

Section 30 of the Act. Even when the matter was brought before this Court, the State has maintained a studied silence. It has not even filed a reply to the writ petition. One can only lament this indifference on the part of the State.

(28) After taking all the facts into consideration, it appears clearly that the respondent Authority has not provided the amenities contemplated under the Act. In particular, it has failed to provide the basic amenities like: (i) Drainage; (ii) Sewerage; (iii) Adequate potable water; and (iv) Parks. All these have resulted in pollution of environment. It must, therefore, provide all these amenities within one year from the date of the receipt of this order so that the 'right to life' as guaranteed under the Constitution does not become illusory.

(29) Before parting with the judgment, it may be mentioned that the plea raised on behalf of the respondent-authority that the plot-holders are liable to contribute towards the construction of open and internal drains at the rate of Rs. 5.67 per square yard is untenable. Initially, the expenditure on account of development cost of public health works which includes sewerage as also towards the building and roads works which include levelling etc. was included in the price of the plots. This having been paid, there was no provision for raising any further demand. The price was not tentative. It was full and final. This having been paid, the respondents are bound to provide all the promised amenities.

(30) Accordingly, it is held that the respondents are bound to provide all the facilities as mentioned above and till this is done, they cannot be permitted to transfer the ownership of roads, parks and sewerage etc. to the Municipal Committee. Accordingly, the order at Annexure P.4 is quashed. The respondents are directed to provide the requisite facilities within one year 'from the date of receipt of a copy of this order. The petitioner shall also be entitled to its costs which are assessed at Rs. 2,000.

*J.S.T.*

*Before Hon'ble R. P. Sethi & G. S. Singhvi, JJ.*

**BHAI JASBIR SINGH,—Petitioner.**

*versus*

**STATE OF PUNJAB AND OTHERS,—Respondents.**

*Civil Writ Petition No. 2491 of 1994*

**May 20, 1994**

*Constitution of India, 1950—Art. 226—Punjab Jail Manual Rule 441—Prisoners (Attendance in Courts) Act, 1955—Punjab Prisoners (Attendance in Court) Rules, 1959—Human, fundamental and civil*

*rights cannot be permitted to be violated by law enforcing agencies under cloak of technicalities which do exist in Jail Manual—Suitable amendments to be made in Jail Manual to protect citizens and prisoners against alleged police excesses—Pending reconsideration—Interim arrangement regarding inter jail transit and admission of prisoners.*

*Held*, that we, however, feel that the provisions of the Jail Manual particularly para 441 requires reconsideration and modification under the changed circumstances. The Punjab Jail Manual is stated to have been codified on the basis of the provisions of the Prisons Act and the Rules framed thereunder, Transfer of Prisoners Act, Habitual Offenders Act, Punjab Good Conduct Prisoners Act and such other similar provisions about a century back. The nature of the offences and the persons involved in such offences appears to have not been within the comprehension of the framers of the Jail Manual or the Rules at that time. After the framing of the Constitution and its development and rising concern of the society regarding violation of human rights it has become necessary to make suitable amendments in the said Manual to protect the citizens in general and prisoners in particular against the alleged police excesses. Reconsideration of the Jail Manual is also necessary in view of the development of the fundamental rights guaranteed under the Constitution. Human, fundamental and civil rights cannot be permitted to be violated by law enforcing agencies under the cloak of technicalities which cannot be denied to exist under the aforesaid Jail Manual pending reconsideration of the provisions of the Jail Manual in general and regarding inter-jail transit and admission of the prisoners in the Jail, we in the meantime make the following interim arrangements :—

- (i) That prisoners should be delivered for transfer custody in such a manner that their destination is ensured within the time prescribed for permitting the admission of such prisoners to the transferee jail.
- (ii) adequate transport arrangements be made for the transfer of the prisoners without any delay. In case a transferee prisoner cannot reach to the transferee jail he may be brought back without delay from where he was transferred or kept in the nearest jail as far as possible.
- (iii) Prisoners be admitted to the Jail between sunrise and sun set. The proviso regarding admission of women under trial prisoners and made under trial prisoners in respect of whom red ink entry has been made on their warrant shall continue.
- (iv) Political undertrials or detenues be admitted in the jail at whatever time they are presented for admission by the police.

