

(2008) 04 CAL CK 0012

Calcutta High Court

Case No: C.R.R. No. 797 of 2008

Malati Rani Barman

APPELLANT

Vs

State of W.B.

RESPONDENT

Date of Decision: April 2, 2008

Acts Referred:

- Advocates Act, 1961 - Section 2
- Foreigners Act, 1946 - Section 13, 14
- Juvenile Justice (Care and Protection of Children) Act, 2000 - Section 10, 12(3)
- Juvenile Justice (Care and Protection of Children) Rules, 2007 - Rule 58
- West Bengal Correctional Services Act, 1992 - Section 51

Citation: (2008) 4 CHN 375

Hon'ble Judges: Ashim Kumar Roy, J

Bench: Single Bench

Advocate: Joymalya Bagchi, Somopriya Roychowdhury and Habibur Rahaman, for the Appellant;

Judgement

Ashim Kumar Roy, J.

The petitioner and her husband Madan Chandra Barman along with their two minor children Krishna Barman aged about 10 years and Anima Barman aged about 7 years were apprehended by the police in connection with a case for commission of the offences punishable u/s 13/14 of the Foreigners Act on the allegations they being Bangladeshi national entered into the territory of India without valid VISA. Following their arrest police registered a specific case being Islampur Police Station Case No. 208 of 2007 u/s 14/13 of the Foreigners Act and all of them were produced before the learned Additional Chief Judicial Magistrate, Islampur, when the learned Magistrate rejecting the prayer for bail of the petitioner and her husband remanded them to jail custody and accordingly, they were sent to the Islampur Sub-Divisional Correctional Home and have been detained there. Whereas the aforesaid two minor

children of the petitioner being the alleged juvenile in conflict with law were forwarded to the concerned Juvenile Justice Board and pursuant to the order passed by the Board, they were sent to the Observation Home and kept at Coochbehar Children Home.

2. In the meantime, the petitioner, in connection with G.R Case No. 816 of 2007 arising out of Islampur Police Station Case No. 208 of 2007 u/s 13/14 of the Foreigners Act, 1946 moved an application before the learned Additional Chief Judicial Magistrate, Islampur and prayed for keeping her aforesaid two minor children with her at the Islampur Sub-Divisional Correctional Home where she has been detained, instead of keeping both of her said minor children at Coochbehar Children Home.

3. However, the learned Additional Chief Judicial Magistrate, Islampur by his order dated November 27, 2007 rejected such prayer. The petitioner challenged the aforesaid order in the instant criminal revisional application.

4. In spite of repeated calls and service of notice none appears on behalf of the State. Let the affidavit-of-service filed in Court be kept with the records.

5. Mr. Joymalya Bagchi, the learned Counsel appearing on behalf of the petitioner submitted that she being the mother of the two minor children Krishna Barman aged about 10 years and Anima Barman aged about 7 years is vitally interested with their welfare and very much concerned with their present whereabouts and in such circumstances she moved the aforesaid application before the learned Court below. Mr. Bagchi further submitted in any event the petitioner is legally entitled to meet her children in regular interval for her mental satisfaction that her children are under proper care and protection.

6. In this connection Mr. Bagchi draws the attention of this Hon'ble Court to the provisions of Article 9(3) as well as Article 37(c) of the United Nations Convention on the Rights of the Child, 1989 to which our country is one of the signatory. Mr. Bagchi also referred to the provisions of the Section 51 of the West Bengal Correctional Services Act, 1992 and submitted that every under-trial prisoner has a statutory right to have interviews with his friends and relations.

7. The provisions of Article 9(3) and Article 37(c) of the United Nations Conventions on the Rights of the Child, 1989 as well as the provisions of Section 51 of the West Bengal Correctional Services Act, 1992 are quoted below:

Article 9,

3. States parties shall respect the rights of the child who is separated from one or both parents to maintain personal relations and, direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.

Article 37.

c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.

The West Bengal Correctional Services Act, 1992.

Section 51. Interviews.- (1) Every prisoner shall have the right to have such number of interviews with his friends and relatives, not being less than one in a month; as may be prescribed. The State Government shall prescribe by rules the procedure of such interviews, having due regard to the question of security measures and safeguards against smuggling of contraband articles.

(2) Any legal practitioner as defined in Clause (i) of Section 2 of the Advocates Act, 1961, may interview any prisoner in connection with his defence in the presence of the Superintendent or any other officer of the Correctional Home duly authorised by the Superintendent and such interviews shall not be taken into account while computing the number of interviews admissible under the rules made under this Act.

