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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 12098 of 2023

Bishal Das & Ors.
Vs.
The State of West Bengal & Ors.

Mr. Achin Jana,
Mr. Subhanitwa Ghosh,
Mr. Prosenjit Ghosh,
Ms. Gargi Dhang
...for the petitioners

Mr. Sk. Md. Galib,
Mr. Abu Siddique Mallik
...for the State

Affidavit-of-service filed in Court today be kept on record.

Learned counsel appearing for the petitioners contends that the petitioners have been kept in separate solitary confinement, contrary to the norms of humanity and justice. Learned counsel, in support of his contention, places reliance on the judgment of the Supreme Court, reported at (1981) 1 SCC 503.

The Supreme Court, in the said case, specifically deprecated solitary confinement. It is submitted that the present petitioners, being mere under-trials, cannot suffer a worse fate than convicts.

It is further contended that the petitioners are being restrained severely from meeting people. It is also contended that, in fact, on at least one occasion, one of the petitioners' sister and mother were picked up by police, when they came up to meet the said petitioner, and were dealt with brutally.

Thirdly, it is argued that the petitioners suffer from serious medical ailment but are not being checked up properly by the respondent-authorities.

Learned counsel appearing for the petitioners places reliance on Section 64 of the West Bengal Correctional Services Act, 1992. Sub-section (3)(a)(i) of the same provides that, subject to the provisions of the Act and the Rules made thereunder, the Superintendent of a District Correctional Home shall have the power to transfer a prisoner from a District Correctional Home to the Central Correctional Home on grounds of overcrowding.

Learned counsel appearing for the State seeks to place reliance on a report. It is submitted, on the strength of the report, that the allegations made by the petitioners are incorrect.

Insofar as meeting people is concerned, it is contended that there is a "day unlock" period every day, during which the petitioners are permitted to

mingle with other prisoners. That apart, there have been at least 40 interviews during the under-trial incarceration of the petitioners on several counts of offences, since the year 2018.

As far as the allegation regarding medical ailment is concerned, it is submitted that only one of the petitioners, namely, Bishal Das, is suffering from Hydrocele. However, it was diagnosed not to be emergent and/or serious in nature and it was possible to be reduced.

That apart, there are no serious medical complications and the last check-up, as per records, was held in the month of April 2023 at the Government District Hospital.

With regard to solitary confinement, it is submitted by learned counsel for the State that the petitioners, that is, all three of them, have been kept together in a particular cell. As such, it cannot be said that they are in solitary confinement. That apart, the number of prisoners in the concerned correctional home at Hooghly is almost double the amount which can be accommodated there. Due to such over-crowding, the petitioners could not be given further segregation. That apart, they had to be kept apart from their rival group of criminals, who are also

incarcerated in the same correctional home, for their own safety and security.

It is also contended that the allegations made in the present writ petition were substantially raised before the Sessions Judge on two occasions. As such, those having been dealt with by the said court, the petitioners are not entitled to raise the same issues afresh before this Court.

Learned counsel appearing for the State also places reliance on the definition of “solitary confinement” in Mitra’s Legal and Commercial Dictionary, which primarily defines solitary confinement as a punishment regarded as complete isolation of the prisoner from all human society and his confinement in a cell of considerable size so arranged that he has no direct intercourse or sight of any human being and no employment or instruction. A more practical definition, given in the Black’s Law Dictionary, was also discussed in the cited definition, which says that solitary confinement, in a general sense, is a separate confinement of a prisoner, with only occasional access of any other person and that only at the discretion of the Jailor; in a stricter sense, the complete isolation of a prisoner from all human society and his confinement in a cell so arranged

that he has no direct intercourse or sight of any human being and no employment or instruction.

In the present case, however, it transpires that all the petitioners have been kept together in a particular cell. Hence, the expression 'solitary' cannot be appended to their confinement.

Even in the judgment cited by learned counsel for the petitioners, the language clearly shows that each of the petitioners were put up in separate cells, which led to the court observing that they were in solitary confinement. However, as opposed to the said case, here the petitioners have been kept together in a particular cell. Moreover, it has been alleged in the report sought to be filed the State that there is "day unlock" period, during which the petitioners have the right to intermingle with other prisoners in the correctional home. That apart, a scope is there for interview between the petitioners' visitors and the petitioners, as alleged by the State, which has been happening.

Insofar as the allegation of indecent behaviour against the relatives of the petitioners are concerned, it is rightly pointed out by learned counsel for the State that those have been dealt with by the Sessions Judge, who gave liberty to the petitioners to file proper complaints in that regard independently.

However, it does not appear from the records that any such complaint has yet been lodged.

Regarding the allegation of dearth of medical attention, it has been *prima facie* shown by the State that medical check ups are being done. However, it may be arguable as to whether such scanty medical attention is sufficient to take care of the general well-being of the petitioners, who are under-trials as of now.

As such, since the petitioners seek to apprise themselves on the contents of the report filed today by the State, and to take an exception thereto, if necessary, the matter is adjourned till August 10, 2023, when it will be listed fairly at the top of the list for passing orders.

The report filed by the State today be kept on record.

The exception to the report, if any, shall be filed by the petitioners on the next returnable date, with an advance copy of the same to learned counsel appearing for the State.

(Sabyasachi Bhattacharyya, J.)