

IN THE SPECIAL COURT FOR THE TRIAL OF NIA CASES, ERNAKULAM

Present: Sri. P.K. Mohandas, Judge for NIA Cases

Friday the 14th day of February, 2025 / 25th Pousha, 1946.

Crl.M.P. No. 500/2024

In

SC.01/2020/NIA

Petitioner/Accused No. 4 : Vijith Vijayan @ Pachha @ Balu @ Musafir
@ Ajay, aged 27 years, S/o. Vijayan V.K.,
Chaithram House, Puzhamudi Post,
Kalpetta, Wayanad District, Kerala.

By Adv. Sri. Thushar Nirmal Sarathy

Respondents/Complainants : 1. Union of India represented by National
Investigation Agency, Kochi.

**By Sri. Arjun Ambalappatta (Senior
Public Prosecutor, NIA)**

2. The Jail Superintendent, HSP, Viyyur.

This Criminal M.P coming on for hearing before me on 11.02.2025 and
the Court on 14.02.2025 passed the following:

ORDER

This application is filed by the 4th accused complaining that he is being
locked-up in the cell for 21 hours a day.

2. The petitioner has been undergoing detention in connection with
this case at the High Security Prison, Viyyur, since January 2021. According to
him, he was being permitted to remain unlocked from 6:30 a.m. to 5:30 p.m. in

the veranda of the block for the last 4 years. This freedom was being allowed in accordance with Rules 225 and 238 of Kerala Prisons and Correctional Services (Management) Rules, 2014. However, since November 4, 2024, the petitioner, along with other remand and under trial prisoners, except 10 under trial prisoners, are being confined in cell for 21 hours a day without any notice or reason. All other convicted prisoners, including UAPA prisoners, are still allowed to remain unlocked during the day. Therefore, he seeks direction from this court to implement rule 225 and 238 of the Rules.

3. The Superintendent of the High Security Prison filed a detailed report. It is stated that as per the provisions of the Kerala Prison and Correctional Services (Management) Rules, 2014, prisoners, including those involved in cases relating to Maoists, PFI, UAPA, KAPA cases and other prisoners as directed by the Head of the Department, are accommodated in the High Security Prison. The High Security Prison is working in a three-storied building with cells opening outward and has distinct security features, unlike in the other prisons. There is no barred verandas in the ground floor of the jail, which allows prisoners access upto the outer wall on opening the cells, which requires additional security measures. Service of 15 Assistant Prisons Officers and 3 Deputy Prison Officers is required for proper guard of the prisoners. But, due to shortage of staff, security is managed with 6 APOs and 1 DPO for all the three floors. Besides that, out of such officers put on security duty, 4-5 APOs are often assigned the duty of escorting prisoners to

hospitals due to shortage of police escort.

4. The High Security Prison has a capacity to accommodate 535 inmates. Currently, there are 225 prisoners, including those involved in cases like, Maoists, NIA, PFI, KAPA cases and others transferred as part of disciplinary action. To ensure the security and prevent extremist activities, prisoners are allowed to go out of their cells in shifts. Additional privileges, including phone calls, outsiders' visits, medical care, outdoor recreation activities are also being allowed to them. All prisoners, including the petitioner, are allowed to go out of their cells for at least 4 hours a day and no prisoner is locked up for 21 hours.

5. It is also reported that allowing special security prisoners to remain outside their cells throughout the day may cause serious security risks, including riots in the prison and the spread of extremist ideas. The Superintendent is responsible for maintaining security in the jail, proper management and ensuring safety of prisoners. Previously, prisoners organized a riot, resulting in serious injuries to both officials and inmates. The petitioner is charged with offence under the UAPA and he require high security. As per the prison rules and other instructions, unlocking the petitioner and others involved in such offences from morning to evening may hinder the safety of the jail and even affect the national security.

6. When the matter came-up for consideration, I thought it is

necessary to serve notice on the National Investigating Agency and the Superintendent of the High Security Prison and hear their objections also. I have heard Senior Advocate Sri.Ajith Sasthamangalam on behalf of the NIA, the learned Additional Public Prosecutor representing the State and the learned counsel for the petitioner in detail. The petitioner submitted a written notes.

