

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECT R-1 TO ISSUE TRANSFER ORDER IN CONNECTION OF EACH PETITIONERS FROM THEIR RESPECTIVE JAIL TO BANGALORE CENTRAL PRISON, AS PER THE REQUISITE MADE IN REPRESENTATION DTD 21/03/2023 AT ANNEXURE-A.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 14.03.2024, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

The petitioners who are inmates in several prisons of the State have come together in the subject petition seeking a direction by issuance of a writ in the nature of *mandamus* to transfer the petitioners from different jails to Bangalore Central Prison accepting their representation dated 21-03-2023.

2. Heard Sri Mohammed Tahir, learned counsel appearing for the petitioners, Sri K.Shashikiran Shetty, learned Advocate General appearing for respondent Nos.1 and 2 and Sri P. Prasanna Kumar, Special Public Prosecutor appearing for respondent No.3.

3. The facts, in brief, germane are as follows:-

A crime in Crime No.63 of 2022 comes to be registered on the murder of one Praveen Nettur before the jurisdictional Police Station at Dakshina Kannada. The crime was initially registered against three persons. The crime was then transferred to the National Investigating Agency ('the Agency' for short), who then registered a fresh crime in R.C.No.36 of 2022-23 and several accused come to be arrested. On 10-01-2023, one of the accused by name Mohammed Jabir files an application before the concerned Court under Section 306 of the Cr.P.C. to become an approver and sought pardon. On 19-01-2023 the 1st respondent /State seeks transfer of accused persons, the petitioners to different jails on account of the fact that Mohammed Jabir, an accused had become an approver. The evidence of Mohammed Jabir was sought to be taken and Mohammed Jabir is said to have done a volte-face and records that he would not be an approver but he was forced to do so. In the light of the requisition of the State dated 18-01-2023 and pursuant to the order of the concerned Court dated 19.01.2023, all the petitioners along with accused Nos.1 and 2 were transferred to different jails on 11-02-2023. It is the averment in the petition that on 12-02-2023, when certain petitioners seek to

enter Belagavi Jail on their transfer, accused Nos.1 and 2 are said to have been attacked. Information of assault was immediately sent and on 15.02.2023, accused Nos.1 and 2 filed an application to transfer them to Bangalore Jail citing security and requirement of their presence in Bangalore. The petitioners who are different accused in the same crime submit a representation on 21.03.2023, seeking their transfer to one solitary prison *i.e.*, Bangalore Central prison. Non-consideration of their representation has driven the petitioners to this Court in the subject petition.

4. The learned counsel appearing for the petitioners would vehemently contend that the life of these petitioners is in danger. They will be attacked inside the prison as an attack has happened a year ago. Therefore, to save the life of the petitioners, this Court should direct the State to bring all of them – 18 in number to one solitary prison in Bangalore Central Prison and house them in different cells. He would submit that, that would give protection to the petitioners and also access to the defence counsel as and when required.

5. The learned Advocate General representing the State would vehemently refute the submissions to contend that the petitioners are alleged of conspiracy. The only intention of the petitioners to come to Bangalore and to be together is to hatch another conspiracy for illegal activities. There is no incident that has happened on the petitioners as alleged. The learned counsel for the petitioners is trying to build up a story with regard to registration of crime of assault in Belagavi Jail. It did not concern the petitioners at all. It was against some other person. Therefore, he would submit that it is dangerous to the Society, public and even to the inmates, if the petitioners come together and are housed in a solitary prison. The learned Advocate General would insist that public interest should also be kept in mind while granting any relief to the petitioners who are alleged of brutal murder.

6. In reply, the learned counsel for the petitioners would seek to lay a foundation that the defence of the petitioners is crippled due to them being in different jails. The video conferencing facility does not work and even if it works, there is no privacy as the

defence counsel talking to the accused would always require certain amount of privacy.

7. The learned Advocate General would again refute this submission by contending that all the prisons have video conferencing facility and if any other facility is necessary for interaction with the defence counsel, the same would be provided. The apprehension raised can hardly be a reason for shifting these accused into one prison. He would contend that Bangalore Central Prison has the capacity to accommodate 4000 accused/prisoners but now there are already 5200 in number. Therefore, the submission that Bangalore Prison can house all these petitioners as there are vacant cells is also incorrect.

8. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

9. The afore-narrated facts are not in dispute. All the petitioners become accused in the murder of Praveen Nettur in Dakshina Kannada. A crime then comes to be registered in Crime

No.63 of 2022 initially against three persons. The investigation was immediately transferred to the Agency. The Agency then registers a fresh crime as afore-quoted. These petitioners who come into the web of crime are arrested. Out of the accused persons, one Mohammed Jabir is said to have filed an application seeking transposition as an approver under Section 306 of the Cr.P.C. On the said application being filed, the State files an application before the concerned Court about the factum of accused No.18, Mohammed Jabir turning as an approver. The Court then passes the following order:

"Sri. Shivabasappa, Jailer, Central Prison, Bengaluru is present. He files a requisition for seeking transfer of accused No.1 Zakir A., A2 - Mohammed Shafiq, A3 - Sheikh Saddam Hussain, A4 - Abdul Harris, A5 Noufal M., A6- Zainul Abid, A7 - Abdul Kabir C.A., A8 - Mohammed Shihab S., A9 Abdul Basheer, A10 - Riyaz, A15 - K. Ismail Shafiq, A16 - K.Mohammed Iqbal, A17 Ibrahim Shah and A19- Shahid M to various Central Prisons in the State.

This court has perused the requisition and documents produced along with the requisition.

It is stated in the application that the Superintendent of Police, NIA, Branch Office Bengaluru wrote a letter stating that accused No.18 Mohammed Jabir submitted an application before the court to become approver in this case as expressed apprehension about his safety as all the accused persons of this case are lodged along with him in Central prison, Bengaluru and it is necessary to shift the

other accused persons to various prisons in the State of Karnataka.

*It is further stated that there are more than 5000 under trial prisoners in the prison. They consists of rowdy sheeters, terrorists who are having connection with Lashkar A Toiba, international terrorist organization, ISIS terrorist organization, Pakistani terrorist organization and other high security prisoners. **Therefore, in the interest of security and safety, it is just and necessary to shift the aforesaid accused persons to other prisons. It is further stated that video conferencing facility is available in all the prisons in the State of Karnataka produce them before the court on the date of hearing. The Under trial prisoners can contact their family members. relatives, advocates through 'prison call system' as well as E-muakath' facility.***

This court is satisfied with the aforesaid grounds. Keeping in mind the safety and security of the under trial prisoners, it is just and proper to permit the Chief Superintendent, Central Prison, Bengaluru to shift the aforesaid accused persons to other prisons in the State of Karnataka. Hence, this court proceeds to pass the following:

ORDER

The requisition filed by the Chief Superintendent, Prison, Bengaluru is hereby allowed. He is permitted to shift accused No.1 - Zakir A., A2 - Mohammed Shafiq, A3 - Sheikh Saddam Hussain, A4 - Abdul Harris, A5 - Noufal M., A6 - Zainul Abid, A7 - Abdul Kabir C.A., A8 - Mohammed Shihab S., A9 - Abdul Basheer, A10 - Riyaz, A15 - K. Ismail Shafiq, A16 - K.Mohammed Iqbal, A17 - Ibrahim Shah and A19 - Shahid M to the prisons stated against their names in the requisition.

Intimate the same to the Chief Superintendent, Central Prison, Bengaluru.

Call on 21.01.2023."

(Emphasis added)

The Court observes that it was satisfied that keeping in mind the safety and security of the under trial prisoners, it was just and proper to permit the Chief Superintendent, Central Prison, Bangalore to shift the accused to other prisons in the State. But, he retracts his confessional statement and projects torture by the officials of the Agency. It is then, the matter is again moved and the Court considering the circumstances in which Mohammed Jabir retracts his statements passes the following order:

"This court has perused the application, objections and other materials available on record.

