

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 12098 of 2023

**Bishal Das and others
Vs.
The State of West Bengal and others**

For the petitioners	:	Mr. Achin Jana, Mr. Suman Chakraborty, Ms. Subhanitwa Ghosh, Mr. Prosenjit Ghosh, Ms. Gargi Dhang, Ms. Pooja Singh
For the State	:	Sk. Md. Galib, Mr. Abu Siddique Malik
Hearing concluded on	:	16.08.2023
Judgment on	:	23.08.2023

Sabyasachi Bhattacharyya, J:-

1. The petitioners are under-trial prisoners in custody for over three years in connection with different offences, being co-accused in a trial before the Additional Sessions Judge, Fast Track Court (1st), Hooghly on charges of kidnapping and murder and are being held in the Chinsurah District Correctional Home at Hooghly. A number of other criminal cases are also pending against them in other Districts of the State of West Bengal, particularly in South 24-Parganas. The grievances of the petitioners are the conditions of their incarceration.

First, the petitioners are being confined together in a single cell, allegedly under unfavourable conditions which according to the petitioners are prejudicial to their human rights recognized by the Constitution of India, the prevalent prison laws of India and other national and international instruments. Secondly, the petitioners allege that they are regularly restricted from meeting their relatives and advocates. Thirdly, the petitioners are not given proper medical attention.

2. It is alleged that despite several requests, the living conditions of the petitioners are not being improved in any manner by the Jail Authorities. The petitioners also pray for being transferred to any other safer correctional home than their present abode in the Hooghly District correctional Home and apprehend safety and security risks in their present place of confinement.
3. Learned counsel for the petitioners submits that although the Sessions Court has not granted the petitioners' prayer for bail, including a prayer for transfer, on consideration of a report submitted by the Superintendent of the Hooghly Correctional Home, it is argued that the jurisdictional court does not have the authority in law under the Code of Criminal Procedure, 1973 or any other Act to issue order of transfer of prisoners to a different jail, which is an administrative act, amenable to the writ jurisdiction.
4. Eloquent arguments are advanced by learned counsel for the petitioners against their confinement in a single cell. Learned counsel cites *State of A.P. Vs. Challa Ramakrishna Reddy and others*, reported

at (2000) 5 SCC 712 for the proposition that a prisoner, be he a convict or under-trial or a detenu, does not cease to be a human being during his period of detention but enjoys all his fundamental rights, including the right to life guaranteed by the Constitution.

5. Next citing *Francis Coralie Mullin Vs. Administrator, Union Territory of Delhi and others*, reported at (1981) 1 SCC 608, learned counsel for the petitioners cites a quotation in the said judgment of Hon'ble Mr. Justice Douglas of the Supreme Court of the United States, who in *Eve Pall's* case observed that prisoners are still persons entitled to all constitutional rights unless their liberty has been constitutionally curtailed by procedures that satisfy all the requirements of due process. The Supreme Court, it is argued, reaffirmed the human rights of prisoners.
6. Learned counsel next contends that the petitioners have the right to free movement under Article 19(d) of the Constitution of India and any State action which curtails such right must satisfy the test of 'reasonable restrictions' as enumerated in Article 19(5). Although confining under-trial prisoners in custody is one such legally accepted reasonable restriction, such imprisonment does not entail the restriction of other human rights with the exception of those which are naturally restricted by the very act of being imprisoned.
7. The petitioners' segregation/separation for the purpose of security can be permitted as a temporary measure. However, the petitioners cannot be continuously segregated for more than three years, which amounts to a permanent arrangement, merely citing security reasons.

8. It is argued that human liberty is precious. Learned counsel relies on the judgment of *Justice K.S. Puttaswamy (Retd.) and another Vs. Union of India and others*, reported at (2017) 10 SCC 1 where the Supreme Court declared that any action of the State has to be tested on the touchstone of Articles 14,19 and 21 of the Constitution of India. The court held, it is contended, that an invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate State aim; and (iii) proportionality, which ensures a rational nexus between the objects and the means adopted to achieve them.
9. Learned counsel also cites *Modern Dental College and Research Centre and others Vs. State of Madhya Pradesh and others*, reported at (2016) 7 SCC 353 on the issue of proportionality. It is argued that the four sub-components of proportionality are required to be satisfied, which include:
- (a) A measure restricting a right must have a legitimate goal (legitimate goal stage);
 - (b) It must be a suitable means of furthering this goal (suitability or rationale connection stage);
 - (c) There must not be any less restrictive but equally effective alternative (necessity stage); and
 - (d) The measure must not have a disproportionate impact on the right holder (balancing stage).