7. The question arises in this petition is of a serious nature as it affects the fundamental right of freedom of the prisoners and the security and management of the Prisons. The right to freedom guaranteed under the Constitution includes the right of free movement. This right, of course, is subject to reasonable restrictions permitted by law. It is admitted by the Superintendent of High Security Prison that the petitioner and other prisoners involved in such offences are being locked-up almost 20 hours a day, as unlocking and permitting them to interact with others may cause serious threat to the proper management of the Prison and also the petitioner and other inmates.

8. The petitioner is the 4th accused in SC 01/2020/NIA wherein the allegation is that they committed the offences under sections 120B of IPC and Section 13, 20, 38, 39, etc. of Unlawful Activities (Prevention) Act, 1967.

9. The learned counsel for the petitioner submitted that the petitioner and other accused are being locked up in the cell for 21 hours a

day in violation of the provisions of the Prisons Rules. According to him, till 04.11.2024 they were being unlocked at about 6.30 am and thereafter they were being taken back to the cell only by 6.30 p.m. During the interval, they were let free and were being permitted to interact with others. He submits that without any reason, the Superintendent of the jail started locking up the petitioners in the cell for more than 21 hours a day. He referred to Rules 225 and 229 of the Kerala Prisons and Correctional Services (Management) Rules, 2014 (hereinafter referred to as "the Rules, 2014"). According to him, the petitioner is entitled to be unlocked during the day time. It is submitted that suitable directions are to be issued to the Superintendent to treat the petitioner in par with other prisoners and not to lock them up in the jail during the day time.

10. The learned senior counsel appearing for the NIA submitted that the petitioner and other accused, who are involved the offences under the UA(P) Act, NDPS Act, etc. and other serious crimes cannot be equated with other prisoners and high security is to be provided to such prisoners. It is submitted that if the accused involved in UAPA cases, Maoists, etc are permitted to interact with other prisoners, there is likelihood of influencing the other prisoners and they may spread their radical ideas. There is also possibility of law and order issues in the jail. He reiterated the averments contained in the reports submitted by the Superintendent of the Central Prison. Referring to Chapter XX of the Rules, 2014, he submits that Rule

225 and other provisions contained in that Chapter deal with general guidelines for management of the prisoners. According to him, such general rules cannot be made applicable to the prisoners who are detained in High Security Prison as provided in Section 46(1) of the Act, 2010. He also submitted that Chapter XX deals with prisoners who are provided with employment in the prison. It is also submitted that Chapter XXVII of the Rules deals with remand prisoners and Rule 427 classifies different types of prisoners. According to him those who are classified as special security prisoners are to be dealt with separately. The prisoners cannot be permitted to roam around in the jail during the day time. He submits that in order to ensure the safety of the petitioners as well as the other prisoners and to maintain the safety and security in the prison, it is necessary to keep the prisoners involved in serious cases in the lock-up during the day time with facility to attend their daily necessities.

11. The learned Additional Public Prosecutor appearing for the State and representing the Superintendent of High Security Prison submitted that the petitioner is not coming under Chapter XX of the Rules and the provisions contained in that Chapter cannot be made applicable to the case of the petitioner and other accused involved in similar offences. It is also submitted that the High Security Prison is situated in a three storied building. The maximum capacity of the prison is 535 and there are 258 prisoners at present. 13 of which are Maoists, 19 are involved in cases registered by the

NIA, 14 are involved in cases against the Popular Front of India and 69 accused are involved in KAPA cases. They along with other accused, who are shifted to the High Security prison as part of disciplinary action, are detained in the prison. If these accused are permitted to interact among themselves or with others, it will create a lot of law and order problem in the jail. In order to ensure the safety and security of the prisoners, the service of a minimum of 15 Assistant Prison Officers and 3 Deputy Prison Officers is necessary. But, due to insufficiency of staff, the service of only 3 Assistant Prison Officers and one Deputy Prison Officer is available. At times, the service of such officers is also being utilized to take prisoners who are being taken to the hospital for treatment and other purposes due to non-availability of escort police. So there is no sufficient staff to look after and take care of the inmates. It is also submitted that the construction of the prison building is in such a way that all the cells are opening towards outside, unlike in the other jails and it is not possible to supervise all the prisoners or cells by sitting at one or two points in the building. So there is acute shortage of staff to ensure safety and security of the prisoners detained in prison. It is also submitted that due to dearth of staff, the accused are being released for their daily necessities in two batches in the morning, noon and evening. It is submitted that the accused are being permitted to remain outside the cells at least 4 hours a day. In addition to that, they are being permitted to contact their relatives over phone and to consult the doctor in the jail. They are also

being taken for one hour, twice a week, for badminton, volleyball, etc. In addition to that they are being permitted to watch cinema show and to participate in cultural programs.

