

The State of Jharkhand & Others
v.
Vikash Tiwary @ Bikash Tiwary @ Bikash Nath

(Criminal Appeal No. 240 of 2025)

17 January 2025

[J.B. Pardiwala and R. Mahadevan,* JJ.]

Issue for Consideration

Whether the High Court was correct in quashing the order/memo dated 17.05.2023 issued by the Inspector General of Prisons, Ranchi, Jharkhand, making intra-State transfer of the respondent herein from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh, to Central Jail, Dumka, within the State of Jharkhand.

Headnotes[†]

Prisoners Act, 1900 – s.29 – State Jail Manual, 1925 – Rule 770(b) – The Respondent herein was convicted for offences u/ss.302/120-B/34, 353/34, 341/34 of the Penal Code, 1860; ss.25(1-A), 26/35, 27(2) of the Arms Act, 1959 r/w. ss.3/4/5 of the Explosive Substances Act, 1908, and was sentenced to undergo life imprisonment – Inspector General of Prisons by memo dated 17.05.2023 transferred him from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh, to the Central Jail, Dumka – Respondent filed writ petition before the High Court – The High Court set aside the order of transfer dated 17.05.2023 – Correctness:

Held: In the instant case, the Jail superintendent by letter dated 16.05.2023 expressed apprehension of gang war/untoward incident in the prison, due to the presence of two notorious criminals; and insufficient kachpals to maintain them, which pose a challenge to the prison administration and hence, made intra-State transfer request, so as to ensure the safety of the prison – Based on the apprehension so raised, the Inspector General of Prisons by exercising his powers conferred u/s.29 of the Prisoners Act, 1900 and the applicable rules, transferred the respondent to another jail within the State, for security of the prison and to ensure the life

* Author

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and safety of the respondent in the prison – The transfer so made was in accordance with law – There is a duty on the Inspector General of Prisons to ensure the safety of all the inmates in the prison – This measure was essential to ensure not only the safety of the prisoner but also to disrupt and neutralize the potential for gang-related violence within the prison – Such decision of shifting the respondent was only in the larger interest of maintaining security of the prison – There is a profound rationale behind the decision and therefore, such decision does not suffer from the vice of arbitrariness – Thus, the transfer of the respondent to some other jail is not only lawful, but also necessary for his safety and security – The High Court erred in setting aside the order of transfer dated 17.05.2023 – Thus, the order of the High Court is set aside and the order/memo dated 17.05.2023 stands restored. [Paras 13, 16]

Model Prisons and Correctional Services Act, 2023 – Rule 35 – Prison Manual 2016 – Chapter IX – Rule 9.01 (vii) – Discussed. [Para 14]

Constitution of India – Art.21 – Rights of prisoners – Reforms and rehabilitation of the prisoners:

Held: The prison administration needs to be reformed for creating a better environment and prison culture to ensure the prisoners enjoy their right to dignified life under Article 21 – It is essential to continuously monitor the physical conditions prevailing in the prison, compliance with basic and fundamental rights of the prisoners, etc. – The State recognizes that a prisoner loses his right to liberty but still maintains his right to be treated as a human being and as person – His human dignity shall be maintained and all basic amenities should be made available to him – Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life, with due regard to the maintenance of the rights of prisoners – Thus, the objective of reforms and rehabilitation of the prisoners has to be pursued diligently. [Para 17.2]

Model Prisons and Correctional Services Act, 2023 – Prison Manual 2016 – Direction issued:

Held: The State of Jharkhand directed to formulate or expedite the formulation of a Jail Manual incorporating the applicable

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provisions of the 2016 Model Prison Manual, for effective prison administration and ensure its strict compliance by the prison authorities. [Para 18(iii)]

Case Law Cited

State of Maharashtra and Others v. Saeed Sohail Sheikh and others [2012] 11 SCR 916 : (2012) 13 SCC 192; *Kalyan Chandra Sarkar v. Rajesh Ranjan* (2005) 3 SCC 284; *Sunil Batra v. Delhi Administration and Others* [1979] 1 SCR 392 : (1978) 4 SCC 494; *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav* (2005) 3 SCC 284; *State of Maharashtra v. Sayyed Noor Hasan Gulam Hussain*, 1995 Cri.LJ 765 SC; *Rama Murthy v. State of Karnataka* (1997) 2 SCC 642; *Inhuman Conditions in 1382 Prisons, In re* [2017] 14 SCR 519 : (2017) 10 SCC 658 – referred to.

