

DDR

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

PIL-CJ-LD-VC-2 OF 2020

WITH

I.A. NO. CJ-LD-VC-2 OF 2020

(For Direction)

WITH

I.A.NO.CJ-LD-VC-1 OF 2020

(For Interim Relief)

1. People's Union for Civil Liberties

Bhatia Bhavan, 1st floor, Flat No.29,

Babrekar Marg, Dadar (West),

Mumbai 400 028.

2. Sandhya Gokhale

Bhatia Bhavan, 1st floor,

Flat No.29, Babrekar Marg,

Dadar (West), Mumbai 400 028.

..Petitioners/Applicants

vs.

1. The State of Maharashtra

through Principal Secretary of the

Home Department, Mantralaya,

Madam Cama Road, Mumbai 400 032.

2. The State of Maharashtra
through Principal Secretary of
the Law and Judiciary Department
Mantralaya, Madam Cama Road,
Mumbai - 400 032.

3. Director General of Police
Maharashtra Police,
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

4. Addl. Directorate of Police & Inspectorate
of Prisons and Correctional Services,
2nd floor, Old Central Building,
Pune - 411001.

5. Addl. Director General of Police
(Law & Order),
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

6. Shri S.N. Pandey
Director General of Police (Prisons)
Maharashtra.

.. Respondents

Mr. Mihir Desai, Senior Advocate a/w Ms. Isha Khandelwal a/w Ms. Kritika Agarwal for applicant/petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

WITH
PIL NO. 15 OF 2018
WITH
I.A. 1 OF 2020
(Converted from OS)

Archana Rupwate, aged 30 years,

Occupation : Advocate,

having office at 1st floor, 61/Jalaram

Krupa, Janmabhoomi Marg,

Fort, Mumbai 400001.

..Petitioner/Applicant

Vs.

1. The State of Maharashtra
through Principal Secretary of the
Home Department, Mantralaya,
Madam Cama Road, Mumbai 400 032.

2. The State of Maharashtra
through Principal Secretary of
the Law and Judiciary Department

Mantralaya, Madam Cama Road,
Mumbai - 400 032.

3. Director General of Police
Maharashtra Police,
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

4. Addl. Directorate of Police & Inspectorate
of Prisons and Correctional Services,
2nd floor, Old Central Building,
Pune - 411001.

5. Addl. Director General of Police
(Law & Order),
Chhatrapati Shivaji Maharaj Marg,
Colaba, Mumbai 400 001.

.. Respondents

Mr. Mihir Desai, Senior Advocate i/by Ms. Afreen Khan for
applicant/petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak
Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for
State.

WITH

PIL-CJ-LD-VC-5 OF 2020

Geeta Bharat Jain

Jain Bungalow, New Golden

Nest Phase 13, Opp. Hanuman

Temple, Bhayander (East),

Thane - 401105.

.. Petitioner

Vs.

1. State of Maharashtra

2. Director General of Prisons

3. Assistant Director General of Prisons

.. Respondents

Mr. Sunny Punamia for petitioner.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

WITH

PIL-CJ-LD-VC- 24 OF 2020

1. Devmani Shukla, aged about 38 years

s/o. Jagdish Prasad Shukla

Occupation : Advocate,

residing at 02, Janbhagyodaya Chawl

Committee, Gaondevi Road, Opp.

Human Temple, Poisar, Kandivali (East),
Mumbai 400 101.

2. Nikita Abhyankar, aged about 28 years
D/o. Rajendra Abhyankar
Occupation : Advocate,
residing at B3, 702-703, Saket Complex,
Majiwada, Thane (W) - 400601 .. Petitioners

Vs.

1. The State of Maharashtra
through the Government Pleader,
High Court Building, Mumbai 400 001.

2. High Powered Committee of Maharashtra
having its address at Administrative Building,
4th floor, Legal Department, Anant Kanekar
Marg, Bandra (E), Mumbai 400051.

