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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 9th February, 2023

+ **W.P.(C) 2087/2021**

NATASHA NARWAL & ANR. Petitioners

Through: Ms. Tusharika Mattoo and Mr. Kunal
 Negi, Advocate with Petitioners (M:
 9999279361).

versus

STATE OF NCT OF DELHI & ANR. Respondents

Through: Mr. Gautam Narayan, ASC with Mr.
 Unmukt Gera, Mr. Harshit Goel,
 Advocates for GNCTD.
 Mr. Sarfaraz Khan Advocate for
 DSLSA (M: 9899140169).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The instant writ petition was filed by the Petitioners- Ms. Natasha Narwal and Ms. Devangana Kalita, two undertrial persons, who were lodged in Tihar Jail at the time when the writ petition was filed. The petition was filed during the COVID-19 pandemic. They had sought several reliefs in this writ petition in view of the suspension of certain prison rules, change in prison rules owing to the pandemic and the requirement for isolation which was prescribed during the said period.
3. The reliefs sought in the writ petition are as under:

“(i) Issue a writ of mandamus directing the Respondent No.1 in consultation with the Respondent Director General of Prisons to amend/ formulate rules in terms of the table set out hereinabove;

(ii) Issue a writ of mandamus directing the Respondent No.2 to allow Petitioners as also other inmates of jails

within the NCT of Delhi to have the choice to have physical or virtual mulaqaats to communicate with family and friends regularly as is mandated by the Prison Rules, 2018;

(iii) Issue a writ of mandamus directing the Respondent No.2 to permit the Petitioners and other inmates of jails within the NCT of Delhi access to accredited doctors, therapists, and other medical professionals through video-conferencing facilities;

(iv) Issue a writ of mandamus directing the Respondent No.1 in consultation with the Respondent Director General of Prisons to amend/ formulate rules to permit adherence to norms of natural justice and prisoner participation in disciplinary proceedings;

(v) Issue a writ of mandamus directing the Respondent No.2 to make mandatory/ compulsory the viewing of a video introducing new inmates to prison life;

(vi) Issue a writ of mandamus directing the Respondent No.2 to permit the Petitioner access to resource persons/ research supervisors/ other professionals through video-conferencing facilities as required for the purpose of completing education;

(vii) Issue a writ of mandamus setting aside Rule 1268(k) as violative of the right to food and to suitably amend the same to permit access to eggs/ non-vegetarian food; and to

(viii) Pass such other Order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case."

4. Notice was issued on 17thFebruary, 2021 in this case and a report was sought from the Respondent No. 1- GNCTD. On the said date, a direction was issued to the Jail Superintendent, Tihar Jail to arrange for video conferencing facilities to the Petitioners in order to enable them to join the Court proceedings through video conferencing. Thereafter, on 13thApril, 2021, the GNCTD had filed its status report pursuant to which detailed directions were

issued in respect of provisions for the following:

- (i) Physical *mulaqaats*,
- (ii) Computer centers,
- (iii) Legal aid for the Petitioners.

5. The relevant extract of the said order dated 13th April, 2021 reads as:

“3. On 17th February, 2021, the issues raised by the Petitioners in respect of Physical mulaqaats, VC facilities etc. were recorded in the order passed on the said date and a status report was called-for from the Jail Superintendent, Tihar Jail.

4. The said status report has been placed on record, along with various annexures. The counsels for the Petitioner and the Respondents have made their respective submissions. The Petitioners have also joined the hearing through video-conferencing from Jail. At this stage, the three issues that the Petitioners highlight are as under:-

(i) Physical mulaqaats: In respect of physical mulaqaats, the status report indicates that at least 8 physical mulaqaats for 30 minutes per month were being permitted prior to the outbreak of the Covid-19 pandemic for each under trial prisoner. Post the outbreak of the pandemic, physical mulaqaats have been stopped and e-mulaqaats are currently prevalent. Currently 3 e-mulaqaats of 15 minutes per month are permitted. For a brief period, physical mulaqaats were re-started but again w.e.f. 15th April, 2021, they were stopped.

