

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

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

Thursday the 17th day of March, 2022/ 26th Phalguna, 1943

Crl.M.P. No.10/2022

In

S C No.2/2021/NIA

Petitioner/Accused No.25

T.K. Rajeevan, S/o. Krishnan, Thottumkara House, Pookkode, Chandrasekhara Street, Koothuparamba, Kannur, Kerala.

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 17.03.2022 and the Court on the same day passed the following:-

ORDER

1. The petitioner herein is the 25th accused in SC No.2/2021. He is an under trial prisoner (RP 88), detained in High Security Prison, Viiyoor under the orders of this court.

2. He is aggrieved by the order issued by the Jail Superintendent restricting the number of the books to be made available to the under trial prisoners and more particularly withholding of the 26 books handed over by his friend to the Jail Superintendent on 27.11.2021. He prays an order for the release of the whole set of books to him.

3. The petitioner is alleged to be a Maoist and he is charged with offences punishable under UA(P) Act. He was earlier detained in Central Prison, Kannur. From there he was transferred to High Security Prison, Viyyoor. At the time of transfer he was having two books with him. One is English Malayalam Dictionary and the other one a book on Easy Learning English.

4. On 2.11.2021 he placed a request before the Jail Superintendent for courier of books, since he is interested in carrying out a self study on subjects relating to social, economic and religious aspects. It was also informed that he had asked his wife and friends to make it available for him necessary books on the subject. His request was not disallowed.

5. On 27.11.2021 his friend produced before the jail authorities 8 volumes of economic and political weekly and also books, totaling 26 in number.

6. Jail Superintendent refused to hand over the books to the petitioner. He withheld all the books. He took a stand that, at a time petitioner can keep with him only five books. Remaining books will be handed over to him in due course, batch by batch five in numbers, as and when petitioner returns the books in his possession.

7. Petitioner would submit that, for the purpose of his study he has to refer many number of books at a time and the restriction imposed by the Jail Superintendent amounts to curtailing his right for continuous education.

8. Initially petitioner made an oral submission in this regard on 04.12.2021 before this court and later made a written submission on 07.12.2021 which was received in this court on 10.12.2021.

9. A report was called for from the Jail Superintendent. His report was received on 24.12.2021. He would submit that if under trial prisoners are permitted to keep many number of books in their cell it will adversely affect the jail security, cause hindrance in conducting search and further it will lead to radicalisation.

10. Petitioner then submitted a detailed statement refuting the allegations in the report submitted by the Jail Superintendent.

11. This court issued notice to the District Government Public Prosecutor, Ernakulam. Later both sides were heard. In the meanwhile Jail Superintendent sent to the court another detailed report. He had given multiple reasons to justify the restriction imposed, limiting the number of books to five at a time. Much emphasis was given to the discipline and security of the jail.

12. Since multiple contentions were raised by the Jail Superintendent on security issues, a detailed order is to be passed. The matter is reserved for passing a final order.

13. At the same time I find it just and proper to pass an interim order in this matter concerning the personal claim of the petitioner. It is clear and evident that petitioner is really interested in undertaking an indepth study by his own, on subjects relating to social, economic and religious aspects. He had informed this fact to the Jail Superintendent well in advance on 02.11.2021 itself. His request was never refused. Only thereafter his friend produced books before the Jail Superintendent. Jail Superintendent in his last report had given the details of the books received. He has no case that any of the books contain objectionable contents. Many of the books are on religion. In the reply statement filed by the

petitioner, he made it clear that he is an atheist and he only wants to study religion. No complaints were ever received from the Jail Superintendent that the petitioner herein is involved in any radicalisation activities. In this given circumstance it is too harsh for the Jail Superintendent to withhold the books and to pass an order that the petitioner is only entitled to keep five books at a time. It adversely affects the petitioner in continuing the study he has undertaken.

14. Hon'ble Bombay High Court in **George Fernandes v. State of Maharashtra (1996 Bom. LR 185)** had set aside an order passed by the jail authorities restricting the number of books to twelve. The Hon'ble High Court observed as follows:-

“Of all the restraints on liberty of a civilized Citizen, that an opportunity to knowledge, learning and pursuit of happiness is the most irksome and lease to be justified. Improvement of mind, thought and knowledge is the eternal process and could not be reasonably thwarted but for exceptional and just circumstances. Power of detention cannot be equated to a power of regimentation of personal life, thoughts and habits. It would require very strong evidence of legislative mandate before any such claim can be countenanced in a prison official in this country”.

15. It is to be taken note that CCTV cameras are fixed in all the cells and every movements of the prisoners are being captured. Any suspicious behaviour on the side of the petitioner visible from CCTV recordings can be produced by the Jail Superintendent, if it support his concern on security.

16. Considering all these aspects I find it justifiable to pass an interim order.

17. Hence following orders are passed:-

1. The Jail Superintendent. High Security Prison, Viyyoor is hereby directed to immediately hand over to the petitioner Rajeevan, all the volumes of Economic and Political Weekly and all the books received in the jail on 27.11.2021, in the name of the petitioner Rajeevan.

2. Petitioner Rajeevan is entitled to keep it in his cell for reading purpose subject to the final orders to be passed in this petition.

3. Forward a copy of this order via email to the Jail Superintendent, High Security Prison, Viyyoor for compliance. Jail Superintendent shall also serve a copy of this order to the petitioner Rajeevan.

Dictated to the Confidential Asst., transcribed and typed by her, corrected and pronounced by me in open court on this the 17nd day of March, 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