

IN THE COURT OF THE ADDITIONAL SESSIONS JUDGE – IV, ERNAKULAM

Present:-

Shri. P. Krishna Kumar, Additional Sessions Judge - IV
Tuesday the 27th day of October, 2020/ 5th Karthika, 1942

Crl.M.P. No.164/2020

in

S.C No.43/2017

Petitioner/Accused 1:-

Roopesh, S/o Ramachandran,
Now residing H.No:XVII/183, Aami,
University Colony, Kochin University ,
Kochi – 22. (Now custody at Central Prison,
Viyur, Thrissur, RP No.2628)

Respondent/Complainant:-

State of Kerala represented by
DYSP, ISIT, Thiruvananthapuram.

By Shri. George Joseph, Additional District Govt. Pleader.

This petition having been heard on 27/10/2020 and the Court on the same day passed the following:-

ORDER

1. The petitioner, the 1st accused person in the above case, has been in judicial custody from 20.05.2015. He is conducting the case as party in person. This petition is filed for a direction to the prison authorities for providing limited and indirect access to Internet for collecting legal materials like judgments of the constitutional courts and various statutes.

2. Shri.Roopesh, the petitioner states that he has been prosecuted for 39 cases in various courts and he is conducting the trial as party in person in most of the cases. He further states that most of these cases, including the present one, are now matured for trial, for which access to the judgments of the constitutional courts and various statutory provisions is absolutely indispensable. Being an under trial prisoner, he is entitled to access the Internet in a controlled manner, he submits. He points out that Rule 828(v) of the

Kerala Prisons & Correctional Services (Management) Rules (for short, ‘the Rules’) permits foreign citizens who are in prison to access Internet for obtaining legal aid on their own expenditure and hence, he should not be discriminated to deny the same facility. Referring to the decision in Sunil Bathra-II vs. Delhi Administration (1978 (4) SCC 154), he points out that “For a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment”. Placing reliance on D.B.M.Patnaik vs. State of A.P (AIR 1974 SC 2092) and State of Maharashtra vs. Prabhakar Pandurang Sangzgiri (AIR 1966 SC 424), he contended that even convicts are not denuded of all fundamental rights they possess and hence being an under-trial prisoner, he is entitled to enjoy the human dignity as conceptualized by the Hon’ble Supreme Court in Shabnam vs. Union of India (2015 (6) SCC 702). The petitioner submitted that the right to use Internet has become a fundamental right protected under Article 19 of the Constitution of India as it is recognized by the Hon’ble Supreme Court in Anuradha Bhasin vs. Union of India (Order dated 10.01.2020) wherein it is held that law and technology seldom mix like oil and water but the law should imbibe the technological development and accordingly mould its rules so as to cater to the needs of society, and “non recognition of technology within the sphere of law is only a disservice to the inevitable. He also relied on Faheema Sherin vs. State of Kerala (Order dated 19.09.2019) for asserting the said legal proposition. He also pointed out that the Hon’ble High Court in Madras in L.Prakash vs. Superintendent, Puzhal Central Prison-I, Puzhal Chennai (LAWS (MAD)-2008-7-353) held that a prisoner has the right to use computer in the jail for the purpose of education. It is also contended that the Hon’ble High Court of Andhra Pradesh in T.Nagireddi vs. State of Andhra Pradesh (LAWS (APH-1971-3-30) permitted a leader of Naxalite movement to use a typewriter in prison for making all his communications with the court. The petitioner gave emphasis to the observation made by the Hon’ble High Court of Andhra Pradesh in the said decision that every civilized community is bound to take an approach giving

more amenities and freedom to the prisoners within the prison, especially in the case of under-trial prisoners, who are presumed to be innocent. Shri.Roopesh further submitted that the Central Prison, Viyyur, where he is housed at present, has a TV channel and an FM Radio and both are working on Internet platform and they are being run by the prisoners themselves.

3. On getting the said petition, this court called for a detailed report from the Superintendent of Central Prison, Viyyur and also issued notice to the learned Public Prosecutor who is appearing in the said case. As the petitioner is involved in a case charge sheeted by NIA, the Senior Public Prosecutor for NIA is also heard.