- (v) If for reasons beyond the control of the Escorting Officer the prisoners cannot be brought back or admitted to the transferee jail, and is kept in a police Station or lock up, the matter must be reported on the following day to the Court which had remanded such accused person to judicial custody. On receipt of such report, the concerned court may condone the lapse on sufficient ground being shown failing which the matter shall be reported to the higher authorities for appropriate action under the law.

(Para 14)

R. S. Bains, Advocate, for the Petitioners.

S. K. Sharma, Deputy Advocate General, Punjab, for the Respondents.

#### JUDGMENT

(1) The petitioner who claims to be running Punjabi Daily 'Aj Di Awaj' from Jalandhar alleges to have been arrested on 11th January, 1994 from his office at Jalandhar by the police party commanded by Deputy Superintendent of Police (D) Satinder Singh and Inspector, Chanchal Singh of C.J.A. Staff. Eight other persons namely Bhai Jasbir Singh, Kuldeep Singh, Amrik Singh, Ajaib Singh, Devinder Singh, Jasbir Singh, Gurdip Singh and Malkiat Singh were also arrested along with the petitioner. He was presented before the Court of S.D.M. Jalandhar on 12th January, 1994 and remanded to the judicial custody till 25th January, 1994, which was extended for two more days on 28 January, 1994 the petitioner was sent to Judicial custody till 12th February, 1994 and thereafter was sent to judicial remand till 24th February, 1994. The petitioner was arrested in F.I.R. dated 25th December, 1993 for offences under Section 4/5 of the Explosive Act and Section 25 of the Arms Act. It was alleged in the F.I.R. that the accused along with others had formed a group and collective a lot of explosive and destructive material with the object of creating terror in high populated areas by firing and causing explosions and by a plan of hitting V.I.Ps. It is submitted that on 12th February, 1994 all the eight persons were taken from the Jail for presenting them before the Court of Shri B. R. Bansal, who extended their judicial remand till 24th February, 1994. Around 2.00 P.M. the police party took the accused to P. S. Jalandhar (Sadar) and their turbans were removed by force. They were locked in the police lock up. Around 7.00 P.M. SSP (Rural) Shri Dinkar Gupta came to the Police Station and started interrogating the accused

persons. It is alleged that the accused persons were insulted and humiliated with threats that they will be shot dead. After keeping them in the police station for the whole night, the petitioner was taken to the Jail on 13th February, 1994 and handed over the judicial custody. The petitioners intimated this Court that they apprehended being killed in fake encounter or some false cases could be planted against them. They sought the protection during the period of judicial remand. It is contended that the manner in which the judicial custody of the petitioner is being used by the police for intimidating and insulting was illegal, unconstitutional and repugnant to effective functioning of criminal justice system in a democracy. The petitioner apprehended that he may be harmed during the protective judicial custody and subjected to intimidation and humiliation.

(2) At the time of motion hearing, we issued notice to the Advocate General, Punjab and directed him to ascertain the true position by filing reply before the date fixed. On 1st March, 1994, the respondents were directed that they will not remove the petitioner from the judicial custody without obtaining prior permission of this Court. The aforesaid interim order was modified on 7th March, 1994 to the extent that the respondents shall be at liberty to take the petitioner out of Jail for the purposes of obtaining judicial remand from the competent court of jurisdiction and bring him back to the Jail without any further delay. *Vide* our order dated 15th March, 1994, we directed that Inspector General of Prisons, Punjab and Superintendent, Central Jail, Jalandhar to explain their position in view of the allegations made in the petition by means of their affidavits.

(3) Affidavits in reply and as per our directions have been filed.

(4) Learned counsel for the petitioner has submitted that during the pendency of this petition, the petitioner has been released on bail by the Designated Court. The learned counsel further wanted us to examine the matter and take appropriate action against the respondents if found guilty and further that a direction be issued for the purposes of safe custody of the accused like the petitioner who are remanded to judicial custody.

(5) In the affidavit filed by Shri Dinkar Gupta, I.P.S., Senior Superintendent of Police (Rural), Jalandhar it is stated that Police Station Sadar, Jalandhar, is not within his jurisdiction and that he had no concerned with the accused petitioner at all.