List of Acts

Arms Act, 1959; Explosive Substances Act, 1908; Prisoners Act, 1900; Model Prisons and Correctional Services Act, 2023; Prisons Act, 1894; Penal Code, 1860; Constitution of India.

List of Keywords

Section 29 of Prisoners Act, 1900; Transfer to another jail; Intra-State transfer request; Prisons; Safety in prisons; Safety of prisoners; Gang-related violence; Security of prisons; Rights of prisoners; Reforms and rehabilitation of the prisoners.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 240 of 2025

From the Judgment and Order dated 21.08.2023 of the High Court of Jharkhand at Ranchi in WPCR No. 318 of 2023

Appearances for Parties

Ms. Pallavi Langer, Ms. Pragya Baghel, Honey Khanna, Sujeet Kumar Chaubey, Advs. for the Appellants.

Vivek Krishna Tankha, Sr. Adv., Inder Dev Singh, Vipul Tiwari, Anuj Agarwal, Sarvam Ritam Khare, Advs. for the Respondent.

Digital Supreme Court Reports**Judgment / Order of the Supreme Court****Judgment****R. Mahadevan, J.**

1. Leave granted.
2. The present appeal is filed by the State of Jharkhand and others, against the final order dated 21.08.2023 passed by the High Court of Jharkhand at Ranchi¹ in Writ Petition (Cr.) No. 318 of 2023, whereby the High Court quashed the order / memo dated 17.05.2023 issued by the Inspector General of Prisons, Ranchi, Jharkhand, making intra-State transfer of the respondent herein from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh, to Central Jail, Dumka, within the State of Jharkhand.
3. It is the words of Fyodor Dostoevsky, "*The degree of civilization in a society can be judged by entering its prisons*". Prisons are considered as the 'tailend' of the criminal justice system. They have existed since ancient times, where anti-social elements were kept in, for deterrence and retribution. But, in modern days, a prison connotes a correctional mechanism, thereby emphasizing the reform of inmates. Prison life necessitates certain constraints on the freedom of inmates. Therefore, it is imperative on the part of the prison authorities to rehabilitate the prisoners into law abiding citizen, besides maintaining security and rule of law in the prison. With this preface, we will delve into the issue involved in this appeal.
4. The short facts apropos are that by judgment dated 22.09.2020, the respondent was convicted in connection with a case in S.T.No.141/2016 arising out of Hazaribagh Sadar P.S. Case No.610/2015, corresponding to G.R.No.2325/2015 for the alleged offences under sections 302/120-B/34, 353/34, 341/34 of the Indian Penal Code, 1860, Sections 25(1-A), 26/35, 27(2) of the Arms Act, 1959, r/w Sections 3/4/5 of the Explosive Substances Act, 1908, and was sentenced to undergo life imprisonment. He was also implicated as accused in other cases in the Districts of Hazaribagh, Chatra, Ramgarh and Ranchi. Alleging that without affording any opportunity and in violation of the principles

1 Hereinafter shortly referred to as "the High Court"

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of natural justice, the respondent was transferred from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh, to the Central Jail, Dumka, by memo dated 17.05.2023 of the Inspector General of Prisons, he moved the High Court by filing the Writ Petition (Criminal) No.318 of 2023, to quash the same. It was also stated by the respondent that similar orders of transfer dated 30.10.2015 and 02.11.2015 passed by the Chief Judicial Magistrate, Ramgarh, in connection with Patratu P.S. Case No.309/2014 corresponding to G.R.No.5151/2014, were quashed by the High Court, *vide* order dated 08.03.2016 in Crl.M.P.No.2267 of 2015. After hearing both sides, the High Court set aside the order of transfer dated 17.05.2023 and accordingly, disposed of the writ petition, by order dated 21.08.2023, which is put to challenge before us, by the State authorities.