4. During the course of hearing, Shri.George, the learned Public Prosecutor for the State, submitted that the Investigating Agency has no objection in giving permission to the petitioner to use the Internet for the sole purpose of accessing legal materials from the official websites of the Government Authorities or the websites like Indian Kanoon etc. However, Shri. George submitted that the prison authorities have serious objections in giving permission to the petitioner for accessing Internet on various grounds. Nevertheless, the learned Prosector submitted that, the prison authorities are ready to provide adequate law journals to the petitioner or similarly placed inmates of the prison, if the court makes such a direction.

5. The learned Senior Public Prosecutor for NIA also submitted that, as the petitioner has been conducting many cases as party in person, such type of controlled access could be given to him for a limited time, by making sure that he is not misusing the liberty to disseminate some message to his confiderators.

6. Apart from the present case, the petitioner is facing accusation in yet another case in this court, in its capacity as the Special Court for NIA Cases. This court had the opportunity to see the legal acumen of the petitioner on a number of occasions. He always comes prepared to address the court with suitable precedents and legal provisions. He is a law graduate. However, his

submission is that the study materials available with him has been exhausted and they are no more helpful to him to defend the ensuing trial in various courts. The prison authorities have already reported through the learned Public Prosecutor that though the Central Prison has a library, they do not have enough legal books which are helpful to defend a serious criminal trial. It is also reported that law journals are also not available.

7. Right to legal aid has been accepted as a fundamental right to every citizen of India, by various constitutional courts. The concept of free legal aid to the prisoners and weaker section of the society as contemplates under Article 39A, is considered to be ingrained in Articles 14, 22(1) and 21 of the Constitution of India. Access to justice is incomplete without access to laws and legal provisions. As argued by the petitioner, right to use Internet is now considered as part of fundamental right. Law is well settled that prisoners also have fundamental rights, though circumscribed by the prison laws. The Prisoners Act or the Kerala Prisons & Correctional Services (Management) Act, 2010 (for short, "the Act") or the Rules made thereunder neither prohibits nor permits the under-trial prisoners from using Internet for accessing legal materials or otherwise. On the other hand, the idea of Internet usage by the prisoners is not completely alien to the prison laws in Kerala. As stated above, Rule 828(v) of the Kerala Prisons & Correctional Services (Management) Rules, 2014 permits foreign citizens who are detained in prison to use Internet for legal aid, on their own cost.

8. When it is declared by the constitutional courts that right to legal aid and right to use Internet are fundamental rights, the petitioner has every justification in asking permission to use the same for accessing legal materials to properly defend his case, in the absence of any prohibition in the prison laws. But the exercise of that right depends upon the availability of that facility in the prison and the capability of the prison authorities to provide it to the petitioner or any other person who demands it, without compromising the risk

elements involved. Such a facility can be provided to a person only if there is enough mechanism to regulate its use in a reasonable manner and also to prevent the misuse of the same. As pointed out by the learned Public Prosecutor for NIA, such a liberty if given, in an unbridled manner, a prisoner could misuse it for passing vital information, by making the very purpose of pre-trial detention in oblivion. Therefore, a direction in this regard can be granted only after considering all these aspects.

9. In this regard, the report submitted by the prison officials has to be considered in detail. It states about the following limitations for granting the permission requested by the petitioner. (a) Viyyur Central Jail has to house about 500 inmates, but it has only 15 computers, among them 13 are connected to Internet and these computers are used for making all the official functions of the prison. (b) Rule 828(v) envisages Internet facility only to foreign prisoners for legal aid, and on their own expenditure. (c) When the matter has been discussed with the other officials and the Head of the Department, the prison authority has reached to an opinion that providing Internet access to the prisoners is not desirable for want of necessary infrastructure and also for shortage of staff for supervising such usage. (d) It is not fair to grant such a facility only to one prisoner as there are so many other prisoners. (e) Internet usage by prisoners would cause considerable financial burden upon the prison department. (f) The petitioner could obtain necessary legal aid through the virtual legal aid clinic being conducted by the District Legal Service Authority (DLSA), Thrissur and thereby, he could obtain the required legal materials.

10. In view of the objections raised by the prison authority, a formal consultation was made with the Member-Secretary of the Kerala State Legal Service Authority (KELSA). The learned Member-Secretary informed that though there is a legal aid clinic in the Central Prison under the control of DLSA, Thrissur, due to the present pandemic crisis, it has not been functioning

properly and once the legal aid clinic restores its regular function, it is possible to provide appropriate legal aid to the petitioner. It is also intimated that the question of granting permission to the under-trial prisoners to access online legal materials without causing risk of its misuse could be considered by KELSA in consultation with the prison authorities, if the petitioner makes such a request.

