

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETN. NO.119 OF 2022

Shaikh Ruheena w/o Imran Shaikh Petitioner

Versus

The State of Maharashtra and others Respondents

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Mr. Rupesh Jaiswal, Advocate for the petitioner.
Smt. D.S. Jape, A.P.P. for the respondents.

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**CORAM : V.K. JADHAV AND
SANDIPKUMAR C. MORE, JJ.**

DATE : 28-01-2022.

ORDER :

1. Learned Counsel for the petitioner submits that the petitioner is the wife of convict Imran @ Mehedi Nasir Shaikh, who is presently kept in Central Prison, Aurangabad. Learned Counsel for the petitioner submits that the husband of the petitioner i.e. said Imran @ Mehedi Nasir Shaikh is kept in Anda Cell (solitary confinement) approximately since 2 years and 4 months.

2. Learned Counsel for the petitioner submits that on 15.09.2021 the convict Imran @ Mehedi Nasir Shaikh has submitted an application to respondent No. 3 –

Superintendent of Jail. His contention is reproduced hereinbelow in verbatim :

"Respected sir,

Since October 2019 I have been kept in solitary confinement in the Anda Barrack, for complete 1 year. I have been kept alone and then after 1 year other various prisoners who broke some prison rules were kept here for 15 days or most 2 months, but I here from 2 years. This Anda Barrack solitary confinement have affected on my mind and psychological mental problems diseases happened and medicines have started. Various types of halucinations happen to me, by keeping me so I have even forgotten to communicate with human being's and every human feeling's have been wiped out even animal's are not kept like this. I am not a terrorist or affiliated to any underworld nor have I broken any prison rules.

I have various medical problems diseases as-

- (1) *My sthenian gravis – abnormal response to non depolqrising muscle relaxanis.*
- (2) *Diebitics sugar*
- (3) *High Blood Pressure*
- (4) *180 stitches on my abdomen liver kidney problem*
- (5) *Now this psychological mental disease.*

Hence in the name of reformation and looking at my medical multiple problems, I request you to please remove me from Anda Barrack solitary confinement before this disease of psychological mental disease gets more complicated.

Hope I will be treated as a human and would be removed from Anda Barrack can get my complete medical history from C.M.O.

*C.C. to Chief Medical Officer
Harsul Central Prison
Reformation Centre"*

3. Learned Counsel for the petitioner, on instructions, submits that respondent No. 2 – Authority has neither answered the above representation nor taken any corrective measures.

4. Learned Counsel for the petitioner submits that on 01.12.2021 the petitioner (wife of convict Imran @ Mehedi Nasir Shaikh) has filed an application before respondent No.3, stating therein that on 24.11.2021, she has visited her husband and found his health in deteriorating condition. She has also observed that her husband is not in a position to understand her communication. She has also observed that her husband has lost his mental balance. In the said application dated 01.12.2021 she has requested the respondent No. 3 to keep her husband alongwith other prisoners in the jail.

5. Learned Counsel for the petitioner submits that respondent No. 3 has forwarded the said communication of the petitioner dated 01.12.2021 to respondent No. 2. However, by communication dated 10.12.2021 respondent No. 2 has merely forwarded the same to respondent No. 3 for appropriate action in accordance with law.

6. Learned Counsel for the petitioner submits that in terms of provisions of Section 45 of the Prisoners Act, 1894 certain acts are declared to be prison offences when committed by prisoner and under Section 46 the punishment for such offences is contemplated. Learned Counsel submits that Section 46 (1) prescribes the punishment for cellular confinement. Section 46 (10) is reproduced herein below :

“Section 46 - The Superintendent may examine any person touching any such offence, and determine thereupon, and punish such offence by -

(10) Cellular confinement for any period not exceeding fourteen days:

Provided that after each period of cellular confinement an interval of not less duration than such period must elapse before the prisoner is again sentenced to cellular or solitary confinement;

Explanation - Cellular confinement means such confinement with or without labour as entirely excludes a prisoner from communication with, but not from sight of, other prisoners”.

