

IN THE COURT OF SH. SATVIR SINGH LAMBA,
CHIEF METROPOLITAN MAGISTRATE, NORTH DISTRICT,
ROHINI COURTS, DELHI.

FIR No.218/2021

PS Model Town

**U/s 302/308/365/325/323/341/506/188/269/34/120-B IPC &
25/54/59 Arms Act.**

State Vs. Sushil Kumar

09.06.2021

In the scenerio of COVID-19 pandemic, matter is taken up through video conferencing hearing in compliance of the directions of Hon'ble High Court of Delhi and directions of Ld. Principal District & Sessions Judge, North District, Rohini Courts, Delhi.

Pr: Dr. Sharwan Kumar Bishnoi, Ld. APP for State.

Sh. Pardeep Rana, Ld. Counsel for the applicant along with his associates.

IO Inspector Mangesh through VC

Heard. Perused.

Present application is filed on behalf of the accused namely Sushil Kumar S/o Diwan Singh seeking permission to be provided with supplements and special food in prison.

Arguments on the present application have already been heard on 08.06.21. Copy of the reply to the present application received from the Jail Superintendent, Tihar Jail has already been supplied to the Ld. Counsel for the applicant. Clarifications sought.

Vide the present application, it is stated that accused is innocent and is falsely implicated in the present case. It is

contended that the accused/applicant is an international hero in sports of wrestling and has won bronze medal in Olympic Games 2008, silver medal in Olympic 2012 and three gold medals in Commonwealth Games. It is further stated that accused/applicant is a recipient of Padma Shri Award for his decorative contributions in making the country proud at international level.

It is further contended that as per the fundamental presumption of innocence under the principal of criminal jurisprudence, the accused is innocent unless his guilt is proved before any court of law. It is further contended that the accused/applicant wishes to continue his carrier in wrestling and the alleged false implication should not lead to end his carrier. It is further contended that the future carrier of accused/applicant in wrestling directly depends on his physical strength and physique, without which he cannot sustain. With these submissions, Ld. Counsel for the applicant seeks permission to allow special foods and supplements to the accused/applicant, which contain protein, Omega-3 capsules, jointment capsules, Pre-workout C4, Hyde, Multivitamin GNC, Exercises Bands etc.

On the other hand Ld. APP for State as well as vide reply the concerned Jail Superintendent, Tihar Jail have strongly opposed the present application. It is argued by Ld. APP that the desire of the applicant/accused for special foods/food supplements or extra protein etc. tantamounts to discrimination among the prisoners lodged in the prison. It is further contended that allowing of such kind of application may invite

flood of applications from many more prisoners, who can afford such type of diets at their own expenses. It is further contended by Ld. APP that requirement of prisoner shall not be decided on his previous life style and the facilities regarding the food and other aspect are governed as per the Delhi Prisons Rules, 2018. With these submissions, Ld. APP prays for the dismissal of the present application.

The present application is filed on behalf of the accused/applicant seeking supplements and special foods claiming that he is a renowned wrestler & wants to continue his carrier in wrestling in future. It is claimed that the aforesaid supplements and special foods are required to maintain his physical strength and physique. The present application on behalf of accused/applicant is filed without mentioning of any statutory provisions etc. Upon specifically asking by the court on the maintainability of the present application, Ld. Counsel for the accused relied upon a Bombay High Court judgment titled as "Asgar Yusuf Mukadam Vs. State of Maharastra and Ors." (2004) Crl. L J 4312 and of Gujrat High Court "Suresh Jugalkishore & Ors. Vs.Superintendent, Central Prison" (1991) 2 GLR 708. For the purpose of present application, Ld. Counsel for the applicant also relied upon the section 31 and 32 of the Prisoner's Act 1894 as well as section 40 and 41 of Chapter 9 Part IV of Delhi Prisons Rules, 1988.

It is pertinent to mention here that the Delhi Prisons Act, 2000 is applicable to the whole of the National Capital Territory of Delhi. This act is effective in Delhi since 14.02.2002. Interestingly, as per the Section 73 (Repeal and Savings) of the

Delhi Prisons Act, 2000, the enactment i.e. Delhi Prisoner's Act, 1894 has been repealed. Meaning thereby, onwards 14.02.2002, the provisions of The Prisoner's Act, 1894 are no more applicable in Delhi. However, Ld. Counsel for the applicant has emphasised on the provision of The Prisoners Act, 1894 for the adjudication on the present application for the reasons best known to him.