12. According to the learned Public Prosecutor, keeping the prisoners outside the cell throughout the day will create law and order problems. He submitted that on many occasions there were clashes between the inmates and also between the inmates and the prison officers and so many cases are registered by the Viyyur Police on the basis of the complaints filed by the Superintendent of Prison. According to him, for the proper security of the prisoners, it is necessary to keep them in a secured place without permitting them to interact with others.

13. Before going to the other aspects of the case, it is necessary to go through the relevant provisions of the Act and Rules. The Kerala Prisons and Correctional Services (Management) Act, 2010 came into force on 14.10.2010. The Act provides for the safe custody, correction, reformation, welfare and rehabilitation of prisoners and management of prisons and correctional services in the State. Section 2(xxxiv) defines the term "prisoner". It states that "prisoner" means an under-trial prisoner or a convicted prisoner or a civil prisoner and includes a prisoner remanded under the orders of a competent authority.

14. Section 38 of the Act classifies prisoners. It states that all

prisoners as classified in the section, shall be categorised by a Committee consisting of the Superintendent, Joint Superintendent, Welfare Officer and Medical Officer. The classification includes (1) Civil prisoners, (2) Criminal prisoners, (3) Under-trial prisoners, (4) Convicted prisoners, (4) Habitual offenders, (5) Non-habitual offenders, (6) Detenues, (7) Lunatic criminal prisoners, (8) Dangerous prisoners, (9) Security prisoners, etc. Section 39 states that prisoners classified into different categories under section 38 shall be imprisoned separately. Sub-section 2 states that prisoners referred to in Clauses (a) to (k) of Section 38 shall further be classified into male prisoners and female prisoners and kept separated in separate buildings in such a manner as to prevent them contacting with each other. Sub-section 5 states that remand and under-trial prisoners shall be kept apart from convicted criminal prisoners. Sub-section 7 states that dangerous prisoners and security prisoners shall be kept separately.

15. Chapter XI of the Act of 2010 deals with custody and security of prisoners. Section 43 states that the Superintendent of the prison shall be responsible to undertake effective measures to ensure safe custody and security of prisoners. Section 46 of the Act says that dangerous and security prisoners shall be accommodated in special cells in Central Prisons or High Security Prisons. Sub-section 2 states that the Superintendent shall take special care and caution for ensuring safe custody of dangerous prisoners and security prisoners as may be specified by Government by notification in

this behalf.

16. Chapter XX of the Kerala Prisons and Correctional Services (Management) Rules 2014 deals with general provisions with regard to the discipline and day to day affairs of the prison. Rule 225 of the comes under this Chapter. Rule 225 states that throughout the year the cells shall be opened in the morning and before that the Assistant Prison Officer shall wake them up and parade them with their bedding and take their attendance. Rule 228 deals with cleaning of the cells. Rule 229 states that the cells shall be kept open throughout the day so as to ensure free flow of air and sunlight and the same shall be kept locked to ensure that the prisoners do not re-enter into the cells. It is also stated that the key of the cells shall be kept in the almirah or the box provided for the same. Rule 237 states that as and when the work of the prisoners is over, they shall be taken back to the cell after bath and other routines. Rule 238 deals with locking-up of the prisoners between 6.00 p.m. and 6.30 p.m. on everyday. Chapter XXX is dealing with under-trial prisoners. Rule 479 states that like the other prisoners, the under-trial prisoners shall be subject to only such restrictions which are necessary for the proper safety and security of the prisoners in the jail. Rule 473 states that under-trial prisoners shall be classified as Special Security Prisoners, Dangerous Prisoners and Others. Those who are involved in terrorist activities and other like offences are to be included in the class of special security prisoners.

17. The learned Public Prosecutor appearing for the Superintendent of the Prison states that as per Section 46 and Rule 479 and other provisions, the petitioners cannot be treated equally with other prisoners. It is also submitted that the Director General of Prisons and Correctional Services as per order dated 05.10.2023 has directed the Superintendent of High Security Prison to ensure that the accused involved in terrorist acts and PFI are not being interacted with other prisoners and there is a chance of influencing and radicalizing the other prisoners. It is also submitted that directions have been issued by the Director General of Prisons and Correctional Services to ensure the safety and security of the other prisoners. According to him the Superintendent is only complying with the directions issued by the Director General to ensure the safety of the prisoners.