It is stated in the application that the accused are in judicial custody in this case and they were kept in Central Prison Bengaluru until 11.02.2023. On 17.02.2023, one of the accused retracted his confessional statement and specifically stated about a torture and coercion by the NIA officials. After this incident, dramatically the accused were shifted to different jails in the state of Karnataka for the best reasons known to the Jail Authorities and agency. Now the case is set down for HBC and the accused have to give specific input about the each event of the allegations made in the charge sheet. The conduct of the jail authorities appeared instructed one in order prevent the effective instruction from the accused persons. It is further stated in the application that the colleague of the learned counsel for the accused was informed by the Superintendent of Central Prison, Belgavi about the attack on accused No.1 Sheeyab by an undertrial prisoner Poojari which raises serious concern upon the security and safety of each accused person as in

the past communal forces have murdered one Mustafa Kavoor in Mysore Jail who was an accused in similar kind of incident. Even in the past in north India innocent under trial prisoners who were charged under terror charges were gun downed in suspicious circumstances and now other than terror charges the accused persons also carrying the tag of member of banned organization which give enough ammunition to target such accused persons. It is further stated that seeing the subjective investigation, there is every chance to target the accused persons and one are the other pretext and they can be safe guarded only with the order of this court. Hence, it is prayed to direct the Chief Superintendent, Central Prison, Bengaluru to keep all the accused persons in one place under proper security.

The Learned SPP has opposed the application by filing his objection. He has specifically contended that this court passed the order permitting the jail authorities to transfer the accused persons to various other prisons in the state of Karnataka upon the request made by prison authorities on 19.01.2023. Pursuant to the order passed by this court the accused were shifted to various other prisons in karnataka in accordance with the procedure established by law. The allegations made in the application are baseless and have been leveled with a sole intention to malign the name of the investigation agency. Prior to the retraction the confession by one of the accused on 07.02.2023, the prison authorities have independently approached this court seeking transfer of the accused persons on 19.01.2023 and this court allowed the same.

It is further stated that in case of any attack on under trial prisoner the law safeguards the interest and safety of the said person and appropriate legal action could be initiated against the person involved in the commission of the alleged crime. The accused persons have been shifted to various prisons pursuant to the order passed by this court and it is the responsibility of the jail authorities to ensure

their safety. Such being the case, the alleged incident in itself would not permit all the accused persons to be kept at a single place. The prison authorities provide various facilities such as online communication and phone call facilities and E-mulakth for the prisoners to enable them to communicate with family members and advocates for effective representation before the court. Hence, there is no merit in the application and has prayed to reject the application.

*It is the first contention of the learned counsel for the accused persons that one of the accused person retracted his confession before this court on 7.2.2023 and thereafter the accused persons were shifted to various prisons in karnataka state to reasons best known to the authority and agency. **It appears from the records that of the accused retracted his confession before this court on 7.2.2023, whereas the Jail authorities have approached this court by filing an application stating that accused no. 1 Mohammed Jabire submitted application before the court to become approval in this case and he expressed apprehension about his safety and security and there is security issue in keeping all the accused in Central Prison on 19.1.2023. After considering the application filed by the jail authorities, this court ordered to shift the accused persons to various prisons in the state of Karnataka before retracting the confession by accused Mohammed Jabir. Therefore this court does not find any merit in the contention raised by the learned counsel for the accused persons.***

*It is next contention of the learned counsel for the accused persons that the accused persons were shifted to various prisons at the instance of the NIA to prevent the accused persons from giving effective instruction to their counsel. In this regard this court while appreciating the application filed by the Jail authorities, **it is held that the prison call system and E-mulkakth facilities are available to the undertrial prisoners to contact their family members and their advocates to give inputs or instruction for effective representation of their case before the court and the accused persons can utilize the said facilities. Even the learned counsel for the accused persons can get the information or input***

through the said facilities from the accused persons. This court has also consider the security issue in keeping all the accused persons in central prison Bengaluru before passing the order. Hence, there in no substance in the contention passed by the learned counsel for the accused persons.