Now the relevant contemporary provision regarding the maintenance of prisoner from private sources in Delhi Prisons Act, 2000 is described as follows:

31. "Maintenance of certain prisoners from private sources – A Civil prisoner shall be permitted to maintain himself, and to purchase, or receive from private sources at proper hours and days foods, clothing, bedding or other necessaries, but subject to examination and to such rules as may be approved by Inspector General".

Perusal of the abovesaid rule reveals that the applicability of the abovesaid provision is now for the Civil prisoners only instead of other prisoners, UTPs. Hence, the contention raised by the Ld. Counsel does not hold water.

It is pertinent to mention here that presently Delhi Prisons Rules, 2018 are applicable to the whole of the National Capital Territory of Delhi and are effective in Delhi from 01.10.2018. Ld. Counsel for the accused/applicant has relied upon the section 40 and 41 of Chapter 9 Part IV of Delhi Prisons Rules, 1988. It is pertinent to mention here that as per section 1902 (Repealing and Saving) of Delhi Prisons Rules, 2018, which states that on the day of implementation of present rules, the Delhi Prisons

Rules, 1988 and all other notifications issued thereunder stands repealed. However, Ld. Counsel for the applicant has emphasised on the provision of the Delhi Prisons Rules, 1988 for the adjudication on the present application for the reasons best known to him.

It is pertinent to mention here that the abovesaid judgment "Asgar Yusuf Mukadam Vs. State of Maharashtra" of Bombay High Court is of no assistance to the accused/applicant as the provisions of Delhi Prisons Act, 1894 are not applicable in Delhi after the commencement of Delhi Prisons Act, 2000. Moreso, another judgment "Suresh Jugalkishore & Ors. Vs. Superintendent, Central Prison" of Gujarat High Court is also not applicable to the facts of the case as the said judgment only dealt with the aspect of keeping the permissible private food in their barracks by the prisoners and is not pertaining to the permission or requirement of supplements and special foods in any manner.

By way of present application, the accused/applicant reveals his wish to pursue his future carrier in wrestling. However, the accused/applicant has neither disclosed the details of any upcoming competition for which he has been qualified to participate nor has mentioned the name of any competition in which he is participating in nearby future. Moreso, no such documents regarding the competitions have been filed despite giving of the opportunity for the same. In the reply of concerned Jail Superintendent, it is categorically stated that all the UTPs including the applicant/accused have been provided food as per the provisions of Delhi Prisons Rules,

2018. It is further claimed by the Prisons Authority that a balance and healthy diet is providing to the accused/applicant without any discrimination. This position is not disputed by the Ld. Counsel for the applicant at all. It is to be noted that the nutrients required in a person's daily diet, their quantities and the common sources of proteins are specifically dealt in Delhi Prisons Rules, 2018. Undoubtedly, the Prison Authority are statutory bound to comply the same without failures in any manner.

By the way of present application, the accused/applicant is not claiming any deficiency in a persons daily diet, their quantities and the common source of nutrients as mentioned in Delhi Prisons Rules, 2018. Meaning thereby, the accused/applicant has been provided with a balance and healthy diet, as per entitlement of Under Trial Prisoners in terms of Delhi Prisons Rules, 2018. Moreso, as per medical report of accused/applicant, it has been specifically noted that the accused/applicant is not suffering from any such disease, which requires food supplement and a special diet.

It is well settled law that all the persons, whether natural or juristic are equal in the eyes of law irrespective of their caste, religion, sex, class, etc. Right to equality is a basic feature of Indian Constitution. It implies the rule of law. It also implies absence of any special privilege in any person due to his rank, status, whether rich or poor, etc. The law should be equal and should be equally administered, that like should be treated alike.

Considering the facts and circumstances of the present

case as well as keeping in view the averments made in the present application, it is apparent that all the basic needs and necessities of the accused/applicant are being taken care of as per the provisions of Delhi Prisons Rule, 2018. The alleged special foods and supplements appears to be only the desires and wishes of the accused/applicant and are not in any manner the essential need or necessity for the accused/applicant. Hence, the prayer of the accused/applicant in the present application is not maintainable. Accordingly, the present application is hereby dismissed.

Admittedly, few applications of the accused/applicant are pending before the Jail Authority. Concerned Jail Authority is also directed to inform the court of undersigned/trial court regarding the adjudication of said applications or any applications filed or decided in future, as per rules.

Copy of the order be given dasti, as prayed for.

Copy of the order be sent to concerned Jail Superintendent for intimation and record.

**(SATVIR SINGH LAMBA)
CMM (North District)
Rohini Court/09.06.2021**