Before D. S. Tewatia, J.

SUKHPAL SINGH AND ANOTHER,—*Petitioners.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Criminal Writ Petition No. 495 *of* 1983.

November 15, 1983.

Constitution of India 1950—*Article* 21—*National Security Act* (*LXV of* 1980)—*Section* 5(*a*)—*Transfer of Prisoners Act* (*XXIX of* 1950)—*Section* 3(2)—*Haryana Detenus* (*Conditions as to Maintenance, Discipline and Punishment for Breaches of Discipline*) *Order,* 1980—*Rule* 13—*Punjab Detenus* (*Conditions of Detention*) *Order,* 1981—*Rule* 14—*Person detained in Punjab transferred to a jail in*

Haryana—Conditions of detention of the detenu—Whether governed by Haryana Rules—Clauses (1) (iv) and (3) of Rule 13 providing for interview with a lawyer within the hearing of the deputed officer only after approval from the State Government or District Magistrate—Such rule—Whether violative of Article 21—Interview with family members and friends of detenu—Guidelines—Stated.

Held, that a reading of sub-section (2) of section 3 of the Transfer of Prisoners Act, 1950, the extra-territorial efficiency of only writ, warrant or order of the Courts by which the prisoner had been committed or the power of the Government of the transferor State to remit or commute the sentence of such a prisoner is preserved which by necessary implication would mean that in regard to all other matters, the transferred prisoner would be subject to the provisions of the Jail Manual of the transferee State as also other laws bearing upon the detention of a prisoners in its jail. However, the conditions of detention governing the detention of such a detenue would be of the State in whose jail the detenu happened to be in jail. In this view of the matter, it is Rule 13 of the Haryana Detenus (Conditions as to Maintenance, Discipline and Punishment for Breaches of Discipline) Order, 1980 and not Rule 14 of the Punjab Detenus (Conditions of Detention) Order, 1981 framed under section 5(a) of the National Security Act, 1980 that would govern the conditions of detention of the detenus so long as the detenu is in detention in a jail within the territory of the State of Haryana.

(Paras 7, 8 and 9).

Held, that clause (1) of Rule 13 of the Haryana Detenus (Conditions as to Maintenance Discipline and Punishment for Breaches of Discipline) Order, 1980 to the extent it envisages grant of interview with a lawyer of choice with the prior approval in writing of the State Government or the District Magistrate of the district is unreasonable. So also its sub-clause (iv) to the extent it envisages holding of the interview within the hearing of an officer deputed by the State Government or the District Magistrate of the district or the Superintendent of the jail or the Central Government. Sub-rule (3) to the extent it restricts interview with members of the family and near relatives of the detenu not exceeding two in number once a fortnight only with the permission of the District Magistrate of the district also suffers from the vice of unreasonableness. As such, the aforesaid provisions are liable to be struck down to the extent indicated being *ultra vires* Article 21 of the Constitution of India 1950.

(Para 16).

Held, that in regard to the interview with the members of the family and friends and relatives, it would be normal that five persons at a time, whether relatives or friends be permitted to see the detenu. If they happen to be more than 5 in number, then they

should also be permitted to have interview with the detenu the same day by distributing the available time of the interview. However, not more than 10 persons on the given day would have a right to see the detenu. Since a friend cannot be defined, so as it would be desirable, to avoid inconvenience, that the detenu furnishes a list of his friends from time to time to the Superintendent of the Jail and such persons, whose names appear on the list as friends, be permitted to see the detenu.

(Para 17).

Petition under Article 226 of the Constitution of India praying that the impugned rules, which are mentioned in the heading of the petition, be quashed and the Superintendent Central Jail, Ambala, be directed to grant interview and other facilities to the detenu, in conformity with the Supreme Court decision, mentioned above.

It is further prayed that during the pendency of this writ petition, the Superintendent, Central Jail Ambala, be directed to permit the petitioners to have an interview with the detenu in accordance with their rights.

