

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1268 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- SIWAN

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Raish Khan @ Md.raish Khan S/o Late Qamrul Haque @ Quamruddin Haque , R/o
Vill.- Gyaspur, P.S.- Siwan, District- Siwan.

.... Petitioner

Versus

1. The State of Bihar, Through The Home Commissioner, Bihar, Patna.
2. The Inspector General of Police, Prison and Reform Services, Bihar, Patna.
3. The District Magistrate, Siwan.
4. The Superintendent of Police, Siwan.
5. The Jail Superintendent , Siwan Jail, Siwan.
6. The Superintendent Special Central Jail, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr. Advocate
For the Respondent/s : Mr. Md. Harun Quareshi, A.C. to S.C.01

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date: 24-07-2018

Heard Mr. Yogesh Chandra Verma, learned Senior
Counsel representing the petitioner and learned counsel representing
the State.

This writ application has been preferred for quashing of
the order as contained in memo no. 1279 dated 27.02.2018 passed by
Inspector General, Prison and Reforms Services, Bihar, Patna by
which the petitioner has been transferred from Siwan Jail to Central
Jail, Gaya. The Inspector General of Police, Prison and Reforms
Services (respondent no. 2) has passed the impugned order in exercise
of the power conferred upon him under Section 29(2) of the Prisoners
Act, 1900 and further in terms of Rule 781 Clause (vii) of the Bihar



Prisoner Manual. It appears that during pendency of the writ application the period of three months for which the order as contained in Annexur-3 of the writ application has been passed, expired, but once again the respondent no. 2 has issued memo no. 3197 dated 21.05.2018 as contained in Annexure-C series to the counter affidavit filed on behalf of respondent nos. 1, 2, 5 & 6. By Annexure-C, the transfer period has been extended for a further period of three months. This order has however not been challenged by filing any amendment application in the present writ application.

Learned senior counsel representing the petitioner has challenged the order on three grounds namely, (1) that a judicial order by which the petitioner has been remanded to Siwan Jail cannot be allowed to be nullified by virtue of an administrative order passed under Section 29(3) r/w Rule 781 by respondent no. 2.

(2) In any case the order passed by respondent no. 2 in exercise of his power under sub-section (3) of Section 29 of the Prisoners Act is not based on any reason. Learned senior counsel submits that even reasons are not enough rather those reasons are required to be supported by materials on which the order is passed by respondent no. 2, and (3) he has submitted that the impugned order in the present case is nothing but a result of colourable exercise of power by respondent no. 2 who has kept on settling the petitioner from one



place to another in the garb of exercise of his power.

On the other hand, learned counsel representing the State submits that the decision to transfer the petitioner from Siwan Jail to Central Jail, Gaya has been taken only after reviewing the security issues which arose during his stay in the Siwan jail.

Learned counsel submits that a bare reading of Annexure-3 would show the reasons based on the materials which are duly indicated and have been considered by respondent no. 2 before passing the impugned order. It is further stated that the contention of learned senior counsel representing the petitioner that in the garb of his administrative order respondent no. 2 is nullifying the judicial order passed by the court below has no basis to stand. It is submitted that no material at all muchless any order of the court below has been brought before this court to demonstrate that such order has been violated by respondent no. 2. It is submitted that the respondent no. 2 having understood the situations prevailing in the Siwan Jail during the stay of this petitioner has taken a decision in the interest of the Jail administration and the adequacy or inadequacy of the materials cannot be examined by this court sitting in its writ jurisdiction.

Having heard learned senior counsel representing the petitioner and learned counsel representing the State, this court is of the considered opinion that Annexure-‘3’ itself provides sufficient



reasons based on which the decision impugned in the present writ application has been taken by respondent no. 2. The extract relevant to take a view on the submissions made on behalf of the petitioner, is quoted herein from Annexure-3 to the writ application

“जिला पदाधिकारी, सिवान के पत्रांक 130 मु0/सा0”110 दिनांक 24.2.2018 के साथ संलग्न पुलिस अधीक्षक सीवान का पत्रांक 1298/गो दिनांक 24.2.2018 तथा अधीक्षक, मंडल कारा, सीवान का पत्रांक 593, दिनांक 20.2.2018 द्वारा प्रतिवेदित किया गया है कि मंडल कारा, सीवान में संसीमित विचाराधीन बंदी यथा 1. रई”1 खान, पे0 कमरुद्दीन, हक सा0 गयासपुर, थाना सिसवन जिला सीवान, 2 अजहरुद्दीन बेग उर्फ लडडन मियाँ, पे0 स्व0 कुन्दन मियाँ, सा0 रामनगर, थाना नगर, जिला सिवान, को कारा की विधि व्यवस्था एवं कारा की सुरक्षा मद्देनजर रखते हुए अलग अलग कारा में स्थानांतरित करना आव”यक है। तदआलोक में जिला पदाधिकारी, सिवान द्वारा विचाराधीन बंदी 1. रई”1 खान, पे0 कमरुद्दीन हक, 2. अजहरुद्दीन बेग उर्फ लडडन मियाँ, पे0 स्व0 कुन्दन मियाँ को राज्य के अलग-अलग कारा में स्थानांतरण करने की अनु”ंसा की गई है।

2. जिलाधिकारी, सीवान एवं पुलिस अधीक्षक, सीवान के प्रतिवेदन एवं अनु”ंसा के आलोक में सम्यक विचारोपरान्त कारा की विधि व्यवस्था, लोकहित एवं जनहित प्र”ासनिक दृष्टिकाण से बिहार कारा हस्तक, 2012 के नियम 781 की कंडिका (vii) में उल्लेखित बंदी अधिनियम की धारा 1900 की स”ोधित धारा 29(3) के तहत प्रदत्त भाक्तियों को प्रयोग करते हुए मंडल कारा, सीवान में संसीमित उक्त बंदियों को अगले 03 तीन माह के लिए उनके नाम के समक्ष यथा स्तंभ 03 में अंकित कारा में स्थानांतरित करने का आदे”1 दिया जाता है।”



While pressing the propositions set forth by learned senior counsel, despite specific queries raised by this court requesting him to show any judicial order which has been violated or transgressed by respondent no.2, no such order has been placed before this court to demonstrate that by an administrative order the respondent no. 2 has violated a judicial order.

The contention of learned senior counsel that it is a case of colourable exercise of power would not impress upon this court once the without reasons and rationale provided in Annexure-‘3’ are gone through. This court would agree with the submission of learned counsel representing the State that sitting in its writ jurisdiction, the court would not assume upon itself the role of an administrative functionaries and the reasons for which the a jail inmate is transferred from one jail to another, sufficiency of materials, adequacy or inadequacy thereof has only to be objectively looked into by this court and there cannot be a subjective test by way of judicial review.

Considering the fact that the as per the report whenever the petitioner is placed in Siwan Jail several difficulties arise which make it difficult to smoothly run the administration inside the jail, given the kind of criminal antecedents of the petitioner, if the respondent no. 2 has been taking a decision to transfer him from



Siwan Jail to some other jails from time to time, in the opinion of this court such discretion must be left open for respondent no. 2 and this court should not exercise its extraordinary writ jurisdiction to interfere with such orders.

The writ application has no merit. It is, accordingly, dismissed.

(Rajeev Ranjan Prasad, J)

Rajeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.07.2018
Transmission Date	26.07.2018

