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IN THE SUPREME COURT OF INDIA

Writ Petition (C) No. 22 of 1995

Decided On: 01.05.1995

Appellants: **Citizens for Democracy**
Vs.
Respondent: **State of Assam and Ors.**

Hon'ble Judges: Kuldip Singh and N. Venkatachala, JJ.

Counsels:
For Appellant/Petitioner/Plaintiff: Naresh Kaushik and Lalita Kaushik, Advs

For Respondents/Defendant: Arun Jaitley and Krishna Kumar, Advs. (Caveator)

Subject: Constitution

Acts/Rules/Orders:
Constitution of India - Articles 14, 19 and 21

Cases Referred:

Prem Shankar Shukla v. Delhi Admn., MANU/SC/0084/1980; Sunil Batra v. Delhi Admn. MANU/SC/0184/1978

Case Note:

Constitution - human right - Articles 14, 19 and 21 of Constitution of India - police and jail authorities under public duty to prevent escape of prisoners and provide them with safe custody - rights of prisoners guaranteed to them under Articles 14, 19 and 21 not infracted - authorities justified in taking suitable measures legally permissible to safeguard custody of prisoners - use of fetters at whims or subjective discretion of authorities not permissible.

Citing Reference:

Prem Shankar Shukla v. Delhi Administration MANU/SC/0084/1980	Discussed
Sunil Batra Etc. v. Delhi Administration and Ors. Etc. MANU/SC/0184/1978	Discussed

JUDGMENT

Kuldip Singh, J.

1. "We clearly declare - and it shall be obeyed from the Inspector General of Police and Inspector General of Prisons to the escort constable and the jail warder - that the rule, regarding a prisoner in transit

between prison house and court house, is freedom from handcuffs and the exception, under conditions of judicial supervision we have indicated earlier, will be restraints with irons, to be justified before or after. We mandate the judicial officer before whom the prisoner is produced to interrogate the prisoner, as a rule, whether he has been subjected to handcuffs or other "irons" treatment and, if he has been, the official concerned shall be asked to explain the action forthwith in the light of this judgment." Ordained this Court - speaking through V.R. Krishna Iyer, J. -in Prem Shankar Shukla v. Delhi Administration MANU/SC/0084/1980 : 1980CriLJ930 .

2. In Sunil Batra Etc. v. Delhi Administration and Ors. Etc. MANU/SC/0184/1978 : 1978CriLJ1741 this Court pronounced that under-trials shall be deemed to be in custody, but not undergoing punitive imprisonment'. Fetters, especially bar fetters, shall be shunned as violative of human dignity, within and without prisons. The indiscriminate resort to handcuffs, when accused persons are taken to and from court and the expedient of forcing irons on prison inmates are illegal and shall be stopped forthwith save in small category of cases where an under-trial has a credible tendency for violence and escape a humanely graduated degree of "iron" restraint is permissible if - other disciplinary alternatives are unworkable. The burden of proof of the ground is on the custodian. And if he fails, he will be liable in law. Reckless handcuffing and chaining in public degrades, puts to shame finer sensibilities and is a slur on our culture.

3. The law declared by this Court in Shukla's case and Batra's case is a mandate under Articles 141 and 144 of the Constitution of India and all concerned are bound to obey the same. We are constrained to say that the guidelines laid down by this Court and the directions issued repeatedly regarding handcuffing of under-trials and convicts are not being followed by the police, jail authorities and even by the subordinate judiciary. We make it clear that the law laid down by this Court in the above said two judgments and the directions issued by us are binding on all concerned and any violation or circumvention shall attract the provisions of the Contempt of Court Act apart from other penal consequences under law.

4. Mr. Kuldip Nayar, an eminent journalist - in his capacity as President of "Citizens for Democracy" - wrote a letter dated December 22, 1994 to one of us wherein he stated as under:

A few days ago when I was in Guwahati I went to see a patient at the Govt. hospital. To my horror, I found 7 TADA detenus put in one room, handcuffed to their bed. This was despite the fact that the room in which they were locked had bars and was locked. Outside a posse of policemen stood with guns on their shoulders.

After talking to the detenus I found that they had to pay for the medicine from their own pocket. I fail to understand how the Assam government could do all this inspite of various court orders. I drew the attention of the state Chief Minister through a letter but got no reply. May I approach you to intervene.

5. This Court treated the letter as a petition under Article 32 of the Constitution of India and issued notice to the State of Assam, through its Chief Secretary, Home Secretary and Secretary, Health.

