

# The High Court Of Madhya Pradesh

WP-13544-2021

(SHYAM SINGH Vs THE STATE OF MADHYA PRADESH AND OTHERS)

**Jabalpur, Dated : 10-08-2021**

**Heard through Video Conferencing.**

Shri Ajay Gupta, learned counsel for the petitioner.

Shri Ashish Anand Bernard, learned Deputy Advocate General for the respondents/State.

This writ petition has been filed under Section 226 of the Constitution of India by Shyam Singh, who is an Advocate, on the basis of his experience of representing one client Suyash Shrivastava, who is accused for the offence punishable under Sections 11/12, 13/14 of the Protection of Children from Sexual Offences Act, 2012 and under Section 354-D of the Indian Penal Code, 1960 and under Sections 66-E and 67-8 of the Information Technology Act, 2000. An FIR No.42/2020 was registered against the said accused person on 25.02.2020 in the Cyber and IT Offences Police Station, Bhopal, pursuant to which he was arrested on 08.03.2020 and since then he is imprisoned in the Central Jail, Bhopal. A charge-sheet with challan No.60/2020 was submitted before the Special Judge, Bhopal on 23.03.2020. Due to limited virtual hearing, the accused who is an under-trial prisoner, could not appear physically before the Court and therefore, the petitioner-Advocate was engaged by the mother of the accused. But the petitioner could not get a chance to interact with his client to seek instructions and understand his case.

It is contended that as per conventional law practice, there are only two ways by which the lawyer could meet and seek instructions from his client. One, the lawyer, after permission from the Judge, could talk to his client, an under-trial prisoner, during his/her visit to the Court for the hearings and second, if the accused is released on bail then he/she could visit his lawyer's office to discuss about the case. Presently, the first option is not available due to suspension of the physical hearings and the second option is subject to

getting bail from the Court. The petitioner therefore, filed an application on 11.01.2021 before the Trial Court of Additional Sessions Judge, Bhopal seeking permission from the court to meet the accused for better understanding of the case and to provide essential legal advice. The Trial Court vide order dated 25.02.2021 rejected the said application on the ground that the accused cannot be directed to appear physically and in the present circumstances, can be allowed to appear only through video conferencing.

Attention of this Court was drawn towards the ground reality that there are no such arrangements in the prisons of the State of Madhya Pradesh through which the prisoners could consult their private lawyers and have effective privileged communication. It is submitted that the Ministry of Home Affairs through its circular dated 20.04.2021 directed that all *Mulaqats*, i.e. meeting between the prisoners and their family members, be stopped till the pandemic is controlled and that video calls/phone calls be allowed. However, no order and/or guidelines have been issued by the Jail Authorities with respect to '*Legal Mulaqats*' of the under-trial prisoners with their private lawyers which is so very essential in most of the cases as the physical appearance of the accused has been discontinued.

Shri Ajay Gupta, learned counsel for the petitioner, has invited attention of this Court to the order passed by the Bombay High Court dated 02.07.2020 directing the prison department to install smartphones in jail and arrange lawyer-prisoner meeting through video conferencing in all the jails. Attention has also been drawn towards the circular dated 06.07.2020 issued by the Government of NCT of Delhi providing guidelines for '*Legal Mulaqats*' wherein it is stated that -

- (i) the applications received through email from the private counsels shall be considered by the Superintendent of Jails.
- (ii) Superintendent shall take a prompt decision to allow/decline request on the merit/verification of vakalatnama and identity of applicant.
- (iii) After scrutiny of request, slot for video

conferencing may be fixed for an early possible date. The same will be intimated to the concerned at least one day in advance.

(iv) Legal interview through video conferencing will be conducted for maximum half an hour of each 3 interview, subject to maximum of two interviews in a week.

(v) Link for video conferencing will be sent by email through which the advocate can establish a link for video conferencing.

(vi) The video conferencing shall be allowed on First Come, First Serve basis.

(vii) The legal interview shall be conducted in the presence of Deputy Superintendent/Assistant Superintendent/ other jail staff but out of hearing.

(viii) If any misuse of video conferencing by the users is noticed, the facility extended will be withdrawn immediately.

It is further contended that in the State of Bihar and Gujarat 'e-mulaqats' system has been set up for facilitating VC mulaqats between prisoners and their counsel/family & friends. Moreover, Vadodra Central Jail has also commenced a special dedicated application to facilitate VC mulaqats. Similarly, various measures have been undertaken by the prison department of the State of Tamil Nadu wherein Smartphones were procured for conducting VC mulaqats through the medium of 'Whatsapp Video Call'. The newspaper clippings have also been placed on record to bring home the arguments.

Learned counsel for the petitioner has relied on the order of the Supreme Court in *Suo Moto W.P. (Civil) No.406/2013, Re: Inhumane Conditions prevailing in 1382 prisons of India* which directed the Ministry of Home Affairs to review the Model Prison Manual as there had been a huge change in circumstances and the availability of technology since 2003. Reliance has also been placed on the judgment of the Supreme Court in the case of *Dwarka Prasad Agrawal (D) by LRs v. B.D. Agarwal and Others [(2003) 6 SCC 230]* wherein it was held that an accused has a right

to fair trial. Under our Constitution as also the international treaties and conventions, the right to get a fair trial is a basic fundamental/human right. He has a right to defend himself as a part of his human as also fundamental right as enshrined under Article 21 of the Constitution of India.

Learned Deputy Advocate General Shri Ashish Anand Bernard submits that the petitioner should be required to approach the State of Madhya Pradesh through Principal Secretary, Department of Home, Jail and Law, Vallabh Bhawan, Bhopal, with all such suggestions who shall examine the matter and do the needful.

Having regard to submissions made and taking note of the detailed arguments, I deem it appropriate to require the petitioner to give all his suggestions in a comprehensive representation to the Principal Secretary, Department of Home, Jail and Law, Vallabh Bhawan, Bhopal, who shall examine the grievance raised by the petitioner vis-a-vis right to fair trial to all the under-trial prisoners in the State of Madhya Pradesh and shall also examine the guidelines laid down by the different State Governments specially the circular of Government of NCT of Delhi dated 06.07.2020, the order of the Bombay High Court dated 02.07.2020 and also the similar facilities provided in the State of Bihar, Gujarat and Tamil Nadu. The respondent-State Government shall enquire about the similar facilities being provided in the other States and shall frame and issue appropriate S.O.P./Guidelines to provide for the facility of *e-mulaqat* to the prisoners, not only with their lawyers as per the procedure that may be devised but also with the family members periodically, on the basis of advance application, atleast once in a week, for not more than 30 minutes, by ensuring that while communicating with them, privacy is given to the accused and the staff of the prison should not be made to sit in the audible range so as to ensure privacy between the accused and his lawyer/family members. It is directed that appropriate orders in this regard may be passed after having all the inputs within a period of four weeks from the date of production of copy of this order.

With the aforesaid direction, the present petition is **disposed of**.

Certified copy as per rules.

**(MOHAMMAD RAFIQ)**  
**CHIEF JUSTICE**

**(VIJAY KUMAR SHUKLA)**  
**JUDGE**

Priya.P