3. The Undertrial Review Committee,
Mumbai.

4. Maharashtra State Legal Services Authority
having its address at 105 High Court
(PWD) Building, Fort, Mumbai 400 032.

5. Maharashtra Prison Department
44, Samrat Ashok Path, Sector No.5,
Mohanwadi, Yerawada, Pune,
Maharashtra 411006.

.. Respondents

Mr. Bhavesh Parmar with Mr. Monil Punjabi i/by Ms. Gauri Govilkar for petitioners.

Mr. A. A. Kumbhakoni, Advocate General a/w Mr. Deepak Thakare, Public Prosecutor a/w Mr. S. R. Shinde, APP for State.

Dr. Milind Sathe, Senior Advocate a/w Mr. Rahul Nerlekar for respondent No.4.

CORAM: DIPANKAR DATTA, CJ. &

M.S.KARNIK, J.

RESERVED ON : JUNE 26, 2020

PRONOUNCED ON : JULY 2, 2020

JUDGMENT (Per M.S. Karnik, J.):

The spread of COVID-19 infection resulted in a pandemic. It virtually brought life to a complete standstill. Lockdown which was rarely brought into effect was witnessed. The spread of COVID-19 had the potency of completely disrupting normal life. Various precautionary measures to contain the spread of the infection are suggested by the experts which include use of masks, sanitizers, etc. The Government, the administration, doctors, experts in the field of medicine were at pains to emphasize the need for maintaining hygiene and importance of social distancing. The focus also was at avoiding over crowding. Therefore arose a need to decongest the correctional homes which had high density of inmates. A High Powered Committee ('HPC' for short) came to be constituted in terms of the order passed by the Supreme Court dated March 23, 2020 in Suo Motu Writ Petition (C) No. 1 /2020. Accordingly recommendations were made by the HPC, chaired by the Senior Administrative Judge of this Court to decongest the correctional homes of its inmates.

2. It is well settled that Right to life, enshrined under Article 21 of the Constitution of India means something more than survival or animal existence. It would include the right to live with human dignity. It is now established that even where a person is convicted and imprisoned under the

sentence of Court, he does not lose all the fundamental rights belonging to all persons under the Constitution, excepting those which cannot possibly be enjoyed owing to the fact of incarceration. The prisoner remains a human being notwithstanding his imprisonment and would be entitled to minimum human rights. The Apex Court **In Re : Contagion of Covid -19 Virus in Prisons Suo Motu Writ Petition (Civil) No.1 of 2020** has observed that the issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19). The HPC has been constituted to determine the class of prisoners who can be released on parole or on interim bail, in view of the observations of the Apex Court that having regard to the provisions of the Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled. It is therefore imperative for the State to undertake all such measures for the safety of the health and hygiene of the prisoners in view of the pandemic of COVID-19.

3. The issue raised in these Public Interest Litigations ('PILs' for short) relate to the alleged lack of facilities for proper treatment of prisoners lodged in various correctional homes. Since the Petitions are interlinked, this Court had proposed to consider the same analogously, whereafter these Petitions came to be clubbed together and heard.

4. At the outset, it would be pertinent to state that on the earlier occasion, this Court during the course of the hearing of these PIL Petitions, issued directions calling for composite comprehensive report from the State touching upon all the aspects raised in these PIL Petitions as well as measures taken in this regard.

5. On May 26, 2020 the contentions raised by the learned Senior Counsel Shri Mihir Desai for some PIL Petitioners came to be recorded. Upon considering the response of the State Government, certain interim directions were issued. Learned Senior Counsel Shri Desai had submitted that the progress achieved by the State of Maharashtra in regard to containing the spread of COVID-19 infection amongst the inmates of various correctional homes is more or less satisfactory. Upon Shri Desai voicing a grievance that 'there are large number of bail applications pending before diverse Criminal Courts which frustrates the purpose for which the HPC came to be constituted', this Court observed thus :-

"Even though the High Powered Committee has delineated categories of under-trial prisoners who would be entitled to release on interim bail, we are of the opinion that the relevant courts are not supposed to act as mere post-offices and allow applications without application of mind. We have no doubt in our mind that in the light of the guidelines issued by the High Powered Committee, the relevant courts, to the best of its ability and with the resources available at its disposal, have been striving to take appropriate steps to dispose of as many applications for bail as possible in accordance with law and in the light of the guidelines of the High Powered Committee. No direction as such is required to be made, since we hope and trust that no application for bail shall be kept pending unnecessarily."

