ITEM NO.304 COURT NO.9 SECTION PIL

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(Civil) No(s).406/2013

RE-INHUMAN CONDITIONS IN 1382 PRISONS

Date : 24/04/2015 This petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE UDAY UMESH LALIT

For Petitioner(s) **By Post**

For Respondent(s) **Mr. Neeraj Kishan Kaul, ASG**
Ms. Binu Tamta, Adv.
Ms. Sushma Suri, AOR

Mr. Ashok Kumar Singh, AOR

Mr. D. Mahesh Babu, AOR

Mr. Gopal Singh, AOR

Mr. Kamal Mohan Gupta, AOR

Mr. Samir Ali Khan, AOR

For States of
Andhra Pradesh **Mr. Guntur Prabhakar, Adv.**
Ms. Prerna Singh, Adv.

Arunachal Pradesh **Mr. Anil Shrivastav, Adv.**
Mr. Rituraj Biswas, Adv.

Assam **Ms. Vartika Sahay, Adv.**
for M/s Corporate Law Group

Chattisgarh **Mr. C.D. Singh, AAG**
Ms. Sakshi Kakkar, Adv.

Haryana **Mr. B.K. Satija, AAG**

H.P. **Ms. Pragati Neekhra, AOR**

Jharkhand	**Mr. Tapesh Kumar Singh, AOR** **Mr. Kumar Anurag Singh, Adv.** **Mohd. Waquas, Adv.**
Karnataka	**Mr. V.N. Raghupathy, Adv.** **Mr. Parikshit P. Angadi, Adv.**
Madhya Pradesh	**Mr. Sunny Choudhary, Adv.** **Mr. Mishra Saurabh, AOR**
Maharashtra	**Mr. Aniruddha P. Mayee, Adv.** **Mr. A. Selvin Raja, Adv.**
Manipur	**Mr. Sapam Biswajit Meitei, Adv.** **Mr. Ashok Kumar Singh, Adv.** **Mr. Z.H. Isaac Haiding, Adv.**
Meghalaya	**Mr. Ranjan Mukherjee, Adv.** **Mr. S.C. Ghosh, Adv.**
Mizoram	**Mr. Pragyan Sharma, Adv.** **Mr. Heshu Kayina, Adv.** **Mr. K.N. Madhusoodhanan, Adv.** **Mr. T. G. Narayanan Nair, AOR**
Nagaland	**Mrs. K. Enatoli Sema, Adv.** **Mr. Amit Kumar Singh, Adv.** **Mr. Balaji Srinivasan, AOR**
Odisha	**Mr. Ashok Panigrahi, AOR** **Mr. A. Mohan, Adv.**
Rajasthan	**Mr. S.S. Shamshery, Adv.** **Mr. Amit Sharma, Adv.** **Mr. Sandeep Singh, Adv.** **Ms. Ruchi Kohli, Adv.**
Sikkim	**Mr. A. Mariarputham, AAG** **Ms. Aruna Mathur, Adv.** **Mr. Yusuf Khan, Adv.** **Mr. K. Vijay Kumar, Adv.** **for M/s Arputham Aruna & Co.**
Tripura	**Mr. Gopal Singh, AOR** **Ms. Shubhra Rai, Adv.** **Mr. Rituraj Biswas, Adv.** **Ms. Rashmi Srivastava, Adv.**
Tamil Nadu	**Mr. B. Balaji, Adv.** **Mr. R. Rakeshsharma, Adv.** **Ms. R. Shase, Adv.**

Telangana	**Mr. S. Udaya Kumar Sagar, Adv.** **Mr. Krishna Kumar Singh, Adv.**
Uttar Pradesh	**Ms. Pragati Neekhra, AOR** **Mr. Mukul Singh, Adv.**
Uttarakhand	**Mr. Aviral Saxena, Adv.** **Ms. Rachana Srivastava, AOR**
West Bengal	**Mr. Anip Sachthey, AOR** **Mr. Saakaar Sardana, Adv.**
A&N Islands	**Mr. K.V. Jagdishvaran, Adv.** **Mrs. G. Indira, AOR**
Puducherry	**Mr. V.G. Pragasam, AOR** **Mr. S.J. Aristotle, Adv.**

UPON hearing the counsel the Court made the following

O R D E R

We have perused the affidavit filed by the Ministry of Home Affairs on 23rd April, 2015 and have heard learned counsel.