G. S. Grewal, Senior Advocate, (T.P.S. Mann, Advocate and S. S. Bajwa, Advocate with him), *for the Petitioner.*

H. S. Riar, D.A.G., (Punjab) for the State Punjab. B. S. Pawar, A.A.G., (Haryana for the State of Haryana).

JUDGMENT

D. S. Tewatia, J. (Oral)

(1) Sukhpal Singh and Mohinder Kaur, son and wife respectively of the detenu Sukhjinder Singh, have sought the quashing of the rules framed under Section 5(a) of the National Security Act (Act 65 of 1980), hereinafter referred to as the Act, by the States of Punjab and Haryana providing therein the conditions of detention, *inter-alia*, pertaining to the grant of interview to the detenu, his counsel and relatives on the ground of being unreasonable and thus violative of Article 21 of the Constitution of India.

(2) The detenu after his arrest, in the first instance, was detained in the Central Jail, Ambala, on the morning of October 5, 1983, wherefrom he was transferred to some jail in Orissa. When petitioner No. 1 challenged through Criminal Writ No. 466 of 1983 the confinement of the detenu at such a distant place from his

residence in Punjab, the State of Punjab agreed to have him transferred to the Central Jail, Ambala, wherein the detenu now stands interned.

(3) It has been asserted in the petition that almost after three weeks of arrest of the detenu, the petitioners went to see him in the Central Jail, Ambala. The Superintendent of the Central Jail, Ambala, refused to grant them interview with the detenu on the plea that he had no order from the detaining authority, that is, the State of Punjab, to grant such an interview. The petitioners thereafter booked a lightening call to the District Magistrate, Kapurthala, so that he might grant permission to them on phone, but the District Magistrate informed the petitioners that such a permission could only be granted by the Home Secretary. The petitioners then tried to contact the Home Secretary, but to no avail. The petitioners also met the Deputy Commissioner, Ambala, who refused to permit them to have an interview with the detenu, as there were no orders by the State Government to grant such a permission.

The petitioners having thus been thwarted in their effort to meet the detenu sought recourse to the aid of the Court by filing the present petition, in which both the sets of relevant rules one promulgated by the State of Punjab and the other by the State of Haryana, have been reproduced which deserves noticing.

(4) The rule framed by the Haryana Government dealing with the interview is rule 13, which is in the following terms, and these rules are called 'The Haryana Detenus (Conditions as to Maintenance, Discipline, and Punishment for Breaches of Discipline) Order, 1980':

"13. Interviews—

(1) Every detenu shall be granted interview with a lawyer of his choice with the prior approval in writing of the State Government or the District Magistrate of the district wherein the detenu is detained or the Superintendent and when detained under the orders of the Central Government, that Government, subject to the following conditions, namely :—

(i) the interview will not be allowed more than once a week ;

(ii) the interview will be confined to matters relating to the detenu's detention or such other judicial matters

pertaining to the detention, as may be pending in court ;

(iii) the interview will not last more than two hours on any one occasion ;

(iv) the interview will be held in the presence and within the hearing of an officer deputed by the State Government or the District Magistrate of the district or the Superintendent or the Central Government, as the case may be.

(2) On an application of a detenu, the District Magistrate of the district wherein the detenu is detained or the Superintendent may grant special interview with not more than one person at a time to be specified by him in connection with the following matters, namely:—

(i) filing of returns of income-tax, sales-tax or the like ;

(ii) business or professional matters if the District Magistrate or the Superintendent is satisfied that such matter cannot be looked after by any one other than the detenu :

Provided that such interview will be held in the presence and within the hearing of an officer deputed by the District Magistrate or the Superintendent.

(3) A detenu may be allowed interview with members of his family and near relatives not exceeding two in number once a fortnight only by the District Magistrate of the district wherein the detenu is detained or the Supeintendent subject to the condition that the interview will be held in the presence and within the hearing of an officer, deputed by the District Magistrate or the Superintendent, as the case may be."

