

**IN THE HIGH COURT FOR THE STATE OF TELANGANA AT  
HYDERABAD**

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**WRIT PETITION NO. 17840 OF 2022**

**Between:**

Trisha Chandran

... Petitioner

AND

The Superintendent,  
Cherlapally Central Prison and another

... Respondents

DATE OF JUDGMENT PRONOUNCED: **19.04.2022**

**SUBMITTED FOR APPROVAL:**

**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

1. Whether Reporters of Local Newspapers  
may be allowed to see the judgment? No
2. Whether the copies of judgment may be  
marked to Law Reporters / Journals? Yes
3. Whether His Lordship wish to  
see the fair copy of the Judgment? yes

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**LALITHA KANNEGANTI, J**

**\* HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

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**! Counsel for Petitioner** : Sri K. Manoj Reddy

**^ Counsel for Respondents** : GP for Home

**< Gist:**

**> Head Note:**

**? Cases referred:**

- 1) (1978) 4 SCC 494
- 2) (1981) 1 SCC 503
- 3) (2019) 2 SCC 435
- 4) (2000) 5 SCC 712
- 5) (1978) 4 SCC 494
- 6) AIR 1966 SC 424

**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI****WRIT PETITION No. 17840 of 2022****ORDER:**

This Writ Petition is filed seeking a direction to the respondents to immediately remove Sanjay Kumar and Marri Srinivas Reddy currently lodged at Cherlapally Central Prison from solitary confinement and permit their movement within jail and communication with other prisoners. The petitioner requests the respondents to ensure that Sanjay Kumar and Marri Srinivas Reddy currently lodged in Cherlapally Central Prison are treated equally with the other prisoners in Cherlapally Central Prison and are provided access to all facilities available to other prisoners including television, newspaper, work, library and access to outdoor and common spaces.

2. Sri P. Vivek Reddy, learned Senior Counsel appearing on behalf of the learned counsel for the petitioner Sri K. Manoj Reddy submits that the petitioner is an advocate working with Project 39A which is a criminal justice initiative based in National Law University, Delhi who provide *pro bono* legal representation before the Supreme Court and various High Courts to prisoners sentenced to death. It is stated that this

Writ Petition is filed representing two death row prisoners lodged in Cherlapally Central Jail 1) Sanjay Kumar, S/o Pavan Ram and 2) Marri Srinivas Reddy, S/o Bal Marri Reddy. It is stated that Sanjay Kumar was sentenced to death on 28.10.2020 by the I Additional Sessions Judge, Warangal in S.C.No. 107 of 2020 for the offences under Sections 449, 328, 380, 404, 302 IPC. and confirmation proceedings i.e. RT 2 of 2021 and Criminal Appeal No. 143 of 2021 against the conviction and death sentence are pending before the High Court. It is submitted that Marri Srinivas Reddy was sentenced to death on 06.02.2020 by the Additional District and Sessions Judge, Nalgonda in S.C.No. 109 of 2020 and S.C.No. 110 of 2020 for the offences under Sections 366, 376(3), 376-A, 302, 201 IPC. and Section 5 of the Protection of Children from Sexual Offences Act, 2012 and confirmation Proceedings RT 2 of 2020 and RT 3 of 2020 and Criminal Appeals No. 248 and 249 of 2020 are pending before the High Court. Learned Senior Counsel submits that the persons were confined in a solitary ward and they have been segregated from the other prisoners on the ground of death sentence imposed on them. Now they are lodged in individual cells which have only one window without any ventilation. They were instructed to collect the meals and

eat them alone inside their respective cells which in turn bar them from interacting with other prisoners. It is submitted that they are denied access to all common areas in the prison, including library and television viewing area which they had access to before. Further, they are under constant surveillance as the prison guards check on them every 20-30 minutes making it difficult for them to undertake routine activities. It is submitted that Marri Srinivas Reddy also informed the petitioner that he is only provided a small place inside the cell and a wash room and he is not allowed to use the sanitization facilities used by the other prisoners. His cell is isolated due to which he is unable to see or talk to any other prisoners. These restrictions and the segregation imposed on him has caused irrevocable harm to both their physical and mental health and they are not allowed to leave their cell throughout the day barring one hour in the morning and evening when they are allowed to walk outside. Earlier, they were permitted to move around within the confines of the prison during the day and also allowed to work at the garment department within Cherlapally Central Prison and now the authorities are removing all the amenities such as access to common sanitation facilities, television and newspapers. Four other prisoners on death row

