PETITIONER:
SHEELA BARSE

Vs.

RESPONDENT:
STATE OF MAHARASHTRA

DATE OF JUDGMENT18/09/1987

BENCH:
MISRA RANGNATH
BENCH:
MISRA RANGNATH
DUTT, M.M. (J)

CITATION:
JT 1988 (3) 15

ACT:
Permission to journalists to interview prisoners and tape-record the interviews, guarantees under Articles 19(1)(a) and 21-Benefits thereof for all the citizens.

HEADNOTE:
Sheela Barse, a free lance journalist, sought permission to interview the female prisoners in the Maharashtra State Jails. The permission was granted by the Inspector-General of Prisons. As, how ever, the journalist started tape-recording her interviews with the prisoners, the permission to interview was withdrawn. Feeling aggrieved by the cancellation of the permission, the journalist moved this Court in its writ jurisdiction on the ground that a citizen has a right to know under Articles 19(1)(a) and 21 of the Constitution, if the Government is administering the jails in accordance with law, and that the Press has a special responsibility to collect information on public issues to educate the people. The permission in question was cancelled, as stated by the Inspector-General of Prisons in his counter-affidavit to the Writ Petition, on the ground inter alia that the permission had been granted to the petitioner in contravention of the Maharashtra Prison Manual and the rules made thereunder, which govern the interviews with the prisoners; the petitioner, an amateur free lance journalist not employed by any responsible newspaper, was not covered by the said rules. The respondent also contended that the Articles of the Constitution referred to by the petitioner were not attracted to the case.

Disposing of the Writ Petition, the Court,

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HELD: The term 'life' in Article 21 covers the living conditions of the prisoners, prevailing in the jails. The prisoners are also entitled to the benefit of the guarantees provided in the Article subject to reason able restrictions. It is necessary that public gaze should be permitted on the prisoners, and the pressmen as friends of the society and public spirited citizens should have access to information about, and interviews with, the prisoners. But such access has to be controlled and regulated. The petitioner is not entitled to uncontrolled interviews. The factual information collected as a result of the interviews should usually be

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cross-checked with the authorities, so that a wrong picture of a situation may not be published. Disclosure of correct information is necessary, but there is to be no dissemination of wrong information. Persons, who get permission to interview have to abide by reasonable restrictions. As for tape-recording the interviews, there may be cases where such tape-recording is necessary, but tape-recording is to be subject to special permission of the appropriate authority. There may be some individuals or class of persons in the prisons with whom interviews may not be permitted for reasons indicated by this Court in Prabha Dutt v. Union of India & ors., [1982] 1 S.C.R. 1184. The interviews cannot be forced upon anyone and willingness of the prisoners to be interviewed is always to be insisted upon. There may also be certain other cases, where, for good reasons, permission to interview the prisoners may be withheld, which situations can be considered as and when they arise. [215C; 217F; 218B, E-H; 219A-B]

The petitioner can make a fresh application for permission to interview the prisoners, which is to be dealt with in accordance with the guidelines laid down hereinabove. [219B]

Prabha Dutt v. Union of India & ors., [1982] 1 S.C.R. 1184; Sunil Batra v. Delhi Administrator, [1979] 1 S.C.R. 392 and Francis Coralie Mulin v. Administrator, Union Territory of Delhi and ors., [19811 1 S.C.C. 608, referred to.

JUDGMENT:

ORIGINAL JURISDICTlON: Writ Petition No. 1053 of 1982.

(Under Article 32 of the Constitution of India).

Suleman Khurshid and K.K. Luthra for the Petitioner.

S.B. Bhasme, A.M. Khanwilkar and A.S. Bhasme for the Respondent.

L.R. Singh for the Intervener.

The Judgment of the Court was delivered by

RANGANATH MISRA, J. Petitioner is a Bombay-based free lance journalist who had sought permission to interview women prisoners in the Maharashtra jails and on 6.5.1982, the Inspector-General of Prisons of the State permitted her to do so in respect of female prisoners lodged in the Bombay Central Jail, the Yerawada Central Jail at Pune and the Kolhapur District Jail. When the petitioner started

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tape-recording her interviews with the prisoners at the Bombay Central Jail, she was advised instead to keep notes only of interviews. When the petitioner raised objection on this score, the Inspector-General of Prisons orally indicated that he had changed his mind. Later, the petitioner was informed that grant of permission to have interview was a matter of discretion of the Inspector-General and such interviews are ordinarily allowed to research scholars only. Petitioner has made grievance over the withdrawal of the permission and has pleaded that it is the citizen's right to know if Government is administering the jails in accordance with law. Petitioner's letter was treated as a writ petition under Article 32 of the Constitution.