6. The State of Assam has filed counter by way of affidavit of Mr. B.V.P. Rao, Home Secretary of the Government of Assam. The relevant part of the affidavit is reproduced hereunder :-

It is necessary to state and bring to the notice of this Hon'ble Court that during the period 1991-94 there have been as many as fifty one cases of escape and/or rescue of terrorists from Police and Judicial custody including thirteen terrorists who escaped and/or were rescued from different hospitals of the State, of them seven escaped from Guwahati Medical College Hospital where the above seven detenus are presently lodged.... The following three instances are significant to point out to the Hon'ble Court how TADA detenus escaped from the hospitals when not in handcuff... (a) On 1.5.91, at about 10.30 hrs. one Mahidhar Dihingia Bipul Das, an ULFA activist in custody, escaped from the Hospital of Assam Medical College, Dibrugarh while he was taken to operation theatre, (b) On 11/12/93, an ULFA terrorist awaiting trial for serious offences including murder, named Jatin Bora Nripen was admitted in the Guwahati Medical College Hospital for treatment as an under trial prisoner. He was kept in the hospital without any

handcuff but under police guard. While so lodged, he killed the constable guarding him in the hospital and escaped, (c) On 14.3.94, one Inkong Ao, belonging to the notorious terrorist organisation known as NSCN lodged in Guwahati Medical College Hospital, climbed up a duct approachable from the lavatory and reached the roof of the hospital building to escape... It is stated that in all the above mentioned three instances, these detenus have escaped from the hospital when they were not in handcuff. The seven detenus in question mentioned in Shri Kuldip Nayar's letter were lodged in Guwahati Medical College hospital. As the Guwahati Medical College Hospital is not a part of any jail, a part of the ward of the said hospital was set apart with a collapsible gate for their lodgment in the Hospital under Police guard. When inside the ward they were bound by long ropes tied to one of their hands with a handcuff, which allowed them to move freely within the ward; but prevented their escape, which was a very real apprehension having regard to the number of TADA detenus escaping from Police, Judicial and Hospital custody as mentioned above... As stated above these seven detenus are hardcore activists of ULFA, which is notorious for insurgent and secessionist activities. These seven detenus are all accused of terrorist and disruptive activities, murder, extortion, hoarding and smuggling of arms and ammunition and other allied offences....

7. Mr. Harish Sonowal, Secretary, Health, Government of Assam has also filed an affidavit. Paras 3 and 4 of the affidavit are as under:

t the seven detenus are allowed to go without handcuffs to the lavatories in the hospitals designated for them outside the ward when, they may be. kept under police guard and also during the routine check up and treatment. They are also allowed morning and evening walk as per advice of Doctors and the handcuffs are removed during such time.... That while they are lodged within the ward, their escape is prevented by one of their hands being tied with a long rope tied to their respective bed and attached to a handcuff which allows them free movement including movement of hands and at the same time prevent the chance of their escape or of their being rescued.

8. The Health Secretary has further stated in his affidavit that the Government of Assam, Health and Family Welfare Department, has issued a notification dated January 30, 1995 by which the Director, Medical Superintendents etc. of Government Medical Colleges, have been directed to provide all medical facilities to prisoners/undertrial prisoners who are admitted to Government Medical Hospitals on recommendation of attending doctOrs. It is also averred that the notification further provides that the hospital authorities shall make all the necessary drugs/medicines available to such prisoners by making local purchases. The Home Secretary in his affidavit dated January 21, 1995 stated "as a matter of fact all the seven detenus were provided all required medicines which were available in the hospital drug store."

9. The undisputed facts are that while lodged inside the ward of the Guwahati Medical College Hospital the seven detenus were handcuffed and on top of that tied with a long rope to contain their movement. There is no material whatsoever in the two affidavits tiled on behalf of the State Government to draw an inference that the detenus were likely to jump jail or break out of custody. The reasons for keeping the detenus under fetters are that they are hardcore ULFA activists and earlier during the period 1991-94 as many as 51 detenus escaped from custody which included 13 terrorists who escaped and/or were rescued from different hospitals - seven of them escaped form Guwahati Medical College Hospital. This Court has categorically held that the relevant considerations for putting a prisoner in fetters are the character, antecedents and propensities of the prisoner. The peculiar and special characteristics of each individual prisoner have to be taken into consideration. The nature or length of sentence or the number of convictions or the gruesome character of the crime the prisoner is alleged to have committed are not by themselves relevant considerations. Krishna Iyer, J. in Sunil Batra's case observed as under :-