are also being similarly kept in isolated cells, segregated and prohibited from communicating with the rest of the prison population. It is submitted that pursuant to the video mulaqat, an e-mail was addressed to the Superintendent of Cherlapally Central Prison requesting to ensure that these prisoners are not kept in solitary or segregated confinement and they have also specifically mentioned that these kind of confinement and differential treatment from other prisoners amounts to violation of their fundamental rights under Articles 20(2) and 21 of the Constitution of India. When there was no response, they have also addressed a notice to the Secretary, District Legal Services Authority, Ranga Reddy vide e-mail dated 02.04.2022. It is submitted that the petitioner has visited the prison on 06.04.2022 and she was informed that they are still confined in separate and individual cells and are not allowed to communicate with other prisoners. Hence, they have come before this Court.

3. Learned Senior Counsel has relied on the judgment of the Hon'ble Apex Court in *Sunil Batra (I) v. Delhi Administration*<sup>1</sup>, wherein the solitary confinement is defined as 'seclusion of the prisoner from the sight of other prisoners

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<sup>1</sup> (1978) 4 SCC 494

and from communication with other prisoners. He also relied on the judgment of Hon'ble Apex Court in *Kishore Singh Ravinder Dev. V. State of Rajasthan*<sup>2</sup> and submits that the lodgment in a separate cell is no different from solitary confinement. It is submitted that the Hon'ble Apex Court in *In Re: Inhuman Conditions in 1382 Prisons*<sup>3</sup> held that the convicts on death row have the right to move freely within the confines of the prison like any other convict undergoing rigorous imprisonment and he is entitled to every comforts that are available to other prisoners including communication with prisoners, books reading material, etcetera. Learned Senior Counsel submits that solitary confinement is impermissible under the Prisons Act, 1894 and keeping them in the custodial segregation / solitary confinement before exhaustion of his constitutional, legal and fundamental rights is without authority of law and amounts to torture. He submits that the death sentence imposed by the trial Court is pending confirmation before this Court and the sentence is not beyond judicial scrutiny, as such, they do not fall within the ambit of 'prisoners under the death sentence' in the context of Section 30(2) of the Prisons Act, 1894. He submits that there is no judicial order directing them to be

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<sup>2</sup> (1981) 1 SCC 503

<sup>3</sup> (2019) 2 SCC 435

placed under solitary confinement as a form of punishment under Section 73 of the IPC. Hence, such confinement is illegal. He also submits that as per the Andhra Pradesh Prison Rules, 1979 does not prescribe any form of solitary confinement to the prisoners sentenced to death. He submits that a judicial order under Section 73 IPC. must be passed sentencing a person to solitary confinement. In this case, there is no order passed under Section 73 IPC. directing that the accused be kept in solitary confinement. When once there is no such order, confining the petitioner in a separate cell is in violation of the Prison Rules. Additionally, Rule 773 under Chapter XLIV does not prescribe any form of segregation or solitary confinement to the petitioner. He submits that it is not the case that immediately after the conviction, they were segregated from the other accused. In fact, earlier they were permitted to move along with the other prisoners and without any reason now they were segregated from other prisoners. This amounts to imposing additional punishment and separate punishment not authorized by law and this will amount to torture. Learned Senior Counsel submits that though both Sanjay Kumar and Marri Srinivas Reddy are death convicts, they have a right to move freely within the confines of the prison and also have right to have a



dignified life under Article 21 of the Constitution of India. Hence, he submits that a direction may be issued to the respondents to immediately remove both Sanjay Kumar and Marri Srinivas Reddy from solitary confinement and permit their movement within the confines and shall be permitted to communicate with other prisoners and also to treat them equally along with other prisoners and provide access to the facilities available to other prisoners including television, newspapers, library.

