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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision : 23.07.2018

% **W.P.(CRL) 1137/2018**

JAGTAR SINGH HAWARA

..... Petitioner

Through: Mr. Mehmood Pracha, Mr.
Rudro Chatterjee, Anghashish
Chaliha, Shariq Nisar, Abdul
Kader, Prateek Gupta,
Advocates

versus

GOVT OF NCT OF DELHI & ANR

..... Respondent

Through: Mr. Rahul Mehra, Standing
Counsel, GNCTD with Mr.
Chaitanya Gosain, Advocate
with AS Manjeet Singh and
HW Manoj Kumar

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE I.S.MEHTA

VIPIN SANGHI, J. (ORAL)

1. We have heard learned counsels and proceed to dispose of the present petition at the admission stage itself.
2. The petitioner has preferred the present writ petition to seek a

writ of habeas corpus, directing the respondents to forthwith release him from- what he claims, his illegal detention at Central Jail, Tihar. The petitioner stands convicted in a case involving murder of 17 persons including Sardar Sh. Beant Singh, the then Chief Minister of Punjab. The Sessions Court in Chandigarh vide judgment dated 27.03.2007 sentenced him to death with fine. The High Court of Punjab & Haryana High Court modified the sentence to life imprisonment in place of death, with a direction that the petitioner shall not be released from prison till the rest of his life vide order passed on 12.10.2010 in Crl. A No.731-DB/2007.

3. While the petitioner was lodged at Budhail Jail in Chandigarh in relation to the aforesaid case as an under trial, he dug a tunnel in the jail and absconded on 22.01.2004. On 20.06.2005, he was arrested in Delhi in another case vide FIR 229/2005 under Section 186/132/353/307/34 IPC and 121/121A/122 IPC registered a PS Alipur, and was transmitted to Chandigarh from Delhi. While he was in custody- undergoing his life sentence (as ordered by the Punjab & Haryana High Court on 12.10.2010), he was produced before the learned CMM at Delhi on 25.10.2010 in case FIR 260/2005 and 287/2005 registered at PS Special Cell, and FIR 229/2005 registered at PS Alipur in response to production warrants issued against him. Since the Ld. CMM found that he was a hardened criminal and was also a high risk convict in the case of murder, the Superintendent concerned, Tihar Jail was directed to keep the petitioner in a high risk cell. Since then the petitioner continues to be lodged at Central Jail,

Tihar.

4. The submission of Mr. Pracha, learned counsel for the petitioner is that the petitioner has either been acquitted, or has already undergone the sentence in cases which were registered at Delhi. Mr. Pracha submits that the petitioner is, therefore, not required in any case in Delhi, much less under any judicial order. He submits that, as of now, only three cases are pending against him and they are all in Punjab- being case FIR 134/1995 registered under Section 25/54/59 of the Arms Act registered at Kotwali, Ludhiana; case FIR 133/1995 under Section 307/427/34 IPC registered at Kotwali, Ludhiana, and; case FIR 10/2005 under Section 307/353/186/323/120B IPC and section 25 of the Arms Act registered at Bandikalan, Moga, Punjab. Thus, according to the petitioner, the life sentence that he is undergoing in the murder case— taken note of herein above, is the only sentence that the appellant is presently serving.

5. Mr. Pracha submits that since the sentence that he is undergoing has been awarded in a case registered and tried in Chandigarh, and the said sentence has been awarded by the Punjab & Haryana High Court, he cannot be detained in Central Jail, Tihar and his detention in Central Jail, Tihar is illegal. Mr. Pracha submits that it is only the concerned prison(s) in the State of Punjab, where he could be detained.

6. Mr. Pracha refers to and relies upon the provisions of the Transfer of Prisoners Act, 1950 to submit that the petitioner was

brought to Delhi in response to a production warrant in a case registered in Delhi, and since that case is already over, he was bound to be sent back to Punjab. He submits that under the aforesaid Act, the transfer of the petitioner from Punjab to Delhi could be undertaken only by mutual consent of the concerned State Governments i.e. the Government of Punjab and the GNCTD. He submits that that no such mutual consent has been arrived at between the two States.