- 10.** Learned counsel for the petitioner also cites *Om Kumar and others Vs. Union of India*, reported at (2001) 2 SCC 386 on the issue of proportionality.
- 11.** Seeking to analyse the concept of separate confinement in the context of whether the same can be ascribed as a 'legitimate goal', learned counsel first deals with the component of providing security and safety to the petitioners. It is argued that right to security is an integral part of right to life and personal liberty. Learned counsel cites Article 3 of the Universal Declaration of Human Rights (UDHR), 1948, Article 9 of the International Covenant on Civil and Political Rights (ICCPR), 1966 as well as Rule 1 of the United Nations Standard Minimum Rules for Treatment of Prisoners (the Nelson Mandela Rules) in such context.
- 12.** Secondly, learned counsel stresses on the aspect of providing remedy for overcrowding. It is argued that overcrowding is a menace persisting in prisons in India for a long time. Temporary measure of cramming multiple prisoners into a single cell, constructed to accommodate a single person, can hardly be claimed to be a legitimate claim of the State or an acceptable arrangement.
- 13.** The prisoners, according to Section 32(1) of the West Bengal Correctional services Act, 1992 (hereinafter referred to as, "the 1992 Act"), are to be accommodated either in cells or wards and when cells are used for prisoners' accommodation/segregation, then under no circumstances should more than one prisoner be accommodated in one cell.

- 14.** Besides, it is argued, segregation/separation of prisoners due to overcrowding can be permitted as a temporary measure in terms of Sections 46(8) and 46(10) of the Prisons Act, 1894 (for short, “the 1894 Act”), that too when the prisoners have committed any prison offence under Section 45 of the 1894 Act. Continuous segregation for more than three years amounts to a permanent arrangement, contrary to the same. Moreover, the petitioners have not committed any prison offence, nor was there any adverse report against them during their prison terms as under-trials. Hence, the separation of the petitioners from other under-trial inmates is arbitrary and illegal.
- 15.** Arguing on the suitability or rationality of the means for furthering the legitimate goal, it is contended that the contentions of the State to support their adopted means of furthering their legitimate goals of providing security to the writ petitioners are contradictory and unsustainable. The adoption of an arrangement by which the present three writ petitioners are kept together in a single cell is not acceptable, it is contended.
- 16.** The State’s argument of ‘Day Unlock Period’ from sunrise to sunset is contradictory to the contention of the State that the petitioners have been put into a single cell confinement for rendering protection from their rival groups by thwarting any hostile access to them.
- 17.** As per Section 4(h) of the 1992 Act, the functions of a correctional home is, *inter alia*, to take measures for security of the prisoners. However, the present arrangement creates a horrific situation in the

life of the petitioners, disproportionate to the object of their under-trial imprisonment, it is argued.

- 18.** The petitioners also cite a recent incident in the Tihar Correctional Home, which reveals the inefficiency of prison officials even in high security prisons to neutralize gang rivalry. Continuous segregation for more than three years on the ground of security hazard proves the inability and inefficiency of the prison authority to neutralize existing security threat and also confirms a culpable state of mind on the part of the prison officials, it is argued.
- 19.** The administrative action of keeping the three prisoners in a single cell is violative of right to equality guaranteed under Article 14 of the Constitution of India, it is argued. The petitioners have been chosen selectively for single cell confinement, whereas there are several other under-trial prisoners in the correctional home. The said action is biased and is neither suitable nor rational for achieving the alleged legitimate goals of providing safety and security to the petitioners or to remedy overcrowding issue in the prison.
- 20.** Learned counsel for the petitioners relies on a report dated November 28, 2022 by the Superintendent of the Hooghly District Correctional Home, Chinsurah, categorically admitting that the life and security of the petitioners are under serious threat from rival groups lodged in the same prison. The petitioners, thus, can very well be transferred to some other correctional home to achieve their safety and security and to solve the problem of overcrowding. It is argued that the State's logic of probable complications in regular production of the petitioners

in the Trial Court in case of transfer is not tenable. According to the report of the Law Officer, Directorate of Correctional Services, Government of West Bengal submitted by the State on July 28, 2023, there are other cases pending against the petitioners in the Alipore Court where regular production is also required. The pending cases against the petitioners are, thus, divided between two districts – Hooghly and South 24 Parganas. Hence, shifting the petitioners to some other correctional home, either to Chandannagar Sub-Correctional Home, which is only five kilometers away from the First Fast Track Court at Hooghly where the petitioners' cases are pending or to an alternative correctional home near the Alipore Court is a viable remedy.