(6) In his affidavit Shri Jarnail Singh, Inspector of Police c/o S.S.P., Jalandhar, has submitted that he was deputed to bring the petitioner and his co-accused from Central Jail, Patiala and to produce them in the Court of Shri B. R. Bansal, Additional Chief Judicial Magistrate, Jalandhar. He produced the petitioner and the other accused in that Court when they were remanded to judicial custody till 24th February, 1994. On 12th February, 1994 at about 1.30 P.M. while he was taking the petitioner along with the other accused persons in Government Bus No. PB-08-D-7708 back to Central Jail, Patiala, the said bus is stated to have went out of order near railway crossing, G.T. Road, Jalandhar. He made serious efforts to make arrangement of another bus/vehicle to carry the petitioner and the accused persons to Central Jail, Patiala. He approached the Motor Transport Officer, in the Police Lines, Ludhiana, to make arrangement for another vehicle but no vehicle was found available as is evident from the report of the Motor Transport Officer, Annexure R/1. Shri Malkiat Singh, Mechanic was deputed to repair the bus which could be repaired at about 6.15 P.M. The report of the Mechanic has also been annexed at Annexure R/2. Entries to this effect were also made in the Log Book of the Bus. He approached the Jail authorities at Jalandhar to keep the accused person in the Jail for the night who refused to accept his request on the ground that the said accused and the petitioner had already been refused to be detained in the Central Jail, Jalandhar as per telephonic instructions of the Inspector General of Prisons, Punjab. Finding no way left out in order to protect the petitioner he lodged him and other accused in the nearer Police Station Sadar, Jalandhar on 'Rahdari' (transit). He remained present in the Police Station on the night intervening 12th/13th February, 1994 and during this period no Police Officer interrogated the petitioner. The allegation of the petitioner that his turban and shoes were forcibly removed along with the other accused persons has vehemently been denied. The petitioner and his co-accused were, however, asked to leave their turbans outside the lock up as the same was not allowed inside for security reasons. It is incorrect that the petitioner or his co-accused were interrogated, insulted and humiliated by Shri Dinkar Gupta, S.S.P. or Satinder Singh, D.S.P. (Detective). The petitioner along with other accused persons had to be lodged in the lock up of Police Station, Jalandhar under compelling circumstances explained by him in the earlier part of the affidavit. According to Rule 13 of the Punjab Prisoners (Attendance in Courts) Rules, 1969, he was responsible for the safe custody of the petitioner and the other co-accused persons. After the government vehicle went out of order and refusal of the Jail authorities at Jalandhar, the

accused persons were lodged in the lock-up of Police Station, Sadar, Jalandhar, as per Rule 15 of the aforesaid Rules.

(7) In his affidavit Shri Gurdarshan Singh Gill, Superintendent Central Jail, Patiala, has submitted that the petitioner along with others were admitted in Central Jail, Patiala in F.I.R. No. 812 dated 25th December, 1993 under Sections 212/216 I.P.C., 4/5 of the Explosive Act 25/54/59 and 3/4/5 of T.A.D.A. Act on 29th January, 1994 on the basis of the judicial remand which was extended from time to time. The petitioner alongwith other co-accused was handed over to Inspector Jarnail Singh, for producing them in the Court of Chief Judicial Magistrate, Jalandhar on 12th August, 1994.

(8) In his affidavit, Harbans Singh, P.P.S.-I, Superintendent, Central Jail, Jalandhar has submitted that as per the telephonic directions dated 27th January, 1994 from the Inspector General of Prisons, Punjab, the petitioner and other co-accused were transferred on administrative reasons to Central Jail, Patiala on 28th January, 1994. He has referred to the provisions of Para 441 of the Punjab Jail Manual to urge that the petitioner could not be taken back in the Jail after the prescribed time of 4.30 P.M.

(9) In his affidavit Shri B. S. Sandhu, Inspector General of Prisons, Punjab, Chandigarh has submitted that there was no separate ward for confinement of extremists like the petitioner at Central Jail, Jalandhar which prompted him to give directions on telephone to the Superintendent, Central Jail, Jalandhar to transfer the petitioner and the other co-accused to Central Jail, Patiala where adequate space is available for keeping them separate from other accused persons. Annexure R/1 being *ex-post facto* sanction regarding the transfer of under trial extremists has also been placed on the record.