The Petitioners submits that various under-trial prisoners and their family members may not have sufficient gadgetry, such as smart phones, laptops, tablets or computers, to do an effective e-mulaqat. It is further submitted that even in physical mulaqaats, the prisoner does not have physical contact with the family member as they are separated by fibre glass.

Considering these submissions, Id. counsel for the

Respondents shall seek instructions on whether physical mulaqats can be started even during the pandemic for under-trial prisoners who request for the same, for a duration of 30 minutes at least once a week, by ensuring that any family member who attends the physical mulaqat is wearing a mask/any other PPE Kit which may be required, while maintaining social distancing.

(ii) Computer Centre: Insofar as access to the status of the cases, orders, FIRs etc. for under trials, it is submitted that there is a computer centre available in the jail premises which consists of 10 computers. However, the same is not operational. The Petitioners submit that internet facilities can be made available in those computers to enable under trial prisoners who have not been able to visit the Courts or talk to their lawyers to access the information relating to their own cases.

Accordingly, Id. counsel for the Respondents shall seek instructions on the steps that can be taken to make the Computer Centre operational, along with proper internet connectivity, with access being limited to websites of District Courts, High Courts and the Supreme Court, along with a proper printing facility.

(iii) Legal Aid: In so far as legal aid is concerned, the status report records that efficient legal aid is being provided by deputing three panel Advocates by the DSLSA and two Advocates of the DHCLSC, who work with the female inmates for drafting their bail petitions and other applications and also counsel them on various legal issues.

It is not disputed that there is a legal aid room in the Jail premises. However, it is submitted that the same has only one computer with no internet connectivity. Accordingly, Id. counsel for the Respondents would seek instructions as to whether the number of computers in the legal aid room could be increased along with internet connectivity and a proper printing facility provided, so that the legal aid panel lawyers have a

proper room to assist the under trial prisoners in an efficient manner.”

6. Subsequently, the matter came to be considered on 3rd May, 2021 when vide an application bearing, **CM APPL. 15720/2021** the Petitioners were seeking further reliefs and had flagged a set of additional issues in respect of the inmates in the women’s jail. The following issues were considered in the said application:

- (i) Tele-calling Facilities
- (ii) Vaccination of inmates
- (iii) E-Mulaqaats
- (iv) Monthly charges for calling facilities
- (v) Other Reliefs prayed for in the Application

7. The portion of the order dated 3rd May, 2021 in respect of these issues reads as:

“i) Tele-calling facilities

4. The first issue that has been highlighted by Mr. Adit S. Pujari, Id. Counsel for the Petitioners, is in respect of telephonic calling facilities for prisoners who are being quarantined, due to them having symptoms of COVID-19 or due to having been tested positive for COVID-19.

5. Mr. Pujari, Id. Counsel submits that the inmates do not have any telecalling facilities, and they are able to use the telephone to call only once in a week, which is not sufficient, considering the fact that the relatives of these prisoners would be concerned about their medical condition and their symptoms as also their treatment in respect of COVID-19.

6. In response to this issue, Mr. Gautam Narayan, Id. ASC appearing for the GNCTD, submits that a separate mobile number has now been obtained in order to enable such prisoners to be able to make telephone

calls, and a specific dedicated staff has been nominated to visit the COVID-19 ward to facilitate the same, and enable the said prisoners to speak with their family. He further submits that the Office of Superintendent of Jail is in fact intimating the relatives of the inmates as to their medical condition on a daily basis.

7. Mr. Gautam Narayan, ld. ASC to obtain instructions as to what is the frequency of such visits being made by the said dedicated staff, as also the frequency of such telephone-calls that have been permitted to be made by the inmates, who are currently quarantined due to Covid-19 symptoms and those who are quarantined due to having tested positive and are undergoing treatment.

ii) Vaccination of inmates

8. Mr. Pujari, ld. Counsel, has also in this application under ground (f), raised an issue concerning the vaccination of the inmates in the prison, in order to prevent an outbreak as the jail is overcrowded.