- 21.** It is contended that the order dated march 1, 2023 passed by the trial court (Annexure P-8 to the writ petition) confirms that the approver of the court was allowed to be produced in the court virtually, which measure can also be taken in respect of the present petitioners. It is submitted as per the report of the Officer-in-Charge of the Law Cell, Directorate Correctional Services, Government of West Bengal dated August 9, 2023, less restrictive and equally effective alternative correctional homes are available. For example, whereas the present place of confinement of the petitioners, that is, the Hooghly District Correctional Home has occupancy rate of 183.87 per cent, the Chandannagar Sub-Correctional Home has an occupancy rate of 148.98 per cent.

- 22.** The prolonged segregation of the petitioners in a single cell, it is argued, is having a serious impact on their well-being and the petitioners' personal liberty is being curtailed without justification.
- 23.** In both the reports cited by the State, there is no mention about the size of the cell of the petitioners. The same is extremely cramped for three persons, it is argued. Learned counsel relies on *T.N. Mathur Vs. State of Uttar Pradesh*, reported at *1993 Supp (1) SCC 722* for arguing that minimal civilized conditions must be maintained for detaining a prisoner. The cramped confines of the prisoners' cell, it is argued, are contrary to the decision of the Hon'ble Supreme Court in the said case where it was recommended that prisoners must be housed in a lock-up which will provide at least 40 Sq.ft. per person with minimal facilities of furniture, such as the cot for each of the detained persons, and supply of potable water.
- 24.** The 'Model Prison Manual for the Superintendence and Management of Prisons in India, 2016', in Chapter II, lays down the recommended institutional framework of prisons in India. Article 2.05 (viii) of the same specifies that there will be enough open space inside the perimeter wall to allow proper ventilation and sunlight and the area enclosed within the four walls of a prison will not be less than 83.61 Square meters per head of total capacity. Where land is scarce, the minimum area will be 62.70 Square meters per prisoner.
- 25.** The conditions of the cell, it is argued, are totally unhygienic, having been constructed during the British period without any renovation in recent times. Prolonged separation of the petitioners from other

inmates is having psychological and physical impact on the petitioners. The same tantamounts to 'small group isolation' which refers to a regime in which detainees are confined to their cells together up to five other inmates for lengthy periods of time, with severe restrictions on their access to other inmates. Learned counsel places reliance on an article by the Human Rights Watch, named 'Small Group Isolation in Turkish prisons: An Avoidable Disaster'.

- 26.** Learned counsel for the petitioners next quotes Prof. Stuart Grassian, a Board Certified Psychiatrist on the faculty of the Harvard Medical School for over 25 years, in his Article "Psychiatric Effects of Solitary Confinement", where it was observed that the psycho-pathologic syndrome was found in settings beside isolation in civil prisons.
- 27.** Learned counsel also relies on a report of the HRW (Human Rights Watch), in its report "Tunisia: long-term solitary confinement of political prisoners" and "the Istanbul Statement on the use and effects of Solitary Confinement" adopted by a working group of 24 international experts on the use of solitary confinement and its harmful effects on December 9, 2007 at the International Psychological Trauma Symposium, Istanbul.
- 28.** Learned counsel also relies on certain literature of the European Commission for Human Rights in such context. The petitioners' counsel next cites a published report of the Amnesty International Organization on 'United Kingdom Special Security Units: Cruel, Inhuman or Degrading Treatment' where a solitary confinement and small group isolation in Germany was studied.

- 29.** With regard to physical well-being, learned counsel relies on *Pt. Pramanand Katara Vs. Union of India and others*, reported at (1989) 4 SCC 286, where it was recognized that the State is duty-bound to extend medical assistance for preserving life. Learned counsel also cites *Rasikbhai Ramsing Rana and etc. Vs. State of Gujarat*, reported at 1997 SCC OnLine Guj 296.
- 30.** Rule 25(1) of the Nelson Mandela Rules framed by the United Nations in its General Assembly Resolution 70/175 dated December 17, 2015 provides that every prison shall have in place a health-care service for the physical and mental health of prisoners. The same was recognized by the Government of India, Ministry of Home Affairs, Rajya Sabha, it is argued.
- 31.** Section 4(e) of the 1992 Act mandates providing the prisoners with food, clothing, accommodation and other necessities of life, being adequate as essential functions of the correctional home. Section 5(2) of the Act provides that every Central Correctional Home, District Correctional Home and Special Correction Home shall have such number of Medical Officers as the State Government may from time to time appoint. Section 6(3) stipulates that the Sub-Divisional Medical Officer shall pay visit to the Subsidiary Correctional Home at least twice a week, taking necessary measures for treatment of prisoners confined in the correctional home as and when he is informed of any ailment of a prisoner by any officer of the correctional home.
- 32.** Section 40(1) of the 1992 Act stipulates that in each correctional home, other than a Subsidiary Correctional Home, there shall be a

Medical Officer. It is argued by the petitioners that the Hooghly Correctional Home does not have any permanent medical officer for providing treatment to the prison inmates. The petitioners and other prisoners are seldom taken to the nearby hospital for checkup.

