

HIGH COURT OF KERALA

Bench: Dr. Justice A.K.Jayasankaran Nambiar & Dr. Justice Kauser Edappagath

Date of Decision: 03 November 2023

CRL.M.APPL.NO.3/2023 IN CRL.A NO.740 OF 2018

Crl.M.A.No.3/2023 in Crl.Appeal No.740/2018

Crl.M.A.No.2/2023 in Crl.Appeal No.1099/2018

**SC NO.421/2009 OF THE COURT OF ADDITIONAL SESSIONS JUDGE-
IV, THALASSERY**

PATTAKKA SURESH BABU PETITIONER/APPELLANT

Versus

STATE OF KERALA RESPONDENT/COMPLAINANT

Legislations:

Section 389(1) of Cr.P.C.

Section 302 of the Indian Penal Code (IPC)

Article 21 of the Constitution of India

**UGC (Open and Distant Learning Programmes and Online Programmes)
Regulation, 2020**

**Subject: Application for suspension of sentence by life convicts to
pursue higher education through online mode while serving their
sentence.**

Headnotes:

Criminal Appeal – Suspension of Sentence – Convicts seeking suspension of sentence for pursuing higher education invoking Section 389(1) of Cr.P.C. – Convicted under Section 302 of IPC and sentenced to life imprisonment – Application for attending LL.B. courses online due to confinement in prison. [Para 1-2]

Right to Life and Dignity – Constitutional right to live with dignity under Article 21 – Even convicts retain dignity and essential human rights – The right to life includes the right to live with human dignity and encompasses adequate nutrition, clothing, shelter, and education. [Para 7-8]

Education of Prisoners – Education recognized as a potent tool for advancement and a human right – Prisoners entitled to pursue studies and have access to education to fulfill reformatory and rehabilitative goals of imprisonment – Education in prison seen as a part of living with dignity and a constitutional right. [Para 9-10]

Online Education for Convicts – Suspension of sentence not granted for physical attendance in LL.B. courses – Convicts permitted to attend classes online – Balance struck between societal interest and rights of convicts without suspending the execution of the sentence. [Para 11-12]

Implementation of Online Education – Applicants allowed to attend LL.B. courses online with arrangements made by prison and college authorities – Attendance through online mode considered equivalent to physical attendance in compliance with Bar Council Rules – Provision for interim bail for necessary physical presence at college/university. [Para 13-14]

Referred Cases:

- **Maneka Gandhi v. Union of India (AIR 1978 SC 597)**
- **K.S.Puttaswamy and Another v. Union of India and Others [(2017) 10 SCC 1]**
- **Charles Sobraj v. The Suptd., Central Jail, Tihar (AIR 1978 SC 1514)**
- **Sunil Batra v. Delhi Administration (AIR 1980 SC 1579)**

- **Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors. (AIR 1981 SC 746)**
- **State of Andhra Pradesh v. Challa Ramakrishna Reddy (AIR 2000 SC 2083)**
- **Re Inhuman Conditions In 1382 Prisons [(2016) 3 SCC 700]**
- **Mohini Jain v. State of Karnataka (AIR 1992 SC 1858)**
- **J.P.Unnikrishnan v. State of Andhra Pradesh (AIR 1993 SC 2178)**
- **Mohammad Giasuddin v. State of Andhra Pradesh (AIR 1977 SC 1926)**
- **Vijay Kumar v. Narendra and Others [(2002) 9 SCC 364]**
- **Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) [(2008) 5 SCC 230]**
- **Omprakash Sahni v. Jai Shankar Chaudhary and Another (2023 LiveLaw (SC) 389)**

Representing Advocates

For the petitioner: Sri. Nandagopal S. Kurup, Sri. R. Anil

**For Respondents: Sri. P.C. Sasidharan (Standing Counsel, Sri. Surin George (Standing Counsel), Sri. S.U. Nazar (Senior Public Prosecutor),
For the Bar Council of India: Sri. Rajit (Standing Counsel)**

Application praying that in the circumstances stated therein the High Court be pleased to suspend the sentence passed against the Petitioner in the judgement dated 04.04.2018 in SC No.421/2009 on the files of the Additional Sessions Court IV, Thalassery and such other consequential orders as this Hon'ble Court deems fit, pending the final disposal of the above numbered Criminal Appeal, in the interest of justice.

This Application again coming on for orders upon perusing the application and this court's order dated 06.10.2023 in CrI.M.A.No.3/2023 therein and upon hearing the arguments of SRI.NANDAGOPAL S. KURUP, Advocate for the petitioner and of the PUBLIC PROSECUTOR for the respondent, the court passed the following:

P.T.O.