It is the next contention of the learned counsel for the accused that he received the information from the superintendent of central/ prison Belgavi that accused No.1 Sheeyab was attacked by an undertrial prisoner Poojari. In this regard, this court directed the chief superintendent of Central prison, Belgavi to submit a report before this court. Accordingly, he submitted a report stating that accused No.1 Sheeyab was attacked by 4 under trial prisoners by name Kishon Sudir Poojari, Dhanush Sudir Poojari, shrijit and Dinesh and a case has been registered in this regard. Therefore the said report clearly goes to shown that accused No.1 was attacked by undertrial prisoners of Belagavi jail as contended by the learned counsel for the accused persons. In the opinion of the court, it is just and proper to shift accused No1 and 16 to some other prison keeping in mind the safety and security of the accused persons. Hence, this court proceeds to following:

ORDER

The application filed by the learned counsel for the accused persons is partly allowed.

The chief superintendent of Central Prison Belgavi is hereby directed to shift accused No.1 and 16 to any other prison in karnataka which is suitable to keep accused No.1 and 16 and submit the compliance report before this court.

Intimate the same to the jail authorities."

(Emphasis added)

The application filed by the accused was partly allowed. The Chief Superintendent of Central Prison, Belgavi was directed to shift accused Nos.1 to 16 to any other prison and submit a compliance report. The reason found in the order is that, those accused were attacked by certain undertrial prisoners in Belgavi Jail. Therefore, they are shifted. The situation now is that, pursuant to the order dated 19-01-2023 *supra*, all the petitioners had been transferred to different jails in the State. Accused Nos.1 and 16 were housed in Belgavi Jail. There was an attack on them. Therefore, the Court directed accused Nos.1 and 16 to be shifted to any other central prison in terms of the order dated 15-02-2023. There was a reason for such direction. There is no reason for the petitioners to seek identical direction at the hands of this Court.

10. The projection by the learned counsel for the petitioners is that, there was an attack in the Central Jail, Dharwad against one Suleiman. Suleiman is not the accused in any of these cases. It has happened at the time when they were all having lunch together. The crime is registered for offence punishable under Sections 307 and 506 of the IPC. The issue would be whether these petitioners

are entitled to transfer to Bangalore Central Prison as they have demanded to stay together.

11. What led the State to transfer these petitioners was a communication from the Agency. The communication dated 18.01.2023 reads as follows:

"To,

*The Director General of Police
Prisons & Correctional Services,
Karnataka State Police, Bengaluru.*

Respected Sir,

*Sub: Request to transfer accused persons to
various jails in Karnataka.*

*Ref: NIA case RC-36/2022/NIA/DLI dated
04.08.2022.*

With reference to above, it is submitted that NIA Branch Office, Bengaluru is investigating case in Crime no. RC-36/2022/NIA/DLI. This case pertains to murder of Praveen Nettaru by PFI accused persons.

02. In the said case till date fifteen (15) accused persons have been arrested and are presently lodged in Central Prison, Parappana Agarahara, Bengaluru. One of the arrested accused persons Mohammed Jabir (A-18), who has submitted petition to Hon'ble court to become approver in this case has expressed apprehension about his safety, as all the accused persons of this case are lodged along with him in Central Prison, Bengaluru.

3. As all the arrested accused persons in this case belong to Popular Front of India organisation, which is declared as Unlawful Organisation by The Central

Government of India under UA (P) Act, it is requested to shift all the accused persons in this case, except accused Mohammed Jabir (A-18) to various prisons in Karnataka State.

Thanking You Sir,

*Yours Sincerely,
Sd/-
(G Siva Vikram IPS)
Superintendent of Police
NIA, Branch Office Bengaluru"*

(Emphasis added)

The communication is that all the persons arrested belong to Popular Front of India organization which is declared to be unlawful and one of the persons has turned as an approver and, therefore, it was necessary to shift all the accused persons except the one who turned as an approver to various prisons in the State. The transfer of prisoners from one prison to the other is dealt with under the Karnataka Prisons Act, 1963. The prisons manual which captures the statutory provisions in clauses 537 and 538 read as follows:

"537. Statutory Provision;

