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

+ W.P.(C) 2921/2020

SAMS TAHIR KHAN AND ANR. Petitioners

Through Mr.Amit Khemka and Mr.Rishi
Sehgal, Advs.

versus

GOVERNMENT OF NCT OF DELHI

AND ANR.

..... Respondents

Through Mr.Rahul Mehra, Standing Counsel
(Criminal) with Mr.Chaitanya Gosain,
Mr.Divyank Tyagi, Mr.Sameer Vashisht, ASC(C)
GNCTD and Ms.Urvi Kapoor, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

19.03.2020

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CM No.10156/2020

Exemption allowed subject to all just exceptions.

W.P.(C) 2921/2020

1. This Writ Petition is filed by the petitioners seeking to set aside the rejection of permission to interview the condemned prisoners which has been rejected by impugned letter dated 16.03.2020. Other connected reliefs are also sought.

2. The case of the petitioners is that they are established journalists having vast experience of more than 30 years. The matter pertains to the Nirbhaya case. The prisoners in question, namely, Mukesh Singh, Akshay Thakur, Vinay Sharma and Pawan Gupta have been found guilty by the concerned court and have been awarded the death sentence. The death

sentence was confirmed by the Supreme Court.

3. Mr.Rahul Mehra, learned Standing Counsel (Criminal) for the respondent points out that the Review Petition and Curative Petition stand dismissed by the Supreme Court. The Mercy Petition also stands rejected by the Hon'ble President of India. The date of execution has now been fixed by the trial court on 5.3.2020 and the prisoners are to be hanged tomorrow i.e. on 20.03.2020 at 5:30 AM.

4. On 12.3.2020 the petitioners requested respondent No.2 to grant permission to interview the said condemned prisoners. Simultaneously Writ Petition was filed before this Court being W.P.(C) 2772/2020. On 13.3.2020 this court disposed of the said petition directing the respondents to dispose of the representation of the petitioners within a period of 3 days. Now, the respondents have disposed of the representation by impugned order dated 16.3.2020.

5. I have heard learned counsel for the parties. Learned counsel for the petitioner Mr.Amit Khemka relies upon judgments of the Supreme Court in *Smt.Prabha Dutt vs. Union of India, AIR 1982 Supreme Court 6* and *Shatrughan Chauhan vs. UOI, (2014) 3 SCC 1* to plead that an interview by a journalist is permissible.

6. Learned Standing Counsel (Criminal) appearing for the respondent, however, refutes the said contentions. He submits that the judgments relied upon by the petitioner relate to a different statutory regime. Presently in Delhi, the Delhi Prison Rules, 2018 are in force which came into effect on 1.1.2019. These Rules have been framed under Section 71 of the Delhi Prisons Act, 2000. He relies upon rules 789(ii), 816, 858 and 864 to contend that no interview can be granted.

7. The Supreme Court in *Smt.Prabha Dutt vs. Union of India (supra)* was dealing with the Prisons Act of 1894 and also Manual for the Superintendence and Management of Jails. The Supreme Court proceeded on the basis that the prisoners in question who were under sentence of death were willing to give an interview. In those circumstances, the Supreme Court held as follows:-

“3. Rule 549(4) of the Manual for the Superintendence and Management of Jails, which is applicable to Delhi, provides that every prisoner under a sentence of death shall be allowed such interviews and other communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. Journalists or newspapermen are not expressly referred to in Clause (4) but that does not mean that they can always and without good reasons be denied the opportunity to interview a condemned prisoner. If in any given case, there are weighty reasons for doing so, which we expect will always be recorded in writing, the interview may appropriately be refused. But no such consideration has been pressed upon us and therefore we do not see any reason why newspapermen who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under Clause (4) of Rule 549.”

8. Hence, the Supreme Court interpreted the said Rule 549(4) of the Manual to mean that it would also include journalists.

