

WP(C). No. 18650 of 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 26TH DAY OF JUNE 2023 / 5TH ASHADHA, 1945

WP(C) NO. 18650 OF 2023

PETITIONER:

ADV. THUSHAR NIRMAL SARATHY
AGED 43 YEARS
S/O. T.B. VIJAYASARATHY, DOOR NO.67/6455-C,
AZHIKOTHUPARAMBIL, OPP.TO HOTEL CRYSTAL PLAZA,
BANERJI ROAD, ERNAKULAM, PIN - 682031
BY ADV. THUSHAR NIRMAL SARATHY (Party-In-
Person)

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANDAPURAM, PIN - 695001
- 2 DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL
SERVICES
PRISON HEAD QUARTERS, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012
- 3 SUPERINTENDENT, CENTRAL PRISON, POOJAPPURA
CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM,
PIN - 695012
BY ADVS.
DIRECTOR GENERAL OF PROSECUTION
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC
PROSECUTOR
SHRI.SAJJU.S., SENIOR G.P.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 26.06.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

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P.V.KUNHIKRISHNAN, J.

WP(C). No. 18650 of 2023

Dated this the 26th day of June, 2023

JUDGMENT

This is a writ petition filed by a lawyer stating that he was denied permission by respondent No-3 to get Vakalath, writ petition and affidavit signed by his client, who is a convicted prisoner undergoing life imprisonment at Central Prison, Poojappura.

2. I am astonished to see the pleadings in this writ petition and the grievance of the lawyer. A lawyer is forced to approach this Court to obtain the signature of his client convicted in a criminal case and who is lodged at Central Prison. Usually, it is said that the Bench and Bar are the two sides of the same Coin. On some occasions, the lawyer is part of the judiciary itself. Lawyers are not only helping their clients but are also assisting the Court to arrive at the right conclusion in a lis. Therefore, the lawyers are officers of the Court. When a lawyer is going to prison to meet his client, it

is the duty of the officers of the jail to give respect to the lawyer and allow him to do his official/professional duty without any delay. If any unnecessary delay is caused to a lawyer in meeting a client in jail or if there is any unnecessary detention of a lawyer at the gate of a jail, who approaches a prison after taking appointment to meet his client in connection with his professional duties, this Court will take it very seriously in the future.

3. When this writ petition came up for consideration on 09.06.2023, this Court issued the following direction:

“ There will be a direction to the 3rd respondent to see that the papers submitted by the petitioner are signed by his client, who is a convict, if he is willing. The 3rd respondent will file an affidavit about the allegation raised in this writ petition within ten days.

Post on 16/06/23.”

4. An affidavit was filed by the 3rd respondent as directed by this Court in which the 3rd respondent expresses regret for the inconvenience, if any caused to the petitioner lawyer. It is also stated by the Superintendent, Central Prison and Correctional Home, Poojappura, Thiruvananthapuram, that the incident which gave rise to the grievance of the petitioner was not the result of any intentional act on the

part of the respondents. It is also stated in the affidavit that, being a lawyer, the petitioner ought to have been treated with all respect. It is further stated in the affidavit that, it so happened that certain inconvenience was caused to the petitioner, which could have been avoided. In paragraphs 10 to 12 of the affidavit, the 3rd respondent narrated the facts and the action taken by the 3rd respondent in this issue. It will be better to extract paragraphs 10 to 12.

“10. It is submitted that on 31.05.2023 Adv. Thushar Nirmal Sarathy had attended the office of Central Prison & Correctional Home, Thiruvananthapuram with a request to meet C.No. 5652 Antony @ Aadu Antony, a life term convict. Accordingly he was permitted to have an interview with the prisoner by Smt. Preethi.S.S., Welfare Officer who authorized to supervise interview after due process of application.

11. It is submitted that after the interview, Sri. Thushar Nirmal Sarathy had again approached the Welfare Officer to obtain signature of the prisoner in Vakkalath, Petition and affidavit brought by him. Then the Welfare Officer requested him to approach Sri.Alshan, Joint Superintendent, Central Prison & Correctional Home, Thiruvananthapuram, who was the officer in charge of Jail at the moment, with an application to get signed Vakkalath from the prisoner. Now it is seen that the way in which the Joint Superintendent, handled the application of the petitioner is not in accordance with

the prevailing rules and regulations. When this matter came to my knowledge, I initiated a proceeding against him and a memo was issued to him seeking his explanation in this matter within seven days. The true copy of the Memo No. CP-5/A2/5652/2023 dated 09.06.2023 is produced herewith and marked as **Exhibit R3(A)**. A handwritten petition was also seen submitted by the petitioner before the office of Director General of Prisons & Correctional Services on 31.05.2023.