While in the case of the State of Punjab, rule 14 is the rule which deals with interviews and it is in the following terms. These rules

are called 'The Punjab Detenus (Conditions of Detention) Order, 1981'—

"14. Interviews—

(1) Every detenu irrespective of the class shall be allowed to interview his relatives once a week. The interview will be held in the presence and within the hearing of an officer of the jail and an officer deputed for the purpose by the Superintendent of Police of the district and will last for not more than one hour. A maximum of five persons not counting children below the age of twelve years shall be permitted during each interview. The application for interview shall be made in Form 'A' annexed to this order.

(2) On an application by the detenu, the State Government or any officer appointed by it for this purpose, may grant special interview with not more than two persons at a time on an *ad hoc* basis in connection with the business or professional matters of the detenu or in the context of serious illness of the detenu or his relative. The interview will be in the presence and within the hearing of a jail official and an officer deputed for the purpose by the Superintendent of Police of the district and will last for not more than half-an-hour.

(3) Over and above the interview specified in sub-clauses (1) and (2), every detenu will be entitled to interview an advocate of his choice, subject to the condition that the interview will be purely for purposes of an application the detenu may wish to make to a court of law or in connection with advice relating to matters which may be pending in a court of law in which the detenu is a party. Such interview will be in the presence and within the hearing of a jail official and an officer deputed for the purpose by the Superintendent of Police of the district."

Before dealing with the question as to whether the given rules are unreasonable and thus violative of article 21 of the Constitution of India, it is first necessary to decide as to whether it is the Punjab rules or the Haryana rules that would govern the conditions of detention of the detenu.

(5) It can be laid down without fear of contradiction that legislative authority of a State Legislature and executive power of a State Government do not extend beyond the territory of a given State by its own force.

(6) The detention of the detenu in the Central Jail, Ambala, is by virtue of the provisions of section 5(b) of the Act, which is in the following terms:

> "5. Every person in respect of whom a detention order has been made shall be liable—
>
> (a) * * * * * *
>
> (b) to be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government :
>
> Provided that no order shall be made by a State Government under clause (b) for the removal of a person from one State to another State except with the consent of the Government of that other State."

(7) In regard to the convict-prisoners, it is sub-section (2) of section 3 of the Transfer of Prisoners Act, 1950, which provides for transfer in detention of a prisoner from the jail of convicting State to jail of another State and is in the following terms :

> "3. (1) Where any person is confined in a prison in a State—
>
> (a) * * * * *
>
> (b) * * * * *
>
> (c) * * * * *
>
> (d) * * * * *
>
> the Government of that State may, with the consent of the Government of any other State, by order, provide for the removal of the prisoner from that prison to any prison in the other State.

(2) The officer in charge of the prison to which any person is removed under sub-section (1) shall receive and detain him, so far as may be, according to the exigency of any writ, warrant or order of the Court by which such person has been committed, or until such person is discharged or removed in due course of law."

In *Jhanda Singh son of Sohan Singh* v. *The State of Punjab and another*, (1) a Division Bench of this Court was required to answer the question as to whether it was the State of Haryana, where the prisoner was convicted which could pass orders for his premature release or the State Government of Punjab, to whose jail the prisoner stood transferred and happened to be detained, had the given authority to do so. This Court held that "by virtue of the provisions of sub-section (2) of section 3 of the Prisoners Act, the extra-territorial efficiency of only writ, warrant or order of the Court by which the prisoner had been committed or the power of the Government of the transferor State to remit or commute the sentence of such a prisoner, is preserved which by necessary implication would mean that in regard to all other matters, the transferred prisoner would be subject to the provisions of the Jail Manual of the transferee State as also other laws bearing upon the detention of a prisoner in its jail."

(8) The ratio of the aforesaid decision, in my opinion, would apply to a case of the detention in the jails of a State other than that of the State which passed the order of detention, that is, so far as the period of detention is concerned, that has to be determined by the State which passed the order of detention and which alone would have the authority to reduce or increase the said period in accordance with law and not the State in whose jail the given detenu happened to be kept. However, the conditions of detention governing the detention of such a detenu would be of the State in whose jail he happened to be detained.