Return has been made to the rule nisi and the Inspector-General of Prisons in his affidavit has pleaded that the petitioner is a free lance journalist and is not employed by any responsible newspaper. The permission issued in favour of the petitioner was under administrative

misunderstanding and mistaken belief and was in contravention of the Maharashtra Prison Manual. When this fact was discovered the permission was withdrawn. It has been pleaded that interview with prisoners is governed by the rules made in the Maharashtra Prison Manual and the petitioner does not satisfy the prescription therein so as to justify grant of permission for having interviews with prisoners. The Inspector-General wrote a letter to the petitioner on 31st May, 1982, explaining therein that normally the prison authorities do not allow interviews with the prisoners unless the person seeking interview is a research scholar studying for Ph. D. Or intends to visit the prison as a part of his field work of curriculum prescribed for post graduate course etc. The letter further indicated that there was no rules for permitting interviews except to the relatives and legal advisers for facilitating defence of prisoners. The Inspector-General further indicated in his letter that there was no inherent right of journalists to elicit information from prisoners.

The counter affidavit further indicated that the State Government has prescribed a set of rules known as the Maharashtra Visitors of Prisons Rules, 1962. A Board of Visitors is constituted for every jail and the Board consists of both ex-officio visitors and non-official visitors appointed by the State Government. The members of the Board are expected to inspect the barracks, cell wards, work sheds and other buildings; ascertain or make enquiries about the health, cleanliness, security of prisoners and examine registers of convicted and under trial prisoners, punishment books, other records relating to prisoners, attend to representations, objections etc. made by prisoners, make
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entries in the visitors' book abou their visits. It was finally indicated in A the counter affidavit that the petitioner was an amateur journalist and had published 'certain articles in the newspapers and magazines without realising the impact thereof; many of such allegations and the so-called hearsay stories said to have been collected from the under trials were one-sided and nothing but exaggeration of facts. Such articles written by her were defamatory, irresponsible and no mature journalist would have published such reckless articles.

We have heard Mr. Salman Khurshid Ahmed for the petitioner and Mr. Bhasme for the State of Maharashtra and have considered the written submissions filed on behalf of both in furtherance of their submissions.

According to the petitioner and her counsel Articles 19(1)(a) and 21 guarantee to every citizen reasonable access to information about the institutions that formulate, enact, implement and enforce the laws of the land. Every citizen has a right to receive such information through public institutions including the media as it is physically impossible for every citizen to be informed about all issues of public importance individually and personally. As a journalist, the petitioner has a right to collect and disseminate information to citizens. The press has a special responsibility in educating citizens at large on every public issue. The conditions prevailing in the Indian prisons where both under trial persons and convicted prisoners are housed is directly connected with Article 21 of the Constitution. It is the obligation of Society to ensure that appropriate standards are maintained in the jails and humane conditions prevail therein. In a participatory democracy as ours unless access is provided to

the citizens and the media in particular it would not be feasible to improve the conditions of the jails and maintain the quality of the environment in which a section of the population is housed segregated from the rest of community.

On behalf of the State it has been contended that neither of the Articles is attracted to a matter of this type. The rules made by the Government are intended to safeguard the interests of the prisoners. The Board contemplated under the Rules consists of several public officers both executive and judicial. Apart from that there is a body of non-official visitors as provided in Rule 5 of the Maharashtra Rules. Detailed provisions have been made in the Rules as to the duties of the visitors and the manner in which the visitors have to perform the same. It has been further contended that the idea of segregating the prisoners from the community is to keep the prisoners under strict control and H

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cut off from the community. If unguided and uncontrolled right of visit is provided to citizens it would be difficult to maintain discipline and the very purpose of keeping the delinquents in prison would be frustrated.