5. The learned counsel for the appellants, at the outset, submitted that the respondent is a gangster and is known across the State of Jharkhand for his notoriety, having stronghold in four Districts namely, Ranchi, Hazaribagh, Ramgarh and Chatra of the State of Jharkhand. As per the records, the respondent has been in prison as an undertrial prisoner from 04.08.2015 to 21.09.2020 and as convict from 22.09.2020 onwards. Despite the same, nearly 10 FIRs were registered against him i.e., in the years 2015 (Two FIRs), 2016 (one FIR), 2020 (one FIR), 2021(one FIR), 2022 (Four FIRs) and 2023 (one FIR). The respondent however did not disclose his entire criminal antecedents and made a false statement to this effect in paragraph 24 of the writ petition that 'no new case has been instituted against him'. The High Court, without appreciating this fact, set aside the order transferring the respondent to some other jail. While so, it erroneously placed reliance on the decision of this Court in the [*State of Maharashtra and Others v. Saeed Sohail Sheikh and others*](#)² and the earlier order of the High Court dated 08.03.2016 made in Crl.M.P. No.2267 of 2015, without taking note of the fact that the respondent is a convict and not an undertrial prisoner.

- 5.1. Continuing further, the learned counsel for the appellants submitted that on the basis of the Letter of the Jail Superintendent dated 16.05.2023 addressed to the District Commissioner as well as the Superintendent of Police, Hazaribagh, requesting

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the transfer of the notorious criminals namely, Vikash Tiwari (Respondent herein) and Aman Singh confined in Lok Nayak Jaiprakash Narayan Central Jail, Hazaribagh, to any other prison, due to apprehension of gang war / untoward incident inside the jail, and insufficient Kachpals in keeping strict vigilance over such criminals, and also in the light of the recommendation of the District Commissioner, Hazaribagh, the Inspector General of Prisons transferred the respondent to any jail in Santhal Pargana, by memo dated 17.05.2023, which, according to the learned counsel, is a reasoned one, based on true and tangible inputs provided by the authorities below and it is only to protect the life and liberty of the respondent herein and to ensure security of the prison.

- 5.2. That apart, it is submitted that the order of intra-State jail transfer passed by the Inspector General of Prisons against the respondent, who is a convict and serving life imprisonment, was in consonance with section 29 of the Prisoners Act, 1900 r/w Rule 770(b) of the State Jail Manual, which empowers the said authority to pass the same, based on sufficient grounds.
- 5.3. The learned counsel for the appellants further submitted that the contention of the respondent that the said intra-State jail transfer poses a threat to his life, is self-defeating, as the jail authorities' primary intention behind the transfer was to ensure his safety and security in light of the anticipated gang war between rival groups within the jail premises.
- 5.4. With regard to the certificate dated 19.05.2023 issued by the Jail Superintendent about the character of the respondent, it is submitted that the same is not in accordance with law, but is a farce and misleading one.
- 5.5. To justify the order of transfer passed by the Inspector General (Prison), the learned counsel referred to the judgment of this Court in *Kalyan Chandra Sarkar v. Rajesh Ranjan*.³
- 5.6. Thus, according to the learned counsel, the order passed by the High Court is arbitrary and illegal and hence, the same has to be set aside.