6. As regards the submission of Shri Desai that although family members/relatives of the inmates of correctional homes other than Arthur Road correctional home are being informed about the particular inmate having been infected by the virus, there is no system of informing the family members/relatives of COVID - 19 positive inmates, Public Prosecutor Shri Thakare responded that the family members/relatives of the inmates of the Arthur Road Correctional Home, who have tested positive would be duly informed. Having regard to this submission, this Court refrained from issuing any direction in his behalf in the hope and trust that Shri Thakare's submission shall be duly honoured.

7. It was then urged by Shri Desai that personal meetings of inmates with their family members/relatives have been stopped and presently there is no system in place by which interaction between the inmates and their family members/relatives is possible. Shri Thakare then invited the attention of this Court to the memo dated May 24, 2020 issued by the Additional Director General of Police and Inspector General of Prisons and Correctional Services, Pune, Maharashtra State (hereafter "the ADG, Prisons"). He further submitted that video conferencing facilities are being arranged so that inmates can at least establish contact and talk to their family members/ relatives. Shri Desai pointed out that though memo dated May 24, 2020

was in place, but there is no certainty as to when the video conferencing facilities would be commissioned. He therefore requested that the inmates be allowed two phone calls a week to talk to their family members/relatives. On this submissions of Shri Desai this Court observed thus-

"We trust that the contents of the memo dated May 24, 2020 shall be given full effect by the Correctional Home authorities. However, having regard to the uncertainties of connectivity, an additional facility of allowing the inmates to reach out to their family members/relatives by making phone calls could be allowed till such time Video Conferencing facilities are commissioned and even thereafter, if there is lack of connectivity. The number of phone calls per week per inmate, the duration of the phone calls and the days on which the same may be allowed are left entirely to the discretion of the Correctional Home authorities."

8. This Court also issued directions that the Circular dated April 8, 2020 which provides that the jailor shall open a bank account and provide all particulars for facilitating deposits shall be duly implemented immediately. It was further directed that the bank account number as well as all other requisite particulars for transfer of money shall be displayed by the correctional home authorities on their website for information of all concerned. This Court thus observed that once deposits are made by the family members/relatives of any inmates in such bank account, the same shall be utilised in a manner that benefits him, according to law.

9. On the other points of concern raised in the PIL Petitions, a report was called from the ADG (Prisons), Pune,

Maharashtra State. Thereafter a report dated June 8, 2020 was filed. Upon perusal of the report this Court passed the following order -

P.C.:

1] Pursuant to the order dated May 26, 2020, the Additional Director General of Police and Inspector General of Prisons and Correctional Services, Maharashtra State (hereafter "the ADG, Prisons") has filed a report dated June 8, 2020.

2] We have perused the report.

3] Mr. Desai, learned Senior Counsel appearing on behalf of the Petitioners, upon perusal of such report as well as on consideration of other relevant aspects, has raised three points of concern and made necessary prayers, as follows:-

(i) In Solapur and Aurangabad Correctional Homes, 60 and 20 inmates respectively have tested positive; however testing of asymptomatic inmates has not been undertaken in terms of the guidelines of the Indian Council of Medical Research (hereafter "the ICMR") dated May 18, 2020. He prays for a direction on the prison authorities for testing of asymptomatic inmates, at the earliest.

(ii) Although the inmates of the correctional homes have been permitted interactions with their family members by making phone calls of three minutes duration twice a month, there exists a circular dated February 12, 2019 issued by the prison authorities which has provisions for wider interaction between the inmates and their family members. He submits that the prison authorities may be directed to extend to the inmates the wider benefits flowing from the said circular (dated February 12, 2019.)