18. The issue in this petition is to be considered in the light of the above provisions contained in the Act and the Rules and the submissions made by the counsel appearing for the parties.

19. The submission on behalf of the Superintendent of the High Security Prison is that the prisoners involved in cases under the provisions of the UA(P) Act, cannot be equated with other prisoners and their movements inside the jail is to be restricted to ensure that they are not interacting with other prisoners. He referred to letter No. Home-SSA3/189/2022/Home dated 05-12-2022 of the Government to the Director

General of Prison and Correctional Services requiring him *“to take action to create a system as to avoid such chances of the Maoist prisoners meeting together when they are taken out from cells for carrying out their basic needs as well as exercise, for preventing them from communicating each other and passing collective decisions taken, if any, to their cadres who visit them at the High Security Prison.”* He also referred to letter No.G5-30297/2023/PrHQ dated 05-10-2023 of the Director General addressed to the Superintendent of High Security Prisons wherein it is directed that the Superintendent shall ensure that no opportunity is given to the prisoners involved in terrorist activities, Maoists, PFI cases, etc. to interact among themselves or with the prisoners involved in other cases.

20. The petitioner is charge sheeted with various offences, including under the provisions of the Unlawful Activities (Prevention) Act, as narrated above. The petitioner is allegedly to be a Maoist. There are 14 such accused detained in the High Security Prison. In addition to that the under-trial prisoners allegedly cadres/members of the proscribed organisation, Popular Front of India are also detained there. As per Rule 472 they are to be considered as “Special Security Prisoners”. As per Section 46(1) such prisoners are to be detained in Special Cell in Central Prisons or in the High Security Prison. In this case also, the petitioner is detained in the High Security Prison considering the fact that he is a special security prisoner.

21. A reading of Rule 225 of the Rules, 2014 makes it clear that it is mandatory that all the cells/wards of the prison should be opened every morning, during the entire year and the inmates shall be paraded. As per Rule 229, after cleaning the cell shall be locked to ensure that the prisoners do not re-enter into the same. As per Rule 238, the prisoners should be locked up again only during 6.00 to 6.30 hours in the evening. The submission on behalf of the Superintendent of the Prison is that these are all general guidelines and the same cannot be made applicable to the inmates of the High Security Prison as they are to be classified separately. It is also submitted that these rules are applicable only to those prisoners who are provided with work in the prison.

22. A reading of the provisions contained in Chapter XX makes it clear that those provision are mandatory in nature. The term "prisoner" is not defined in the Rules, 2014. So, we have to go by the definition of that term in the Act, 2010. i.e., the term "prisoner" includes remand or under-trial prisoners also. Section 99 of the Act empowers the Government to make necessary rules consistent with the Act to carry out the provisions of the Act. The Rules of 2014 was created by virtue of the power under Section 99. Though Section 46 requires special security prisoners to be detained in Special Cells in Central Prisons or in High Security Prisons, the Rules of 2014 is silent about the manner in which they are to be dealt with. There is no special provision in the Rules regarding functioning of High Security

Prisons. In the absence of special provisions, it can only be held that the general provisions contained in Chapter XX are applicable to the High Security Prison also. Unless there is separate and specific rules to deal with certain special category or prisoners, they cannot be treated separately.

23. As rightly contended by the learned Senior Counsel on behalf of the National Investigating Agency, if the prisoners involved in terrorist activities, Maoist ideologies and other persons involved in serious and heinous crimes are permitted to interact with other prisoners, it may lead to a dangerous situation. There is chances of radicalizing the other prisoners. Interaction among the prisoners having like mind sets also may lead to serious consequences. As submitted by the learned Public Prosecutor, if all the prisoners are permitted to roam around in the jail, there is every chance of disputes and clashes among themselves and with the jail officials and in such a situation the security in the prison may be affected. The jail officials may find it difficult to handle the situation. Without imposing certain restrictions in the movement of such prisoners, proper management of the prisons will become difficult.

24. But, the question that is to be considered is, can the fundamental right of freedom of movement of the prisoners be curtailed in anticipation of such a situation, in the absence of specific provisions permitting such acts. At present, there is no specific rules for the management of such prisoners. What is available is the general provisions

contained in Chapter XX. It is the duty of the legislature to enact suitable laws so as to handle such situation. The executive orders issued by the Government or the Director General of Prisons or the ideas of the Jail Superintendent cannot override the provisions of the statute.