9. Mr. Narayan, ld. ASC, on this issue, submits that, at this stage, only 12 prisoners/inmates who are over the age of 45 years have been vaccinated.

10. Considering that there are greater chances of spreading of the COVID-19 infection, within the enclosed premises of the prison, let Mr. Gautam Narayan, ld. ASC, take instructions as to the vaccination policy, that is being proposed for vaccinating the inmates in the Central Jail-6, Tihar.

ii) E-Mulaqaats

11. The application also prays for resumption of the E-Mulaqat facility for the inmates to interact with their family members. The same is a part of ground (d) of the application.

12. Insofar as physical mulaqaats of inmates with their family members, the same is stated to have been entirely suspended currently. However, Mr. Gautam Narayan, ld. ASC, has informed the Court that E-Mulaqaats are

being resumed from today i.e., 3rd May, 2021.

13. Let the same be confirmed by ld. Counsel for the Petitioner on the next date.

iv) Monthly charges for calling facilities

14. Ld. counsel for the Petitioner also prays that, as was done in May/June 2020, the monthly calling charges amounting to Rs. 150 to Rs. 300, imposed upon the prisoners, be waived due to the prevalent situation.

15. Mr. Gautam Narayan ld. ASC, submits that a decision qua the same has to be taken by the Prison HQs, as was done previously. Let the same be done, and placed on record before the next date.

v) Other reliefs prayed for in the Application

16. Apart from these, Mr. Narayan, ld. ASC, may peruse the remaining issues raised in the application and may attempt to seek instructions in the matter, to assist the court on the next date.”

8. In order dated 3rd May, 2021, the issues which were flagged by the Petitioners and recorded in order dated 13th April, 2021 were considered. The extract of the order dated 3rd May, 2021 read as:

(i) Physical mulaqats:

19. In respect of physical mulaqats, considering the current wave of the COVID-19 pandemic, it is stated in the status report filed by the Respondents that even after wearing the PPE kits, it is not advisable to have a physical meeting/mulaqats. 20. To this effect, the status report is taken on record and is accepted by the Court, subject to the condition that e-mulaquats would commence and all the facilities qua the same shall be provided to all the inmates in Central Jail-6, Tihar.

(ii) Computer Centre:

21. Insofar as the computer centre is concerned, the status report states that once the second wave of the

COVID-19 pandemic subsides, the computer centre would be opened and re-operationalized in a phased manner. Mr. Gautam Narayan submits that in the computer centre, COVID19 protocols may not be fully maintained, and hence the same is currently not operational.

22. Moreover, insofar as the internet connectivity in the said computer centre is concerned, the Jail Superintendent would not have the authority to decide as to which websites should be made accessible to the inmates.

23. Accordingly, the Jail Superintendent, Central Jail No.6, Tihar, may co-ordinate with the concerned Director at the NIC, who is providing the internet connection to Tihar Jail, in order to seek assistance as to whether limited access to only a certain permissible number of portals can be given in the computer centre at the jail or not, and whether the system can be installed in such a manner that there is no access to other non-permissible internet portals. For this purpose, the Jail Superintendent may directly contact the Director, NIC, and a status report in this regard be placed on record before the next date

(iii) Legal Aid:

24. Insofar as the issue concerning legal aid is concerned, the status report states that the legal aid room is available, and the empanelled counsels of the Delhi State Legal Services Authority (DSLISA) visit the said jail and utilise these computers between 3:00 PM to 6:00 PM five days a week. The status report further states that the number of computers and printers are being made available can be increased, if required.

25. Since the requirement of these computers would be based on the quantum of work which the DSLISA panel lawyers would be undertaking in the said room, let the Secretary, DSLISA, Mr. Kawaljeet Arora, place a report on record, after assessing as to how many computers

and printers would be required in the said legal aid room.