AND

(iii) As on Tuesday last, 11,527 applications for temporary bail are pending before the Magistrates/Sessions Courts, which tend to frustrate the spirit of the order of the Hon'ble Supreme Court dated March 16, 2020 as well as the recommendations of the High Powered Committee constituted in terms thereof; hence, prayer is made for direction to the Magistrates/Sessions Courts to expedite their decisions on such applications.

4] Insofar as the first point of concern raised by Mr. Desai is concerned, we find from a report dated June 8, 2020 of the ADG, Prisons that he is aware of the guidelines issued by the ICMR for COVID-19 testing dated May 18, 2020. It is also evident from a

memo dated June 8, 2020 of the Director of Health Services, Pune addressed to the ADG, Prisons that he has been informed of the requirements of testing of inmates of correctional homes in terms of such guidelines of the ICMR. Considering the further submission of Mr. Desai that even inmates of correctional homes have breathed their last after testing positive for COVID-19, we call upon the ADG, Prisons to furnish information on the following points:-

- (i) the protocol being followed in correctional homes for testing of inmates who are asymptomatic and in direct and high risk contact of inmates who have tested positive for COVID-19; and
- (ii) on the authenticity of the submissions of Mr. Desai that inmates have passed away upon testing positive for COVID-19.

5] Regarding the second point of concern, we direct the ADG, Prisons to consider the desirability of extending the benefits of the circular dated February 12, 2019 to the inmates of the correctional homes, in the light of the fact that number of inmates may have been released on temporary bail in pursuance of the extant judicial/administrative orders and guidelines on the subject and that load of inmates in the correctional homes may not be that burdensome as in normal times. However, if the benefits are denied, the reason shall be indicated in the report to be filed in terms of this order.

6] Also, upon appreciation of the third point of concern, we consider it expedient to call for reports from each of the Principal District & Sessions Judges. The exact number of pending applications for temporary bail filed by the inmates of correctional homes from all over Maharashtra to avail the benefit of the recommendations of the High Powered Committee as on close of working hours today together with the dates of presentation of such applications, shall be indicated in separate reports to be filed by each Principal District & Sessions Judge by close of working hours of Monday next (15th June, 2020). A compilation of the facts and figures shall be made by the Registrar (Legal and Research) and placed before the Bench for consideration on Tuesday next (16th June, 2020), when both these Petitions shall be listed once again."

10. The PIL Petitions then came to be heard on June 16, 2020. Upon perusal of the report of the ADG (Prisons), this Court observed that the report of ADG (Prisons) reveals a

very sorry state of affairs. Considering that number of tests amongst the inmates of the correctional homes across Maharashtra were abysmally low, which requires corrective measures to be adopted by the State and having regard to the facts and figures which have come on record, this Court requested Shri Kumbhakoni, learned Advocate General for the State of Maharashtra, to appear in these matters and to obtain appropriate instructions from the prison authorities on the points raised by Mr. Desai as well as the point raised in the report of ADG (Prisons) that there is insufficient space for quarantining those inmates of correctional homes, who test positive. This Court further observed that having regard to a particular disclosure in such report, the Collectors of various districts have also to be encouraged to explore and identify space available for such quarantine.

11. So far as the grievance of Mr. Desai that the Circular dated February 12, 2019 is not being appropriately enforced, this Court recorded that the ADJ (Prisons) has permitted all the Superintendents of Correctional Homes to purchase additional cellular phones with a view to enforce the terms of the Circular dated February 12, 2019. This Court therefore expressed that it has no doubt that the Superintendents, shall act in terms of the instructions of the ADG (Prisons) to enable the inmates of the prison to have wider interactions with their family members.

12. Noticing that not 11,857 applications but only 1342 applications for temporary bail are pending in all Courts across Maharashtra to avail the benefits of the HPC recommendations, the said issue was closed with the observation that all such pending applications shall be disposed of as expeditiously as possible in accordance with law.