- 33.** The report submitted by the State on July 28, 2023, it is argued, affirms that instead of providing medical assistance by an in-house medical officer, the petitioners were taken to the Hooghly Imambara Hospital for checkup. No mention of any particular doctor, who is available for their checkup on a timely basis, finds place in the said report, let alone any psychiatric evaluation of the petitioners. Under Section 38 of the 1992 Act, every prisoner shall have a right to medical care in case of sickness as well as to maintain good health. The same of flouted, it is submitted.
- 34.** Section 79(c) of the 1992 Act protects prisoners' rights to have proper medical care and service for preventing deterioration of health and for cure of ailment with which he may be attacked, on which count the petitioners are being deprived of their basic minimum health care protection.
- 35.** Learned counsel for the petitioners next relies on *Sunil Batra (II) Vs. Delhi Administration*, reported at AIR 1980 SC 1579, where it was observed that prison houses are part of Indian earth and the Indian Constitution cannot be held at bay by jail officials when Part III of the Constitution is invoked by a convict. When a prisoner is traumatized, it was observed, the Constitution suffers a shock.

- 36.** Prisons Statistics of 2020, it is argued, shows that the number of unnatural deaths in prisons has increased by 18.1 per cent, from 160 in 2019 to 189 in 2020. Among them, 156 inmates have committed suicide, 8 died in accident, 8 were murdered by inmates, 5 died due to firing, 4 were executed and 3 died due to assault by outside elements during 2020. For 56 inmate deaths, the cause of death is yet unknown.
- 37.** Lastly, the learned counsel for the petitioners cites *Joginder Kumar Vs. State of UP and others* [(1994) 4 SCC 260], where it was acknowledged that horizon of human rights is expanded.
- 38.** Thus, it is argued that the petitioners' sufferings, as indicated above, are immediately to be redressed by the jail authorities by direction of the Court.
- 39.** Learned counsel for the State argues that the writ petition is not maintainable since, over the issue of removal/transfer to any other Correctional Home, an application was preferred by the writ petitioners before the Fast Track Court and Sessions Judge, Hooghly at Chinsurah where the Judge *vide* order No.84 dated November 24, 2022 directed the S.P. Hooghly Correctional Home to file a report, which was filed on November 28, 2022. By order dated November 29, 2022, upon considering the report, the Trial Judge rejected the prayer of the writ petitioners. The said order has not been challenged under Section 397/401 of the Code of Criminal Procedure or under Section 482 of the Code of Criminal Procedure and/or under Article 227 of the Constitution of India.

40. Next coming to Section 64 of the 1992 Act, it is argued that the same gives discretion to the Inspection General of Correctional Services on the issue of transfer of prisoners from one Correctional Home to another. The writ petitioners rely on Section 64(3)(a)(i), which is not applicable in the instant case since it relates to transfer of a prisoner from a District Correctional Home to a Central Correctional Home on the ground of overcrowding, which is also subject to the discretion under Section 64(1).
41. The petitioners are tried in most of the cases before the Fast Track Courts/Special Courts in the District of Hooghly. Hence, for the purpose of feasibility in production before the Trial Courts, their detention in the present Correctional Home is more suitable than elsewhere.
42. Section 3 of the 1992 Act, it is submitted, stipulates establishment of different categories of Correctional Homes by the State Government.
43. Thirdly, on the issue of alleged solitary confinement, it is argued that the writ petitioners are jointly lodged in a separate cell-block with liberty to mingle with other inmates during the day-unlock period. Hence, their segregation in cell custody with the liberty to talk/mingle with other inmates during such period is not solitary confinement.
44. Learned counsel for the State relies on the definition of "Solitary Confinement" in Mitra's Legal Dictionary and submits that the same does not support the interpretation of the petitioners.
45. Learned counsel submits that the landmark judgment of the Constitution Bench of the Supreme Court in *Sunil Batra (supra)* also

does not support the case of the petitioners on the issue of solitary confinement.