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6. Repudiating the submissions made on the side of the appellants, the learned counsel for the respondent vehemently contended that there was no material on record to demonstrate that the respondent was involved in any untoward incident inside the prison, nor the appellants produced any substantive evidence to fortify their claim for transfer. As such, the apprehension of gang war expressed by the appellants is unfounded.
- 6.1. Inviting our attention to the certificate dated 19.05.2023 issued by the Jail Superintendent, Hazaribagh, to the effect that the character of the respondent was satisfactory, the learned counsel for the respondent submitted that the character certificate of an inmate is routinely sought for before arriving at any administrative or judicial decision. However, in the present case, without inquiring into the character of the respondent, the Inspector General of Prisons, Jharkhand, passed the transfer order on 17.05.2023, which only creates suspicion that the same was passed without application of mind, in a pre-determined manner and with *mala fide* intention.
- 6.2. It is also submitted that as a matter of routine, around 10 cases were registered against the respondent, while he has been in jail. Further, the respondent was lodged in the Central Jail, Palamau from 09.11.2017 till 09.09.2022. Therefore, it cannot be said that the cases registered against him during such period, are due to any influence he wields by being lodged in Central Jail, Hazaribagh.
- 6.3. The learned counsel for the respondent further submitted that the respondent is an undertrial prisoner in the other cases registered against him, which are pending in the Districts of Hazaribagh and Ramgarh and hence, as per the judgment of this Court in [Saeed Sohail Sheikh](#) (*supra*), his transfer to Dumka Jail which is situated distantly, is bound to prejudice him. Reference was also made to the judgment of this Court in [Sunil Batra v. Delhi Administration and Others](#),⁴ in which, it was observed that ‘*where quality of life or the liberty of a citizen is affected, no matter he/she is under a sentence of imprisonment or is facing a criminal charge in an ongoing trial. That transfer*

4 [\[1979\] 1 SCR 392](#) : (1978) 4 SCC 494

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of an undertrial to a distant prison may adversely affect his right to defend himself but also isolate him from the society of his friends, and relations'. It is thus submitted that the respondent, though convicted and under confinement, does not lose his right to defend himself as undertrial prisoner in the other cases.

- 6.4. It is also submitted that the respondent and Aman Singh were brought to Central Jail, Hazaribagh on 09.09.2022 and 06.12.2022 respectively; and they had been confined at Hazaribagh together for more than 6 months and no untoward incident has taken place during that period. Furthermore, based on the communications of the Jail Superintendent as well as the District Commissioner dated 16.05.2023, the prisoner Aman Singh was transferred from Central Jail, Hazaribagh, and came to be lodged at Central Jail, Dhanbad, where he was shot dead on 03.12.2023 in suspicious circumstances. Hence, the life of the respondent is at stake and he will be executed, in case, he is transferred to any other prison as was done with Aman Singh.
- 6.5. Ultimately, the learned counsel for the respondent submitted that considering all these aspects, the High Court rightly exercised its power of judicial review and set aside the order of intra-State jail transfer of the respondent, by the order impugned herein and therefore, the same does not call for any interference at the hands of this Court.
7. We have heard the learned counsel on either side and perused the materials available on record carefully and meticulously.
8. The challenge made before the High Court was to the order dated 17.05.2023 passed by the Inspector General of Prisons, in the form of memo, transferring the respondent from Lok Nayak Jai Prakash Narayan Central Jail, Hazaribagh to Central Jail, Dumka, within the State of Jharkhand, on administrative grounds. For better understanding, the contents of the said memo are extracted below:

"Vikash Tiwari, a gangster of Pandey gang, undergoing life imprisonment for the murder of the Sushil Srivastava (a leader of Srivastava Gang) is to be transferred from Hazaribagh Central Jail to any jail in Santhal Pargana. In the light of receipt of continuous complaints against Vikash Tiwari, and the hard stance of the Addl. D G (Operation),

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the DC, Hazaribagh and the SP Hazaribagh, on yesterday, made a recommendation to the IG Prison, Jharkhand, Ranchi for the transfer of. Vikash Tiwary from Hazaribagh Central Jail."

It is thus apparent from the above that such transfer was made by the Inspector General of Prisons, entirely on the recommendation of the District Commissioner and the Superintendent of Police, Hazaribagh, based on the letter dated 16.05.2023 addressed by the Superintendent, Lok Nayak Jaiprakash Narayan Central Jail, Hazaribagh.

