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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 13th April, 2021
+ **W.P.(C) 1306/2021**
NATASHA NARWAL AND ANR. Petitioners
Through: Mr. Adit S. Pujari, Advocate with the
Petitioners in person.
versus
DG PRISONS Respondent
Through: Mr. Anuj Aggarwal, Advocate
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through Video Conferencing.
2. The present petition has been preferred by the two Petitioners in view of office order dated 14th January, 2021 in respect of production of under trial prisoners before the physical courts.
3. Petitioner Nos.1 and 2 – Ms. Natasha Narwal and Ms. Devangana Kalita are under trial prisoners who are currently lodged in Tihar Jail. They have joined the hearing through video-conferencing. The case of the Petitioners is that during the Covid-19 pandemic, they would like to exercise the choice of appearing before the trial courts, where trials are ensuing against them, through an online platform instead of appearing physically in view of the risks attached, as also the directions in respect of staying in isolation after being produced in Court.
4. Mr. Pujari, ld. counsel for the Petitioners, submits that since the filing of this writ petition and the passing of directions by this Court, the Petitioners are being permitted to appear before the trial courts through video-conferencing platforms. So long as this choice is made available to the

Petitioners, they do not press for any further directions in this writ petition.

5. On the other hand, Mr. Anuj Aggarwal, ld. counsel, submits that discretion should not just be vested with the under trial prisoners as in certain cases trial courts may want the under trial prisoner to be produced. The decision should also be left to the trial courts if they wish to direct the physical presence of the under trial prisoner.

6. The prayer in this writ petition reads as under:-

“(a) Issue a writ of mandamus to the Respondent directing that the Petitioners, who are undertrials, not be placed in quarantine upon production physically before Courts in compliance with Office Order No. 35/RG/DHC/2021 dated 14.01.2021; and

(b) Issue directions under Article 227 of the Constitution to Courts subordinate to this Hon’ble Court to have the discretion to produce under trials physically or by virtual mode;

(c) Pass such other Order(s) as this Hon’ble Court may deem fit in the facts and circumstances of the case.”

7. The crux of the challenge in this petition is to the office order dated 14th January, 2021 passed by the Delhi High Court. The same reads as under:-

“In continuation of this Court’s earlier Office Orders, Hon’ble the Full Court, in view of the decline in the intensity of spread of Covid-19 pandemic in the NCT of Delhi, has been pleased to order that the Principal District & Sessions Judges and Principal Judge, Family Court (HQs) shall prepare roster of all the subordinate courts of their respective Districts in such a manner that such courts sit physically on alternate day basis and continue to take up the matters through ‘video-conferencing’ on non-physical days. Such

Roster be made effective from 18.01.2021.

The Subordinate Courts have also been permitted to record evidence (except in those cases where the accused is in custody) while scrupulously adhering to the norms of social distancing, when holding Courts physically.

It has further been ordered that adequate arrangement be also made by all the Principal District & Sessions Judges, in coordination with Director General (Prison) and concerned Incharge (Lockup), for production of UTPs before the physical courts w.e.f. 01.02.2021 and thereafter their cases be taken up on priority basis and evidence be also recorded in such matters.

The Advocates, litigants and other visitors to the District Court Complexes are requested to strictly adhere to the norms of social distancing and other Covid-19 related guidelines issued by Central/State Government.”

8. A perusal of the above order shows that it is not to be read in a manner as to mean that every under trial prisoner would have to be compulsorily produced before physical Court, especially during the Covid-19 pandemic.
9. Accordingly, the Petitioners shall be given the choice to appear either physically or through video-conferencing before the trial court(s). If any trial court, is of the opinion that the Petitioners ought to appear physically, the said discretion remains with the trial court. Otherwise, in so far as the Petitioners are concerned, liberty is given to the Petitioners to either appear physically or through video-conferencing.
10. Since a specific order is being passed in case of the petitioners, the same would be applicable over any general administrative order of the High Court in respect of production of under trial prisoners. The present order is

being passed in view of the specific averments made in the writ petition as also the stand taken before the Court that the Petitioners wish to have the choice of appearing through video-conferencing.

11. The petition is disposed of in the above terms. Copy of this order be communicated to the Jail Superintendent, Tihar Jail by the Registry.

PRATHIBA M. SINGH
JUDGE

APRIL 13, 2021

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