In the case of Prabha Dutt v. Union of India & ors., 119821 1 SCR 1184 this Court was considering the claim of a jounalist to interview two condemned prisoners awarding execution. The learned Chief Justice said:

> "Before considering the merits of the application, we would like to observe that the constitutional right to freedom of speech and expression conferred by Article 19(1)(a) of the Constitution, which includes the freedom of the press, is not an absolute right, nor indeed does it confer any right on the press to have an unrestricted access to means of information. The press is entitled to exercise its freedom of speech and expression by publishing a matter which does not invade the rights of other citizens and which does not violate the sovereignty and integrity of India, the security of the State, public order, decency and morality. But in the instant case, the right claimed by the petitioner is not the right to express any particular view or opinion but the right to means of information through the medium of an interview of the two prisoners who are sentenced to death. No such right can be claimed by the press unless in the first instance, the person sought to be interviewed is willing to be interviewed. The existence of a free press does not imply or spell out any legal obligation on the citizens to supply there is under section 161 (2) of the Criminal Procedure Code. No data has been made available to us on the basis of which it would be possible for us to say that the two prisoners are ready and willing to be interviewed

Dealing with the matter further learned Chief Justice stated:

> "Rule 549 (4) of the Manual for the Superintendence and Management of Jails, which is applicable to Delhi, provides that every prisoner under a sentence of death shall be allowed such interviews and other communications with his relatives, friends and legal advisers as the Superintendent thinks reasonable. Journalists or newspapermen are not

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> expressly referred to in clause (4) but that does

not mean that they can always and without good reasons be denied the opportunity to interview a condemned prisoner. If in any given case, there are weighty reasons for doing so, which we expect will always be recorded in writing, the interview may appropriately be refused. But no such consideration has been pressed upon us and therefore we do not see any reason why newspapermen who can broadly, and we suppose without great fear of contradiction, be termed as friends of the society be denied the right of an interview under clause (4) of the Rule 549."

That Article 19(1)(a) of the Constitution guarantees to all citizens to freedom of speech and expression is not the point in issue; but the enlarged me. ng given to the provisions of Article 21 by this Court would, however, is relevant. The meaning given to the term 'life' will cover the living condition prevailing in jails.

In Sunil Batra v. Delhi Administration, [1979] 1 SCR 392 a Constitution Bench of this Court was examining the effect of Article 21 in regard to a condemned prisoner. The Court observed thus:

"Judges, even within a prison setting, are the real, though restricted, ombudsmen empowered to prescribe and prescribe, humanize and citizens and life-style within the carcers. The operation of Articles 14, 19 and 21 may be pared down for a prisoner but not puffed out altogether. For example, public addresses by prisoners may be put down but talking to fellow prisoners cannot. Vows of silence or taboos on writing poetry or drawing cartoons are violative of Article 19. So also, locomation may be limited by the needs of imprisonment but binding hand and foot, with hoops of steel, every man or woman sentenced for a term is doing violence to Part III .. "

The Constitution Bench quoted with approval from Munn v. Ilino's, [1877] 94, U.S. 113, to emphasise the quality of life covered by Article 21. The same Constitution Bench judgment further states: -

"..... so, when human rights are hashed behind bars, constitutional justice impeaches such law. In this sense, courts which sign citizens into prisons have an onerous duty to ensure that, during detention and subject to the

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Constitution, freedom from torture belongs to the detenu."

In Francis Coralie Mulin v. Administrator, Union Territory of Delhi & ors., [1981] 1 Scc 608 this Court pointed out that:

" ... A prisoner or detenu is not stripped of his fundamental or other legal rights, save those which are inconsistent with his incarceration and if the constitutional validity of any such law is challenged, the court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just .. ..

It was also pointed out in this case that 'life' included the right to live with human dignity In A.K. Roy etc. v. Union of India & Anr., [1982]2 SCR the word was found:

"..... to include the necessity of right such as nutrition, clothing shelter over the head, facilities for reading, writing, interviews with

members of the family and friends, subject, of course, to present regulation, if any . . . . . .