13. During the course of the hearing on June 19, 2020, learned Advocate General placed before this court a document, which refers to the measures the Government proposes to undertake in correctional homes (in view of the present pandemic), for the greater interest of its inmates. The petitioners were called upon to respond to the measures and offer their suggestions to the learned Advocate General for enabling the Government to consider the suggestions offered by the respective petitioners in the proper perspective. The State was called upon to place before this Court whatever measures the Government proposes to implement for the benefit of the inmates in the correctional homes - both undertrial prisoners or convicts. It would be material to refer to paragraph 4 of the order dated June 19, 2020 which reads thus :-

"4. We make it clear that postponement of the hearing of these PIL Petitions till Tuesday next would not be seen as an impediment by the Government to implement such of the welfare measures as are already conceived for the inmates including, inter alia, attending to each and every inmate without fail in terms of the standard medical protocol as and when he/she requires medical attention."

14. During the course of the hearing on June 23, 2020, Shri Kumbhakoni placed before us a document which refers to the measures to be undertaken by the State Government in prisons in view of the pandemic of COVID-19. Learned Senior Advocate for the Petitioners expressed satisfaction with the measures to be undertaken as reflected in the document. He, however, submitted that certain additional safeguards needed to be incorporated in the document which would enure to the health, hygiene and safety of the inmates. Accordingly, learned counsel made their submissions and offered their suggestions.

15. We have heard Shri Desai, learned Senior Counsel appearing on behalf of some of the PIL Petitioners and also the Counsel appearing on behalf of the other PIL Petitioners. We have also heard Shri Kumbhakoni, learned Advocate General on behalf of the State.

16. In fairness to all the Counsel appearing, it must be mentioned that none of the parties treated these Petitions as adversarial in nature. The suggestions made on behalf of the Petitioners were duly considered by the Respondents whereafter the document which refers to the measures to be undertaken by the State Government is placed on record by the learned Advocate General. Even some of the suggestions made by the learned Senior Counsel appearing on behalf of the PIL Petitioners came to be accepted by the State during the course of this hearing.

17. We may firstly refer to the document which the State Government has placed on record pertaining to the measures to be undertaken in the prisons in view of the pandemic of COVID-19. The same reads thus :

1. In view of various guidelines issued by the Indian Council for Medical Research (ICMR), Government of India and as also the Public Health Department, Government of Maharashtra, from time to time till this date, it has become necessary to modify and consolidate the instructions/guidelines issued earlier, in regard to the protocol to be followed in the administration of various prisons, situated in the State of Maharashtra, for the effective handling of the spread of Corona cases. In this regard some reports about corona cases received from some of the prisons of the State, since the outbreak of the virus, are also considered, in their proper perspective.

2. After discussing various aspect in the aforesaid regard with the officials from the Public Health Department of the State of Maharashtra and all concerned, following guidelines are issued for being implemented, with immediate effect, in every prison situate in the State of Maharashtra. It is clarified that these guidelines are to be read and considered for their implementation along with all guidelines issued earlier on this issue and to the extent the earlier guidelines are inconsistent with these guidelines, the guidelines issued hereunder will prevail.

3. In effectively implementing these guidelines, all the guidelines issued, from time to time, not only by the ICMR but also issued by the Central as also State Governments and their various Departments, in regard to the virus, are to be borne in mind.

4. Under Section 7 of the Prisons Act 1894, so far, Collectors of 27 districts throughtout the State of Maharashtra have declared 36 locations as temporary prisons. In other revenue Districts steps are being taken to declare appropriate places accordingly, as temporary prisons. These premises are being used for decongesting the prisons. Such places declared as Temporary prisons shall also be used as 'Quarantine Centre' and 'Covid Care Centre' by providing proper partitioning and required facilities.

5. Further, the Collectors, as needed, shall declare temporary prisons as per Home Deptt. GR No.JLM 0520/PraKra 64/Prison-2 dated 15th May 2020 and provide facilities as per the requirement.

6. These 'Quarantine Centres' and 'Covid Care Centres' forming part of these temporary jails shall comply with the standards and guidelines prescribed therefor by the Public Health Department of the State of Maharashtra from time to time.