7. Learned Counsel for the petitioner submits that in a case of ***Charles Gurmukh Sobraj vs Delhi Administration and others***, reported ***AIR 1978 SC 1675***, the Supreme Court in para 192 has observed that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational. Para 192 of the said judgment is reproduced herein below :

“192. I hold that bar fetters are a barbarity generally and, like whipping, must vanish. Civilised consciousness is hostile to torture within the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational. More dangerous are these expedients when imposed by the untuned and untrained power of a jail superior who has, as part of his professional equipment, no course in human psychology, stressology or physiology, who has to depend on no medical or psychiatric examination, prior to infliction of irons or solitary, who has no obligation to hear the victim before harming him, whose 'reasons' are in English on the history- tickets and therefore unknowable and in the Journal to which the prisoner has no access. The revisory power of the Inspector General of Prison, is illusory when the prisoner does not know of his right to seek revision and the Inspector General has no duty to visit the solitary or 'fettered' creatures or to examine every case of such infliction. Jail visitors have no powers to cancel the superintendent's orders nor obligation to hold enquiry save to pity and to make remarks. Periodical parades prisoners, when the visitors or dignitaries call for a turn-out, prove a circus in a zoo from a practical standpoint or/and journal entries and history-tickets a voodoo according to rule, the key point to be noted being that after this public exhibition within the prison. the complaining prisoners are marked men at the iron mercy of the hierarchy. there being no active legal aid project busy within the prison. This ferocious rule of law, rule and nude, cannot be sustained read as anything but arbitrary, unreasonable and procedurally heartless. The peril to its life from the lethal stroke of Articles 14, 19 and 21 read with 13 needs no far-fetched argument. The abstruse search for curative guideline in such words as 'dangerous' and 'necessary' forgetting the totalitarian backdrop of stone walls and iron bars, is bidding farewell to raw reality and embracing verbal marga. The law is not abracadabra but at once pragmatic and astute and does not surrender its power before scary exaggerations of security by prison bosses. Alternatives to 'solitary' and 'irons' are available to prison technology, give the will, except where indifference, incompetence and unimaginativeness hold prison authorities prisoner. Social justice

cannot sleep if the Constitution hangs limp where its consumers most need its humanism".

8. We are shocked to read the allegations made in the petition so also in the representation submitted by the prisoner himself and his wife – petitioner before us. Even though in terms of provisions of Section 46 (10) of the Prisoners Act, cellular confinement cannot be awarded exceeding the period of 14 days qualified by the proviso and explanation, however, the husband of the petitioner convict Imran @ Mehedi Nasir Shaikh is kept in solitary confinement continuously for last 2 years and 4 months. The Administration of High Court, Bench at Aurangabad has received the said communication from the petitioner and accordingly the learned Counsel Mr. Rupesh Jaiswal is appointed by the High Court Legal Services Sub-Committee, Aurangabad to represent the cause of the convict.

9. In the given set of facts, we are inclined to issue notice. But before that we direct certain immediate corrective measures with immediate compliance, as below :

(a) We direct the Chief Judicial Magistrate, Aurangabad to visit the Central Prison, Aurangabad immediately at the most

tomorrow i.e. on 29.01.2022, record the statement of convict Imran @ Mehedi Nasir Shaikh and also inspect the said Anda Cell wherein the convict Imran @ Mehedi Nasir Shaikh is allegedly kept. Learned Chief Judicial Magistrate shall submit the fact finding report before us on Monday i.e. 31.01.2022. We also direct the learned Chief Judicial Magistrate to take photographer with him and take photographs of the Anda Cell where the convict is allegedly kept.

(b) We direct the Dean – Government Medical College and Hospital, Aurangabad to constitute a Team of three members to visit the jail forthwith, at the most tomorrow i.e. on 29.01.2022 and examine the convict Imran @ Mehedi Nasir Shaikh, inspect the area of Anda Cell and submit a detailed report about his health condition. We direct that the said Team must consist one Psychiatrist, Physician and any other Expert person.

(c) We further direct the respondents to immediately shift the convict Imran @ Mehedi Nasir Shaikh to any other Cell in the Jail from solitary confinement and submit the report to the Registrar (Judicial) of this Court immediately.

10. Issue notice to the respondents returnable on 31.01.2022. Learned A.P.P. waives notice for the respondents. We request learned A.P.P. to take specific instructions in this regard. We also request the learned A.P.P. to communicate this order to the concerned forthwith.

(SANDIPKUMAR C. MORE, J.)

(V.K. JADHAV, J.)

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