4. Learned Government Pleader for Home Sri Srikanth Reddy, on written instructions received from the Superintendent, Central Prison, Cherlapally, submits that under Section 30 of the Prisons Act, a prisoner under sentence of death shall immediately on his arrival in the prison after sentence, be searched by or by order of the jailor and all articles shall be taken from him which the jailor deems it in-expedient or dangerous to leave in his possession and every such prisoner shall be confined in a cell apart from all other prisoners and shall be placed by day and by night under the charge of a guard, as such, all the prisoners who are sentenced to death are segregated from other convict prisoners and kept them in separate cells. He submits that the cells which were allotted to

the death sentenced are constructed with proper space area, attached bathroom with latrine facilities and installed ceiling fan for free air with proper ventilation and also providing sufficient water facility inside the said compartment so as to enable them to meet their daily necessities without any difficulty. He submits that there is no need for common sanitization facilities. It is stated that death convict prisoners were not allowed to move around and also not allowed to work along with other convicts as per the norms defined in Chapter XLIV of TSPR, 1979. It is stated that they are following the guidelines issued by the competent authorities and accordingly, as per the said guidelines, they have segregated from the other prisoners as per the norms mentioned and there is no solitary confinement.

5. Having heard learned counsel on either side, perused the material on record.

6. The case of the petitioner is that two death convicts are in solitary confinement in a prison which is violative of the rights guaranteed to a person and also contrary to the law laid down by the Hon'ble Apex Court. The Hon'ble Apex Court has consistently held that imprisonment does not spell farewell to fundamental right although by a realistic reappraised courts will refuse to recognize the full panoply of Part-III enjoyed by a free

citizen. A prisoner is a human being as well as a natural person or a legal person. If a person gets convicted for a crime, it does not reduce him to the status of a non-person whose rights could be snatched away at the whims of the prison administration. Giving prisoners the right to fair procedure is also part of Article 21 of the Constitution of India.

7. A prisoner is entitled to all the fundamental rights unless curtailed by the Constitution. In this case, it is submitted by the learned Government Pleader that as per the norms defined in Chapter XLIV of TSPR 1979, they shall segregate these prisoners from other prisoners as per the norms mentioned and there is no solitary confinement. It is also submitted that when condemned prisoners are allowed out of their cells for meals, bathing, latrine or exercise, not more than one prisoner shall be allowed out at the same time. It is submitted that under Section 30 of the Prisoners Act, a prisoner under sentence of death is treated in the manner specified whereby he shall be confined in a cell apart from all other prisoners and shall be placed by day and night under the charge of a guard and except following the said rules, the prison authorities are not violating any of the rights of the prisoners and they are conscious of the same.

*State of Andhra Pradesh v. Challa Ramakrishna Reddy*<sup>4</sup>

8. A person can be said to be under sentence of death only when the death sentence is beyond judicial scrutiny and shall be operative without any intervention from any authority, till then the person who is awarded jail punishment cannot be said to be a person under the sentence of death in the context of Section 30(2) of the Prisoners Act. It is also consistently held that keeping a convict in the custodial segregation before extension of its constitutional, legal and fundamental rights is without any authority of law and amounts to torture. It is appropriate to look at the relevant paragraphs in the said judgment.

197-A. (1) I uphold the vires of Section 30 and Section 56 of the Prisons Act, as humanistically read by interpretation. These and other provisions, bring somewhat out of tune with current penological values and mindless to human-rights moorings, will, I hope, be revised by fresh legislation. It is a pity that Prison Manuals are mostly callous colonial compilations and even their copies are beyond prisoners' ken. Punishments, in civilized societies, must not degrade human dignity or wound flesh and spirit. The cardinal sentencing goal is correctional

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<sup>4</sup> (2000) 5 SCC 712

changing the consciousness of the criminal to ensure social defence. Where prison treatment abandons the reformatory purpose and practises dehumanising techniques it is wasteful, counterproductive and irrational, hovering on the hostile brink of unreasonableness (Article 19). Nor can torture tactics jump the constitutional gauntlet by wearing a “preventive” purpose. Naturally, inhumanity, masked as security, is outlawed beyond backdoor entry, because what is banned is brutality, be its necessity punitive or prophylactic.