7. These 'Quarantine Centres' and 'Covid Care Centres' forming part of these temporary jails shall maintain, amongst others, relevant record of every inmate, relating to his or her health condition relating to the infection of Corona virus, if any.

8. In all prisons of the State, every inmate shall be examined daily with a thermal scanner. In case any inmate is found to have temperature above 100.4 degrees Fahrenheit and/or shows symptoms such as cough, breathlessness, etc. which are, so far, known as the signs of infection of Corona virus, he/she should immediately be referred to the nearest aforesaid newly designated temporary Jail cum 'Covid Care Centre'.

9. At each such 'Covid Care Centre' further action is to be taken, as per the advice of doctor, on Covid testing. Further, action is to be taken in terms of the ICMR and other guidelines issued from time to time, for treating such inmate and for consequent further course.

10. Further, every Covid-19 positive prison inmate shall be classified by the medical officer as given below and the Superintendent shall be informed to transfer him accordingly

- a) Mild or very mild cases - temporary jail - Covid Care Centre (CCC)
- b) Clinically assigned as moderate - Dedicated Covid Health Centre (DCHC)
- c) Clinically assigned as severe - Dedicated Covid Hospital (DCH)

All Districts in the State have designated DCHC and DCH. The shifting, as aforesaid, is to be done by the Superintendent, in consultation with District Collector/Municipal Commissioner or concerned health officials. All security concerns about the prisoners shall be taken care by the prison authorities and the local police.

11. If inmate as above is tested positive then further contact tracing and their categorisation is required to be done. Inmates/Prison staffers who have come within a distance of 3 feet of the Covid-19 positive inmate for more than 15 minutes shall fall in the 'High Risk' category. Those in contact beyond a distance of 3 feet shall fall in the category of 'Low Risk'.

12. Every 'High Risk' inmate shall be institutionally quarantined in the aforesaid temporary prisons declared by Collectors. He will be tested for Covid, anytime between the 5th and the 10th day, as per the advice of the doctor. Further course to be resorted as mentioned in above paragraphs.

13. All the Low risk inmates shall continue to remain in the prison but would be examined daily by thermal scanning and would be watched for the Covid symptoms.

14. Every prison authority, such as the Superintendent thereof, shall update the family members of those inmates who are asymptomatic but turn out to be positive, as also those who are symptomatic, whether mild, moderate or severe, within less than 48 hours of the detection of the fact that such inmate has been infected with Covid.

15. The place of residence of a Covid positive inmate shall be disinfected.

16. To take care of inmates, above the 60 years of age, as they are more susceptible to the Covid infection, as far as possible, a separate arrangement shall be made, inside the prison itself, so that they do not come in contact with other inmates of the lower age group.

17. Further, for all the inmates above 60 years, shall be medically examined by organising special screening to find co-morbid conditions like diabetes, hypertension, cancer, heart ailment etc. Depending on the co-morbid conditions, such inmates shall be further periodically checked as per the advice of the doctor. In the known cases of hypertension, their blood pressure shall be checked regularly and for known diabetic inmates, blood sugar levels shall be regularly checked. Any deviation found from the normal parameters of such inmates must be treated immediately, in order to bring the relevant parameters under control.

18. Lawyers duly engaged by the inmates will be allowed to seek instructions from the inmates either via emails or by speaking to the inmate after getting an appointment via email, in that regard, from the Superintendent of the concerned jail.

19. In terms of the Facilities to the Prisoners Rule 1962, postal correspondence with the prisoners will be permitted, only relating to the non-containment areas, since the postal service in such areas has resumed.

Shri Kumbhakoni, learned Advocate General assures this Court that the guidelines contained in this document shall

be duly implemented and complied with by the prison authorities.

18. Over and above the measures provided for in the document referred to herein before, learned Senior Counsel Shri Mihir Desai made the following suggestions :-

(a) The definition of 'High Risk prisoners' should be as per Standard Operating Procedure ('SOP' for short) issued by National Centre Disease Control (NCDC) for contact tracing of COVID-19 cases. This he suggests, as according to him, though the State has agreed to test all high risk prisoners, nothing has been placed on record to indicate who these high risk prisoners are.