- 46.** *Kishor Singh Ravinder Dev's case (supra)*, also cited by the petitioners, does not support the petitioners' case inasmuch as the appellants in the said case were not allowed to move within the confines of the prison, unlike the present petitioners.
- 47.** In essence, Rule 616 of the West Bengal Jail Code, it is submitted, permits segregation of prisoners. The explanation to Section 79 of the 1992 Act also allows classification, segregation and difference in treatment as an exception to the rights of prisoners granted under Section 79(2)(d) of the Act.
- 48.** Section 75(1) of the 1992 Act, in essence, permits cell custody of a Division I prisoner, which the writ petitioners claim in paragraph 36 of the writ petition, although the said Division has not been made pursuant to Sections 25 or 26 of the 1992 Act.
- 49.** As to the medical reports of the petitioners, those are annexed with the Statement of Facts dated June 12, 2023 filed by the State respondent. No serious ailments are detected in case of writ petitioners 2 and 3. Petitioner no.1 was diagnosed with hernia which was considered "incomplicated" with the remark "no emergency at present" on September 6, 2022 by the MO Surgeon, DH, Hooghly. Medical reports of all the petitioners are annexed to the Statement of Facts and do not substantiate any alleged medical negligence of the said under-trial prisoners.

50. There is no specific material or averment regarding alleged medical negligence of the petitioners, apart from oblique reference in paragraph 9 of the writ petition. The service of a specialist is also available to the prisoners, as envisaged under Section 47 of the 1992 Act.
51. Learned counsel for the State argues that the interviews of the petitioners Bishal Das and Rathin Singh with their family members, relatives and lawyers are shown in the list of interviews annexed to the Statement of Facts (pages 4 to 6). No person came to interview Biplab Biswas, the other petitioner. The facility of e-Mulakat is also available in the concerned Correctional Home.
52. It is next argued that Section 51(1) of the 1992 Act stipulates the number of interviews for every prisoner. Sub-section (2) of the said Section provides for interview by a legal practitioner.
53. The Officer-in-Charge, Law Cell, Directorate of Correctional Services, Government of West Bengal, furnished a report dated August 9, 2023 on the occupancy rate against the sanctioned capacity of different correctional homes in and around the Hooghly District. The same indicates overcrowding of correctional homes.
54. A batch of public interest litigations, it is argued, is pending for adjudication before the appropriate Division Bench of this Court on the issue of overcrowding in prisons.
55. Clause (d) of the prayers at page 16 of the writ petition is not supported by any material from the respective jurisdictional courts to substantiate that the writ petitioners are not being produced before

the courts where their cases are pending trial. Hence, the same is without any foundation and is liable to be rejected, it is argued.

- 56.** Certain factors are to be considered in deciding the present case. The petitioners' challenge is primarily three-fold: Solitary confinement/seclusion, lack of interaction, and lack of medical care.
- 57.** The State's defence is primarily on the ground of overcrowding and safety of the petitioners from their rival groups.
- 58.** Insofar as the confinement of the petitioners is concerned, the argument of the petitioners that they are in 'solitary confinement' cannot be accepted. The judgments cited by the petitioners on such score do not substantiate the allegation of solitary confinement in the present case. The definition of 'solitary confinement', that is, isolation of a prisoner in a separate cell, is not applicable to the petitioners, who, together, are confined in a single cell.
- 59.** However, the argument of 'seclusion' may be relevant in the context.
- 60.** In *Sunil Batra's case*, it was observed that solitary confinement has a degrading and dehumanizing effect on prisoners. The expression "such prisoner shall be confined in a cell apart from all other prisoners" was considered therein to have a restricted meaning.
- 61.** The Supreme Court, justly, observed that the Court has to strike a just balance between dehumanizing prison atmosphere and the preservation of internal order and discipline, the maintenance of institutional security against escape and the rehabilitation of prisoners.

- 62.** The underlying refrain in *Sunil Batra's* case was that Articles 14, 19 and 21 of the Constitution are as much available to the prisoner in a jail as an ordinary citizen, subject, however, to the inherent limitations of his being under imprisonment.
- 63.** Neither facet of the balance can be overstressed, either security/discipline or personal liberty of the prisoner and the right balance has to be struck between the two.
- 64.** In the present case, the jail authorities allege that the confinement of the three petitioners in a single cell is for their own safety from rival gangs, who are housed in the same prison. However, such contention is apparently contradictory with the submission of the State that the petitioners are out from sunrise to sunset within the jail precincts, during the 'day-unlock period'. Thus, in the same breath, the respondents are taking the stand that the prisoners can mingle with others but have been confined in a single prison for their own security.
- 65.** At the first blush, the said stand is definitely contradictory. However, delving a bit deeper, in the event the petitioners are kept in the same cell in a closed space with their allegedly rival gangs, the situation might precipitate into the domain of the uncontrollable. In contrast thereto, intermingling among others in an open space within the prison precincts, under the watchful eyes of prison guards, would be a much safer option. Within the confines of a single cell, it is not possible for the guards in charge of the cell to keep a constant watch

or interfere at the drop of a hat in the case of a brawl, which is much easier in an open space during the day-unlock period.