11. A report as regard to the feasibility of providing limited and controlled Internet access in the prison is called for from the District System Administrator, District Court, Ernakulam, in consultation with the officials in the National Informatic Centre (NIC). Shri.Anand Vishwam, the District System Administrator, as per his report dated 12.10.2020, submitted that on the basis of the discussion made with the NIC officials and on assessing the possibilities explored on other technical levels, he is of the opinion that limited and controlled Internet access to the computers could be provided by enabling Firewalls which are available across various OS platforms. According to him, four types of Firewalls are available such as, Host based, Network based, Software based and Hardware based, in addition to the usual method of browser based blocking. However, he recommends that, out of these options, Hardware based Firewalls are the best solution, as other methods of restrictions could be bypassed by a tech-savvy user, if he is left unmonitored.

12. After considering all the above aspects, this court is of the opinion that the request made by the petitioner cannot be allowed as such, as it involves various issues such as the administrative difficulties in supervising the petitioner as and when he uses Internet for collecting legal materials. As pointed out by the prison authority, if such a facility is extended to the petitioner, there might be demand from the other prisoners as well and the prison authorities may not be able to handle such demands without compromising the risk factors involved in the usage of Internet facility by the inmates. At the same time, the request made by the petitioner for using limited

and controlled Internet facility for collecting legal materials to enable him to properly defend his case in the ensuing trials, is also a just and reasonable need. The prison authority, through Public Prosecutor, undertook that they would provide adequate law journals to the petitioner. Considering the financial aspects behind subscribing law journals including the back volumes, it is advisable to avail the facility of Software based law journals, which are comparatively cheaper. Until such a facility is provided to the petitioner, he is entitled to use Internet, in a limited and controlled manner and on his own costs. He is also entitled to make a request to KELSA for implementing a comprehensive scheme for providing legal aid to under-trial prisoners, including the facility to access online legal materials. In this circumstance, it is decided to dispose of the petition with the following directions.

(1) If the petitioner makes a request to the Member-Secretary, Kerala State Legal Service Authority, Niyama Sahaya Bhavan, High Court Compound, Ernakulam for providing adequate legal aid, including the facility to provide limited and controlled access to the Internet to collect legal materials, the Superintendent of Prison shall forward the same.

(2) Based on the submission made by the prison authority that they are ready to provide journals to the inmates of the jail, if the court directs, the Superintendent of Prison, Central Prison, Viyyur is directed to arrange Software based law journals (like KHC, Verdicts etc) to the petitioner.

(3) When such software based law journals are made available, petitioner shall be permitted to use the computer in which it is enabled for a reasonable duration.

(4) Until a decision is taken on the petition given to the Member-Secretary, KELSA or until the direction No. 2 is implemented, the petitioner shall be permitted to use Internet facility for a duration of 45 minutes every week to access only the official websites of the Hon'ble Supreme court and various High Courts in India, India Code, Indian Kanoon and any useful search

engine for accessing any of the said websites.

(5) The Superintendent is also directed to implement necessary Firewall protection to the computer so as to restrict the use of Internet only with the above said official websites.

(6) The Superintendent of the prison shall take steps to place the computer (in which the petitioner would access Internet or the Software based law journal), in such a manner to cover its screen in a CCTV camera which is available in the prison, so as to ensure that the liberty given to the petitioner is not misused.

(7) The Jail Superintendent shall fix the usage charges for the Internet facility being used by the petitioner, taking into account the actual charges caused by such usage and the incidental matters, and shall adjust it against the wages to be given to the petitioner, if he exercises his option under section 54 of the Kerala Prisons & Correctional Services (Management) Act, for availing employment in the prison.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 27th day of October, 2020.

Sd/-

P. Krishna Kumar
Additional Sessions Judge-IV

APPENDIX:- NIL

Sd/-
Additional Sessions Judge-IV

//True copy//

Additional Sessions Judge-IV

Typed by : skp
Comp.by : kbs

CrI.M.P. No.164/2020
in
S.C No.43/2017
Order dated 27/10/2020