

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE ALOK KUMAR VERMA

WRIT PETITION (PIL) NO. 136 OF 2020

17th November, 2021

Counsel for the petitioner : Mr. D.S. Mehta, learned counsel
Counsel for the respondents : Mr. C.S. Rawat, learned Chief
Standing Counsel with Mr. Vikas
Pande, learned Standing Counsel
for the State

The Court made the following:

ORDER: (per Hon'ble The Chief Justice Sri Raghvendra Singh Chauhan)

In compliance of the order dated 20.10.2021, Mr. Ranjeet Singh Sinha, the Secretary (Home), and Mr. Pushpak Jyoti, the Inspector General of Prisons, Uttarakhand, are present before this Court through video conference.

2. On 17.04.2021, the former Inspector General of Prisons, Uttarakhand, Mr. A.P. Anshuman, had submitted a detailed affidavit, which was taken on record by this Court.

3. A bare perusal of the detailed affidavit reveals the fact that in the entire State of Uttarakhand, there is only one Central Jail. All the other jails are either District Jails or Sub-Jails. According to the chart given in the said affidavit, the total capacity in all the jails for keeping inmates is 3540. However, as of 07.04.2021, there are 6499 inmates, including 192 female inmates.

4. Obviously, the jails in the State are over-crowded. In order to reduce the over-crowding, jail inmates are periodically transferred from one jail to the other. For, according to the affidavit, those who have been sentenced with life imprisonment, and are housed at District Jails Tehri, Chamoli and Pauri, are generally transferred to District Jails at Haridwar and Dehradun. Similarly, by order dated 13.04.2021, 131 inmates of Sub-jail Haldwani were transferred to the District Jail, Nainital; by another order, also dated 13.04.2021, 106 inmates from Sub-jail Haldwani were transferred to the Central Jail at Sitarganj, District Udham Singh Nagar. Likewise, prisoners from District Jails Nainital, Almora, and Sub-jail Haldwani are being transferred to the Central Jail Sitarganj.

5. In catena of cases, the Hon'ble Apex Court has specifically opined that generally the prisoners should not be transferred far away from their family. For, it is imperative that the familial relationship should continue between the prisoner and his family despite the fact that the prisoner is incarcerated. The family relationship is essential not only for the emotional support of the prisoner, but also as a means to reform the prisoner, and to motivate him or her to reform him or herself to the extent that he or she can be brought back into the society as a law abiding citizen. The Hon'ble Supreme Court has also opined that to separate a prisoner from his family is to violate Article 21 of the Constitution of India. Thus, it is imperative that a prisoner should be kept as close to his family location as possible. Thus, it is rather surprising that prisoners from Tehri, Chamoli and Pauri, the mountainous districts of this State, are being transferred to Haridwar and Dehradun. Needless to say, such a move forces the family of prisoner to travel through the mountainous terrain and to come down to the plains to be able to meet and interact with a relative, who is now a prisoner. *Prima facie*, this would be in violation of Article 21 of both the fundamental rights of the family, and the fundamental rights of the

prisoner to be able to interact and to maintain cordial, social and familial relationship.

6. Despite the fact that it is an admitted position that jails are over-crowded in Uttarakhand, there is not a single suggestion in the affidavit with regard to the creation of new sets of jails. Even in Haldwani, which admittedly, has a capacity of 382 prisoners, but at present it houses 1738 prisoners. There is no suggestion or recommendation for construction of a larger jail at Haldwani. According to the affidavit, even in Pithoragarh, seven crores of rupees were invested for construction of the jail wall, but even today, Pithoragarh does not have a fully functional and furnished jail.

7. Although, the affidavit claims that there is an endeavour to upgrade the skills of the prisoners, but there are no concrete details with regard to quantity for production of such items as carpentry, or electric work, or welding work.

8. Since the retributive theory of punishment is no longer in vogue, since it is the reformatory theory of punishment, which is presently being implemented all over the world and within the nation, it is rather surprising that the prisoners in Uttarakhand continue to

languish in jail without proper facilities, and without any endeavour to upgrade their skills. The reformatory theory of punishment clearly teaches that it is, indeed, possible to reform a criminal, and to bring him back to the society as a contributory member of the society. But, a full-fledged, systematic and a sympathetic effort has to be made to reform a criminal. After all, a person is not born a criminal, but due to circumstances, many a times beyond his control, a person slowly but surely turns into a criminal. But merely because a person has become a criminal does not absolve the society of its responsibility to reform him, and to bring him within the folds of the society.

9. Although the State does claims that it has a shortening of sentence policy, which was promulgated on February 09, 2021, but even the said policy is full of lacunae. Therefore, even the said policy would need to be re-considered and re-examined by the State.

10. Similarly, the State claims that it has a policy for suspending a sentence, in case, there is an emergency in the family or an urgent situation arises vis-à-vis a convicted prisoner. But, even the said policy is a flawed one. While, on the one hand, it states that in

case a prisoner's family faces an urgent situation, the prisoner would be released for a maximum of three months, yet Clause 7 of the Policy prohibits the suspension of sentence of those prisoners, who are convicted for murder, dacoity, rape, POCSO offences, until and unless, they complete four years of sentence. There is no reasonable justification for denying a convicted prisoner, of offence under Section 302 IPC, of an opportunity to go out and tackle the urgent situation being faced by his family. Therefore, even this particular clause of the policy would have to be re-examined by the State.

11. Therefore, this Court directs the learned Inspector General of Prisons to first visit each of the jails functioning in the State, and to submit a detailed report about the conditions of the jail along with photographs of the jail. He is further directed to put forth the vision for improving and reforming the conditions of the jail. He is further directed to give his opinion on the issue whether, more open air jails should be created within the State, or not? For, presently we only have a single open air jail functioning in the State. Lastly, he is directed to convey his vision for improving the entire jail administration,

including the jails which may be required for the future needs of the State.

12. The said report shall be submitted by him on or before 07.12.2021.

13. Both, Mr. Ranjeet Singh Sinha, the learned Secretary (Home), and Mr. Pushpak Jyoti, the learned Inspector General of Prisons, Uttarakhand, are directed to remain present before this Court through video conferencing on 08.12.2021.

14. The Registry is directed to tag Writ Petition (Criminal) No. 333 of 2021 with this batch of cases.

15. List this case on 08.12.2021, along with connected matters.

RAGHVENDRA SINGH CHAUHAN, C.J.

ALOK KUMAR VERMA, J.

Dt: 17th NOVEMBER, 2021
Negi