

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
BENCH AT AURANGABAD.**

CRIMINAL WRIT PETITION NO. 718 OF 2016

The State of Maharashtra,
through the Superintendent of Jail,
Latur, Tq. Latur, Dist. Latur.

... Petitioner

VERSUS

Vikramsinh Dattusinh Chauhan,
Age : Major, Occu. Nil,
Back Side of Ushakiran Theater,
Indradatta Niwas, Vishalnagar,
Latur, at present in Latur District Prison.

... Respondent

.....
Mr R. V. Dasalkar, APP for the petitioner
None for the respondent.

.....

CORAM : A. M. DHAVAL, J.
DATE : 10TH NOVEMBER, 2017.

ORDER :-

1. Heard learned APP on admission of the matter.
2. The State, under article 227 of the Constitution of India, challenges the order passed by 2nd Addl. Sessions Judge, Latur on Exh. 113 in Sessions Case No. 78/14 whereby the petitioner under-trial accused was allowed permission for home food.

3. Learned APP - Mr. R. V. Dasalkar submits;

(i) The accused under trial is facing serious charges of murder, kidnapping for ransom and gang-rape.

(ii) The provisions of Sections 31 & 32 of Prisons Act, 1984 do not provide permission for home food and the decision has to be taken by the jail authorities. The jail authorities were not heard.

4. Since every accused person is presumed to be innocent person till he is held guilty, the seriousness of the allegations against the petitioner cannot be a ground to deny him the facilities available to all the under-trial prisoners unless there are special reasons for denying so.

5. The ld. Sessions Judge has observed that there were medical papers on record showing that the petitioner had undergone two angioplasties and was suffering from breathlessness and spinal problems. He was satisfied about the existence of health problems.

6. Pertinently, the Jail authorities had filed application for recalling the said order and the said application was rejected by order dt. 16.01.2016. In the said challenge, the provisions of Jail Manual

particularly Sections 31 & 32 were quoted. The ld. Addl. Sessions Judge vaguely recorded that there were pronouncements of the High Court as well as Supreme Court about permitting of home food.

7. The point argued about the authority to permit such home food is no more *res integra* in view of the judgment of the Division Bench of the Principal Seat of this Court in **Asgar Yusuf Mukadam and others v. State of Maharashtra and another 2004 CRI. L. J. 4312** wherein in paras 21, 23, 27 & 28 it is held as under:

21. The food is necessary for the survival of human being, and being so, the Magistrate who is required to get himself satisfied about the existence of adequate grounds for continuation of detention of the accused in custody is obviously empowered to grant the facility of home food to the under-trial while he is in custody, albeit which could be subject to conditions and bearing in mind the facts and circumstances of each case.
23. It is not only the power of the Magistrate and the Court but it should be their endeavour to ascertain through the executing agency the availability of basic needs to the person to be detained in the custody. The same is implicit in the power to order detention and it would include passing of an appropriate order in relation to such basic needs to the under-trials detained in jail, as and when occasion arises. Undoubtedly, the order has to be a speaking order disclosing the grounds for ordering the facility in relation to the basic needs otherwise than in the manner provided in the jail by its authorities. Being so, whenever an application is filed by an under-trial prisoner for grant of facility for home food, the Magistrate will have power to

pass an appropriate order on such application after hearing the authorities and giving reasons for grant of such facility to such person. This power is implicit in the power to order detention or continuation of detention of the accused in custody either at the time of investigation or on filing of the charge sheet on conclusion of the investigation and till the disposal of the trial.

27. *It is to be remembered that, as rightly submitted by the learned advocate for the petitioners, the cardinal principles of criminal jurisprudence is that a person accused of an offence is deemed to be innocent until he is proved guilty. The provision of law, as they stand comprised, under [Section 167](#) of the Code of Criminal Procedure, therefore, discloses implicit power in favour of the Magistrates and the Courts before whom the accused is produced for remand or continuation of detention of the accused in custody, to order the facility of home food on being requested for by such accused and on being satisfied about the need for grant of such facility. Undoubtedly, the respondents would be entitled to take appropriate steps to ensure that the drugs, messages, weapons, etc. are not transported inside the jail under the guise of supplying home food to the under-trials, and, in case, any such mischief is brought to the notice of the Court, nothing would prevent the Court or the Magistrate either to defuse such facility or even to recall the order already passed granting such facility, albeit, after hearing the concerned accused and in extreme urgency, even ex parte subject to confirmation after hearing the accused.*
28. *..... The power to order home food vests in the Magistrate or the trial Court under [Section 167](#) of the Code of Criminal Procedure and the same is not controlled by virtue of [Sections 31](#) and [32](#) of the Prisons Act, 1894. In this view of the matter, it is not necessary to deal with the issue of vires of the amended [Sections 31](#) and [32](#) of the said Act sought to be raised by the petitioner. Suffice to observe that the petitioners are entitled to move before the concerned trial Court, and if such application is*

filed, the concerned Court should pass an appropriate order in that regard considering the facts and circumstances of the case.

8. Thus, the Sessions Judge had every power to permit home food to the respondent in appropriate cases. He has referred to the medical evidence and was satisfied about necessity to grant such permission. In the writ jurisdiction, it will not be proper to consider the merits and demerits of the findings in this regard. The petition, therefore, deserves to be dismissed *in limine* and is accordingly dismissed.

[A. M. DHAVAL]
JUDGE

sgp