25. Section 8 the Act states that the Government may, by notification, establish various categories of prisons for the purposes of the Act and rules made thereunder. Sub Section (2) deals with pattern of construction of prison, ground space, air space and ventilation in respect of cells, sleeping barracks, etc. Sub Section (3) states that "*The standards of security of each prison shall, such as may be prescribed.*" This shows that the Government is empowered to prescribe separate standards of security to each prison. Section 2 (xxxii) states "*prescribed*" means *prescribed by rules made under this Act*" Section 4 of the Act deals with the powers and functions of the Director General of Prisons and Correctional Services. It shows that the Director General has every authority to implement the policies of the Government and to coordinate and control the activities of prison. But, that do not override the express provisions of the Act or the Rules made thereunder. So, the directions and orders issued by the Director General can only be in consonance with and not in derogation of the provisions of the Act and rules. In the absence of specific provision in the rules, the Director General cannot impose more restriction on a particular prisoner or a class of prisoners.

26. The contention that Chapter XX deals with only prisoners who are provided with employment in the prison and has no application to other prisoner cannot be accepted. The title of the Chapter itself shows that it is the general rules applicable to all the prisoners. The rule clearly provides that during the entire year the cells and wards of the prisons shall be opened in the morning and it shall be closed only after 6'O clock in the evening.

27. The fact that the petitioner and others are unlocked for almost 4 hours a day and occasionally permitted to go out for gaming activities, etc. cannot be considered as compliance of the provisions in Rules. In the absence of specific empowering rules, there cannot be separation or discriminatory treatment among the prisoners. If the inmates of the High Security Prison or particular class of prisoners are to be dealt with in a separate manner, it is for the Government to make necessary rules by virtue of its power conferred under Section 99 of the Act. Until necessary rules are framed, the inmates of the High Security Prison, including the petitioners, are to be treated in equal with other prisoners and cannot be discriminated. The provisions of Chapter XX is to be complied with and it cannot be deviated at the discretion of the prison officials stating the reasons mentioned in the report filed by the Superintendent.

28. It is reported by the Superintendent of High Security Prison that the prison is situated in a 3 storied building. The verandah of the first and second floor are secured by providing iron grills and the veranda of the

ground floor is open and if the cell is opened, the prisoners can go upto the compound wall without any obstruction. It is further reported that each floor is divided into 4 quarter having a length of 75 meters, which accommodates 17 cells which accommodate 35/40 prisoners. Each quarter is secured by separate lock and key to the grills. As per the report of the Superintendent, there are 13 Maoist case prisoners, 19 NIA case prisoners and 14 PFI case prisoners in the High Security Prison. Considering the anxiety expressed by the learned Senior Counsel for the NIA and the Superintendent of the High Security Prison, I am of the view that the movement of the special security prisoners can be restricted to the veranda of the quarter in which their cell/ward is situated, unless they are being taken for their daily activities and work, if any, provided to them. So, as far as possible those prisoners who are classified as “*Special Security Prisoners*” as per Rule 472 shall be accommodated in the cells situated in the first and second of the jail building and their free movement can be permitted in the veranda of the quarter.

In the light of the above discussion, the petition can be allowed with the following directions:

1. The Superintendent of High Security Prison, Viyyur shall see that as far as possible, the prisoners classified as “*Special*

Security Prisoners” are accommodated in the cells/wards in the first and 2nd floor of the prison building.

2. The cells/wards shall be opened in the morning as required in Rule 225 and the prisoners shall be taken out.
3. Unless for special reasons, the prisoners shall be locked-up in the cell/ward only in the evening as provided in Rule 238.
4. The Superintendent shall see that Rule 229 is complied with.
5. During the time the prisoners are unlocked, their movement with in the veranda of the quarter in which their cell/ward is situated shall be permitted, unless they are being taken for their daily activities or work, if any, provided to them.
6. Copy of this order shall be communicated to the Superintendent of High Security Prison, Viyyur for compliance.

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 14th day of February, 2024.

Sd/-
P. K. Mohandas
Judge, Special Court for NIA Cases

Appendix: Nil

Id/-
Judge, Special Court for NIA Cases
(By Order)

//True Copy//

Sd/-
Sheristadar