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

Order reserved on :10/10/2022

Order pronounced on :03.11.2022

+ **W.P.(CRL) 423/2022**

ABDUL MAJEED BABA

..... Petitioner

Through:

versus

STATE (NCT OF DELHI) & ORS.

..... Respondents

Through: Ms Rupali Bandhopadhyaya, ASC
with Mr Akshay Kumar and Mr
Abhijeet Kumar, Advocates.

Inspector Somil Sharma, Special
Cell/SWR

CORAM:

HON'BLE MS. JUSTICE POONAM A. BAMBA

POONAM A. BAMBA, J.:

1.0 This is a petition under Article 226 of the Constitution of India praying that the respondents be allowed to transfer the petitioner to his native state Jail i.e., Srinagar, Central Jail from Central Jail, Tihar, New Delhi.

1.1 It is submitted that the petitioner is a resident of Jammu & Kashmir lodged in High-Risk Ward in Central Jail, Tihar No. 4, New Delhi pursuant to his conviction under Sections 120B/121A/122/123 IPC and Sections 17/18/20/21/23 of the Unlawful Activities (Prevention) Act, 1967 (**UAPA** 'in short') in case FIR No. 07/2007, PS Special Cell. The petitioner is aged about 66 years and is suffering from multiple ailments and his health is deteriorating every day. His family members comprising of two daughters, aged about 18 and 20 years, a son aged about 26 years, and his mother are unable to visit him frequently from

Kashmir. Being close to his family would help him recover better.

1.2 Learned counsel for the petitioner also submits that rules 664 and 672 of the Delhi Prison Rules, 2018 provide for transfer of prisoners on humanitarian as well as medical grounds; and therefore, the petitioner deserves to be transferred to Srinagar Central Jail. But the petitioner's application for transfer to Srinagar Jail was rejected by the Hon'ble Lieutenant Governor, Delhi vide communication dated 24.09.2021.

2.0 *Per contra*, this petition is strongly opposed by Learned Prosecutor submitting that the petitioner is a hard core militant of banned terrorist organization Jaish-e-Mohammad (JeM). During pendency of his appeal before this court, when the petitioner was released on bail, the petitioner had absconded. He remained absconding deliberately for a long time and repeated NBWs could not be executed for a period of six years with effect from 2013-2019. Later, considering the seriousness of the matter, a reward of Rs. 2 lakhs was declared on the petitioner's arrest by the Commissioner, Police vide order date 18.03.2019. Subsequently, the petitioner was arrested from Srinagar, J&K, on 11.05.2019.

2.2 It is also submitted that there is every likelihood of the convict managing to flee from any other jail, considering his past conduct.

2.3 Status report mentions that as per the MHA's advisory no. 17011/6/2015-PR dated 24.09.2015 on the shifting of high risk prisoners from the jail of one state/UT to the jail of another State/UT, it has been emphasized that States/UTs need to be extremely cautious in shifting high risk prisoners to jails of other States/UTs; and that inputs from both, the Central and State security agencies should be taken to avoid any

adverse security implications in transfer of such prisoners.

2.4 It is further submitted that the petitioner being a hard core militant of banned terrorist organization Jaish-e-Mohammad (JeM) his transfer may have law and order repercussions in both, the transferring and the receiving state. The petitioner's request for transfer to Srinagar Jail was rightly declined after duly considering the above facts and circumstances as well as the past conduct of the convict.

3.0 In rebuttal, learned counsel for the petitioner submitted that the petitioner had not absconded. He could not surrender as he was under constant treatment at hospital Sher-i-Kashmir Institute of Medical Sciences, Department of Cardiology Post Bag No. 27, Srinagar, Kashmir, India. He also submitted that the transfer of the petitioner to jail at Srinagar would help in his speedy recovery and his family members would also be able to visit him more frequently.