Counsel for the petitioner relied upon the observations of this Court in the case of S.P. Gupta & OrS. v. Union of India & orS., [1982] 2 SCR 365 at page 598, where it was said:

"Now it is obvious from the Constitution that we have adopted a democratic form of Government. Where a society has chosen to accept democracy as its creda faith it is elementary that the citizens ought to know what their government is doing The citizens have a right to decide by whom and by what rules they shall be governed and they are entitled to call on those who govern on their behalf to account for their conduct No democratic government can survive without accountability and the basic postulate of accountability is that the people should have information about the functioning of the government. It is only if people know how government is functioning that they can fulfil the role which democracy assigns to them and make democracy a really effective participatory democracy. "Knowledge said James Madison, 'will for ever govern ignorance and a people who mean to be their own gover-

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nors must arm themselves with the power knowledge gives.A popular government without popular information on the means of obtaining it, is but a prologue to a force or tragedy or perhaps both'. The citizens' right to know the facts, the true facts, about the administration of the country is thus one of the pillars of a democratic State. And that is why the demand for openness in the government is increasingly growing in different parts of the world."

"The demand for openness in the government is based principally on two reasons. It is now widely accepted that democracy does not consist merely in people exercising their franchise once in five years to choose their rulers, and once the vote is cast, then retiring in passivity and not taking any interest in the government. Today it is common ground that democracy has a more positive content and its orchestration has to be continuous and pervasive. This means inter alia that people should not only cast intelligent and rational votes but should also exercise sound judgment on the conduct of the government and the merits of public policies, so that democracy does not remain merely a sporadic exercise in coting but becomes a continuous process of government-an attitude and habit of mind. But this important role people can fulfil in a democracy only if it is an open government where there is a full access to information in regard to the functioning of the government "

We endorse these observations as a correct statement of the position. We also reiterate the views expressed in several decisions of this Court that "life" in Article 21 has the extended meaning given to the word and those citizens who are detained in prisons either as under-trials or as convicts are also entitled to the benefit of the guarantees subject to reasonable restrictions.

Judicial notice should be taken of the position that on account of intervention of courts there has been a substantial improvement in the conditions prevailing in jails. The provisions of jail manuals have undergone change; the authorities connected with the jail administration have changed their approach to administration and method of control there has been a new awakening both in citizens in general and the people detained in jail. Indisputably intervention of the courts has been possible on account of petitions and protests lodged from jails;
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news items published in the Press. We may not be taken to mean that the rules prescribed for administration of prisons are of no value at all. Yet, until the appropriate attitude grows in the administrative establishment the provisions in the several manuals applicable to the jails in the country would not provide adequate safeguard for implementation of the standards indicated in judicial decisions. It is, therefore, necessary that public gaze should be directed to the matter and the pressmen as friends of the society and public spirited citizens should have access not only to information but also interviews. Prison administrators have the human tendency of attempting to cover up their lapses and so shun disclosure thereof. As an instance, we would like to refer to incidents in the Tihar Jail located at the country's capital under the very nose of the responsible administrators.

In such a situation we are of the view that public access should be permitted. We have already pointed out that the citizen does not have any right either under Article 19(1)(a) or 21 to enter into the jails for collection of information but in order that the guarantee of the fundamental right under Article 21 may be available to the citizens detained in the jails, it becomes necessary to permit citizen's access to information as also interviews with prisoners. Interviews become necessary as otherwise the correct information may not be collected but such access has got to be controlled and regulated.

We are, therefore, not prepared to accept the petitioner's claim that she was entitled to uncontrolled interview. We agree with the submission of Mr. Bhasme for the respondent that as and when factual information is collected as a result of interview the same should usually be cross-checked with the authorities so that a wrong picture of the situation may not be publised. While disclosure of correct information is necessary, it is equally important that there should be no dissemination of wrong information. We assume that those who receive permission to have interviews will agree to abide by reasonable restrictions. Most of the manuals provide restrictions which are reasonable. As and when reasonableness of restrictions is disputed it would be a matter for examination and we hope and trust that such occasions would be indeed rare. We see reason in the stand adopted by Mr. Bhasme relating to the objections of his client about tape-recording by interviewers. There may be cases where such tape-recording is necessary but we would like to make it clear that tape-recording should be subject to special permission of the appropriate authority. There may be some individuals or class of persons in prison with whom interviews may not be permitted for the reasons indicated by this Court in the case of
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Prabha Dutt (supra). We may reiterate that interviews cannot be A forced and willingness of the prisoners to be

interviewed would always be insisted upon. There may be certain other cases where for good reason permission may also be withheld. These are situations which can be considered as and when they arise.

The petitioner is free to make an application to the prescribed authority for the requisite permission and as and when such application is made, keeping the guidelines indicated above, such request may be dealt with. There will be no order for costs.

S . L. Petition disposed of.

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