9. Notably, the communication dated 16.05.2023 sent by the Jail Superintendent explicitly stated that notorious criminals viz., respondent herein and Aman Singh have been confined in the same prison, as a result of which, there is threat of gang war / untoward incident in the prison; due to shortage of kachpals, it is difficult to exercise strict vigilance over the criminals; in the event of gang war, the Jail administration may face extreme difficulties in controlling them; and hence, the said notorious criminals may be transferred to any other prison, on administrative grounds, so that the security of the prison remained unaffected. The District Commissioner also, in his letter dated 16.05.2023, referred to the said communication of the Jail Superintendent and requested the Inspector General of Prisons, to take necessary action for transfer of the said accused persons to any other prison, on administrative grounds. On consideration of these two communications, the Inspector General of Prisons passed the said transfer order on 17.5.2023, which was assailed by the respondent before the High Court. Thus, the reason for such transfer was that the confinement of two notorious criminals in the same prison raised a gang war threat, and the shortage of kachpals would hinder control over the criminals and pose a challenge for the jail administration and hence, transfer was sought for effective maintenance of the prison.
10. However, by the order impugned herein, the High Court set aside the transfer order so made by the Inspector General of Prisons, stating that the prayer of the respondent not to shift him to any other jail was earlier allowed by the High Court *vide* order dated 08.03.2016 in Cr.M.P.No.2267 of 2015; and the certificate issued by the Superintendent of Hazaribagh jail dated 19.05.2023 disclosed

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no adverse remarks against the respondent and his character as satisfactory; and further placing reliance on the decision of this Court in [Saeed Sohail Sheikh](#) (supra).

11. Specifically, it is pleaded by the learned counsel for the appellants that the order of transfer passed by the Inspector General (Prison) was in terms of Section 29 of the Prisoners Act, 1900 r/w Rule 770(B) of the State Jail Manual. For easy understanding, the said provisions are extracted below:

“29. Removal of prisoners - (1) The State Government may, by general or special order, provide for the removal of any prisoner confined in a prison –

(a) under sentence of death, or

(b) under, or in lieu of, a sentence of imprisonment or transportation, or

(c) in default of payment of a fine, or

(d) in default of giving security for keeping the peace or for maintaining good behaviour, to any other prison in the State.

(2) Subject to the orders, and under the control of the State Government, the Inspector General of prisons may, in like manner provide for the removal of any prisoner confined as aforesaid in a prison in the State to any other prison in the State.”

By Act 30 of 2000, the State of Jharkhand was brought into existence on 15.11.2000 by carving out certain southern districts of Bihar. The State of Jharkhand has adopted many Acts and Rules applicable to the State of Bihar. The Jail Manual, 1925 as applicable to the State of Bihar has been adopted by the State of Jharkhand. Rule 770 (b) of the said rules as applicable to the present case, reads as under:

“Rule 770(B) - Long-term prisoners on admission to District Jails, who are certified fit to travel by the Medical Officers may be transferred to the affiliated Central Jails, irrespective of their age.

Nothing in this rule contained, shall be deemed in any way to interfere with the power of the Inspector General for

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sufficient reason, in his discretion, by general or special order to direct that any class or class of prisoners shall be confined in or transferred to any jail or class of jails”.

Thus, Section 29 makes it clear that removal of any prisoner in a prison to any other prison within the State is at the instance of the State Government, in cases where the prisoner is confined in circumstances mentioned by clauses (a) to (d) of sub-section (1); and subject to the order and under the control of the State Government, the Inspector General of Prisons is empowered to remove any prisoner confined as aforesaid in a prison to any other prison in the State. The said provision does not speak about an undertrial prisoner. That apart, Rule 770(B) empowers the Inspector General to shift/transfer a prisoner from one jail to another jail on sufficient grounds. The first limb of Section 29 empowers the State government to issue general or specific order to remove the prisoner under any of the circumstances in clause (1) of Sub-section (1). Sub-section (2) of Section 29 confers similar powers to the Inspector General of Prisons to order for such transfer, however subject to orders and under the control of the State government. In the instant case, no adverse order or proceeding of the State government is brought to our knowledge. The substantive right flows from the Section and Rules as applicable, enables the Inspector General of Prisons, on discretion to transfer a prisoner from one prison to another or from one class to another. The only caution, we may add, is that such discretion cannot be exercised arbitrarily. Admittedly, the respondent herein is a life convict and undergoing sentence in the Central Jail, Hazaribagh, pursuant to the judgment dated 22.09.2020 passed in S.T.No.141/2016 arising out of Hazaribagh Sadar P.S. Case No.610/2015, corresponding to G.R.No.2325/2015. In view of the said provisions of law, the order of transfer passed by the Inspector General of Prisons citing administrative grounds, was in accordance with law.