"C.R."

**DR. A.K.JAYASANKARAN NAMBIAR
&
DR. KAUSER EDAPPAGATH, JJ.**

Dated this the 3rd day of November, 2023

ORDER

Dr.Kauser Edappagath, J.

Two life convicts in two different cases seek suspension of the execution of their sentence and to be released on bail for pursuing higher studies invoking section 389(1) of Cr.P.C.

2. The applicant in CrI.M.A.No.3/2023 in CrI.Appeal.No.740/2018 is the ninth accused in SC No.421/2009 on the file of the Additional Sessions Court IV, Thalasserry and the applicant in CrI.M.A.No.2/2023 in CrI.Appeal.No.1099/2018 is the second accused in SC No.374/2011 on the file of the Additional Sessions Court III, Thalasserry. Both were convicted and sentenced to life imprisonment for the offence, among other things, under section 302 of IPC. The former is serving the sentence in the Open Prison and Correctional Home, Cheemeni Kannur, while the latter is serving the sentence in the Central Prison, Kannur, for more than five years.

3. Both the applicants appeared for the entrance examination for the LL. B Course conducted by the Kerala Law Entrance Commissioner for the academic year 2023-24 and came out successful. The applicant in CrI.M.A.No.3/2023 in CrI.Appeal.No.740/2018 secured admission at KMCT Law College, Kuttippuram, Malappuram, for the three-year LL. B Course, while the applicant in CrI.M.A.No.2/2023 in CrI.Appeal.No.1099/2018 secured admission at Sree Narayana Law College, Poothotta, Ernakulam, for the five-year LL. B Course.

4. As per the interim orders dated 6/10/2023 and 10/10/2023, we directed the respective college authorities to complete the admission process through online mode. We also directed the wife and brother of the applicants to appear at the college with the required documents and

to pay the fee. It is submitted that the admission process is over. The class is to

commence on 6/11/2023.

5. We have heard Sri. Nandagopal S. Kurup, the learned Counsel for the applicant in Crl.M.A.No.3/2023 in Crl.Appeal.No.740/ 2018, Sri. R. Anil, the learned Counsel for the applicant in Crl.M.A.No.2/2023 in Crl.Appeal.No.1099/2018, Sri. P.C.Sasidharan, the learned Standing Counsel for Calicut University, Sri. Surin George, the learned Standing Counsel for the M.G. University, Sri. S.U. Nazar, the learned Senior Public Prosecutor and Sri. Rajit, the learned Standing Counsel for the Bar Council of India, who was suo moto impleaded in both applications as an additional respondent. We have also interacted with the Controller of Examination and Principals of both Law Colleges via video conferencing.

6. The learned Standing Counsel for the Universities relying on the UGC (Open and Distant Learning Programmes and Online Programmes) Regulation, 2020, submitted that attending LL. B Course through online mode is prohibited. The Principals of the colleges fairly took the stand that if this court passes an order considering the peculiar facts of the cases, they are prepared to permit the applicants to attend the classes online. The learned Standing Counsel for the Bar Council of India submitted that only candidates who passed a regular course of LL. B from a recognised University is entitled to enrol as an advocate. Reliance was placed on Rules 2(xxiii) and 12 of the Bar Council of India – Rules of Legal Education, 2008

7. The right of a citizen to live with dignity forms a significant part of the right to life guaranteed under Article 21 of the Constitution of India. The idea behind this is that every person's life is precious, and irrespective of the circumstances, he should be given a sense of dignity to help him continue living. In Maneka Gandhi v. Union of India (AIR 1978

SC 597), the Apex Court propounded a new dimension of Article 21, holding that the 'right to life or live' does not confine itself to mere physical existence but also includes the right to live with human dignity. This facet of the right under Article 21 has also been reiterated in recent times in the case of *K.S.Puttaswamy and Another v. Union of India and Others* [(2017) 10 SCC 1] where the court also read in the right of choice of an individual as part of his/her dignity. The restriction on liberty imposed by law on a convict does not take away his right to dignity protected by the Constitution. A convict is entitled to constitutional rights and essential human rights behind bars.

