



230 CWP-PIL-93-2023 (O&M) and connected matters

COURT ON ITS OWN MOTION V/S STATE OF PUNJAB AND OTHERS

Present: Ms. Tanu Bedi, Advocate (amicus curiae) assisted by
Mr. Sumit Kumar, Advocate and
Ms. Vibhu Agnihotri, Advocate.

Ms. Ishma Randhawa, Addl. AG, Punjab and
Mr. Harmandeep Singh Sullar, Senior DAG, Punjab.

Mr. Rahul Dev Singh, Addl. AG, Haryana.

Mr. Manish Bansal, Public Prosecutor, UT, Chandigarh and
Mr. Rajiv Vij, Addl. PP, UT, Chandigarh.


Mr. Gourave Bhayyia Gilhotra, Advocate and
Mr. Hitesh Verma, Advocate
for the applicant in CM-85-CWPIL-2023.

Mr. Arun Gosain, Advocate and
Ms. Swati Arora, Advocate (Senior Govt. counsel) for UOI
in CWP-24232-2011.

This petition has been listed as public interest litigation after *suo motu* notice had been taken by the Single Bench of this Court in CRM-M-44786-2023 with regard to the usage of mobile phones within the jail premises by the inmates and as to what steps are in place to curb the entry of such prohibited items. It had come to the notice of the Single Bench that an inmate in Sangrur Jail, who was an undertrial in a case under Section 376 IPC and 6 of the POCSO Act had sent a video message to the victim showing his presence in jail with music in the background and 2-3 boys were seen sitting in a room where there was also a TV. In the said video, the boys were seen eating and drinking and the video was purportedly sent from the mobile phone from the jail where the accused was lodged. The relevant extract of the order passed by the Single Bench of this Court is reproduced hereunder:

“XXXX

- i) Whether any witness or any other person connected with the present FIR was contacted by the present petitioner using the mobile phone which was admittedly recovered from him;
- ii) Number of phones recovered/confiscated since July 2023 i.e after the present Jail Superintendent was posted there, and the make of the phones;
- iii) Who monitors the CCTV Cameras when that one person needs to use the facilities or needs to step out for any other reason;
- iv) The distance between the 7 watch towers which are on the periphery of the jail premises;
- v) Number of Police personnel who are on duty at night monitoring the activities in the barracks;
- vi). What are the provisions for serving meals to the inmates as from the video it can be seen that the petitioner is consuming his meal with loud music playing in the background in the barrack which also has a pink sheet hanging at the back;
- vii) What action has been taken against the concerned official(s) for dereliction of duty;
- viii) Why have the additional CCTV Cameras not been installed as requested so as to cover the entire periphery of the Jail;
- ix) How many times have drugs and alcohol been recovered from the inmates since July 2023;
- x) How do the inmates go near the boundary walls to recover the articles which are, as stated by the Jail Superintendent, thrown over the Jail boundary wall, unnoticed by the guards who are posted there;

- 
- xi) How are the guards posted at the watch towers oblivious to the articles being thrown over the boundary wall and successfully being retrieved by the inmates;
 - xii) How and when are the inmates rotated amongst the cells which have TV's and the ones without such a provision as has been stated and moreover when was the present petitioner moved to such a cell along with the other inmates as seen in the video;
 - xiii) Whether all inmates are regularly frisked after every Court hearing and after the physical mulakats;
 - xiv) How often are the inmates and their cells regularly checked by the prison authorities to check for such illicit material(s) and items not permitted in a jail.
- xxxxX”

Learned State counsel, upon instructions from ADGP, Prisons, Punjab, who is present in Court, submits that a departmental enquiry for major penalty has been initiated against the Superintendent, Central Jail, Sangrur and FIR has been registered with regard to the aforementioned incident wherein an inmate in Sangrur Jail had sent a video message to the victim.

While hearing the matter, it had also come to our notice that a known criminal, namely, Lawrence Bishnoi, who is also a suspect in the murder case of a renowned singer Shubhdeep Singh Sidhu Moosewala, had been interviewed by a News channel and the interviews had been telecast in March, 2023. Lawrence Bishnoi was stated to be in the custody of the Punjab police or judicial custody in the State of Punjab at that time. We were informed that the interviewee was in Bathinda jail when the interview was telecast but the place and time the interview was conducted was not known. A two member High-Powered Committee comprising of Director General, STF