7. The GNCTD has filed a reply affidavit. Along with the reply affidavit, the State has placed on record several communications issued from time to time in relation to the risk that the petitioner poses of his escaping, and in relation to his continued detention in Central Jail, Tihar. A communication was issued by the Joint Commissioner of Police, Special Cell, Delhi to the Director General- Prisons (Prisons), Central Jail, Tihar on 11.07.2011, stating that as per intelligence inputs received in respect of the petitioner, the petitioner may attempt to escape from police custody with the help of associates at the time of his production in Punjab. The said communication desired that the security arrangement in respect of the petitioner be strengthened.

8. Reference is also drawn to the communication dated 14.02.2012 issued by the Ministry of Home Affairs, Govt. of India to the Chief Secretary, Govt of Punjab. A perusal of this communication shows that under the orders of the Punjab & Haryana High Court, video conferencing facilities were directed to be put in place in respect of the on-going trials in the State of Punjab. The communication also states

that the movement of the petitioner from Delhi to Chandigarh besides being a serious security risk, may also cause law and order problem.

9. On 05.03.2013, a secret communication was received by the Commissioner of Police, Delhi, as per which, it had been learnt that the petitioner and one Paramjit Singh Bheora— who were lodged at Central Jail, Tihar, were desperate to escape from custody and that they had even carried out a dry run in the recent past. As per this communication, they had decided to go for medical examination and escape, but the plan failed since only Paramjit Singh Bheora was sent for examination

10. Another communication dated 01.02.2017 has been placed on record, as issued by the Ministry of Home Affairs, Govt of India to the Deputy Secretary (Home), GNCTD, in response to the communication issued by GNCTD for transfer of the petitioner from Central Jail, Tihar to any other jail in the State of Punjab. The Govt of India referred to its comprehensive advisory dated 23.09.2015 addressed to all the States/UTs on shifting of high risk prisoners from the jail of one State/UT to the jail of another State/UT, highlighting para 5 of the said Advisory—which required that the States/UT administrations should consult the IB/Special Branch of the State/UT and obtain their views/ comments before shifting of high risk prisoners from one State to another State. It further states that in case the IB provides adverse inputs dissuading from such transfers, the transfer of such prisoners should be avoided. The GNCTD was asked to seek views of the IB and take approval of the competent authority before any transfer. The

said Advisory dated 23/24.09.2015 has also been placed on record. The said Advisory, after making reference to the Transfer of Prisoners Act, 1950 states as follows:

“The Statement of object and reasons of the Transfer of Prisoners Act, 195 provides that the transfer of such prisoners may be considered if it is administratively desirable and necessary.

3. *State Governments are expected to follow the spirit of the legislation to prevent security hazards in such transfer. Transfer of high risk prisoners i.e., prisoners convicted or charged in terror related cases or heinous crimes like murder, rape, human trafficking or any other kind of organized crime etc., from one State/ UT should be considered taking into account security implications of such transfers in both the transferring and receiving State/ UT.*

4. *State/ UTs need to be extremely cautious in shifting of such prisoners to the jails of other States and inputs from both Central and State security agencies like IB/ Special branch of the State/UT need to be taken to avoid any adverse security implications in transfer of such prisoners who may misuse the provisions of Transfer of Prisoners Act, 1950 for obtaining transfer on other proxy grounds. The transfer of such prisoners may also have law and order repercussions in both the transferring and the receiving States which needs to be assessed based on the inputs of State and Central Security agencies.*

5. *The State/ UT administrations should consult the IB/ Special branch of the State/ UT and obtain their views/ comments before shifting of such high risk prisoners from one State to another State in all such cases as mentioned in para 3 above. In case the IB provides adverse inputs dissuading from such transfers, the transfer of such prisoners should be avoided”.*

11. Mr. Mehra submits that since the petitioner is a life convict who is not to be released from the jail during his life time, he has no vested or fundamental right to claim that he should be kept in custody in any particular jail. He submits that the endeavour of the petitioner, obviously, is to attempt his escape by getting out of the Central Jail Tihar, which has very high security. He points out that the petitioner has already escaped once while lodged at Budhail Jail, Chandigarh.