3.1 In support of his prayer, the Learned counsel for the petitioner placed reliance on the judgment of this court in W.P.(CRL) 1137/2018 titled as *Jagtar Singh Hawara Vs Govt. of NCT of Delhi & Anr.* dated 23.07.2018 and the judgment of Madras High Court in WP(MD) No. 15664/2019 and 12339/2019 titled as *V. Radhakrishnan vs. The State of Tamil Nadu* dated 19.07.2019.

4.0 I have duly considered the submissions made by both the parties.

5.0 The petitioner was convicted in case FIR No. 07/2007, u/Ss. 120B/121A/122/123 IPC and Sections 17/18/20/21/23 of the UAPA and is serving life sentence while lodged in Tihar Jail, Delhi. The petitioner's

conviction was upheld by the Hon'ble Supreme Court vide judgment dated 17.02.2020 in Cr. Appeal No. 1069/2014.

6.0 The petitioner has sought transfer to his native state jail i.e., Srinagar, Central Jail from Central Jail, Tihar, New Delhi, pleading ill health and that his family members are unable to visit him frequently at Delhi. The petitioner's said request for transfer was rejected by the Hon'ble Lt. Governor Delhi after consideration.

7.0 In this respect, it is submitted by the Learned Prosecutor that taking into account the previous conduct of the convict and other facts/inputs, there is an apprehension of likelihood of law and order repercussions in both, the transferring and the receiving state, in case the petitioner is transferred to Srinagar Central jail. Considering the same and after due examination of the matter, the petitioner's request was declined by the Lieutenant Governor

8.0 Learned Prosecutor also drew attention of this court to security advisory for shifting of high risk prisoners from the jail of one state/UT to the jail of another State/UT issued by Ministry of Home Affairs, Government of India on 23/24.09.2015. The relevant portion of which reads as under:

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2.

*The Statement of object and reasons of the Transfer of Prisoners Act 1950 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 the receiving State/UT.***

5. ***States/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.***

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”.

8.1 As per the above advisory, the Government has to be cautious in transfer of high risk prisoners convicted in terror related cases taking into account the security implications of such transfers in both, the transferring and the receiving state/UT.

8.2 Learned Prosecutor has submitted that in view of previous conduct, facts and circumstances of the case and other inputs, there is an apprehension of likelihood of law and order repercussions in case the

petitioner is transferred to Srinagar Central Jail.

9.0 No doubt, Rules 664 and 672, Delhi Prison Rules, 2018 provide that the prisoner may be transferred from one prison to another on medical and humanitarian grounds with prior approval of the State Government. However, in view of the above facts and circumstances and taking into account the apprehension of law and order repercussions expressed by the State pursuant to evaluation of the security risk in transfer of the petitioner from Central Jail Tihar, Delhi to Srinagar Central Jail, this court is not inclined to grant the prayer of the petitioner.

10.0 In view of the above, the judgments as relied upon by the learned counsel for the petitioner are not of much assistance to the petitioner. In V. Radhakrishnan's case (supra), the Madras High Court observed that the court must ask if the Government body is acting in pursuit of a legitimate objective. It also noted that choice of convict for transfer be respected subject to security, public interest etc. In the present case, as noted above, the State has expressed its apprehension of law and order repercussions in both, the transferring as well as the receiving state. In Jagtar Singh Hawara's case (supra), the facts were distinguishable. Rather, the Division Bench of this court had observed that no convict can claim right to be placed in the prison of his choice particularly when there is a reason to believe that it may not be secure to house the convict in a particular jail.

11.0 As far as the concern about the petitioner's health as expressed by the learned counsel is concerned, suffice it to state that as per the report of Medical Officer in Charge, Central Jail No. 4, Tihar, New Delhi dated 06.09.2022, the petitioner is being provided due medical care and

treatment.

12.0 The Superintendent Jail is further directed to ensure that requisite treatment/medical care be continued to be provided to the petitioner.

13.0 Petition is disposed of accordingly.

(POONAM A. BAMBA)
JUDGE

NOVERMBER 3,2022/g.joshi

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