- 66.** Thus, the respondents' stand on such score cannot be brushed aside.
- 67.** With regard to the argument of the petitioners that the petitioners may be kept with other under-trials, who may belong to rival gangs, the same, pitted against the views of the jail authorities, has to give way.
- 68.** At a certain level, it is the threat perception of the jail authorities which ought to be given primacy over the individual perception of the prisoners themselves, since the authorities are in charge of maintaining discipline and security in the prison.
- 69.** However, one has to be careful to ensure that, in the name of discipline and threat perception, no atrocity or cruel treatment is meted out to the prisoners, which would undermine the psychiatric and physical health of the prisoners. In the present case, as per the chart produced by the respondent-Authorities, the Hooghly District Correctional Home, where the petitioners are now housed, has an occupancy rate of 183.87 per cent. Among the other correctional homes in the vicinity, Arambag Sub-Correctional Home has an occupancy rate of 369.57 per cent, Serampore Sub-Correctional Home has 261.80 per cent, and Howrah District Correctional Home has 226.02 per cent. Such whopping rates clearly show that the petitioners are in a rather better position in the Hooghly District Correctional Home as opposed to three others.

- 70.** The only jail which is in a marginally better condition, insofar as overcrowding is concerned, than Hooghly is the Chandannagar Sub-Correctional Home having an occupancy rate of 148.98 per cent.
- 71.** However, it has to be kept in mind that Chandannagar is a sub-correctional home whereas Hooghly is a District Correctional Home, the latter, thus, having supposedly better facilities than the former.
- 72.** Section 40(1) of the 1992 Act provides that in each correctional home (other than a subsidiary correctional home) there shall have a medical officer.
- 73.** A District Correctional Home is on a better footing than a subsidiary correctional home on such ground, hence giving Hooghly District Correctional Home an edge over the Chandannagar Sub-Correctional Home.
- 74.** Chapter XIII of the 1992 Act deals with medical administration and medical care. Section 39 thereof provides that a Chief Medical Officer shall supervise and inspect performances of Medical Officers of the correctional homes and may cancel/modify any measure taken or allotment of diet by the Medical Officer (MO) at any correctional home.
- 75.** Section 40 stipulates that each correctional home (other than subsidiary correctional homes) shall have MOs. The number of MOs is to be decided by the State Government in consideration of the number of prisoners in each correctional home. Under an MO, there can be Junior Officers.
- 76.** Section 47 provides that if the MO is of the opinion that a specialist should be engaged for proper treatment of a sick prisoner, he shall

report the same to the Superintendent, who will refer it to the Inspection General (IG) of Correctional Services. The IG, after consulting with the Chief MO, is to take necessary steps for making services of specialist available.

- 77.** In the present case, it appears that the last medical check-up of the petitioners did not reveal anything so serious as to refer any of them to a specialist.
- 78.** However, the visits by the MOs appear to be few and far between, at least as revealed from the submissions of the respondents themselves. For proper care and welfare of the prisoners, even within the contemplation of the 1992 Act, there should be more frequent medical check-ups and regular visits by the MOs.
- 79.** In view of the large number of prisoners incarcerated in the Hooghly District Correctional Home, it is expected that the MO or MOs should visit at least once a fortnight and take due care and ensure that routine medical check-ups of the prisoners are held, at least once in every two months. Of course, in case of special requirement of one or more particular prisoners, who may fall sick or have a medical emergency, immediate action has to be taken without waiting for the next check-up.
- 80.** Chapter XV of the Act deals with letters, interviews and interrogation. Section 51(1) confers the right on the prisoners to have interviews with friends and relatives, not less than once a month, as prescribed by the State Government by Rules, having due regard to the question of security measures and safeguards against smuggling of contraband.

Sub-section (2) of Section 51 stipulates that a legal practitioner may interview the prisoner in connection with his defence in the presence of of the Superintendent or duly authorised officer, which will not be included in the number of interviews.