8. Extending the right to live with dignity to prisoners as well, the Apex Court from *Charles Sobraj to Re Inhuman Conditions In 1382 Prisons*, has consistently held that even though convicted, the prisoners are still humans, have the right to live with dignity and are entitled to basic human rights. In *Charles Sobraj v. The Suptd., Central Jail, Tihar* (AIR 1978 SC 1514), it was held that the prisoners retain all rights enjoyed by free citizens except those lost necessarily as an incident of confinement. Rights enjoyed by prisoners under Articles 14, 19 and 21, though limited, are not static and will rise to human heights when challenging situations arise. In *Sunil Batra v. Delhi Administration* (AIR 1980 SC 1579), the Apex Court, while dealing with the 'right to life', observed as follows; "By the term 'life' as here used something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and faculties by which life is enjoyed. The provision equally prohibits the mutilation of the body or amputation of an arm or leg or the putting out of an eye or the destruction of any other organ of the body through which the soul communicates with the outer world." Taking a cue from the above observations, in *Francis Coralie Mullin v. Administrator, Union Territory of Delhi and Ors.* (AIR 1981 SC 746), it was held that the right to life includes the right to

live with human dignity and all that what go along with the 'right to live with human dignity', such as, adequate nutrition, clothing, shelter, and facilities for reading, writing and expressing one-self in diverse forms, freely moving about and mixing and commingling with fellow human beings. In State of

Andhra Pradesh v. Challa Ramakrishna Reddy (AIR 2000 SC 2083), it was held that a prisoner is entitled to all his fundamental rights unless his liberty has been constitutionally curtailed. The Apex Court has emphasised that a prisoner, whether a convict, under trial or detenu, does not cease to be a human being and, while lodged in jail, he enjoys all his fundamental rights guaranteed by the Constitution of India, including the right to life guaranteed by the Constitution". In Re Inhuman Conditions In 1382 Prisons, [(2016) 3 SCC 700], while issuing guidelines on prison reforms, the Apex Court has observed that due importance needs to be given to the rights of prisoners and undertrials in various prisons across the country.

9. Education is the most potent mechanism for the advancement of an individual. International treaties specify the aims of education as promoting personal development and respect for human rights and freedoms, enabling individuals to participate effectively in a free society and fostering understanding, friendship, and tolerance. The right to education has been formally recognised as a human right in the Universal Declaration of Human Rights in 1948 and has since been affirmed in global human rights treaties, including the 1960 United Nations

Educational, Scientific and Cultural Organization (UNESCO) Convention Against Discrimination in Education and the 1966 International Covenant on Economic, Social and Cultural Rights, Article 13(1) of which recognises 'the right of everyone to education'. In Mohini Jain v. State of Karnataka (AIR 1992 SC 1858), the Apex Court held that the right to education is the essence of the right to life and directly flow and

interlinked with it, and life living with dignity can only be assured when there is a significant role of education. Later, the validity of this judgment was re-examined by a five judges Bench in J.P.Unnikrishnan v. State of Andhra Pradesh (AIR 1993 SC 2178) and held that: “Right to education means citizen has the right to call upon the State to provide the facilities of education to them according to the financial capacity”.

10. As stated already, a convict is entitled to basic human rights and has the right to live with dignity in jail. The prisoners’ right to education is a human right grounded in the right to dignity. A prisoner has as much a right to pursue study as a person free from the confines of jail. The aims of imprisonment include reformation and rehabilitation apart from deterrence. Education can contribute to a sense among prisoners that they remain a part of the wider community. Prison education can provide a source of hope and aspiration whilst making purposeful use of time in detention. It also helps them lead better lives once they are free. Thus, ensuring that prisoners have access to education is essential to achieving the reformatory and rehabilitative objectives of imprisonment as well. The United Nations Standard Minimum Rules for the Treatment of Prisoners underlined the importance of education and training for all prisoners who are able to benefit and stated that prison education and training should be integrated with the mainstream educational system (Rule 104). In Mohammad Giasuddin v. State of Andhra Pradesh (AIR 1977 SC 1926), the Apex Court gave directions to regulate the manner of work and education provided to jail inmates. It directed the State Government to look into the nature of work and education given to the prisoners and check that the work provided is 'not of a monotonous, mechanical, intellectual or like type mixed with a little manual labour...'. The court further stated that the facilities of liaison through correspondence courses must also be given to prisoners who are interested in doing higher or advanced studies. Moreover, essential learning such as tailoring, embroidery, and doll-making should

be extended to the women prisoners. In addition to that, well-educated prisoners should be given the opportunities to engage in some sort of mental-cum-manual productive work.