12. It is humbly submitted that Adv. Thushar Nirmal Sarathy, has attended this office on 14/06/2023 with an application dated 14/06/2023 to get signature of C.No. 5652 Antony in the vakkalath, writ petition and affidavit. The prisoner had also expressed his willingness in writing to sign the vakkalath, writ petition and affidavit. Accordingly vakkalath, writ petition and affidavit duly signed by the prisoner have been handed over him in my presence without any delay. The Court order dt. 09/06/2023 is, thus, complied with properly."

5. Today, when this matter came up for consideration, the petitioner lawyer submitted that his grievance had been redressed. In the light of the above submission, this writ petition can be closed.

6. Before parting with the case, it is to be remembered that the right of a convict to get legal assistance is a

constitutional right. The apex Court in **Sunil Batra v. Delhi Administration** (AIR 1978 SC 1675) observed that, Part III of the Constitution does not part company with the prisoner at the gates, and judicial oversight protects the prisoner's shrunken fundamental rights, if flouted, frowned upon or frozen by the prison authority. The apex Court also observed that the operation of Arts. 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. So the law is that, for a prisoner, all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment. In the same judgment, the apex Court also observed that conviction for a crime does not reduce the person into a non-person whose rights are subject to the whim of the prison administration and, therefore, the imposition of any major punishment within the prison system is conditional upon the observance of procedural safeguards. In **Francis Coralie Mullin v. The Administrator, Union Territory of Delhi and others** (AIR 1981 SC 746) the apex Court once again considered the prisoners' rights. It would be better to extract the relevant portions of paragraphs 10 and 11 of the above judgment:

“10. The right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously, included in the right to live with human dignity and is also part of personal liberty and the detenu cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with reasonable, fair and just procedure established by a valid law.....

11. We are therefore of the view that sub clause (i) of clause 3 (b) regulating the right of a detenu to have interview with a legal adviser of his choice is violative of Articles 14 and 21 and must be held to be unconstitutional and void. We think that it would be quite reasonable if a detenu were to be entitled to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of the Jail, which appointment should be given by the Superintendent without any avoidable delay."

7. The Rajasthan High Court in **Moti Bai v. The State** (AIR 1954 Raj 241) observed that the right of the accused enshrined in Article 22(1) of the Constitution begins right from the day of his arrest. So, the lawyer had the right to consult her ever since she was put under arrest and the police were not correct in not allowing such consultation, as

seems to have been their attitude throughout. The Rajasthan High Court observed this in the year 1954. Even now, some of such instances are there in the State. I fully agree with the dictum laid down by the Rajasthan High Court in the above case. It is the right of a lawyer to see his client in connection with his professional duties, if his client also wants to meet the lawyer. There cannot be any restrictions from the police or the prison authorities. But I make it clear that the action of the lawyers should be in connection with their professional duties and not for any other purpose.

8. Chapter IX of the Kerala Prisons and Correctional Services (Management) Act, 2010, deals with the rights and duties of prisoners. Section 36 says that all prisoners shall have the right of access to due process of law, including legal service and legal aid. Section 47 says about the facility for interviews and communication with relatives and legal practitioners.

It would be better to extract Section 47:

“47. Facility for interviews and communication with relatives and legal practitioners.- Subject to the provisions of the Act and the rules relating to the security of prison and prisoners, the Superintendent shall provide to every prisoner,

facilities for interviews and communication with relatives and legal practitioners and for writing letters, in such manner and at such intervals, as may be prescribed.”

9. Rule 827 of the Kerala Prisons and Correctional Services (Management) Rules, 2014 reads like this:

'827. കൂടികാഴ്ചയുടെയും കത്തുകളുടെയും കാര്യത്തിൽ ശിക്ഷിക്കപ്പെടാത്ത ക്രിമിനൽ തടവുകാർക്കും സിവിൽ തടവുകാർക്കും നൽകേണ്ട സൗകര്യങ്ങൾ - (1) റിമാൻ്റ് /വിചാരണ /കരുതൽ തടങ്കൽ/സിവിൽ എന്നീ തടവുകാർക്ക് അവരുടെ ബന്ധുക്കൾ, സുഹൃത്തുക്കൾ, നിയമോപദേശകർ എന്നിവരുമായി അനുയോജ്യമായ സമയത്ത് ആവശ്യമായ നിയന്ത്രണത്തോടുകൂടി കൂടിക്കാഴ്ച നടത്തുന്നതിനോ അല്ലെങ്കിൽ മറ്റ് തരത്തിൽ വാക്കാലോ എഴുത്തുമുഖേനയോ ആശയവിനിമയം നടത്തുന്നതിനും മതിയായ സൗകര്യങ്ങൾ അനുവദിക്കേണ്ടതാണ്.