The defence of the State is that high-risk prisoners, even the under-trials, cannot be allowed to bid for escape, and where circumstances justified, any result-oriented measure, including fetters is legally permissible.... A synthetic grasp of the claims of custodial security and prison humanity is essential to solve the dilemma posed by the Additional Solicitor General. If we are soft on security, escapes will escalate : so be stern, 'red in tooth and claw' is the submission. Security first and security last, is an argument with a familiar and fearful ring with Dwyerlist memories and recent happenings. To cry 'wolf as a cover for official violence upon helpless prisoners is a cowardly act. Chaining all prisoners, amputating

many, caging some, can all be fobbed off, if every undertrial or convict were painted as a potentially dangerous maniac. Assuming a few are likely to escape, would you shoot a hundred prisoners or whip everyone every day or fetter all suspects to prevent one jumping jail? These wild apprehensions have no value in our human order, if Articles 14, 19 and 21 are the prime actors in the constitutional play. We just cannot accede to argument intended to stampede courts into vesting unlimited power in risky hands with no convincing mechanism for prompt, impartial check. A sober balance, a realistic system, with monitoring of abuses and reverence for human rights - that alone will fill the constitutional bill.

10. This Court in Shukla's case categorically held that handcuffing is prima facie inhuman, unreasonable, arbitrary and as such repugnant to Article 21 of the Constitution of India. To prevent the escape of an under-trial is, no doubt, in public interest, but "to bind a man hand-and-foot, fetter his limbs with hoops of steel, shuffle him along in the street and stand him for hours in the courts is to torture him, defile his dignity, vulgarise society and foul the soul of our constitutional culture."

11. This Court in Shukla's case speaking through Krishna Iyer, J. laid down the law as under:

urance against escape does not compulsorily require hand-cuffing. There are other measures whereby an escort can keep safe custody of a detenu without the indignity and cruelty implicit in hand-cuffs or other iron contraptions. Indeed, binding together either the hands or the feet or both has not merely a preventive impact, but also a punitive hurtfulness. Manacles are mayhem on the human person and inflict humiliation on the bearer. The Encyclopedia Britannica, Vol. II (1973 Edn.) at p.53 states "handcuffs and fetters are instruments for securing the hands or feet of prisoners under arrest, or as a means of punishment." The three components of 'irons' forced on the human person must be distinctly understood. Firstly, to handcuff is to hoop harshly. Further, to handcuff is to punish humiliatingly and to vulgarise the viewers also. Iron straps are insult and pain writ large, animalising victim and keepers. Since there are other ways of ensuring security, it can be laid down as a rule that handcuffs or other fetters shall not be forced on the person of an undertrial prisoner ordinarily.... We lay down as necessarily implicit in Arts. 14 and 19 that when there is no compulsive need to fetter a person's limbs, it is sadistic, capricious despotic and demoralizing to humble a man by manacling him. Such arbitrary conduct surely slaps Art. 14 on the face. The minimal freedom of movement which even a detainee is entitled to under Article 19 (see Sunil Batra, supra) cannot be cut down cruelly by application of handcuffs or other hoops. It will be unreasonable so to do unless the State is able to make out that no other practical of forbidding escape is available, the prisoner being so dangerous and desperate and the circumstance so hostile to safe-keeping... But even here, the policeman's easy assumption or scary apprehension or subjective satisfaction of likely escape if fetters are not fitted on the prisoner is not enough. The heavy deprivation of personal liberty must be justifiable as reasonable restriction in the circumstances. Ignominy, inhumanity and affliction, implicit in chains and shackles are permissible, as not unreasonable, only if every other less cruel means is fraught with risks or beyond availability. So it is that to be consistent with Arts. 14 and 19 handcuffs must be the last refuge, not the routine regimen. If a few more guards will suffice, then no handcuffs. If a close watch by armed policemen will do, then no handcuffs. If alternative measures may be provided, then no iron bondage. This is the legal norm.

12. Further elaborating the legal norm laid down by this Curt in Shukla's case, it was observed as under :-

The conclusion flowing from these considerations is that there must first be well-grounded basis for drawing a strong inference that the prisoner is likely to jump jail or break out of custody or play the vanishing trick. The belief in this behalf must be based on antecedents which must be recorded and proneness to violence must be authentic. Vague surmises or general averments that the under-trial is a crook or desperado, rowdy or maniac, cannot suffice. In short, save in rare cases of concrete proof readily available of the dangerousness of the prisoner in transit - the onus of proof of which is on him who puts the person under irons - the police escort will be committing personal assault or mayhem if he handcuffs or fetters his charge. It is disgusting to see the mechanical way in which callous policemen, cavalier fashion, handcuff prisoner in their charge, indifferently keeping them company assured by the thought that the detainee is under 'iron' restraint... Even orders of superiors are no valid justification as constitutional rights cannot be kept in suspense by superior orders, unless there is material, sufficiently stringent, to

satisfy a reasonable mind that dangerous and desperate is the prisoner who is being transported and further that by adding to the escort party or other strategy he cannot be kept under control.

