

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION (APL) NO.55 OF 2021**

Surjit Singh Arora

....Applicant.

Vs.

The State of Maharashtra

....Respondent.

Mr. Sujay Gawade and Ms. Mudita i/by Shree & Co. for the Applicant.
Mr. Amit Palkar, APP for the Respondent-State.

CORAM : A. S. GADKARI, J.
DATE : 13th JANUARY, 2021.

P.C.:-

Applicant, an under-trial prisoner, has impugned Order dated 10th November, 2020 passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai. By the impugned Order, facility of home food to the Petitioner has been cancelled, which was permitted by Order dated 17th October, 2019 by the said Court.

2 Heard Mr. Gawade, learned counsel for the Applicant and Mr. Palkar, learned APP for the Respondent-State.

3 The record indicates that, the Applicant who is aged about 65 years, had filed an Application before the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai, on 17th October,

2019 for having prescribed medicines and home food in view of his medical condition. The learned Magistrate, by its Order dated 17th October, 2019 was pleased to allow the said Application and permitted Applicant to have prescribed medicines and home food.

4 The Superintendent of Taloja Central Prison, thereafter filed an Application No.1406/MISC/2020 for cancellation of facility of home food provided to the Applicant on the ground that, the Jail Authority is providing necessary balanced diet to its prisoners as per guidelines issued by the State Government and if the prisoners came into contact with other persons in the present pandemic situation, there is possibility of spreading virus in the Jail. The person who providing home food to the prisoner, brings home foods to the prisoner from home and therefore, there is a chance of spreading virus in the Jail.

5 The record indicates that, in paragraph No.4 of the impugned Order, the Trial Court has observed that, notice of the said Application was served upon the Applicant in Jail through an e-mail however, no reply has been filed to the said Application.

There is no contemporaneous record produced by the Jail Authority to accept its submission that, the Applicant was in fact served with a notice of filing of the Application No.1406/MISC/2020 by it. The Superintendent of Taloja Central Prison or its other Officers would have

easily served a copy of the said Application upon the Petitioner who is an under-trial prisoner in their prison. However, the said easy step was not adopted by the Jail Authority. It further appears that, the Jail Authority also did not inform the date of the hearing of the said Application to the Petitioner, so as to enable him to appoint an Advocate to represent him before the Trial Court.

6 Even otherwise, as a matter of fact, the Applicant was not heard before passing the impugned Order dated 10th November, 2020 thereby, curtailing the facility provided to him by an earlier Order dated 17th October, 2019 passed by the same Court. It appears that, the basic principle of natural justice, of being heard, has not been complied with by the learned Magistrate, while passing impugned Order dated 10th November, 2020.

7 In view thereof, the impugned Order dated 10th November, 2020 is set aside and the said Application No.1406/MISC/2020 is remanded back to the Court of Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai for fresh consideration.

Learned Magistrate is directed to hear the Applicant through his Advocate before passing Order on merits. Learned Magistrate to decide the said Application within a period of four weeks from the date of receipt of the present Order.

8 It is made clear that, this Court has not gone into the merits of the Application preferred by the Superintendent of Taloja Central Prison and all the contentions of both the parties are expressly kept open.

9 Application is allowed in the aforesaid terms.

(A.S. GADKARI, J.)

Sanjiv S.
Mashalkar

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