(2) ശിക്ഷിക്കപ്പെടാത്ത തടവുകാരനുമായി അയാളുടെ നിയമോപദേശകൻ നടത്തുന്ന ഓരോ കൂടികാഴ്ചയും ജയിൽ ഓഫീസറുടെ ദൃഷ്ടി പരിധിയിലും എന്നാൽ കേൾവിക്കപ്പറമായിരിക്കണം. ശിക്ഷിക്കപ്പെടാത്ത തടവുകാരന്റെ ഏതെങ്കിലും അടുത്ത ബന്ധുവുമായി നടത്തുന്ന കൂടികാഴ്ചയ്ക്കും സമാനമായ ആനുകൂല്യം സുപ്രണ്ടിന് നൽകാവുന്നതാണ്.

(3). തടവുകാരന്റെ നിയമോപദേശകൻ എന്ന നിലയിൽ ഒരു ശിക്ഷിക്കപ്പെടാത്തതടവുകാരനുമായി കൂടിക്കാഴ്ച നടത്താൻ ഒരു വ്യക്തി ആഗ്രഹിക്കുന്നു എങ്കിൽ അയാൾ അതിനു പേര്, അഡ്രസ്, ഏതു നിയമ വിഭാഗത്തിൽപ്പെടുന്നു എന്നീ വിവരങ്ങൾ വെളിപ്പെടുത്തുന്ന രേഖാമൂലമുള്ള അപേക്ഷ നൽകേണ്ടതും കാണാനാഗ്രഹിക്കുന്ന തടവുകാരന്റെ യഥാർത്ഥ നിയമോപദേശകനാണെന്നും തടവുകാരനുമായി

നിയമപരമായ ഇടപാടുകൾ ഉണ്ടെന്നും സുപ്രണ്ടിനെ ബോധ്യപ്പെടുത്തേണ്ടതുമാണ്.

(4) ഒരു ശിക്ഷിക്കപ്പെടാത്ത ക്രിമിനൽ തടവുകാരൻ തന്റെ നിയമോപദേശകന് നൽകാൻ തയ്യാറാക്കിയിട്ടുള്ള സത്യസന്ധമായ രേഖാമൂലമുള്ള അറിയിപ്പ് ആ നിയമോപദേശകനോ അദ്ദേഹത്തിന്റെ അംഗീകൃത ഗുമസ്തനോ വ്യക്തിപരമായി നൽകേണ്ടതാണ്.

(5) സുപ്രണ്ട് നിശ്ചയിക്കുന്ന നിബന്ധനകളനുസരിച്ചും സമയത്തിനും സിവിൽ തടവുകാർക്ക് അവരുടെ ബന്ധുക്കൾ സുഹൃത്തുക്കൾ നിയമോപദേശകർ എന്നിവരെ കാണാവുന്നതും ആയതിന് ഒരു ജയിൽ ഉദ്യോഗസ്ഥന്റെ സാന്നിധ്യം അത്യാവശ്യമില്ലാത്തതുമാണ്. സുപ്രണ്ടിന്റെ വ്യക്തമായ അനുമതി ഇല്ലാതെ മധുരപലഹാരങ്ങളോ മറ്റ് ഭക്ഷണ സാധനങ്ങളോ സിവിൽ ജയിലിനുള്ളിൽ കൊണ്ടുപോകുവാൻ ഒരു സന്ദർശകനെയും അനുവദിക്കാവുന്നതല്ല. '

10. Similarly, The Kerala Prisons Rules, 1958 also states about interviews and communications with prisoners. Rule 435 of the Kerala Prisons Rules, 1958, is extracted hereunder:

“ 435. Reasonable facilities to be allowed for interviews and letters.- (1) Every newly convicted prisoner shall be allowed reasonable facilities for seeing or communicating with his relatives, friends or legal advisers with a view to the preparation of an appeal or to the procuring of bail and shall also be allowed to have interviews or write letters to his relatives, friends or legal advisers, once or

twice, or often if the Superintendent considers it necessary, to enable him to arrange for the management of his property or other family affairs.