(2) I hold that solitary confinement, even if mollified and modified marginally, is not sanctioned by Section 30 for prisoners “under sentence of death”. But it is legal under that section to separate such sentences from the rest of the prison community during hours when prisoners are generally locked in. I also uphold the special watch, day and night, of such sentences by guards. Infraction of privacy may be inevitable. But guards must concede minimum human privacy in practice.

(3) By necessary implication, prisoners “under sentence of death” shall not be denied any of the community amenities, including games, newspapers, books, moving around and meeting prisoners and visitors, subject to reasonable regulation of prison management. Be it noted that Section 30 is no

substitute for sentence of imprisonment and merely prescribes the manner of organising safe jail custody authorized by Section 366 of the CrPC.

(4) More importantly, if the prisoner desires loneliness for reflection and remorse, for prayers and making peace with his maker, or opportunities for meeting family or friends, such facilities shall be liberally granted, having regard to the stressful spell of terrestrial farewell his soul may be passing through — the compassion society owes to him whose life it takes.

(5) The crucial holding under Section 30(2) is that a person is *not* “under sentence of death”, even if the sessions court has sentenced him to death subject to confirmation by the High Court. He is not “under sentence of death” even if the High Court imposes, by confirmation or fresh appellate infliction, death penalty, *so long as* an appeal to the Supreme Court is likely to be or has been moved or is pending. Even if this Court has awarded capital sentence, Section 30 does not cover him so long as his petition for mercy to the Governor and/or to the President permitted by the Constitution, Code and Prison Rules, has not been disposed. Of course, once rejected by the Governor and the President, and on further application there is no stay of execution by the authorities, he is “under sentence of death”,

even if he goes on making further mercy petitions. During that interregnum he attracts the custodial segregation specified in Section 30(2), subject to the ameliorative meaning assigned to the provision. To be “under a sentence of death” means “to be under a finally executable death sentence”.

(6) I do not Rule out further restraint on such a condemned prisoner if clear and present danger of violence or likely violation of custody is, for good reasons, made out, with due regard to the Rules of fairplay implied in natural justice. Minimal hearing shall be accorded to the affected if he is subjected to further severity.

202. The roots of our Constitution lie deep in the finer spiritual sources of social justice, beyond the melting pot of bad politicking, feudal crudities and sublimated sadism, sustaining itself by profound faith in Man and his latent divinity and the confidence that “you can accomplish by kindness what you cannot do by force” [ Pubillus Syrus] and so it is that the Prisons Act provisions and the Jail Manual itself must be revised to reflect this deeper meaning in the behavioural norms, correctional attitudes and humane orientation for the prison staff and prisoners alike. We cannot become misanthropes and abandon values, scared by the off chance or some stray

desperate character. Then amputation of limbs of unruly suspects may be surer security measure and corporal punishment may have a field day after a long holiday. *The essence of my opinion* in both these cases is the infusion of the higher consciousness of the Constitution into the stones of law which make the prison houses.

203. The winds of change must blow into our *careers* and self-expression and self-respect and self-realization creatively substituted for the dehumanizing remedies and “wild life” techniques still current in the jail armory. A few prison villains — they exist — shall not make martyrs of the humane many; and even from these few, trust slowly begets trust. *Sarvodaya* and *anttyodaya* have criminological dimensions which our social justice *awareness* must apprehend and actualize. I justify this observation by reference to the noble but inchoate experiment (or unnoticed epic) whereby Shri Jai Prakash Narain redemptively brought murderously dangerous dacoits of Chambal Valley into prison to turn a responsible page in their life in and out of jail. The rehabilitative follow-up was, perhaps, a flop.