(b) Where any inmate has been diagnosed as COVID positive, all the prisoners and staff from such correctional facilities (temporary prisons included) must be tested. According to him, priority should be given to inmates and staff older than 50 years and/or those with co-morbidities and other vulnerabilities.

(c) The inmates who are above 60 years of age and suffering from co-morbidities be given special attention.

(d) Given further fear of such outbreaks in other prisons, as a preventive measure, random testing should be periodically conducted in all the correctional facilities (temporary prisons included) to enable prison authorities to take preventive measures in time.

(e) Every inmate should be allowed one call (video/phone) per week to contact their family members and/or lawyers for 10 minutes. The same facility should be extended to the inmates in temporary prisons.

(f) Family members and lawyers of prisoners should be immediately informed of any transfer of the inmate from one facility to another.

(g) Temporary prisons (including quarantine centres) must comply with the guidelines as prescribed by the Jail Manual and NCDC.

(h) The prisoners must be tested before being shifted from one jail to another and must be placed in an appropriate quarantine and Covid Care facility.

(i) Given the lack of information in the public domain, the state should upload information, with regards to the prison and its inmates, once every week on the e-prisons website. For monitoring purposes, the same should be submitted to this Court during the pendency of this case. The committee as prescribed by the Jan Adalat decision of this Court in **Criminal PIL St. No.46 of 2015** should be activated with addition of the health experts. A detailed weekly report be submitted to the Secretary, Ministry of Health and other related bodies with recommendations.

19. The Counsel appearing for the petitioners in other connected PIL Petitions adopted the suggestions made by

Shri Desai. In addition, they had the following suggestions to offer :

- (a) All staff should be tested as being done for inmates.
- (b) The staff deputed at an identified quarantine centre cum temporary jail be provided with PPEs as applicable.
- (c) The duty officers should not be rotated and given different posting as per the present practice. For the time being an officer on duty be continued in the facility where he is presently posted.
- (d) The existing vacancies of staff should be filled up. The staff presently posted at a particular prison should not be sent to quarantine centres/ temporary prisons as that would lead to further reduction in the prison staff.
- (e) As per the letter of the Central Government dated May 2, 2020 provisions be made for sanitizers/mask, etc. for prisoners and for upkeep of hygiene and cleanliness.
- (f) Adequate stock and availability of regular patient specific medicines in all prison/quarantine cum temporary jails be arranged.
- (g) Doctors must visit regularly and the Jail Superintendent must submit a comprehensive report to the Additional Director General punctually.
- (h) Women/menstruating prisoners should have good quality sanitary napkins for free and it should be given in advance. A dustbin with a lid and a supply of old

newspapers to be provided in all female barracks for disposal of sanitary pads at all times.

20. During the course of the hearing, on instructions of the concerned officials, Shri Kumbhakoni stated that the State would accept some of the suggestions made by the Petitioners. He agreed to accept the following suggestions :

(a) All the staff deployed in the correctional homes will be tested in the same manner as the inmates as per SOP.

(b) As far as possible the staff deployed in the correctional homes/temporary prisons shall be posted in the present place of posting and they will not be rotated.

(c) The guidelines issued for the maintenance of hygiene and safety measures for the inmates by the Central Government, State Government or its authorities will be complied with.

(d) A dedicated e-mail ID for lawyers for taking appointment with their inmate-clients in the correctional homes will be notified at the earliest on the website of the prison authorities.

(e) The inmates will be educated on the importance of preventive measures and hygiene. Awareness programmes to contain the spread of the virus will be organised on regular basis by the Jailer/Competent Authority of the correctional homes including temporary prisons.

(f) The women inmates shall be provided in advance with good quality sanitary napkins for free and the prison authorities shall ensure proper hygiene and appropriate facility for disposal of sanitary pads at all times.

(g) Telephone call facilities to contact the family members of the inmates shall be made available in the temporary prisons in the same manner as is being done in the case of regular correctional homes.