(9) In this view of the matter, it is the Haryana State rules that would govern the conditions of detention of the detenu so long as he is in detention in a jail within the territory of the State of Haryana.

(10) The counsel for the petitioners nevertheless urged that the reasonableness of the Punjab State rules should also be considered,

(1) I.L.R. 1977(1) Pb. & Hary. 520.

for the detenu can be transferred to a jail in the State of Punjab any time.

(11) If this Court is to examine the rules of detention of Punjab State on the given hypothesis, then one might have to examine such rules of other States as well, for no one can vouchsafe as to which jail of which State the detenu may not be transferred by the concerned authorities. Hence, this Court would confine itself to the examining of the reasonableness of the rules that are held to be governing the case of the detenu right now, that is, the Haryana Detenus (Conditions as to Maintenance, Discipline, and Punishment for Breaches of Discipline) Order, 1980.

(12) Their Lordships in *Francis Coralie Mullin* v. *The Administrator, Union Territory of Delhi and others,* (2) had an occasion to examine the vires of the provisions of clause 3(b) (i) and (ii) of the Conditions of Detention as laid down by the Delhi Administration's Order dated 23rd August, 1975 issued in exercise of powers conferred under section 5 of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, which were in the following terms :

> "3. The conditions of detention in respect of classification and interviews shall be as under—
>
> (a) * * * * *
>
> (b) Interviews: Subject to the direction issued by the Administrator from time to time, permission for the grant of interviews with a detenu shall be granted by the District Magistrate, Delhi as under—
>
> (i) Interview with legal adviser: Interview with legal adviser in connection with defence of a detenu in a criminal case or in regard to writ petitions and the like, may be allowed by prior appointment, in the presence of an officer of Customs/Central Excise/ Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement, who sponsors the case for detention :

(2) A.I.R. 1981 S.C. 746.

(ii) Interview with family members: A monthly interview may be permitted for members of the family consisting of wife, children or parents of the detenu....."

After referring to *Smt. Maneka Gandhi* v. *Union of India* (3) and other subsequent cases, their Lordships observed that article 21 as interpreted in *Maneka Gandhi's case* (supra) required that no one should be deprived of his life or personal liberty except by procedure established by law and this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it was for the Court to decide in the exercise of its constitutional power to judicial review whether the depriviation of life or personal liberty in a given case was by procedure, which was reasonable, fair and just, or it was otherwise.

(13) Their Lordships next considered the question as to whether the right of life enshrined in article 21 could be restricted to mere animal existence or it meant something more than just physical survival. Their Lordships, after referring to decided cases, held that right to life included the right to live with human dignity and all that went along with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter over the head and facilities for feeding, writing and expressing oneself in diverse forms, freely moving about and mixing and co-mingling with fellow human beings.

(14) Considering the case of a prisoner or a detenu, their Lordships observed that the prisoner or detenu obviously could not move about freely by going outside the prison walls nor could he socialise at his free will with persons outside the jail. But, as part of the right to live with human dignity and therefore as a necessary component of the right to life, he would be entitled to have interview with the members of his family and friends and no prison regulation or procedure laid down by prison regulation regulating the right to have interviews with the members of the family and friends could be upheld as constitutionally valid under articles 14 and 21, unless it was reasonable, fair and just.

(15) Their Lordships referred to the rights of undertrial prisoners under rule 559-A and rights of a convicted prisoner under rule 550

(3) A.I.R. 1978 S.C. 597.

of the Jail Manual to have the facilities of interviews with relatives and friends twice in a week in order to highlight the harshness of the rules granting such a right once in a month to a detenu regarding whose status their Lordships were of the view that it was higher than that of an undertrial or a convict.