13. It is not necessary to burden this judgment by quoting further, paragraphs from the judgment of this Court in Shukla's case. Suffice it to say that this Court has, clearly and firmly, laid-down that the police and the jail authorities are under a public duty to prevent the escape of prisoners and provide them with safe custody but at the same time the rights of the prisoners guaranteed to them under Articles 14, 19 and 21 of the Constitution of India cannot be infracted. The authorities are justified in taking suitable measures, legally permissible, to safeguard the custody of the prisoners, but the use of fetters purely at the whims or subjective discretion of the authorities is not permissible.

14. This Court in Batra's case and Shukla's case elaborately dealt with the extreme situation when the police and jail authorities can resort to handcuffing of the prisoners inside and outside the jail. It is a pity that the authorities have miserably failed to follow the law laid down by this Court in the matter of handcuffing of prisoners. The directions given by this Court are not being followed and are being treated as a pious declaration. We take judicial notice of the fact that the police and the jail authorities are even now using handcuffs and other fetters indiscriminately and without any justification. It has, therefore, become necessary to give binding directions and enforce the same meticulously.

15. We have elaborately narrated the facts of the present case. We are of the view that there is no basis whatsoever for drawing an inference that the seven detenues who were lodged inside the ward of a hospital were likely to escape from custody. The antecedents of the detenues are not known. There is nothing on the record to show that they are prone to violence. General averments that the detenues are hard-core activists of ULFA and that they are accused of terrorists and disruptive activities, murder, extortion, holding and smuggling of arms and ammunition are not sufficient to place them under fetters and ropes while lodged in a closed ward of the hospital as patients. Security guards were posted outside the ward. It is not disputed that while in jail the detenues were not handcuffed. They cannot be in a worst condition while in hospital under treatment as patients. In any case to safe guard any attempt to escape, extra armed guards can be deployed around the ward of the hospital where the detenues are lodged. The handcuffing and in addition tying with ropes of the patient-prisoners who are lodged in the hospital is, the least we can say, inhuman and in utter violation of the human rights guaranteed to an individual under the International Law and the law of the land. We are, therefore, of the view that the action of the respondents was wholly unjustified and against law. We direct that the detenues - in case they are still in hospital - be relieved from the fetters and the ropes with immediate effect.

16. We declare, direct and lay down as a rule that handcuffs or other fetters shall not be forced on a prisoner - convicted or under-trial-while lodged in a jail anywhere in the country or while transporting or in transit from one jail to another or from jail to court and back. The police and the jail authorities, on their own, shall have no authority to direct the handcuffing of any inmate of a jail in the country or during transport from one jail to another or from jail to court and back.

17. Where the police or the jail authorities have well-grounded basis for drawing a strong inference that a particular prisoner is likely to jump jail or break out of the custody then the said prisoner be produced before the Magistrate concerned and a prayer for permission to handcuff the prisoner be made before the said Magistrate. Save in rare cases of concrete proof regarding proneness of the prisoner to violence,his tendency to escape, he being so dangerous/desperate and the finding that no other practical way of forbidding escape is available, the Magistrate may grant permission to handcuff the prisoner.

18. In all the cases where a person arrested by police, is produced before the Magistrate and remand - judicial or non-judicial - is given by the Magistrate the person concerned shall not be handcuffed unless special orders in that respect are obtained from the Magistrate at the time of the grant of the remand.

19. When the police arrests a person in execution of a warrant of arrest obtained form a Magistrate, the person so arrested shall not be handcuffed unless the police has also obtained orders from the Magistrate for the handcuffing of the person to be so arrested.

20. Where a person is arrested by the police without warrant the police officer concerned may if he is satisfied, on the basis of the guide-lines given by us in para above, that it is necessary to handcuff such a person, he may do so till the time he is taken to the police station and thereafter his production before the Magistrate. Further use of fetters thereafter can only be under the orders of the Magistrate as already indicated by us.

21. We direct all ranks of police and the prison authorities to meticulously obey the above mentioned directions. Any violation of any of the directions issued by us by any rank of police in the country or member of the jail establishment shall be summarily punishable under the Contempt of Courts Act apart from other penal consequences under law. The writ petition is allowed in the above terms. No costs.

22. Copy of this judgment be sent to Government of India, Ministry of Home Affairs and to all the State and Union Territory Governments through Home Secretaries.