

THE HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI
CHANDRA GHOSE
AND
THE HON'BLE SRI JUSTICE VILAS V. AFZUL PURKAR

PUBLIC INTEREST LITIGATION NO.251 OF 2012

DATED:16.7.2012

Between:

Ms. G. Bhargavi

President

M/s. Gareeb Guide

(The Voluntary Organization)

11/101, Old Malahar,

Sahara Estates

Mansoorabad, LB Nagar

Hyderabad

... Petitioner

And

State of Andhra Pradesh

Through its Secretary

Home Department

Secretariat Building

Saifabad

Hyderabad

and others

... Respondents

**THE HON'BLE ACTING CHIEF JUSTICE SHRI PINAKI CHANDRA
GHOSE
AND
THE HON'BLE SHRI JUSTICE VILAS V. AFZULPURKAR**

PIL.NO.251 OF 2012

JUDGMENT: (Per the Hon'ble the Acting Chief justice)

1. This Writ Petition by way of Public Interest Litigation is filed by one Ms. G. Bhargavi claiming to be a social worker and President of a voluntary organization – Gareeb Guide, working for promoting the human values in the society for a direction to the State of Andhra Pradesh and Director General and Inspector General of Prisons to take immediate steps and allow conjugal visits to the spouses of prisoners in jails across the State of Andhra Pradesh.
2. By order dated 18.07.2012 we have dismissed the writ petition noting that reasons will be recorded later. Now, we record our reasons below.
3. The case of the petitioner is that the spouses of the prisoners who have been sentenced to undergo imprisonment for longer terms at their prime age and undergoing imprisonment in the jails for various offences are deprived of opportunity of begetting children because by the time they are released from the jail the wives of the male prisoners or in the case where the prisoners are female gender crosses forty years by which time chances of begetting children at that advanced age are very low. Therefore, the long imprisonment has taken away

the right of such male or female prisoners to begot children. Further, the long imprisonment is also a ground for divorce under many family laws and if regular contacts with their spouses are maintained such break-up can be avoided. It is further contended deprivation of heterosexual conduct will have a psychological effect on the inmates and is leading to homosexual activities in the jails. Statistical reports prepared on the basis of a survey made in various central prisons across the country reveals that due to such homosexual activities persons are suffering from HIV/AIDS. Therefore, if regular conjugal visits are allowed in jails, the situation will improve and the spouses who are at their prime age will have an opportunity to begot children of their own.

4. We are of the view that the writ petition is without any merit. No doubt, Article 21 of the Constitution of India confers on every citizen right to live with human dignity. But, the personal liberty of a citizen can be taken away in accordance with the procedure established by law. Liberty of prisoners undergoing imprisonment in the prisons is deprived temporarily in accordance with the procedure established by law. Consequently, the right to live with his or her spouse or family members will get severed temporarily till he completes the imprisonment. But, at the same time, the right and liberty of the prisoner to live with human dignity in the four corners of the prison is not taken away and the same will be governed in accordance with the guidelines and regulations framed by the State for maintenance of the jails.

5. Though the contentions urged appear to be attractive but lacks merit and the fallacy in such theory cannot be countenanced. Even if such conjugal visits are to be allowed such visits will have to be necessarily allowed to only select prisoners as per rules keeping in

view their good behaviour during the period of imprisonment actually undergone in the prison. In such a situation, chances of the environment in the jail getting disturbed cannot be ruled out as it will have an adverse impact on the other inmates of the jail who have not been selected and extended such benefit or allowance and this may lead to new difficulties. Be that as it may, the issue raised in the writ petition being a policy decision is within the domain of the State and, this Court, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India cannot enter into such arena.

6. The writ petition is liable to be dismissed for yet another reason. Chapter IV of Andhra Pradesh Prison Rules, 1979 provide for release of prisoners on furlough/leave and parole/emergency leave. Sub-rule (a) of Rule 967 provides that a prisoner who is sentenced to imprisonment of more than one year and upto five years may be released on furlough/leave provided he or she has actually undergone one year's imprisonment. Sub-rule (b) of Rule 967 provides that a prisoner who is sentenced to imprisonment of more than five years may be released on furlough/leave provided he or she has actually undergone two years imprisonment. Sub-rule (c) of rule 967 provides that the concession of release on furlough/leave shall be conditional on good behavior on the part of the prisoner during the period of imprisonment actually undergone as referred to in clauses (a) and (b) and as per sub-rule (d) such concession shall not exceed two weeks at a time. Rule 968 provides that such concession shall not be admissible to habitual criminals, prisoners convicted under sections 392 to 402 IPC (both inclusive). As per Rule 970 the period of furlough/leave may be sanctioned under the rule as ordinary remission. Therefore, it is not that there is no provision in the rules to release the prisoners to enable them to lead family life with their

spouses when they are granted furlough/leave of course for a limited period. However, to mitigate the situation and to enhance continued relationship of prisoners with their spouses, if necessary, suitable amendments may be brought to the Prison Rules for sanction of longer periods of furlough/leave to enable them to stay with their spouses, at least in respect of prisoners who are at the prime age whenever they avail the benefit of furlough/leave.

7. In the result, writ petition is dismissed. No costs.

PINAKI CHANDRA GHOSE,
ACJ

16.7.2012

VILAS V.
AFZULPURKAR, J

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