26. A copy of the present order be communicated to Mr. Kawaljeet Arora, Secretary- DSLSA, and the concerned Director, NIC, who shall be served through the Jail Superintendent, Central Jail No.6 itself.

27. Let status report in respect of issues (ii) and (iii) be filed by the Respondents within a period of 10 days from today.

28. Insofar as the issues relating to tele-calling and vaccination are concerned, instructions may be obtained by Mr. Gautam Narayan, Id. ASC urgently. For the rest of the issues matter would be taken up after two weeks. List this petition, as also CM Appl. 15721/2021, on 5th May, 2021."

9. Details directions have also been passed on 5th May, 2021 on the following issues:

- (i) Tele-calling Facilities
- (ii) Vaccination of inmates
- (iii) E-Mulaqaats
- (iv) Monthly calling charges and intermingling issues

10. The relevant extract of the order dated 5th May, 2021 reads as:

“i) Tele-calling Facilities

4. Currently, as per the submissions made, there are three types of wards: one is the recovery ward, one is the isolation ward and the third is COVID-19 positive quarantine ward, respectively housing 18 inmates, 21 inmates and 9 inmates. The calling facilities are stated to have been activated in all these wards with effect from 4th May, 2021.

5. In view thereof, insofar as the activation of calling facilities is concerned, no further direction needs to be issued, except for the fact that the said calling facilities would be continued.

6. However, there is a further issue that has been raised in this petition, as to the inmates who can make these calls, and to the kind of numbers which the said calls are allowed to be made to.

7. Firstly, it is submitted that the daily calling facilities are only available to those inmates who have verified their biometric data and also have submitted various documents in respect of the postpaid number, the address and the bill, of the person, to whom the call is to be made. It is further submitted that the daily calling facilities are available only to numbers which are postpaid, and not to prepaid numbers. This requirement was suspended during the first wave of the COVID-19 pandemic, as a large number of relatives of the inmates do not have postpaid facilities and only have prepaid connections.

8. Considering this fact and the current situation of the pandemic, where a large number of families seem to be affected, the daily calling facilities would henceforth be extended, during the current second wave of the COVID-19 pandemic, even to prepaid numbers so long as the number to which the said call being made is verified, and the person who is receiving the call is verified in some manner, to be a close relative of the inmate concerned.

9. Further, insofar as the inmates in recovery/isolation/COVID-19 positive wards are concerned, daily calling would be permitted for a maximum of 5 minutes for these inmates, considering that they would wish to update their family members as to their medical condition.

10. The directions to this effect are issued to the Jail Superintendent, CJ-6, Tihar Jail, to make the same operational within the next 2-3 days.

ii) Vaccination of inmates

11. On the issue of vaccination, insofar as the inmates who are 45+ years of age are concerned, there are a total of 136 inmates for whom vaccines are already

stated to have been received by the Jail Superintendent. Out of them only 12 inmates have already been vaccinated. However, the impediments in the administration of vaccination appear to be due to various factors such as hesitance in the inmates to get vaccinated, non-availability of identity cards such as Aadhar Card, PAN Card, and the non-availability of a mobile number which is to be put in the CoWIN portal.

12. Considering that for inmates who are 45+ years of age, vaccines are already available and are with the Jail Superintendent, it is directed that proper counselling shall be done for these inmates, and they would be encouraged to obtain vaccination, at the earliest.

13. Considering the density of occupancy in jail premises, vaccination is almost a necessity for all inmates. If an identity card, in the form of an Aadhar card or a PAN card is not available, the Prison ID number may be used as the identification number, for being put on the concerned portal/App. Insofar as the mobile number is concerned, if the inmate himself or herself does not have a mobile number, he or she is permitted to use the mobile number of a close relative, like a parent or a sibling or child, for the purpose of registration for the vaccine.