- i. Under Section 8 of The Karnataka Prisoners Act, 1963, the power of removing convicted prisoner or a person confined in prison in default of giving security for keeping the peace or for maintaining good behavior from one Prisons to another within the State vests with Government and subject to its***

order under the control of the Director General of Prisons and Correctional Services;

- ii. Section 25 of The Karnataka Prisons Act, 1963, requires that all prisoners before to transfer shall be examined by the Medical Officer who shall certify that they are free from any illness rendering them unfit for removal.**

538. Reasons and Circumstances for transfer;

- i. Prisoners may be transferred from one prison to another for the following reasons;*
 - a) For custody and treatment in a suitable institution;*
 - b) For attendance in Court for the purpose of standing trial or giving evidence;*
 - c) On medical grounds;*
 - d) On humanitarian grounds, in the interest of their rehabilitation;*
 - e) For providing essential services;*
 - f) On grounds of security, expediency;**
 - g) To be nearer to his/her home district;*
 - h) On disciplinary grounds;*
 - i) For other special reasons, if any.*
- ii. No prisoner who is in hospital shall be transferred except for the benefit of his health;*
- iii. The Chief Superintendent or Superintendent of Prison shall on requisition in writing of the Medical Officer, supply extra diet, clothing and bedding to prisoners*

about to be transferred. Medicines with instructions for their use shall if necessary, be supplied to the Officer-in-charge of the escort together with the medical case sheet prepared by the Medical Officer."

(Emphasis supplied)

The power of removing convicted prisoner or a person confined in prison in default of giving security for keeping the peace or for maintaining good behavior it is necessary to be transferred. The other reason and circumstance of such transfer as quoted *supra* is security and expediency.

12. The learned Advocate General would submit that safe keep of the prisoners is the duty of the State. Some untoward incident happened one year ago would not mean that the petitioners are entitled to come together and stay in one house. The submission that it is the duty of the State to protect the life of prisoners merits acceptance as it is indeed the duty of the State. Submission of the learned Advocate General is placed on record that the State will see to that and no untoward incident would happen.

13. Insofar as the other submission for a transfer as projected by the learned counsel for the petitioners that they are unable to meet the defence counsel is concerned, I deem it appropriate to direct the State to provide all such facility in all the prisons to develop a vibrant video conferencing facility so that no prisoner is put to prejudice *qua* his defence. The crime may vary but the facility cannot be crippled. Therefore, the State shall ensure that in all the prisons where the undertrial prisoners are housed or the convicts, shall have a robust video conferencing facility so that any inmate will be in a position to interact with the defence counsel or the family members as the case would be in accordance with law. The plea of the petitioners that there is no privacy to speak to the defence counsel through video conferencing as it is conducted in a room, to alleviate the said grievance, I deem it proper to direct the State to provide head phones to the accused and to the person be it the defence counsel or the family members whoever wants to interact with the undertrial prisoners / convicts or any inmate so that there is no breach of privacy in the prisons. This system be put in place if it is not already in place. If it is already in place, the State shall see to it that the system works without any glitch.

Therefore, I decline to accept the request of the petitioners to house them in one prison i.e., the Central Prison, Bengaluru as this Court would not sit in the seat of the State to foresee or oversee the safety of every prisoner. It is the duty of the State and the duty is accepted by the learned Advocate General on an assurance that there would be no danger to the life or limb of the petitioners or any other inmate.

14. For the aforesaid reasons, the following:

ORDER

- (i) The Writ Petition is disposed.
- (ii) The prayer sought in the petition stands rejected.
- (iii) The State is directed to provide such facility at all the prisons and endeavour to develop a vibrant video conferencing facility, if not already available, so that no prisoner is put to prejudice *qua* his defence to converse with the defence counsel, in accordance with law.

- (iv) The State shall also provide headphones to the accused and to the person on the other end, be it the defence counsel or family members, who want to interact with the undertrial prisoners/convicts or any inmate, so that breach of privacy is not alleged.

- (v) If the system is already put in place, it shall be seen by the State that it works without any glitch.

**Sd/-
JUDGE**

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CT:MJ