12. It is interesting to note that the High Court, while setting aside the transfer order, referred to the decision of this Court in [*Saeed Sohail Sheikh*](#) (supra), wherein, the petitioners therein were undertrial prisoners; and the order of the High Court passed earlier on 08.03.2016 in Cr.M.P.No.2267 of 2015 filed by the respondent, who was at that time, in prison as an undertrial prisoner. As indicated above, the respondent is now a life convict and undergoing sentence

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in the Central Jail, Hazaribagh. Therefore, the aforesaid orders are not applicable to the present circumstances of the case. In fact, in [Saeed Sohail Sheikh](#) (supra), it was clearly stated by this Court that *Sub-section (2) no doubt empowers the Inspector General of Prisons to direct a transfer, but what is important is that any such transfer is of a prisoner who is confined in circumstances mentioned in sub-section (1) of Section 29. That is evident from the use of words any prisoner confined as aforesaid in a prison. The expression leaves no manner of doubt that a transfer under sub-section (2) is also permissible only if it relates to prisoners who were confined in circumstances indicated in sub-section (1) of section 29*. As such, reference made to the said decision seems to be misplaced.

13. To justify the order passed by the High Court, the learned counsel for the respondent heavily placed reliance on the character certificate issued by the Jail Superintendent on 19.05.2023. Indisputably, the power of giving character certificate is entrusted to the Jail Superintendent as he is the authority, who closely watches the activities of the inmates for a considerable amount of time. However, as noticed earlier, the Jail superintendent by letter dated 16.05.2023 expressed apprehension of gang war / untoward incident in the prison, due to the presence of two notorious criminals; and insufficient kachpals to maintain them, which pose a challenge to the prison administration and hence, made intra-State transfer request, so as to ensure the safety of the prison. The notorious prisoner Aman Singh came to be lodged in the said Jail on 22.10.2022. Based on the apprehension so raised, the Inspector General of Prisons by exercising his powers conferred under section 29 of the Prisoners Act, 1900 and the applicable rules, transferred the respondent to another jail within the State, for security of the prison and to ensure the life and safety of the respondent in the prison. It is also to be noted that before the issuance of the character certificate, the Inspector General of Prisons passed the order of transfer of the respondent to some other jail, in the light of the recommendation of the District Commissioner, based on the earlier letter dated 16.05.2023 sent by the Jail Superintendent. We have already held that the transfer so made was in accordance with law. That apart, the fact remains that while he has been in prison from 04.08.2015 to 19.05.2023, multiple FIRs got registered against the respondent. Even the said certificate has not denied the threat of gang war within the prison. Therefore,

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the certificate issued by the Jail Superintendent, at the later date, i.e., on 19.05.2023 appears to be contradictory and cannot be trustworthy, and the reliance placed on the same cannot be accepted by us.

14. In connection with the issue involved herein, we may additionally refer to the Prison Manual 2016 and Model Prisons and Correctional Services Act, 2023. Chapter IX of the Prison Manual 2016, under Rule 9.01 provides for list of grounds, under which a transfer can be made and it is on case-to-case basis. It is significant to note that the ‘ground of security’ has been mentioned in Rule 9.01(vii). That apart, Rule 35 of the Model Prisons and Correctional Services Act, 2023 deals with safe custody and security of prisoners, wherein, it was explicitly pointed out that the officer-in-charge of the prison shall be responsible to undertake effective measures for ensuring safe custody and security of prisoners; and the Head of Prisons & Correctional Services shall be empowered to transfer a prisoner to any other prison in the State/UT, as may be prescribed under the rules. Moreover, in *Kalyan Chandra Sarkar v. Rajesh Ranjan Alias Pappu Yadav*,⁵ it was pointed out that a convict or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another, because the Jail Manual does not provide for it. The relevant portion is reproduced below:

“23. Therefore, in our opinion, a convict or an undertrial who disobeys the law of the land, cannot contend that it is not permissible to transfer him from one jail to another because the Jail Manual does not provide for it. If the factual situation requires the transfer of a prisoner from one prison to another; be he a convict or an undertrial. Courts are not to be a helpless bystander when the rule of law is being challenged with impunity. The arms of law are long enough to remedy the situation even by transferring a prisoner from one prison to another, that is by assuming that the concerned Jail Manual does not provide such a transfer. In our opinion, the argument of the learned counsel, as noted above, undermines the authority and majesty of law. The facts narrated hereinabove clearly show that the respondent has time and again flouted the law even

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while he was in custody and sometimes even when he was on bail. We must note herein with all seriousness that the authorities manning the Beur jail and the concerned doctors of the Patna Medical College Hospital, for their own reasons, either willingly or otherwise, have enabled the respondent to flout the law. In this process, we think the concerned authorities, especially the authorities at the Beur Central Jail, Patna, are not in a position to control the illegal activities of the respondent. Therefore, it is imperative that the respondent be transferred outside Bihar.”

Thus, it is vivid that if the situation necessitates transfer of the prisoner from one jail to another, it can be done by the authority concerned.

15. Furthermore, this Court in *Geerinder Kaur v. State of Punjab*, has categorically held that “the place of detention is a matter for the administrative choice of the detaining authority and a court would be justified in interfering with that decision only if it was in violation of any specific provision of the law or was vitiated by arbitrary considerations and mala fides”. In *State of Maharashtra v. Sayyed Noor Hasan Gulam Hussain*,⁶ it was held that classification of the prisoners and their placement in different prisons by the prison administration is a relevant policy decision. The discretion and power to interfere by the courts in such matters does exist yet it should be used very sparingly. Similarly, this Court in *Kalyan Chandra Sarkar (supra)*, has held that the Right of a prisoner under Article 21 of the Constitution to be lodged in a jail and general prohibition against his transfer to a distantly located jail in the State or out of the State is not absolute. It is also subject to the amenability of the prisoner to the maintenance of jail discipline. The relevant passage of the said decision reads as under:

“21. The fundamental right of an undertrial prisoner under Article 21 of the Constitution is not absolute. His right of visitations as also other rights are provided in the Jail Manual. The Respondent as an undertrial prisoner was bound to maintain the internal discipline of the jail. Such a fundamental right is circumscribed by the prison manual and other relevant statutes imposing reasonable

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restrictions on such right. The provisions of the Bihar Jail Manual or other relevant statutes having not been declared unconstitutional, the Respondent was bound to abide by such statutory rules."

Hence, it is lucid that transfer of convict prisoner from one prison to another is purely an administrative decision and hence, the same cannot be interfered with by the court unless it is arbitrary and contrary to law.

16. Thus, the overall analysis would abundantly demonstrate that subject to the orders of the State Government, the Inspector General of Prisons shall exercise control and superintendence of all prisons situated in the State, in accordance with the above stated provisions. Further, the prison authorities are charged with the duties of maintenance of discipline and peace within a prison. At the same time, there can be no manner of doubt that the transfer of prisoners from one jail to another is not a matter of routine and must be approached with circumspection. In the present case, the reason given for transfer was the existence of imminent possibility of a gang war and due to insufficient kachpals, the prison authorities would find it difficult to effectively manage such a situation, if it arises. In this exceptional circumstance, the Inspector General of Prisons passed the order transferring the respondent to another jail. There is a duty on the Inspector General of Prisons to ensure the safety of all the inmates in the prison. This measure was essential to ensure not only the safety of the prisoner but also to disrupt and neutralize the potential for gang-related violence within the prison. Such decision of shifting the respondent was only in the larger interest of maintaining security of the prison. There is a profound rational behind the decision and therefore, such decision does not suffer from the vice of arbitrariness. Thus, we are of the opinion that transfer of the respondent to some other jail is not only lawful, but also necessary for his safety and security. However, the High Court erred in setting aside the same, by the order impugned herein, which is liable to be set aside.
17. At this juncture, it may not be out of sight to point out that the Indian Prison System has been under the close scrutiny of judiciary / District Magistrates, who have been given a responsibility to closely monitor the administration and management of prisons under their jurisdiction and to inspect them periodically. Since 'Prisons' is a State subject under Entry 4 in List-II of the Seventh Schedule to the Constitution