(10) Remand of the accused persons is governed and controlled by Sections 167 and 309 of the Code of Criminal Procedure. Section 167 provides a procedure for custody of the accused when investigation of an offence cannot be completed within the stipulated period and Section 309 deals with the power of remand during the trial of a case when proceedings are postponed or adjourned in a criminal case. Whereas Section 167 deals with police remand. Section 309 authories the judicial remand. The maximum period of remand under section 167 cannot exceed 15 days in the whole whereas there is no such bar under Section 309 by which an accused can be remanded to custody for a term not exceeding 15 days at a time. The object

of both these sections is to bring the accused persons before the Court and to safeguard their interest. As the detention in both the cases is authorised by the Magistrate or the Court, the accused persons therefore remain under the control of Court or the Magistrate authorising his custody in the manner prescribed or authorised. Such a custody of the accused cannot be interfered with or interrupted by any person or the authority except and with the proper permission and sanction obtained from the said Magistrate or the Court in accordance with the provisions of law. Legislative changes were made in the aforesaid sections with the object to eliminate the chronic melody of protected investigation and to protect the fundamental rights as enshrined under Article 21 of the Constitution of India. The object of remand is to ensure that the persons arrested by the police are brought before the Magistrate without any delay in order to enable the Magistrate to ascertain if such person had to be further kept in custody and also to enable such person to make representation if he may wish to make in the matter. The powers under both the sections are co-related. Power under Section 309 for judicial remand can be invoked even before the submission of the formal charge-sheet. The scope and distinction of two sections was considered by the Supreme Court in *Gauri Shankar v. State of Bihar* (1), wherein it was held :

“12. Thus, Section 167 operates at a stage when a person is arrested and either an investigation has started or is yet to start, but is such that it cannot be completed within 24 hours. Section 344, on the other hand, shows that investigation has already begun and sufficient evidence has been obtained raising a suspicion that the accused person may have committed the offence and further evidence may be obtained, to enable the police to do which, a remand to jail custody is necessary. The fact that Section 344 occurs in the Chapter dealing with inquiries and trials does not mean that it does not apply to cases in which the process of investigation and collection of evidence is still going on. That is clear from the very language of subsection (1-A) under which the Magistrate has the power to postpone the commencement of the inquiry or trial. That would be the stage prior to the commencement of the inquiry or trial which would be the stage of investigation

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(1) A.I.R. 1972 S.C. 711.

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(see *A. Lakshamanra v. Judicial Magistrate*, A.I.R. 1971 S.C. 186). Therefore, it is not as if the stage at which the Magistrate passed the remand orders was still the stage when Section 167 applied and not Section 344. The decision of the Orissa High Court in *Artatran v. State of Orissa*, A.I.R. 1956 Orissa 129 to the effect that Section 344 does not apply at the stage of investigation and can apply only after the Magistrate has taken cognizance of and issued processes or warrant for the production of the accused if he is not produced before him cannot, in view of *A. Lakshamanrao's case*, be regarded as correct. The power under Section 344 can be exercised even before the submission of the charge-sheet (of *Chandradip v. State*, 1955 BLJR 323 and *Ajit Singh v. State*, 1970 Cr.L.J. 1075 = (A.I.R. 1970 Delhi 154), that is, at the stage when the investigation is still not over. If the view we hold is correct that Section 34 operated, the Magistrate provided he complied with the condition in the Explanation, was competent to pass remand orders from time to time subject to each order being not for a period exceeding 15 days. There can be no doubt that the Magistrate had satisfied the condition. The judgment of the High Court points out that the prosecution case was that the appellant had himself made a confession before the police. That was in addition to confession by two others which implicated the appellant in the commission of offence under Section 395 of the Code."