- 81.** It has been reported by the respondent-Authorities that in respect of one of the petitioners, there have been no visitors, which rules out the question of interviews. Regarding the other two, it transpires from the arguments of the respondents that sufficient interviews have already been granted to the said petitioners.
- 82.** Insofar as the allegation of the mother and sister of one of the petitioners being forcibly removed when they sought an interview with the petitioner, the petitioners are always at liberty to complain to the jail authorities and/or even have a regular complaint lodged with the police, through their lawyer, if such untoward incident happens, since prisoners and visitors are as much citizens as others.
- 83.** Chapter XVIII speaks about transfer of prisoners. Section 64 provides that the IG, Correctional Services may, in his discretion or on an application, transfer a prisoner from one correctional home to another.
- 84.** In the present case, no such application seems to have been made by the petitioners. In any event, the petitioners are always at liberty to explore such option by making an application before the IG. In case the IG, Correctional Services deems it fit on the facts to grant such transfer, the IG can definitely do so upon considering the ground realities.

- 85.** Chapter XXIV deals with prisoners' attendance in courts. Section 77(3) provides that if the prisoner is held in a different District than the court where he is required to attend, the order of attendance is sent through the court to the Superintendent concerned, through the IG of Correctional Services.
- 86.** The argument made by the petitioners in the present case that they have several cases in Alipore against them, does not confer any additional benefit insofar as their prayer for transfer is concerned. Insofar as the petitioners are concerned, the number of cases against them is almost equally balanced between Hooghly and South 24 Parganas. Hence, there cannot be any particular reason to transfer the prisoners at their whims to any prison within the territorial jurisdiction of South 24 Parganas.
- 87.** The transfer sought by the petitioners to the Chandannagar Sub-Correctional Home is not backed up by any concrete reason for the same. Although it appears from the report of the authorities themselves that the saturation in Chandannagar is marginally less, there is not much difference between 148.98 per cent (Chandannagar) and 183.87 (Hooghly). In fact, the Hooghly District Correctional Home, where the petitioners are at present housed, is a District Correctional Home as opposed to Chandannagar, which is a sub-correctional home having less facilities. Thus, such transfer, as sought for, need not be granted at this stage. As per the statistics provided, all the correctional homes in or around the Hooghly District

are oversaturated. There is no reason to assume that the position in South 24 Parganas is better.

- 88.** Since several other prisoners are suffering the same fate due to overcrowding, including multiple under-trial prisoners, the petitioners cannot be favoured with a transfer to any particular prison as per their choice, even if the test of Article 14 of the Constitution is applied.
- 89.** The strongest case sought to be made out by the petitioners is regarding their segregation. Chapter XXV of the 1992 Act envisages the rights of prisoners. In Section 79(2)(d) thereof, a right has been given to a prisoner to protection against unreasonable discrimination. The Explanation for (d) clarifies that classification, segregation or difference in treatment under the provisions of the Act or Rules shall not be deemed to be unreasonable discrimination.
- 90.** The question here is whether the fact of the petitioners being confined together in a separate cell tantamounts to classification, segregation or difference in treatment under the provisions of the Act or Rules.
- 91.** Section 75(1) of the Act provides that a Division I prisoner, which the petitioners claim to be, shall, without prejudice to other provisions of the Act, be accommodated in a cell which shall not amount to punishment or solitary confinement, with certain facilities.
- 92.** Thus, subject to providing facilities, in certain cases, the housing of a prisoner in a single cell is considered a privilege.
- 93.** In the present case, the allegation is that the petitioners have been housed together in a single cell within the jail precincts. Whether the same tantamounts to 'segregation' of such a scale that the same

would lead to psychiatric and physical prejudice to the petitioners is to be considered in proper context.

94. The petitioners, as submitted by the jail-authorities, have daily periods, known as 'day-unlock periods', during which they can mingle with other fellow inmates of the jail within the precincts of the correctional home.
95. There is a dispute as to the actual period during which they are so permitted, but it has not been disputed by the petitioners that such day-unlock periods do exist. Thus, the petitioners have the right and opportunity to mingle with other fellow prisoners every day within the jail precincts and the under the supervision of the guards.
96. That apart, it has been established by the respondents that the petitioners do have interviews with their relatives, etc. and have opportunities to meet their lawyers as well.
97. No specific instance has been cited by the petitioners to show that they are the victims of any particular atrocities.
98. Thus, the morbid picture of 'segregation' from the rest of society which has been sought to be projected by the petitioners is not applicable in their case, at least in the context of the available resources. The petitioners have sufficient scope of mingling with fellow human beings and have interactions at times with their relatives and lawyers.
99. The judgments cited by the petitioners are not applicable on principle to their case.
100. Even in *Sunil Batra's* case, it was held that prisoners are entitled to all constitutional rights *unless their liberty has been constitutionally*

curtailed. However, a prisoner's liberty is in the very nature of things circumscribed by the very fact of his confinement. His interest in the limited liberty left to him is all the more substantial and his rights are not subjected to the whims of the prison administration. Therefore, it was held, any imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. However, it was also observed, they are not in a position to enjoy the full panoply of fundamental rights because these very rights are subject to restrictions imposed by the nature of the regime to which they have been lawfully committed.