CWP-PIL-93-2023 (O&M) and connected matters

4

and ADGP, Prisons had been constituted in March 2023 to enquire into the incident as it had been viewed seriously by the authorities. The report of the Committee had been placed before us in a sealed cover and a copy of the report was also furnished to the learned amicus curiae. Learned *amicus curiae* submits that there are several aspects which have not been looked into by the Committee and if the matter is properly investigated or re-examined, the exact time and location of the place where the interviewee was situated when the interviews were conducted can be pinpointed. She also submits that after registration of FIR, these aspects can be looked into by the Special Investigation Team. She stated that the telecast of the interviews is having an adverse impact on youngsters who are getting swayed and it creates wrong impression on the young impressionable minds as the interviews glorifies the criminal life and activities and the interviewee has justified taking law in his own hands for settling personal scores. In fact, a prisoner facing so many criminal cases had access to technology while being in custody and then through that technology has justified his criminal acts as desire of God/destiny. The interviews have been viewed by over 12 million viewers. The amicus curiae further submits that after the telecast of interviews, many more young persons have started writing threatening letters to the film actor targeted in the interview of Lawrence Bishnoi. She further submits that although the fundamental right to speech and expression is important, but this right is subject to reasonable restrictions which include public order, decency, morality and incitement to offence. The telecast of the interviews is adversely affecting public order and harmony.

CWP-PIL-93-2023 (O&M) and connected matters

5

We have also gone through the report which indicates that the Committee has come to the conclusion that it is highly improbable that interviews had taken place either in judicial custody or in the police custody in the State of Punjab. It is apparent that the Committee has not reached a definite conclusion that the interviews were not being conducted in a jail or police custody within the State of Punjab. They have recorded the statements of large number of witnesses in this regard.

We find it strange that the Committee took over 8 months to arrive at an inconclusive finding. Nonetheless, the Committee has made a recommendation for registration of two FIRs with regard to two interviews which were conducted in violation of the law. The Committee has recommended that the government may consider registration of two separate FIRs (one each for the respective interview) at a police station having statewide jurisdiction to investigate the matter and take on record relevant evidence/data exercising the powers available under Cr.P.C. If during the course of investigation, the offence(s) relating to any of the two cases or both of them is/are found to have occurred outside the State, the concerned case(s) may be transferred to police station(s) of appropriate jurisdiction. Further, the Committee has also made a recommendation to the Government to remove the URL of the video from the public domain.

The ADGP, Prisons, Punjab submits that they recommended registration of FIR as after registration of FIR the matter can be investigated with the procedure prescribed under the Cr.P.C. for summoning the witnesses to record their statements etc. Learned State counsel submits that the report is being considered by the Government and appropriate action would be taken.

CWP-PIL-93-2023 (O&M) and connected matters

6

She also submits that Lawrence Bishnoi is involved in 71 cases in the State of Punjab and had been convicted in 4 cases which includes offences under Unlawful Activities (Prevention) Act, 1967, 302 IPC, extortions etc.

The State itself appears to have taken up the matter with some seriousness as a High-Powered Committee was set up by the State. In the backdrop of the gravity of the situation where a suspect, who is involved in a large number of serious criminal cases, is allowed to conduct an interview in police/judicial custody and it has taken the Committee over eight months to submit an inconclusive report, we, while directing the registration of the FIR would like the matter to be investigated by a Special Investigation Team. Those, who facilitated the interviews need to be brought to book at the earliest. We deem it appropriate to constitute a Special Investigation Team headed by Mr. Prabodh Kumar, D.G., Human Rights Commission, the other members of the Team would be Dr. S. Rahul, IPS and Ms. Nilambari Vijay Jagadale, DIG, Cyber Crime.

It is true that freedom of speech and expression has been enshrined in Article 19 (1) (a) of the Constitution of India. This freedom also includes a free and fair press which is an important pillar of a democracy governed by rule of law. However, this freedom is not absolute and is subject to reasonable restrictions as provided under Article 19(2) of the Constitution of India, which include security of State, public order and would not permit incitement to an offence.

We have gone through the contents of the interviews which indicate that it glorifies crime and criminals. The interviewee is involved in 71 cases in the State of Punjab and had been convicted in 4 cases which includes

offences under Unlawful Activities (Prevention) Act, 1967, 302 IPC, extortions etc. The interviewee is justifying target killings and his criminal activities. He has reiterated and justified threat to a film actor. As in a large number of cases wherein he is involved, trials are underway and attempt to projecting his persona as larger than life could influence the witnesses. These interviews are stated to have garnered over 12 million views. It would have an adverse impact upon youngsters with impressionable minds. Punjab is a border State and any deterioration in law and order or increase in crime could affect the national security as at times, anti-national elements take advantage of the situation and often use criminals for their nefarious designs. They often get help from across the border. There is a thin line between extortion, target killings and anti-national activities. The conduct of the interviews is an apparent jail security breach and violation of the Prisons Act. The interviews have been telecast for the last 9 months and are available on public domain.