12. Having heard learned counsels, we are of the view that there is absolutely no merit in the present petition. The petitioner has not brought to our notice any constitutional or statutory provision which mandates that as a life convict, he has a right to be imprisoned in a particular prison, in a particular State. To our mind, no convict can claim that he should be placed in a prison situated at a place of his choice. It is the responsibility of the State to ensure that a convict—who is undergoing a sentence of imprisonment, is kept in a safe and secure environment so as to ensure that neither he suffers from any risks or dangers, nor he is in a position to pose any risk or dangers, or escape from custody.

13. If, in a given case, there is reason to believe that the custody of the prisoner in a particular State may not be secure, in our view, there is nothing to prevent the lodging of the convict/ prisoner in a safer prison, situated at such other place.

14. Section 3 of the Transfer of Prisoners Act, 1950 reads as follows:

*“3. Removal of prisoners from one State to another.
(1) Where any person is confined in a prison in a State,—*

(a) under sentence of death, or

*(b) under or in lieu of, a sentence of imprisonment
or transportation, or*

(c) in default of payment of a fine, or

*(d) in default of giving security for keeping the
peace or for maintaining good behaviour;*

*the Government of that State may, with the consent of the
Government of any other State, by order, provide for the
removal of the prisoner from that prison to any prison in
the other State.*

*(2) The officer in charge of the prison to which any
person is removed under sub-section (1) shall receive and
detain him, so far as may be, according to the exigency of
any writ, warrant or order of the court by which such
person has been committed, or until such person is
discharged or removed in due course of law”.*

15. A perusal of the said section would show that it is not obligatory on the State Government— within whose territory a prisoner may actually be confined, to consent to his transfer to another State. Similarly, there is no obligation cast on the State to take steps to bring back a convict/ prisoner to a prison within its territory, merely because the prisoner is undergoing a sentence in respect of an offence committed within the State while being lodged in a prison of another State. The aforesaid provision shows that it is by mutual consent of the concerned States alone, that the prisoner may be transferred from one State to another.

16. When the petitioner was produced under a production warrant before the learned CMM, Delhi on 25.10.2010 and he was lodged in Central Jail, Tihar, he was already convicted and sentenced to life imprisonment apart from fine for the murder of, amongst others, the then Chief Minister of Punjab. Thus, when the petitioner was directed to be lodged in the high risk cell of Central Jail, Tihar on 25.10.2010, he was undergoing the sentence of life imprisonment and he continued to undergo the said sentence even after his being lodged in the Central Jail, Tihar. He continues to undergo the said sentence, even after his acquittal in other cases, and after undergoing the full sentence in other cases where he stood convicted.

17. Merely because the cases in which he was being tried in Delhi may have been concluded, and the petitioner has either been acquitted or has undergone the sentence awarded in respect of the cases instituted within the NCT of Delhi, it does not follow that the Central Jail, Tihar has no authority to continue with his detention. The petitioner himself states that the State of Punjab has not arrived at any mutual agreement or understanding with the GNCTD in the matter of the transfer of the petitioner from one State to another.

18. Pertinently, it appears that the DG prisons Central Jail, Tihar had sought permission to transfer the petitioner to a jail in the State of Punjab vide letter dated 07.10.2016. That request was expressly rejected by GNCTD on 29.06.2017. That order of rejection has not been assailed by the petitioner.

19. The Ministry of Home Affairs, Govt of India has laid down the guidelines in the matter of transfer/shifting of high risk prisoners from the one State/UT to that of another. We have already taken note of hereinabove the said Advisory. In the light of the said Advisory, the decision taken by the GNCTD in its communication dated 29.06.2017 appears to be justified, keeping in view the facts and circumstances take note of by us hereinabove.

20. For all the aforesaid reasons, we find no merit in this petition. The same is accordingly dismissed.

VIPIN SANGHI, J

I.S.MEHTA, J

JULY 23, 2018

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