The admitted position is 67% of all the prisoners in jails are under trial prisoners. This is an extremely high percentage and the number of such prisoners is said to be about 2,78,000 as on 31st December, 2013.

Keeping this in mind and the various suggestions that have been made in the affidavit, we are of the view that the following directions need to be issued:

1. **A Prisoners Management System (a sort of Management Information System) has been in use in Tihar Jail for quite some time, as stated in the affidavit. The Ministry of Home Affairs should carefully study this application software and get back to us on the next**

date of hearing with any suggestions or modifications in this regard, so that the software can be improved and then deployed in other jails all over the country, if necessary.

2. **We would like the assistance of the National Legal Services Authority (NALSA) in this matter of crucial importance concerning prisoners in the country. We direct the Member Secretary of NALSA to appoint a senior judicial officer as the nodal officer to assist us and deal with the issues that have arisen in this case.**

3. **For the purpose of implementation of Section 436A of the Code of Criminal Procedure, 1973 (for short "the Code"), the Ministry of Home Affairs has issued an Advisory on 17th January, 2013. One of the requirements of the Advisory is that an Under Trial Review Committee should be set up in every district. The composition of the Under Trial Review Committee is the District Judge, as Chairperson, the District Magistrate and the District Superintendent of Police as members.**

The Member Secretary of NALSA will, in coordination with the State Legal Services Authority and the Ministry of Home Affairs, urgently ensure that such an Under Trial Review Committee is established in every District, within one month. The

next meeting of each such Committee should be held on or about 30th June, 2015.

4. In the meeting to be held on or about 30th June, 2015, the Under Trial Review Committee should consider the cases of all under trial prisoners who are entitled to the benefit of Section 436A of the Code. The Ministry of Home Affairs has indicated that in case of multiple offences having different periods of incarceration, a prisoner should be released after half the period of incarceration is undergone for the offence with the greater punishment. In our opinion, while this may be the requirement of Section 436A of the Code, it will be appropriate if in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under trial prisoner. It is not necessary or compulsory that an under trial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.

5. The Bureau of Police Research and Development had circulated a Model Prison Manual in 2003, as stated in the affidavit. About 12 years have gone by and since then there has been a huge change in circumstances and availability of technology. We direct the Ministry of Home Affairs to ensure that

the Bureau of Police Research and Development undertakes a review of the Model Prison Manual within a period of three months. We are told that a review has already commenced. We expect it to be completed within three months.

6. **The Member Secretary of NALSA should issue directions to the State Legal Services Authorities to urgently take up cases of prisoners who are unable to furnish bail and are still in custody for that reason. From the figures that have been annexed to the affidavit filed by the Ministry, we find that there are a large number of such prisoners who are continuing in custody only because of their poverty. This is certainly not the spirit of the law and poverty cannot be a ground for incarcerating a person. As per the figures provided by the Ministry of Home Affairs, in the State of Uttar Pradesh, there are as many as 530 such persons. The State Legal Services Authorities should instruct the panel lawyers to urgently meet such prisoners, discuss the case with them and move appropriate applications before the appropriate court for release of such persons unless they are required in custody for some other purposes.**

7. **There are a large number of compoundable offences for which persons are in custody. No attempt seems to have been made to compound those offences and instead**

the alleged offender has been incarcerated. The State Legal Services Authorities are directed, through the Member Secretary of NALSA to urgently take up the issue with the panel lawyers so that wherever the offences can be compounded, immediate steps should be taken and wherever the offences cannot be compounded, efforts should be made to expedite the disposal of those cases or at least efforts should be made to have the persons in custody released therefrom at the earliest.

A copy of this order be given immediately to the Member Secretary, NALSA for compliance.

List the matter on 7th August, 2015 for further directions and updating the progress made.

For the present, the presence of leaned counsel for the States and Union Territories is not necessary. Accordingly, their presence is dispensed with.

(SANJAY KUMAR-I)
COURT MASTER

(RENU DIWAN)
COURT MASTER