14. The Prison Authorities have assured this Court that all the 136 inmates, who are 45+ years of age, would be vaccinated by 31st May, 2021.

15. Insofar as the 18 - 44 age group of inmates are concerned, there are a total of 279 inmates. Currently, the Jail Superintendent has not received vaccines for the said group.

16. Accordingly, let a request be made by the Jail Superintendent within a period of 48 hours to the Disaster Management Office (West) which shall be forwarded to the Ministry of Home Affairs. The request of the Jail Superintendent shall be considered expeditiously, and the requisite vaccines shall be

supplied within a period of 15-30 days, for the purpose of vaccination of the said group of 279 inmates who belong to the 18-44 age group.

17. If there is any impediment in respect of the same, an appropriate application may be moved by the Jail Authorities before the court.

iii) E-Mulaqaats

18. Insofar as E-mulaqaats are concerned, the physical mulaqaats earlier were for half an hour per week. However, E-mulaqaats are being permitted only once for 15 minutes, every ten days.

19. Considering the current pandemic situation, there could be relatives and family members of the inmates, who may wish to be in touch with the inmates. Accordingly, e-mulaqaats for at least half an hour, each week, would be permitted by the Jail Authorities, to all the inmates.

iv) Monthly calling charges and intermingling issues

20. Insofar as the monthly calling charges are concerned, Mr. Gautam Narayan, Id. ASC, informs the Court that the same has been waived until 31st May, 2021. It is also submitted that further intermingling of the isolated/recovering COVID-19 positive patient is being completely avoided, and separate water facilities and other common facilities are being made available through dedicated staff to the recovery, COVID positive and isolation wards. The said submissions are taken on record.

21. Insofar as the remaining issues captured in the order dated 3rd May, 2021 are concerned, the same would be taken up on the next date of hearing i.e., 24th May, 2021. On the said next date, the Jail Superintendent shall arrange for video-conferencing facilities so that the Petitioners can join the Court from jail, if they are in custody.”

11. It has also been observed that subsequent to the filing of the writ petition, both the Petitioners have also been released on bail in July, 2022.

12. Today, Id. Counsel for the Petitioner, on being queried as to if there are any other additional issues in this matter, has raised a concern relating to e-mulaqaats facilities and inmates in case of relatives who are foreigners. In respect thereof, the circular dated 26th December, 2022 has been placed on record which states that for the category of foreign inmates unless they are covered by the exception, the said facility would be available. The relevant portion of the said circular is extracted herein below:

“....

*The E-Mulakat facility will not apply to foreign inmates involved in terrorist activities, offences against the State. The information with regard to this facility to be provided to the rest of the category of foreign inmates shall be shared with the investigating agency and the facility will be allowed **once in a fortnight only.**”*

13. In addition, it is also clarified, if any inmates have foreign relatives, e-mulaqaats would be permitted as per the applicable Rules. Considering the fact that the restrictions imposed due to the COVID-19 pandemic are not applicable any more, no further orders would be called for in this particular petition which primarily dealt with conditions in prisons and sought reliefs for prison inmates during the COVID-19 pandemic.

14. Id. counsel for the Petitioner expresses an apprehension that the grant of bail to the Petitioners, has been challenged and the same is pending before the Supreme Court. Liberty is accordingly granted to the Petitioners to approach, in case there is any change of circumstances.

15. It is also recorded that vide order dated 14th July, 2022, the Court had called for a response to the Delhi State Legal Services Authority (DSLISA) report where certain issues were highlighted in terms of providing IT infrastructure in the jails. The DSLISA, in its affidavit dated 17th September,

2022 had stated that in respect of inkjet printers, desktop computers, printers, scanners and UPS, orders have already been placed. The submission of Mr. Narayan, Id. ASC today is that the said equipment has already been supplied to Tihar Jail.

16. Petition is disposed of in these terms. All pending applications are disposed of.

FEBRUARY 9, 2023

Rahul/AM

**PRATHIBA M. SINGH
JUDGE**

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