

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

Present: Sri. Anil.K. Bhaskar, Judge for NIA Cases

Saturday the 22nd day of January, 2022/ 2nd Magha, 1943

Crl.MP No. 11/2022 in SC No. 02/2021/NIA

Petitioner/Accused No.2

Danish @ Krishna, Age 33/2021,
S/o Selvakumar, 41/ Saidappa Thevar Street
Poliyakulam, Ramandahapuram, Coimbatore,
Tamil Nadu.

By Adv. Sri. Thushar Nirmal Sarathy

Respondent/Complainant

Union of India represented by National
Investigation Agency, Kochi.

**By Sri. Arjun Ambalappatta
Public Prosecutor, NIA**

This Criminal M.P coming on for hearing before me on 22.01.2022 and the Court on the same day passed the following:-

ORDER

1. The petitioner herein is the second accused in SC No.2/2021. He is an under trial prisoner (UT 9257), detained in Central Prison, Thiruvananthapuram under the orders of the court.
2. He moved the above petition against indiscriminate stripping, while being taken back after attending the court proceedings. He would say that removing all the cloths and searching the body, as a routine manner, amounts to unnecessary harassment, humiliation and ignominy.
3. While forwarding the complaint Jail Superintendent had enclosed a report justifying search of the body by stripping cloths for security reasons.
4. Identical issues were raised by the remand prisoners detained in High Security Prison, Viyyoor in Crl.M.P. No.2069/2019 in SC 43/2017 before Addl.

Sessions Court IV, Ernakulam and also before this court in SC No.2/2018. There, the Jail Superintendent, Viiyoor attempted to justify search by stripping cloths, relying upon Section 30(2) of the Kerala Prisons and Correctional Services (Management) Act and also an official circular issued by the Director General of Prison dated 28.06.2014. In those proceedings, the Court overruled the contentions and made it clear that search by frisking is the rule and search by stripping is an exception. It was observed that an under trial prisoner in UA(P) case is being send to the court with tightened security and accompanied by the members of a Special Task Force, hence there is no reason to subject him to stripping on each and every occasion, unless there are well founded reasons.

5. In the strict sense, the above order is not binding upon the Jail Superintendent, Central Prison, Thiruvananthapuram since he was not a party to the said proceedings. Considering the seriousness of the matter, I find it just and proper to issue notice to the District Government Public Prosecutor, Ernakulam and to hear him before passing any final orders in this regard.

6. Right to live with dignity is an inalienable one. Strip – search enforced as a routine practice, prima facie injures personal dignity of the prisoner. Indignity is an acute concern and court shall act at once. Therefore I find it justifiable to pass an interim order.

7. Hence following orders are passed.

1. The Jail Superintendent, Central Prison, Thiruvananthapuram is hereby directed not to subject the petitioner Danish (UT 9257) to stripping on each and every occasion when he was taken back after attending the court

proceedings, without being satisfied that the petitioner attempted to smuggle any prohibited articles into the jail.

2. Needless to say that when the petitioner's body is searched (without stripping) or when he is frisked, if anything found suspicious in his cavities or otherwise, further stages of the search is absolutely legal. But that should be an exception but not a routine practice, and the reasons for the same shall be put it in writing.

3. Issue notice to the Government Public Prosecutor, Ernakulam. Case stands adjourned to 18.02.2022.

4. The interim direction given above, shall be in force till a final order is passed. The Jail Superintendent can place all his contentions before this court through the Public Prosecutor.

5. Communicate the order to the Jail Superintendent, Central Prison, Thiruvananthapuram via email. The Jail Superintendent shall furnish a copy of the order to the petitioner Danish (UT 9257).

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 22nd day of Januray, 2022.

Sd/-
Anil.K.Bhaskar
Judge, Spl. Court for NIA Cases

Appendix: Nil

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

//True copy//

Sd/-
Sheristadar