The Committee has recommended that the Government may ask the police to ensure removal of videos pertaining to Interview-I and Interview-II from YouTube/ internet, wherever possible. We would not like to wait for the government to act at its leisure but would direct the removal of the interviews. Reference can be made to the judgment of the Division Bench of this Court in **Court on its own motion vs. Union of India and others**, (CROCP No.2 of 2023) wherein while relying upon the judgment of the Supreme Court in the case of **Shreya Singhal vs. Union of India, (2015) 5 SCC 1**, it had directed the removal/blocking of the offensive content from social media platforms. The Delhi High Court in the case of **'X' vs. Union of India and ors.** (Decided on : 20.04.2021), while relying upon **Shreya Singhal**

vs. Union of India (*supra*) had directed the offending contents to be removed. In the event of intermediary not removing objectionable contents in pursuance to the direction of this Court, it would lose its exemption under Section 79 of the I.T. Act from its liability in cases illustrated therein.

Moreover, Rule 3(1)(b)(vii) of The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 provides that, the intermediary shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information which threatens the unity, integrity, defence, security or sovereignty of India, friendly relations with foreign States, or public order, or causes incitement to the commission of any cognisable offence, or prevents investigation of any offence, or is insulting other nation; (emphasis supplied).

Furthermore, Rule 3(1)(d) provides that an intermediary, on whose computer resource the information is stored, hosted or published, upon receiving actual knowledge in the form of an order by a court of competent jurisdiction or on being notified by the Appropriate Government or its agency under clause (b) of sub-section (3) of section 79 of the Act, shall not host, store or publish any unlawful information, which is prohibited under any law for the time being in force in relation to the interest of the sovereignty and integrity of India; security of the State; friendly relations with foreign States; public order; decency or morality; defamation; incitement to an offence relating to the above, or any information which is prohibited under any law for the time being in force. (emphasis supplied).

CWP-PIL-93-2023 (O&M) and connected matters

9

Learned State counsel submits that the tentative timelines have been suggested for taking measures with regard to strengthening jail security. These measures include installation of jammers, CCTV cameras, nylon mesh for raising the outerwalls, X-ray body scanners etc. The proposals had been submitted to the government and some time may be granted to submit definite timelines. We direct the competent authority to consider the matter as top priority as breaches in jail security have an impact on the law and order in the State. We have noticed that in several cases which have come up for hearing in the courts, mobile phones are being used by the inmates in furtherance of their criminal activities.

In view of the above, we deem it appropriate to issue following directions:

- i) The DGP, Punjab, is directed to immediately register two FIRs with regard to the conduct of two interviews as recommended by the Special Investigation Team in the police station having State-wide jurisdiction.
- ii) The investigation of the FIRs shall be carried out by the Special Investigation Team headed by Mr. Prabodh Kumar, IPS, DG, Human Rights Commission. The other members of the SIT would include Dr. S.Rahul, IPS and Ms.Nilambari Vijay Jagadale, DIG, Cyber Crime.
- iii) The Head of the SIT would be at liberty to seek assistance of any other officer or of any other kind, on his making a request, the DGP, Punjab shall provide all necessary help and assistance to him. A copy of the report dated

11.12.2023 and the relevant record shall be handed over to the Head of the SIT. The SIT shall conclude the investigation expeditiously and file a status report before this Court within a period of two months.

- iv) The DGP, Punjab is further directed:
- (a) to get the URLs/weblinks/videos pertaining to both the said interviews removed/blocked/disable/restrict from all social media platforms like Youtube etc. forthwith;
 - (b) To ensure that the Press channel, where the said interview is hosted, removes the URLs/weblinks/videos from all its news /social media platforms with immediate effect;
 - (c) In case the said interviews are discovered by police authorities to be existing on any social media platform in future, the same be get removed with immediate effect;
 - (d) to direct the intermediary to preserve all the information associated relating to the offending content for use in investigation, in line with Rule 3(1) (g) of the 2021 Rules;
 - (e) To direct the search engines Google Search, Yahoo Search, Microsoft Bing to globally de-index and de-reference from their search results the afore-said interviews and their related contents as identified by its web URL and image URL.

- (f) All the concerned intermediaries be informed that non-compliance with the foregoing directions would make the non-complaint party liable to forfeit the exemption, if any, available to it generally under Section 79 (1) of the I.T.Act and as specified by Rule 7 of 2021 Rules: and shall make such entity and its officers liable for action as mandated by section 85 of the I.T.Act.
- (g) The ADGP, Prisons, Punjab shall file a status report with regard to the timelines for installation of jammers, CCTV cameras, nylon mesh, X-ray body scanners etc. for augmentation of jail security.

List on 10.01.2024 for further proceedings and orders.

Photocopy of this order be placed in the connected files.

(ANUPINDER SINGH GREWAL)
JUDGE

(KIRTI SINGH)
JUDGE

21.12.2023
SwarnjitS