Thus in a given case the power under Section 309 of the Code of Criminal Procedure can be exercised even before the completion of the investigation and submission of the formal challan. Such a power if used is admittedly for the benefit of the accused person. The allegations of the petitioner in the case are that the judicial custody in his case was violated inasmuch as he was removed to police Station Sadar, Jalandhar and subjected to interrogation. The respondents have, however, explained the reasons for taking the petitioner and other accused persons to the said Police Station. The custody of the petitioner and others in the police lock up on the night intervening 12th/13th February, 1994 has been justified on the basis of the provisions of the Prisoners Attendance in Courts Act, 1955 and Para 441 of the Punjab Jail Manual. Section 5 of the said Act provides :—

"5. Prisoners to be brought up.—Upon delivery of any order made under Section 3 to the officer in charge of the prison



in which the person named therein as confined that officer shall cause him to be taken to the court in which his attendance is required, so as to be present in Court at the time in such order mentioned and shall cause him to be detained in custody in or near the Court until he has been examined or until the judge or presiding officer of the court authorises him to be taken back to the prison in which he was confined."

(11) Rule 12 of the rules framed under the aforesaid Act specifies the duty of the police to provide escort to prisoner and Rule 15 mandates that convicted persons and undertrial prisoners produced in the Court of a Magistrate shall be kept at night in the lock-up of a police station if there is any such station within five kilometers.

(12) Para 441 of the Jail Manual provides that no prisoner shall except on transfer from another jail be admitted into any jail before sunrise or after 4.30 P.M. from 1st of October to 31st March and 5.30 P.M. during summer from 1st April to 30th September. It is further provided that this restriction will not apply in case of women undertrial prisoners who can be admitted in the jail at whatever time presented for admission by the Police and on all days including Sunday and Jail holidays. Male undertrial prisoners in respect of whom it is reported by the police on their warrants by a red ink entry that they have got to be identified in an identification parade. All prisoners including undertrials returning from Courts will be admitted in the jails after lock-out till half an hour after the working hours of the Courts as prescribed by the Government from time to time.

(13) In view of the provisions of the Prisoners (Attendance in Courts) Act, 1955, the rules framed thereunder and the Jail Manual we are of the opinion that the petitioner alongwith other accused was kept in the police lock-up under the bona-fide belief and not subjected to any harassment as alleged in the petition. No action in this regard is required to be taken against any officials who have filed their affidavits or who were accompanying or escorting the petitioner and other accused persons.

(14) We, however, feel that the provisions of the Jail Manual particularly Para 441 requires reconsideration and modification under the changed circumstances. The Punjab Jail Manual is stated to have been codified on the basis of the provisions of the Prisons Act and the Rules framed thereunder, Transfer of Prisoners Act, Habitual Offenders Act, Punjab Good Conduct Prisoners Act and such other

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similar provisions about a century back. The nature of the offences and the persons involved in such offences appears to have not been within the comprehension of the framers of the Jail Manual or the Rules at that time. After the framing of the Constitution and its development and rising concern of the society regarding violation of human rights it has become necessary to make suitable amendments in the said Manual to protect the citizens in general and prisoners in particular against the alleged police excesses. Reconsideration of the Jail Manual is also necessary in view of the development of the fundamental rights guaranteed under the Constitution. Human, fundamental and civil rights cannot be permitted to be violated by law enforcing agencies under the cloak of technicalities which cannot be denied to exist under the aforesaid Jail Manual. Pending reconsideration of the provisions of the Jail Manual in general and regarding inter-jail transit and admission of the prisoners in the Jail, we in the meantime make the following interim arrangements :

- (i) That prisoners shall be delivered for transfer custody in such a manner that their destination is ensured within the time prescribed for permitting the admission of such prisoners to the transferee jail ;
- (ii) Adequate transport arrangement be made for the transfer of the prisoners without any delay. In case a transferee prisoner cannot reach to the transferred jail he may be brought back without delay from where he was transferred or kept in the nearest jail as far as possible.
- (iii) Prisoners be admitted to the Jail between sun rise and sun set. The proviso regarding admission of women under trial prisoners and male under trial prisoners in respect of whom red ink entry has been made on their warrant shall continue.
- (iv) Political undertrials or detenus be admitted in the jail at whatever time they are presented for admission by the police ;
- (v) If for reasons beyond the control of the Escorting Officer the prisoner cannot be brought back or admitted to the transferee jail, and is kept in a Police Station or Lock-up, the matter must be reported on the following day to the

Court which had remanded such accused person to judicial custody. On receipt of such report, the concerned Court may condone the lapse on sufficient ground being shown failing which the matter shall be reported to the higher authorities for appropriate action under the law.

With the above observations, the writ petition stands disposed of.

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*J.S.T.*