2. The same facilities shall be allowed to every prisoner committed to prison in default of payment of a fine or finding security under Chapter VIII of the Code of Criminal Procedure to enable him to arrange for the payment of the fine or the furnishing of security.”

11. Similarly, Rules 451 and 750 are also important. It would be better to extract Rules 451 and 750 also.

“ 451. *Facilities to be granted to unconvicted criminal prisoners and civil prisoners in the matter of interviews and letters.*—(1) Unconvicted criminal prisoners and Civil prisoners shall be granted all reasonable facilities at proper times and under proper restrictions for interviewing or otherwise, communicating either orally or in writing with their relatives, friends and legal advisers.

(2) Every interview between an unconvicted prisoner and his legal adviser shall take place within sight but out of hearing of a Jail Official. A similar concession shall be allowed by the Superintendent in the case of an interview with any near relative of the unconvicted prisoner.

(3) When any person desires an interview with an unconvicted criminal prisoner in the capacity of the prisoner's legal adviser, he shall apply in writing, giving his name and address

and stating to what branch of the legal profession he belongs and he must satisfy the Superintendent that he is the bona fide legal adviser of the prisoner with whom he seeks an interview and that he has legitimate business with him.

(4) Any bonafide written communication prepared by an unconvicted criminal prisoner as instructions to his legal adviser may be delivered personally to such legal adviser or to his authorised clerk without being previously examined by the Superintendent.

(5) Civil prisoners may see their friends, relations and legal advisers at such times and under such restrictions as the Superintendent may appoint and the presence of a Jail Officer shall not be necessary. No visitor shall be allowed to take within the Civil Jail any sweetmeats or other eatables without the express permission of the Superintendent.

750. *Visitors*—(1) Prisoners undertrial shall be given all reasonable facilities for communicating with their legal advisors and so far as is consistent with the interest of justice such prisoners shall be allowed to see their duly qualified legal advisors at such time and place as the Superintendent may appoint, without the presence of any other person.

(2) An undertrial prisoner who is detained in

default of bail shall be permitted to see his friends on any week day at any reasonable hour for the purpose of providing bail.

(3) Except as provided in the two preceding paragraphs under - trial prisoners shall not be permitted to see their friends oftener than once a week, except for some special reasons which should be recorded by the Superintendent in his journal”

12. In the light of the above discussion, I am of the considered opinion that, all Prison Authorities should give necessary assistance to the prisoners to meet their lawyers. If a lawyer approaches a prison to meet his client and the client also wants to meet his lawyer in connection with the professional duty of a lawyer, the Prison Authority should give due respect to the lawyer and should take necessary steps to facilitate the meeting of the prisoner with his lawyer, without any unnecessary delay.

13. I am of the considered opinion that the 2nd respondent should issue a Circular in this regard and forward it to all the Jails in the State to ensure that the lawyers coming to the prison in connection with their professional duties are given the required respect and are

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not detained unnecessarily by the jail authorities. The Registry will forward a copy of this judgment to the 2nd respondent for issuing the Circular forthwith.

With the above observations, this writ petition is disposed of.

Sd/-

P.V.KUNHIKRISHNAN
JUDGE

mtk

APPENDIX OF WP (C) 18650/2023

PETITIONER EXHIBITS

Exhibit P1 REQUEST DATED 31.05.2023 FOR OBTAINING
SIGNATURE IN VAKKALATH AND PETITION FROM
ANTONY C NO.5652, CENTRAL PRISON
POOJAPPURA

Exhibit P2 REQUEST TO DGP (PRISONS) DATED 31.05.2023
FOR OBTAINING SIGNATURE IN VAKKALATH AND
PETITION FROM ANTONY C NO.5652, CENTRAL
PRISON POOJAPPURA

RESPONDENT EXHIBITS

EXHIBIT R3 (A) EXHIBIT R3 (A) TRUE COPY OF THE MEMO
NUMBER CP-5/A2/5652/2023 DATED 09-06-2023

PETITIONER EXHIBITS

Exhibit P2 (a) RECEIPT BEARING NO.205 DATED 31.05.20233
ISSUED FROM PRISONS HEAD QUARTERS.