*Sunil Batra (I) v. Delhi Administration*<sup>5</sup>

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<sup>5</sup> (1978) 4 SCC 494



9. The restriction of environmental stimulation and social isolation associated with confinement in solitary are strikingly toxic to mental functioning, producing a stuporous condition associated with perceptual and cognitive impairment and affective disturbances. In more severe cases, inmates so confined have developed florid delirium—a confusional psychosis with intense agitation, fearfulness, and disorganization. But even those inmate who are more psychologically resilient inevitably suffer severe psychological pain as a result of such confinement, especially when the confinement is prolonged, and especially when the individual experiences this confinement as being the product of an arbitrary exercise of power and intimidation. Moreover, the harm caused by such confinement may result in prolonged or permanent psychiatric disability, including impairments which may seriously reduce the inmate's capacity to reintegrate into the broader community upon release from prison.

Many of the prisoners who are housed in long<sub>1</sub> term solitary confinement are undoubtedly a danger to the community and a danger to the corrections officers charged with their custody. But for many they are a danger not because

they are coldly ruthless, but because they are volatile, impulse-ridden, and internally disorganized.

As noted earlier in this statement, modern societies made a fundamental moral division between socially deviant behavior that was seen as a product of evil intent, and such behavior that was seen as a product of illness. Yet this bifurcation has never been as simple as might at first glance appear. Socially deviant behavior can in fact be described along a spectrum of intent. At one end are those whose behavior is entirely “instrumental”—ruthless, carefully planned, and rational; at the other are individuals whose socially deviant behaviour is the product of unchecked emotional impulse, internal chaos, and often of psychiatric or neurological illness.

It is a great irony that as one passes through the levels of incarceration—from the minimum to the moderate to the maximum security institutions, and then to the solitary confinement section of these institutions— one does not pass deeper and deeper into a subpopulation of the most ruthlessly calculating criminals. Instead, ironically and tragically, one comes full circle back to those who are emotionally fragile and, often, severely mentally ill. The laws and practices that have

established and perpetuated this tragedy deeply offend any sense of common human decency.”

*State of Haryana v. Arun*

10. In *State of Maharashtra v. Prabhakar Panduranga Sangzgiri*<sup>6</sup>, the Hon’ble Apex Court has held that every prisoner retains all such rights that are enjoyed by free citizen except the one that is necessary as an incident of confinement.

11. In this case, Sanjay Kumar and Marri Srinivas Reddy were convicted and they preferred an Appeal before this Court and their Appeal is still pending consideration. In view of the same, as per the law laid down by the Hon’ble Apex Court in *Sunil Batra’s*, which was subsequently followed in several other cases, it cannot be said that the death convicts have to be kept in a solitary confinement. Section 30 of the Prisoners Act, they cannot be applied to Sanjay Kumar and Marri Srinivas Reddy as their legal rights are still not exhausted. The right to live with human dignity is a right guaranteed under the Constitution of India to all its citizens and it will also apply to the prisoners. Just because they are prisoners, they cannot be put to any kind of inhumane treatment. If the behaviour of the convict is such which led the respondents to keep him in a solitary confinement

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<sup>6</sup> AIR 1966 SC 424

by way of a punishment, it stands on a different footing but in this case, only reason mentioned is that under Section 30, as they are death convicts, they are being given this kind of a treatment. The prisoners should be provided with such an environment whereby they will evolve as a better citizen. This kind of treatment by keeping them in solitary confinement will have a very bad effect on the psychological aspect which deprives the prisoner all his personal rights. Hence, the action of the respondents in confining the death convicts in separate cells is most unwarranted and the respondents shall remove Sanjay Kumar and Marri Srinivas Reddy from solitary confinement and shall permit their movement within jail by treating them equally with other prisoners in the prison. They shall be provided access to all facilities like the other prisoners.

12. The Writ Petition is accordingly, allowed. There shall be no order as to costs.

13. Consequently, the miscellaneous Applications, if any shall stand closed.

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**LALITHA KANNEGANTI, J**

19<sup>th</sup> April 2022

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