11. Section 389(1) of Cr.P.C. contemplates suspension of execution of sentence on merits pending appeal. Law is well settled that in cases involving conviction under section 302 of IPC, the execution of sentence could be suspended in appeal only in exceptional cases where the convict has a fair chance of acquittal {Vijay Kumar v. Narendra and Others [(2002) 9 SCC 364], Sidhartha Vashisht alias Manu Sharma v. State (NCT of Delhi) [(2008) 5 SCC 230], Omprakash Sahni v. Jai Shankar Chaudhary and Another (2023 LiveLaw (SC) 389)}. The applicants seek suspension of sentence not on merits but to pursue the study. The trial court in both cases found that there was direct evidence to prove that the applicants had committed the offence of murder beyond reasonable doubt. Considering the entire facts and circumstances of the case, we do not deem it proper to suspend the execution of the sentence and grant bail to the applicants to attend the course. At the same time, the right of the applicants to pursue the study must be honoured. It is necessary to strike a balance between the interests of society and the rights of a convict. We are of the view that without suspending the execution of the sentence, the applicants can be permitted to undergo the classes online utilising the technology available at the jails and the colleges. We believe that in issuing such a direction, we would be doing nothing more than bringing about a meaningful integration of technology into the criminal justice dispensation system of our country.

12. It is true, going by the UGC (Open and Distant Learning Programmes and Online Programmes) Regulation, 2020, the programme in the discipline of Law is prohibited from being offered under ODL and Online mode. In our view, the prohibition is a general one that operated against the institution and prevents it from providing LL. B

Courses under ODL or Online mode. It cannot be seen as offering a student from attending the course through Online mode in peculiar circumstances. Permitting a particular student to attend the course online in exceptional cases like the present would not in our opinion violate the above Regulation. We have seen almost all the colleges in the country, including professional colleges, switch over to online mode during the COVID–19 pandemic period. The appellants being confined to jail are unable to attend the course physically. Hence, their presence through online mode can be treated as equivalent to attending the course in regular offline mode. The Jails in Kerala are equipped with a video conferencing facility. Further, the Principals of both colleges have expressed their willingness to make necessary arrangements to enable the applicants to attend the classes online.

13. As per Bar Council of India – Rules of Legal Education, 2008, to enrol as an advocate, a candidate has to complete a regular course, either a three-year course or a five-year one, successfully from a University or approved affiliated Centre of Legal Education/Departments of the recognised University as approved by the Bar Council of India. Rule 2(xxiii) defines a ‘Regular Course of study’ as a course which runs for at least five hours a day continuously with an additional half an hour recess every day and running not less than thirty hours of working schedule per week. Rule 12 stipulates that a student has to attend a minimum of 70% of the classes held in the subject concerned, as well as the moot court exercises, tutorials and practical training conducted in the subject taken together to take the end semester test. We feel that when the attendance of the applicants is under the supervision of this court and pursuant to our directions, their attendance through online mode can be treated as appearance through physical mode and in compliance with the Rules of the Bar Council as well. The applicants can also be permitted to be physically present at the college

whenever their physical presence is necessary and indispensable for practical training or attending examinations.

14. In the light of the aforesaid discussion, we pass the following orders:

(i) The applicant in CrI.M.A.No.3/2023 in CrI.Appeal.No.740/2018 Sri. Pattakka Suresh Babu, who is now undergoing the sentence in the Open Prison and Correctional Home, Cheemeni Kannur, is permitted to attend the three-year LL. B Course at KMCT Law College, Kuttippuram, Malappuram commencing from the academic year 2023-24 through online mode.

(ii) The applicant in CrI.M.A.No.2/2023 in CrI.Appeal.No.1099/2018 Sri. V.Vinoyi, who is now undergoing the sentence in the Central Prison, Kannur, is permitted to attend the five-year LL. B Course at Sree Narayana Law College, Poothotta, Ernakulam from the academic year 2023-24 through online mode.

(iii) The Jail Superintendent of both jails and the Principals of both colleges shall make necessary arrangement to enable the applicants to attend the classes online.

(iv) Whenever the physical presence of the applicants is insisted by the college/university for attending moot court, seminar, workshop, internship programme, examination or any other practical training, the Jail Superintendent is directed to release them on interim bail for the required period on executing a bond for `1,00,000/- (Rupees One lakh only) with two solvent sureties. The applicants shall file an application to that effect before the Jail Superintendent with supporting document from the college/university.

The Criminal Miscellaneous Applications are disposed of as above. The Registry shall forward a copy of this order forthwith to the Jail Superintendents of Open Prison and Correctional Home, Cheemeni, Kannur and the Central Prison, Kannur as well as to the Principals of KMCT Law College, Kuttippuram, Malappuram and Sree Narayana Law College, Poothotta, Ernakulam for compliance.

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