9. As far as reliance by the learned counsel for the petitioners on the judgment of the Supreme Court in *Shatrughan Chauhan vs. UOI (supra)* is concerned, reliance was placed on para 241.12 of the judgment which reads as follows:-

” Final Meeting between Prisoner and his Family:
241.12 While some prison manuals provide for a final meeting between a condemned prisoner and his family immediately

prior to execution, many manuals do not. Such a procedure is intrinsic to humanity and justice, and should be followed by all the prison authorities. It is therefore, necessary for the Prison Authorities to facilitate and allow a final meeting between the prisoner and his family and friends prior to his execution.”

10. He submits that a final meeting can take place between the condemned prisoners and the family and friends prior to execution which he submits would necessarily also mean journalist.

11. As noted above, presently in Delhi it is the Delhi Prison Rules, 2018 which came into effect on 1.1.2019, which are applicable. To that extent there is a change in the statutory provisions which would be the appropriate applicable provisions. The Rules 789(2) of the said Rules reads as follows:

“Chapter XII Prisoners Sentenced to Death

789. (i)....

(ii) “relative” in relation to a prisoner means spouse, children, grandchildren, brothers, sisters, parents, grand-parents, parent’s brother or sisters parents-in-law, grandparents in law, brothers or sisters of spouse, children of brothers or sister and children of brothers or sister of the spouse.”

12. Hence, in the chapter pertaining the Prisoners’ Sentenced to Death, relatives have been clearly defined and do not include any friends. Rules 816, 858 and 864 may also be looked into. The same reads as follows:-

“816. The Superintendent may permit prisoners under sentence of death to have interviews with their relatives, friends or legal advisors, twice a week, or more often when the Superintendent is of the opinion that such interviews may be granted for good reason.

858. Minimum period of execution of death sentence. A

minimum period of 14 days was stipulated by the Supreme Court between the receipt of the communication of the rejection of the mercy petition and the scheduled date of execution. This is to enable the prisoner sentenced to death to prepare himself and settle his affairs and meet his family members for one last time or to avail any judicial remedy. Therefore a clear 14 days will be provided to the prisoner sentenced to death to prepare himself and settle his affairs and meet his family members for one last time or to avail any judicial remedy.

864. On receipt from the Trial Court of the final confirmation and the date of execution of a prisoner sentenced to death.

- i) The prisoner sentenced to death if he so desires then his relatives shall be informed, about the date of execution by the Superintendent, sufficient time before the execution.
- ii) The prisoner sentenced to death and his relatives, if they so desire, the prison authorities will facilitate their final meeting.
- iii) The prisoner sentenced to death, if he so desires, be permitted to prepare his will in accordance with his wishes, his statement to that effect shall be recorded by the Deputy Superintendent/superintendent.”

13. The relevant Rule here would be Rule 864. The death sentence of the prisoners are to be executed tomorrow i.e. 20.03.2020 in the early morning. In terms of Rule 864 of the said Rules the prisoners, if they so desire, their relatives would be informed, and, if required, a final meeting will be organised. There is no provision here for meeting of friends. Given that the meeting is confined only to relatives, in my opinion, a journalist would not fit into the four corners of Rule 864 of the Prison Rules.

14. That apart, the Supreme Court in *Smt.Prabha Dutt vs. UOI (supra)* had clearly stated that where there are weighty reasons an interview may be

appropriately refused. In my opinion, at this stage, when there are less than 24 hours left for execution of the death sentence it would be highly improper to allow persons other than close relatives to meet the convicts.

15. A perusal of the impugned order shows that one of the grounds for rejection of the application of the petitioner is as follows:-

“6.That considering the present facts and circumstances where the condemned prisoners are waiting for the execution of sentence of death it will rather be more dehumanizing for them if such kind of request is acceded to. Moreover, if we consider and allow such request then there may be flood of similar request from other media groups as well.”

16. In my opinion, the above ground stated in the impugned order does not suffer from any material illegality. The same cannot said to be grossly arbitrary or illegal to warrant this court interfering in the said order.

17. There is no merit in the present petition. Same is dismissed. All pending applications, if any, also stand disposed of.

JAYANT NATH, J

MARCH 19, 2020

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