- 101.** In *Sunil Batra's* case, the Supreme Court prophetically observed that the court has to strike a just balance between dehumanizing prison atmosphere and the preservation of internal order and discipline, the maintenance of institutional security against escape, and the rehabilitation of prisoners.
- 102.** In such context, *Sunil Batra's* case held that solitary confinement has degrading and dehumanizing effect on prisoners.
- 103.** In the context of the present case, however, no stretch of imagination can describe the petitioners' condition as 'solitary confinement'.
- 104.** It is true that although we have crossed decades after *Sunil Batra's* case, till date that conditions in which prisoners are confined are not fully congenial to a very healthy atmosphere.
- 105.** Time and again, several international guidelines and resolutions have stressed upon humane conditions being provided to prisoners.

- 106.** Several of those have been cited by the petitioners. In fact, the court would fail in its duty if the thorough research work made by counsel for the petitioners goes without appreciation.
- 107.** However, words of idealism in the international context would not benefit the petitioners unless the ground realities which are available to the State-Authorities are also congenial to providing an ideal situation.
- 108.** The stark reality here is that all the jails are overcrowded, both due to a large population and administrative apathy. It is only a difference of percentages of overcrowding that distinguishes different correctional homes. Thus, the distinction is not one of quality but merely of degree. Hence, the same logic which applies to the petitioners' case also applies to all the other under-trial and custodial prisoners who have been housed in the several jails of not only the Hooghly District but the entire State.
- 109.** If substantial advancements in that regard are to be achieved, the only remedy is probably administrative zeal and/or a public interest litigation.
- 110.** In fact, it has been submitted by learned counsel for both the parties that a bunch of public interest litigation is at present pending regarding conditions of the prisoners. Hence, the adjudication on such score is best left to the Division Bench taking up the same.
- 111.** The limited scope of exploration in the present case is to see whether the petitioners, in the circumstances of the case, are justified in seeking transfer to a different correctional home or to a different cell.

- 112.** Some amount of discretion is required to be left to the jail authorities as well, since if the prisoner's perception is to be the sole criteria of oppression, there would be a negative bias attached to it. Hence, the court cannot be oversensitive to such an extent that the practical realities are overlooked.
- 113.** The Hooghly District Correctional Home, where the petitioners are housed, is considerably overcrowded, as are other correctional homes in the District.
- 114.** The respondent-authorities have clearly opined that there is risk to the safety and security of the petitioners from rival groups, also incarcerated in the same prison, if they are confined together with the said groups. As such, the petitioners have been kept together in a particular cell. The writ petition has not alleged anywhere as to the measurements of their cell or that the constraints of the same are not suitable for housing three persons. In fact, there is no allegation or anything on record to indicate any comparison between the per person ratio of the other cells of the correctional home and the petitioners' cell.
- 115.** Thus, the court cannot reach a conclusion that the petitioners are segregated to such an extent that the same is inhuman.
- 116.** Hence, taking into consideration all aspects of the matter, the only apparent aspect on which the petitioners' lot can be improved immediately appears to be on the medical front.
- 117.** Keeping in view the above observations, WPA No.12098 of 2023 is disposed of by directing the respondent-Authorities to ensure that

Medical Officers of the Hooghly District Correctional Home regularly check-up the physical and mental health of the prisoners. Routine check-ups both on the psychiatric and physical fronts much be undertaken for every prisoner housed in the said correctional home, including the petitioners, at least once every two months and necessary medical facilities be extended to them, in the event so required, over and above the medical check-ups.

118. The jail authorities shall also ensure that basic amenities are available to the prisoners. The respondents shall also ensure the petitioners' right to have interviews with their relatives and friends as well as with their lawyers as and when so required, subject, of course, to the Rules framed in that regard by the State Government and having regard to the question of security measures and safeguards against smuggling of contraband, but not less than once a month as prescribed in Section 51(1) of the 1992 Act.

119. The petitioners, however, are given liberty to apply to the Inspector General of Correctional Services under Section 64 of the 1992 Act, if they so wish, for being transferred to alternative correctional homes. If such applications are made, it will be open to the IG of Correctional Services, upon undertaking proper enquiry, to consider such application and take a decision thereon at the earliest in accordance with law.

120. There will be no order as to costs.

121. Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)