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

+ **W.P.(CRL) 2739/2018**

JAVED AHMED KHAN

..... Petitioner

Through: Mr Aditya Vikram and Mr
Avinash, Advocates.

versus

STATE & ORS.

..... Respondents

Through: Mr Rahul Mehra, Standing
Counsel for State with Mr
Chaitanya Gosain and Mr
Amanpreet Singh, Advocates
with SI Alok Bajpai, Special
Cell/SR.

Ms Shashi Juneja, ASC with Ms
Priyanka Bharihoke, Advocates
for R-4/State of J&K.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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14.01.2020

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 25.05.2016, whereby his representation for seeking transfer from the Central Jail Tihar, Delhi to the Central Jail, (Srinagar), Jammu & Kashmir was dismissed by respondent no.1.

2. The petitioner was convicted of an offence under Sections 302/307/323/120B/124A of the IPC; Sections 3/4/5 of the Explosive

Substances Act, 1908; Section 25 of the Arms Act, 1959, and; Section 411 of the IPC. The petitioner was found guilty of an act of terrorism and it is held that he was one of the persons responsible for bomb blasts in Lajpat Nagar, Delhi.

3. The learned counsel appearing for the petitioner referred to the decision of the Madras High Court in ***V. Radhakrishna v. the State of Tamil Nadu: W.P.(MD) 15664/2019 decided on 19.07.2019*** and decision of the Supreme Court in ***Re-inhuman Conditions in 1382 Prisons, In Re: (2017) 10 SCC 658***, in support of his contention that insofar as possible, the prisoner is required to be placed in a jail near his home in order to ensure his social rehabilitation. The petitioner relies upon the United Nations Standard Minimum Rules for the Treatment of Prisoners as adopted by the General Assembly of United Nations on 17.12.2015 (referred to as the Nelson Mandela Rules).

4. He submits that in terms of Rule 59 of the Nelson Mandela Rules, prisoners are required to be allocated, to the extent possible, to the prisons close to their homes or their places of social rehabilitation. The learned counsel for the petitioner also relies upon Rules 664 and 672 of the Delhi Prison Rules, 2018, which provides for transfer of prisoners.

5. Rule 664 and 672 of the Delhi Prison Rules, 2018 are set out below:

“664. Reasons and Circumstances for Transfer - Prisoners may be transferred from one prison to another for the following reasons:

I. For custody and treatment in a suitable institution in

accordance with the classification procedure/ lodging policy

II. For attendance in court for the purpose of standing trial or giving evidence.

III. On medical grounds

IV. On humanitarian grounds, in the interest of their rehabilitation

V. For post-release vigilance by the police.

VI. For providing essential services

VII. On grounds of security, expediency, etc

VIII. To be nearer to his home district

IX. To ease overcrowding in a prison

X. For other special reasons, if any.

* * * *

672. Transfer of prisoners belonging to other States -

The transfer of prisoners from one state to the other state shall be in accordance with the provisions of the Transfer of Prisoners Act, 1950 whether under this rule or under any other rule of this chapter. The proposals for transfer of prisoner, belonging to other state, may be initiated by the Superintendent on his own, or on the request of the prisoner, on the basis of any of the grounds mentioned in the Transfer of Prisoners Act, 1950. For this, the Superintendent of the prison, where the prisoner is confined, shall obtain from the prisoner a written declaration giving details of his address as also addresses of his relatives in his State of origin and send a nominal roll and other documents to the Inspector General of Prisons of that State with the prior approval of the State Government. The Inspector General shall also ascertain the name of the prison, in the State of origin to which the prisoner has to be transferred from the Inspector General of that State and then issue orders for the transfer of the prisoner with the prior approval of the State Government. Explanation: (i) Due consideration shall be given to the wishes of a prisoner regarding transfer to his home State, unless there are adequate reasons against it.

Explanation: (ii) The transferring State shall bear the cost of transfer of the prisoner. The cost of maintenance of the prisoner shall be borne by the State of his origin from the date he is received.

Explanation: (iii) The prisoners' property and wages earned by him in the prison till the date of his transfer shall be sent, along with the prisoner, to the prison to which he is transferred.

Explanation (iv) Delhi state convicts transferred to other states to serve remaining part of their sentence shall be governed by Delhi Prison Rules for the purposes of State Remissions, Parole, Furlough and pre mature release etc.”

6. Rule 664 of the Delhi Prison Rules, 2018 expressly sets out the grounds/reasons for the transfer of prisoners. One of the reasons is that the petitioner can be transferred on humanitarian grounds in the interest of rehabilitation.

7. Rule 672 of the Delhi Prison Rules, 2018 also provides for transfer of prisoners from one state to another in accordance with the provisions of the Transfer of Prisoners Act, 1950. Explanation (i) of the said Rule expressly sets out that due consideration shall be given to the wishes of a prisoner regarding transfer to his home state, unless there are adequate reasons against it.

8. Section 3 of the Transfer of Prisoners Act, 1950 is relevant and is set out below:-

“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.”

9. On 17th December 2015, the United General Assembly adopted the revised rules as the “United Nations Standard Minimum Rules for Treatment of Prisoners”. As per the recommendations of the Expert Group, the revised rules are to be known as the Nelson Mandela Rules to honour the legacy of the late President of South Africa, Nelson Rolihlahla Mandela. Rule 59 of the said Rules – which is relied upon by the learned counsel for the petitioner – reads as under:-

“Rule 59

Prisoners shall be allocated, to the extent possible, to prisons close to their homes or their places of social rehabilitation.”

10. Rule 59 of Nelson Mandela Rules finds statutory expression in the Delhi Prison Rules, 2018. As noticed above, Rule 672 of the Delhi Prison Rules, 2018 expressly provides that the wishes of the prisoner regarding transfer to his home state would be considered and acceded

to, unless there are reasons requiring to the contrary. In the present case, the request for transfer to Central Jail, (Srinagar), Jammu & Kashmir had been rejected as the report reiterates that such transfer would involve a high degree of security hazard.

11. The status report filed on behalf of respondent no.1 also indicates that a letter dated 16.12.2015 had been received from the Ministry of Home Affairs forwarding a communication dated 09.12.2015 sent by the Intelligence Bureau, Ministry of Home Affairs. The report states that militants/radical elements have sympathizers in the Srinagar Jail premises. In view of the above, and considering the offence for which the petitioner had been convicted, there appears to be reasonable grounds for security concerns regarding transfer of the petitioner from the Central Jail, Tihar, Delhi to the Central Jail, (Srinagar), Jammu & Kashmir. Keeping the aforesaid in mind, the Lt. Governor, Delhi has not consented for transfer of the petitioner from Delhi to Srinagar.

12. The court cannot be oblivious of the fact that there is terrorist activity in the State of Jammu and Kashmir and the petitioner has been convicted for an act of terrorism.

13. Although a wish of a prisoner is required to be considered; the same is not the only factor to be considered. A prisoner's transfer to a prison near his home would, obviously, be subject to security concerns of the State.

14. In the present case, the concerned authorities have examined the petitioner's request and have also indicated the reasons for rejecting the

same.

15. This Court finds no reason to interfere with the impugned order rejecting the petitioner's request to be transferred to a prison in Jammu and Kashmir. The petition is, accordingly, dismissed.

JANUARY 14, 2020
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VIBHU BAKHRU, J

