

D/L. 14.
January 3, 2024.
MNS.

WPA No. 26476 of 2023

Shahbaz Ismail @ Shahbaz @ Md. Zamal
Vs.
The State of West Bengal and others

Mr. Sabyasachi Mukherjee,
Mr. Bibek Dey,
Mr. Syed Neaz Ahmed

... for the petitioner.

Sk. Md. Galib,
Ms. Tanwishree Mukherjee

...for the State.

1. The bunch of copies of communications made by the State as referred to hereinbelow be kept on record.
2. The petitioner is a Pakistani citizen. He was convicted for certain acts of terrorism. The trial court's order was affirmed by this Court. The petitioner seeks to prefer a challenge against the said order before the Supreme Court.
3. Primarily for such purpose and to get access to his relatives in Pakistan, the petitioner seeks a transfer to any jail in Delhi, which would facilitate contact with the Pakistan Embassy in India, situated at New Delhi.

4. Learned counsel for the State submits that even apart from the petitioner's efforts to be transferred to a jail in Delhi, the State authorities, in particular the Special Commissioner to the Government of West Bengal, has written to the Deputy Director (PB), MHA (Foreigners Division), for transfer of the petitioner from the Dum Dum Central Correctional Home, where he is now housed, to any correctional home at New Delhi, in order to facilitate the petitioner's approach before the Supreme Court or to contact and meet his relatives and family members and also to get their financial support regarding the matter as well as to get assistance from the Pakistan High Commission situated in New Delhi if required.
5. Since the Deputy Director (PB), MHA (Foreigners Division) is not a party in the present writ petition, no direction is passed in that regard. Of course, nothing in this order shall prevent the petitioner from continuing with his efforts and the State of West Bengal from undertaking its endeavour to have the petitioner transferred to any jail in Delhi in due process of law.

6. It is expected that if the State undertakes such efforts, the Ministry of Home Affairs (Foreigners Division) shall take immediate cognizance of the matter and take decisions thereon.
7. Insofar as the petitioner's present endeavour is concerned, the petitioner seeks to establish contact with the Pakistan Embassy in New Delhi in order to facilitate contact with his relatives in Pakistan and to be favoured with financial support from his said relatives. Also the petitioner's primary interest at present is to prefer a challenge to the order of this Court affirming the conviction of the petitioner before the Supreme Court.
8. For such purpose, the ends of justice would suffice if the petitioner is afforded immediate legal assistance by the State of West Bengal, since the petitioner is now incarcerated in the Dum Dum Central Correctional Home in West Bengal.
9. It is well-settled that the provisions of Article 21 of the Constitution of India are also available to non citizens of India. The right to live a life of dignity is also extended to prisoners and convicts, of course, subject to

reasonable restrictions as contemplated by the law of land in that regard.

10. Hence, WPA No. 26476 of 2023 is disposed of by directing the respondent no. 1, that is, the State of West Bengal through the Principal Secretary, Department of Home and Hill Affairs, Government of West Bengal, to ensure that the petitioner receives proper legal assistance within a fortnight from the panel of lawyers maintained either by the State of West Bengal or the State Legal Services Authority of West Bengal with regard to prefer an appeal in the Supreme Court.

11. The necessary legal expenses for preferring such challenge, till the petitioner gains sufficient financial solvency, if at all, from his relatives shall be given by the State Legal Services Authorities of West Bengal. Such aid shall include all legal expenses as well as proper legal assistance of the petitioner to prefer an appeal before the Supreme Court of India.

12. Furthermore, the respondent nos. 3 and 4, that is, the Inspector General Prison of Correctional Service, Government of West Bengal and the Director General (Prisons),

Government of NCT of Delhi, shall ensure that the petitioner is able to establish communication with the Pakistan Embassy situated at New Delhi in India.

13. It is expected that such channels of communication, of course after ensuring that proper protective measures are taken keeping in view that the petitioner is undergoing imprisonment, shall be provided to the petitioner at the earliest, positively within a month from the date of communication of this order to the respondent no. 4.

14. The parties shall act on the server copy of this order without insisting upon prior production of certified copy for compliance.

15. There will be no order as to costs.

16. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)