(3) The subject-matter of an interview shall not include any matter in the nature of consultation for commission of any offence punishable under this Act or under any other law for the time being in force. The officer attending an interview may terminate the interview, after giving due warning if he considers that the subject-matter of the interview is punishable as aforesaid, and shall note the fact of such termination together with the reasons thereof in the history ticket of the prisoner concerned.

(4) There shall be erected a suitable interview shed inside the Correctional Home equipped with sitting arrangement for the interviewers and the prisoners.

(5) Notwithstanding anything contained elsewhere in this section, in the case of a Correctional Home in any district the Chief Judicial Magistrate of that district and, in the case of a Correctional Home in Calcutta as defined in the Calcutta Municipal Corporation Act, 1980, the Chief Metropolitan Magistrate, may, at his discretion and subject to such conditions as he may deem fit to impose, allow any person to interview any prisoner confined in a Correctional Home in that district or in Calcutta, as the case may be.

8. I have given my anxious and thoughtful consideration to the submissions made by Mr. Bagchi as well as to the relevant provisions of United Nations Convention on the Rights of the Child, 1989 and the provisions of West Bengal Correctional Services Act, 1992 as referred by him.

9. However having gone through the impugned order, I do not find the same suffers from any illegality or infirmity and deserves any interference. One of the basic idea behind the keeping a juvenile in Observation Home instead of any Correctional Home or police lock-up is to ensure that such a juvenile is not brought into the association of any criminal and thereby to ensure prevention of his exposure to any moral, physical or psychological danger. The provisions of Section 10 of the Juvenile Justice (Care and Protection of Children) Act, 2000 has provided in no case a juvenile in conflict with law shall be placed in a police lock-up or lodged in a jail. Besides that the provisions of Section 12(3) of the said Act further provided when a juvenile in conflict with law is not released on bail instead of committing him to prison he or she should be sent to an Observation Home or a place of safety.

10. Thus in view of the aforesaid mandates contained in Juvenile Justice (Care and Protection of Children) Act, 2000 no juvenile in conflict with law shall be kept in jail. Accordingly, the learned Magistrate very rightly rejected the petitioner's prayer for keeping her children, juvenile in conflict with law along with her at the Correctional Home where many other criminals are also confined. However, I have no doubt nor any hesitation to hold that the petitioner, the mother has every right to visit and meet her children, juvenile with law at a suitable place at regular intervals and to interact with them for some considerable period. Similarly, the said two children, juvenile in conflict with law is also equally entitled and have the right to meet her mother at a suitable place on regular intervals for some considerable period.

11. In this connection the reference may be made to provisions of the Rule 58 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 which also provides that the parents and relatives of the juvenile and children shall be allowed to meet such juvenile in terms of the said provisions. Similarly, the provisions of Section 51 of the West Bengal Correctional Services Act, 1992 has also conferred a right on every prisoner, an under trial or not, to have interviews with his friends and relatives. I am of the personal contact with both parents on a regular basis by way of visits is also in consonance with the provisions of Articles 9(3) and Article 37(3) of the United Nations Conventions on the Right of the Child, 1989. The right of the juvenile in conflict with law to have direct personal contact on regular basis with the parents is also one of their basic human rights and same cannot be denied in any way whatsoever.

12. Accordingly, while I am disposing of the instant criminal revisional application without interfering with the impugned order I direct the concerned Juvenile Board before whom the enquiry relating to both the Juvenile in conflict with law viz. Krishna Barman and Anima Barman is pending to consider the prayer of the present petitioner for necessary opportunity to meet her two children who are now confined at Coochbehar Correctional Home in accordance with law.

13. I further direct the in-charge of the Islampur Sub-Divisional Correctional Home that in the event the petitioner made any application in the in this regard to the

concerned Juvenile Board, he shall take immediate steps within 24 hours from the time of receipt of such application to place the matter before the concerned Juvenile Board through proper channel and the concerned Juvenile Board is further directed to permit the present petitioner to meet her two minor children viz. Krishna Barman and Anima Barman who are at present kept at the Coochbehar Correctional Home on a regular basis not less than twice in a week and she should be permitted to remain with her two children at a suitable place at the said Children Home at least for one hour.

14. Criminal Section is directed to make over a certified copy of this order to the petitioner, if applied for, within two days from the date of making such application.