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of India, the management and administration of the same comes within the purview of the State Governments. They are governed by the Prisons Act, 1894 and the Prison Manuals / Rules / Regulations framed by the respective State Governments from time to time. The Model Prison Manual provides guidance to the State Governments to maintain uniformity in the prison administration throughout the country.

- 17.1. This Court has repeatedly recommended an overhaul of prison administration by suggesting reforms in treatment of prisoners and management of prisons. The dehumanized existence of prisoners was reprimanded by Justice Krishna Iyer in *Sunil Batra v. Delhi Administration*,⁷ and he called for an overhaul of Prison Manuals in compliance with constitutional ideals and human rights. He further emphasised on the need for an independent oversight mechanism for operationalizing prisoners' rights and safeguards. Subsequently, after the direction of this Court to examine the framing of new All India Jail Manual in *Rama Murthy v. State of Karnataka*,⁸ the Model Prison Manual came into existence in the year 2003 and the same was approved by the Ministry of Home Affairs, only in the year 2016, pursuant to the direction of this Court in yet another decision in *Inhuman Conditions in 1382 Prisons, In re*.⁹ The Model Prison Manual and the system that it envisages, has to be understood as an outcome of the repeated clarion calls and demands to safeguard prisoners' rights and prison reforms.
- 17.2. The prison administration needs to be reformed for creating a better environment and prison culture to ensure the prisoners enjoy their right to dignified life under Article 21. It is essential to continuously monitor the physical conditions prevailing in the prison, compliance with basic and fundamental rights of the prisoners, etc. The State recognizes that a prisoner loses his right to liberty but still maintains his right to be treated as a human being and as person. His human dignity shall be maintained and all basic amenities should be made available to him. Discipline and order shall be maintained

7 1980 AIR 1579

8 (1997) 2 SCC 642

9 [\[2017\] 14 SCR 519](#) : (2017) 10 SCC 658

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with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life, with due regard to the maintenance of the rights of prisoners. Thus, the objective of reforms and rehabilitation of the prisoners has to be pursued diligently.

- 17.3. As far as the State of Jharkhand is concerned, there is no clear-cut picture regarding prison administration and the facilities available to the prisoners in the prisons. In *Court on its own motion v. State of Jharkhand*, WP(PIL) Nos. 6125/2017 etc. cases, which are pending, vide order dated 13.01.2023, the Jharkhand High Court was apprised regarding the drafting of a Jharkhand Jail Manual based on the Model Prison Manual, 2016. The current status of the same however remains unclear. Hence, we deem it necessary to issue appropriate directions to the Government of Jharkhand for implementing effective prison administration and to protect the interests of prisoners.
18. In the upshot,
- (i) The order of the High Court dated 21.08.2023 stands set aside and the order / memo dated 17.05.2023 of the Inspector General of Prisons stands restored.
 - (ii) The authorities shall ensure that the respondent's life, basic and fundamental rights to the extent available in accordance with law, are protected.
 - (iii) The State of Jharkhand shall, if not already done, formulate or expedite the formulation of a Jail Manual incorporating the applicable provisions of the 2016 Model Prison Manual, for effective prison administration and ensure its strict compliance by the prison authorities.
19. This appeal stands allowed and disposed of, in the above terms. Connected Miscellaneous Application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.