(16) Their Lordships struck down the provisions of sub-clause (ii) of clause 3(b) with the following observations :

> "We would therefore unhesitatingly hold sub-clause (ii) of clause 3(b) to be violative of articles 14 and 21 in so far as it permits only one interview in a month to a detenu. We are of the view that a detenu must be permitted to have at least two interviews in a week with relatives and friends and it should be possible for a relative or friend to have interview with the detenu at any reasonable hour on obtaining permission from the Superintendent of the Jail and it should not be necessary to seek the permission of the District Magistrate, Delhi, as the latter procedure would be cumbrous and unnecessary from the point of view of security and hence unreasonable."

Their Lordships struck down the provisions of sub clause (i) of clause 3(b) as violative of articles 14 and 21 with the following observations :

> "The same reasoning must also result in invalidation of sub-clause (i) of clause 3(b) of the Conditions of Detention Order which prescribes that a detenu can have interview with a legal adviser only after obtaining prior permission of the District Magistrate, Delhi, and the interview has to take place in the presence of an officer of Customs/ Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the case for detention. The right of a detenu to consult a legal adviser of his choice for any purpose not necessarily limited to defence in a criminal proceeding but also for securing release from preventive detention or filing of a writ petition or prosecuting any claim or proceeding, civil or criminal, is obviously included in the right to live with human dignity and is also part of personal liberty and the detenu

cannot be deprived of this right nor can this right of the detenu be interfered with except in accordance with reasonable, fair and just procedure established by a valid law. A prison regulation may, therefore, regulate the right of a detenu to have interview with a legal adviser in a manner which is reasonable, fair and just but it cannot prescribe an arbitrary or unreasonable procedure for regulating such an interview and if does so, it would be violative of articles 14 and 21. Now in the present case the legal adviser can have interview with a detenu only by prior appointment after obtaining permission of the District Magistrate, Delhi. This would obviously cause great hardship and inconvenience because the legal adviser would have to apply to the District Magistrate, Delhi, well in advance and then also the time fixed by the District Magistrate, Delhi, may not be suitable to the legal adviser who would ordinarily be a busy practitioner and, in that event, from a practical point of view, the right to consult a legal adviser would be rendered illusory. Moreover, the interview must take place in the presence of an officer or Customs/Central Excise/Enforcement to be nominated by the local Collector of Customs/Central Excise or Deputy Director of Enforcement who has sponsored the detention and this too would seem to be an unreasonable procedural requirement because in order to secure the presence of such officer at the interview, the District Magistrate, Delhi, would have to fix the time for the interview in consultation with the Collector of Customs/Central Excise or the Deputy Director of Enforcement and it may become difficult to synchronise the time which suits the legal adviser with the time convenient to the concerned officer and further more, if the nominated officer does not, for any reason, attend at the appointed time, as seems to have happened on quite a few occasions in the case of the petitioner, the interview cannot be held at all and the legal adviser would have to go back without meeting the detenu and the entire procedure for applying for an appointment to the District Magistrate, Delhi, would have to be gone through once again. We may point out that no satisfactory explanation has been given on behalf of the respondents disclosing the rationale of this requirement. We are, therefore, of the view that sub-clause (i) of clause 3(b)

regulating the right of a detenu to have interview with a legal adviser of his choise is violative of articles 14 and 21 and must be held to be unconstitutional and void. We think that it would be quite reasonable if a detenu were to be entitled to have interview with his legal adviser at any reasonable hour during the day after taking appointment from the Superintendent of Jail, which appointment should be given by the Superintendent without any avoidable delay. We may add that the interview need not necessarily take place in the presence of a nominated officer of Customs/Central Excise/Enforcement, but if the presence of such officer can be conveniently secured at the time of the interview without involving any postponment of the interview, then such officer and if his presence cannot be so secured, then any other Jail official may, if thought necessary, watch the interview, but not so as to be within hearing distance of the detenu and the legal adviser."

