

CWP-7657-2015

Date of Decision : 16.03.2017

Fatima Bibi and another

.....Petitioners

versus

State of Punjab etc

...Respondents

CORAM : HON'BLE MR. JUSTICE M.M.S. BEDI**Present:** None for the petitioners.

Ms. Anu Pal, Asstt.A.G., Punjab
for respondent No. 1.

Mr. Varun Issar, Advocate
for respondent No. 2.

M.M.S. BEDI, JUDGE (ORAL)

Fresh short reply in the shape of affidavit of Superintendent
Central Jail, Amritsar has been placed on record.

Petitioners, two sisters, who are Pakistan nationals, are
suffering sentence of imprisonment in case arising out of complaint No.
123 of 2006 under Section 21/23 of the NDPS Act, Police Station
Custom Cases Amritsar. Their appeal has also been dismissed on
26.03.2013. It appears that they have already undergone sentence of
imprisonment awarded. The petitioners had sought permission to talk to
their family members/relatives in Pakistan. The said request has been
resisted on the basis of the communication Annexure R-2 dated
02.03.2017 a letter written by Under Secretary to Government of India

Ministry of Home Affairs (Foreigners Division) to the Principal Secretary (Home), Government of Punjab, Chandigarh, which reads as follows:-

“Sir,

*Reference Jail Superintendent Amritsar
Letter No. 206 ASUT dated 11.1.2017 on the subject
mentioned above.*

2. In this context, I am directed to state that as follows:-

“(i) As per the existing practice, Pak prisoners are not allowed to speak with their family members over cell/landline phones. However, they can communicate with their family members through PHC Officials during Consular Access which is held at regular Intervals. They can also write letters to their family members through Prison department.

(ii) Having such a facility in all the jails is not advisable from security point of view. Since many of the Pak prisoners lodged in Indian jails have links with anti-India/terrorist groups, possibility of them misusing such a facility cannot be ruled out.

3. Hon'ble Court may be briefed accordingly.”

A perusal of the stand taken by the State, Pakistani prisoners are not allowed to speak with their family members on cell/landline but they can communicate with their family members through Pakistan High Commission officials through Consular Access which is held at regular intervals. They can also write letters to their

family members through Prison department. An apprehension is reflected in the said letter that since many of the Pakistani prisoners lodged in Indian Jails have links with anti-India/terrorists groups, the possibility of the prisoners misusing the said liberty cannot be ruled out.

I have considered the facts and circumstances of the case. The petitioners have undergone the sentence of imprisonment awarded by the Courts but they are at present lodged in the jail only for having not been able to pay the fine. The right of life and liberty as enshrined in Article 21 of the Constitution of India may not be applicable to the petitioners but the right of life and liberty are the basic human rights and recognized at international level. It is settled principle of law that the Universal Declaration of Human Rights and principles are to be read, if need be, into the domestic jurisprudence. Our Constitution in Chapter III guarantees all the basic and fundamental human rights set out in the Universal Declaration of Human Rights, 1948 to its citizens and other persons. A person detained in jail cannot be kept for an indefinite period in violation of the basic human rights. In peculiar circumstances of the present case, a balance is required to be struck between the basic human rights of the petitioners as prisoners and the national security. The petitioners can be permitted to speak to their family members over the cell/landline phones under the strict supervision and vigilance of a Gazetted Officer of the jail concerned to ensure that the petitioners are not able to have any connection with any anti-India/terrorist group. The communication can be permitted by making arrangement of

communication with parallel hearing facility to a responsible officer deputed by the Director General (Prison), Government of Punjab.

The petition is allowed to the above extent. The order be implemented within a period of 15 days after the receipt of certified copy of the order.

(M.M.S. BEDI)
JUDGE

16.03.2017
Neha

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No