the directions of the Government and this compelled Jail Authorities to impose restricted access to all visitors including lawyers from interacting with the client/prisoners in a close manner. This action of the Jail Authorities made the petitioner to behave in a rude manner and the petitioner has created anomalous scene in the Jail. This prompted the 3rd respondent to interact with the petitioner. It was informed to the petitioner of the Covid restrictions owing to Covid protocol. It is only thereafter the petitioner has left the Jail compound.

5. It is further submitted that on the basis of complaint preferred by the petitioner before the 1st respondent dated 05.07.2021 and Exhibit P3 complaint dated 06.01.2022, the 1st respondent has issued Exhibit P6 communication dated 27.04.2022, whereby directions have been issued to comply with Rule 827(2) of the Rules of 2014 to Advocates and other visitors. On the basis of the above, further directions have been issued to the Officers to strictly adhere to the provisions contained Rules of 2014 without fail. Under these circumstances, it is clear that the grievance raised in the writ petition has been duly taken note of by the

authorities and strict directions have been issued to comply with the Act and Rules in this regard whereby measures have been taken to ensure the privacy of advocates and his clients. It is further reiterated the restrictions that were invoked were bonafide taking into account of the Covid pandemic and protocol that were imposed in wake of Covid. For the foregoing reasons, the 3rd respondent prayed to dismiss the writ petition with costs.

3. Pursuant to the above, the District Legal Services Authority, Ernakulam, has filed a report dated 23.10.2022 along with the sketch.

4. As per the report, facilities are provided for conversation between the lawyer and inmates. One table and two chairs are laid for discussion of inmates of the jail with the lawyers, and it was mainly observed that the room of the Jail Welfare Officer is not beyond the earshot where the table and chairs are laid.

5. To the report dated 23.10.2022 of the Secretary, DLSA, Ernakulam, a reply statement dated 14.11.2022 is filed by the Superintendent, District Jail, Kakkanad, wherein it was stated as under:

“Ernakulam District Jail is housed in 1.7 acres of land. The administrative office of the Jail is situated in two floors. In the first floor, there are video conferencing room, Superintendent's office, Accounts Section & Establishment Section. In the ground floor, apart from the visitors lounge, there are Welfare Officer's room, Library, Deputy Superintendent's room, CCTV room, Remission Section and Chapati unit. The

visitors lounge/inmates meeting room is having an area of 200 square feet. As is stated in the report, in the south side of the room there is a window which is covered with grill mesh. This is the area where the inmates meet visitors. The inmates would converse from inside the room and visitors would sit outside.

2. Apart from this, inside the room, table and chairs have been provided to advocates to meet inmates at a distance of 5 meters from the grilled area and 3.5 meters from the room of the Welfare Officer.

3. According to the 3rd respondent, the conversation in normal voice will not be audible to the officer who is within the eye sight of the inmate and Advocate. However, in the report, it is stated that the conversation between Advocate and inmate is audible, two possible solutions are suggested hereunder.

- i. The Advocate - inmate meeting could be made at the area where the visitor inmate have interaction. Thus the distance from the office of Welfare Officer could be increased to 8.5 meters. At the time of Advocate - inmate meeting, it would be ensured that no other visitor is granted entry.
- ii. The present area of Advocate - inmate meeting marked as A in the sketch appended to the report, could be moved towards south, thus ensuring that the Advocate - inmate interaction would be beyond the earshot and within the visibility of the Welfare Officer.

6. We have perused the reply statement. Referring to the averments in the reply statement, Mr. Prasoony Sunny, Party-in-person, submitted that the facilities provided therein have to be extended in all the sub-jails/prisons for effective interactions/conversations with inmates.

7. Responding to the above, learned Senior Government Pleader submitted that there are space constraints in certain

sub jails. Submission is recorded. It is viewed that there should be sufficient space for the advocates and clients, to interact, and privacy should also be taken note of by respondents 1 to 3.

8. In the above circumstances, we direct the respondents to explore the possibility of providing sufficient space, if required, to adopt the rough sketch submitted by the District Legal Services Authority and issue appropriate directions.

With the above observations and directions, the writ petition is disposed of.

Sd/-

S.MANIKUMAR,
Chief Justice

Sd/-

SHAJI P.CHALY,
Judge

Mrcs

APPENDIX OF WP (C) 30827/2022

EXHIBITS

- Exhibit P1 TRUE COPY OF THE REPRESENTATION DATED 22/06/2021 GIVEN TO THE 3RD RESPONDENT BY THE PETITIONER
- Exhibit P2 TRUE COPY OF THE REPLY LETTER NO. G217423/2021/PRHQ BY THE 2ND RESPONDENT DATED 16/08/2021.
- Exhibit P2A ENGLISH TRANSLATION OF EXT-P2.
- Exhibit P3 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER TO 1ST RESPONDENT DATED 6/01/2022 ALONG WITH POSTAL RECEIPT.
- Exhibit P4 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER TO 2ND RESPONDENT DATED 6/01/2022 ALONG WITH POSTAL RECEIPT.
- Exhibit P5 TRUE COPY OF THE REPRESENTATION BY THE PETITIONER TO 3RD RESPONDENT DATED 6/01/2022 ALONG WITH POSTAL RECEIPT.
- Exhibit P6 TRUE COPY OF THE LETTER BEARING NO. B1/216/2021-HOME DATED 27/04/2022 BY THE FIRST RESPONDENT.