Now treating the above norms, as laid down by their Lordships, as the touch-stone to examine the reasonableness of the relevant rules, let us now examine the reasonableness of clause (1) and its sub-clause (iv) and clause (3) of rule 13 of the Haryana rules in question. Clause (1) of rule 13, to the extent it envisages grant of interview with a lawyer of choice with the prior approval in writing of the State Government or the District Magistrate of the district in unreasonable. So also its sub-clause (iv) to the extent it envisages holding of the interview within the hearing of an officer deputed by the State Government or the District Magistrate of the district or the Superintendent of the Jail or the Central Government. Sub-rule (3) to the extent it restricts interview with members of the family and near relatives of the detenu not exceeding two in number once a fortnight only with the permission of the District Magistrate of the district also suffers from the vice of unreasonableness. The aforesaid provisions are, therefore, liable to be struck down to the extent indicated above as being ultra-vires the provisions of article 21. In my view, the Haryana Government should follow the norms regarding the grant of interview with a lawyer, as prescribed by their Lordships in *Francis Coralie Mullin's case* (supra) till such time, the said norms are included in the rules in accordance with law.

(17) In regard to the interview with the members of the family and friends and relatives, in my opinion, it would be normal that

five persons at a time, whether relatives or friends, be permitted to see the detenu. If they happen to be more than 5 in number, then they should also be permitted to have interview with the detenu the same day by distributing the available time of the interview. However, not more than 10 persons on the given day would have a right to see the detenu. Since a friend cannot be defined, so it would be desirable, to avoid inconvenience, that the detenu furnishes a list of his friends from time to time to the Superintendent of the Jail and such persons, whose names appear on the list as friends, be permitted to see the detenu".

(18) In all fairness to the counsel for the State, it deserves noticing that Mr. H. S. Riar, Deputy Advocate-General, Punjab, argued that in view of the provisions of sub-clause (b) of clause (3) of article 22 of the Constitution of India, the detenu cannot be heard to complain about the unreasonableness of a rule which permits him access to a counsel though with some restrictions, for he is not entitled to consult a counsel or be defended by him in his arrest and custody is under any law providing for preventive detention.

(19) In *Francis Coralie Mullin's case* (supra), the provisions of the Order promulgated by the Delhi Administration had been struck down by their Lordships as unreasonable and violative of article 21 of the Constitution of India and such a principle had been expressly approved by the Constitution Bench in *A. R. Roy* v. *Union of India and others,* (4) and the following observations of their Lordships are instructive in this regard :

> "In *Francis Coralie Mullin,* the petitioner, while in detention, wanted to have an interview with her lawyer, which was rendered almost impossible by reason of the stringent provisions of clause 3(b)(i) of the 'Conditions of Detention'. formulated by the Delhi Administration. In a petition filed in this Court to challenge the aforesaid clause, *inter-alia,* it was held by this Court that the clause was void, since it violated articles 14 and 21 by its discriminatory nature and unreasonableness. The court directed that the detenu should be permtited to have an interview with her legal adviser at any reasonable hour during the day after taking an appointment from the Superintendent of the Jail and that the interview need not necessarily take place in the presence of an officer of the Customs or

(4) (1982) 1 S.C.C. 271.

Central Excise Department. The court also directed that the officer concerned may watch the interview but not so as to be within the hearing distance of the detenu and the legal adviser. This decision has no bearing on the point which arises before us, since the limited question which was involved in that case was whether the procedure prescribed by clause 3, governing the interviews which a detenu may have with his legal adviser, was reasonable. The court was not called upon to consider the question as regards the right of a detenu to be represented by a legal practitioner before the Advisory Board. We would, however, like to affirm out respectful agreement with the decision in this case to the effect that the detenu has a right to consult a lawyer of his choice for the purpose of preparing his representation, advising him as to how he should defend himself before the Advisory Board and preparing and filing a habeas corpus petition or other proceedings for securing his release."

In the face of the above categoric observations of their Lordships, I do not think the submission made by Mr. Riar would merit examination by this Court.

(20) For the reasons aforementioned, the writ petition is allowed and the Clause(1) sub-clause (iv) & Clause (3) of Rule 13 of Haryana Rules are struck down to the extent indicated as being unreasonable and violative of the provisions of article 21 of the constitution of India.