(h) The prison authorities will inform the family members / relatives of the inmates upon their transfer to the temporary jails and/or quarantine centres and/or Covid Care Centres.

(i) Every possible endeavour will be made by the Prison Authorities to scrupulously follow the guidelines issued from time to time, not only by the ICMR but also as issued by the Central Government, State Government and its various departments in regard to the virus, unless on account of security concern in temporary prisons, the authorities are unable to do so.

(j) The details of the 37 temporary prisons will be uploaded on the website along with other necessary details as done in case of correctional homes.

21. We may now deal with the submissions of Shri Desai and other learned counsel for the Petitioners, which the learned Advocate General is not willing to accept on behalf of the State, and therefore requires an adjudication.

22. Shri Desai, learned Senior Advocate pointed out that in terms of the directions of the Supreme Court in *Suo Motu Writ Petition (C) No. 1 of 2020* dated March 23, 2020 a monitoring team must be set up at the state level, to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously. According to Shri Desai such a monitoring team has not been set up. Countering this submission, learned Advocate General, placed on record a G.R. dated May 8, 2020 whereby the monitoring team has been set up. He submits that the same is functioning in compliance with the directions issued by the Apex Court. In our opinion, in view of this G.R., the concern of Shri Desai stands addressed. This submission of Shri Desai therefore does not merit any consideration.

23. Shri Kumbhakoni, learned Advocate General submitted that in respect of 'High Risk Prisoners', various guidelines issued by the ICMR, Government of India as also the State Government and its authorities will be duly complied with. It is not possible for us to accept the submission of Shri Desai that the definition of 'High Risk Prisoners' should be as per SOP issued by National Centre Disease Control (NCDC) for contact tracing of COVID-19 cases. We cannot substitute our opinion for that of the experts in the field and direct the State Government to accept the definition of 'High Risk Prisoners' as per the SOP issued by NCDC. Once the learned Advocate General has made a statement that the State will

follow the guidelines issued by the ICMR, the Central Government, the State Government and its authorities in the case of High Risk Prisoners, then it is not possible for us to substitute our opinion in matters of State which are in the realm of policy based on the opinion of the experts. Even as regards the safety measures to be adopted in respect of the health and hygiene of the inmates and also the hygiene in the prisons, we are satisfied with the assurance of the learned Advocate General, that the State would abide by the various guidelines issued by ICMR, Government of India and also Public Health Department of the State of Maharashtra and its authorities in this regard. A reading of the document of safety measures would reveal that the measures stated therein would be implemented along with all guidelines issued earlier on this issue. To the extent earlier guidelines are inconsistent with the fresh guidelines, the fresh guidelines will prevail.

24. We are satisfied with the measures the State proposes to undertake and are not impressed with the submission of Shri Desai that the safety measures in case of inmates who are above 60 years of age are inadequate. Clause 17 of the document reproduced in paragraph 17 addresses this concern. The learned Advocate General has assured that all possible care will be taken by the prison authorities in respect of the inmates who are above 60 years of age. They are kept together in the same barrack/circle in the correctional home so as to enable the prison authorities to

effectively monitor them. There is, thus, no reason to interfere.

25. Learned Advocate General then placed on record the guidelines of June 2,2020 to be followed by the correctional homes issued by the Public Health Department of the State Government in respect of the measures to be undertaken by the prison authorities for safety and wellbeing of the inmates in the present times. These guidelines provide for measures to be undertaken in respect of maintaining hygiene, norms for social distancing, etc. to be followed in correctional homes. It also provides steps to be taken in case any inmate shows any symptoms relating to COVID-19. It has also been provided that the inmates should be medically examined at regular intervals and a suspect, if any, be sent for testing. Instructions have been issued for sanitizing the residential areas of the inmates. Inmates above 30 years of age are to be examined for any other comorbidities. These guidelines also provide for precautions to be taken in respect of the inmates who are recently lodged. The guidelines also deal with the sanitization and hygiene protocol to be followed in the kitchen area, toilets and the frequency of the sanitisation thereof at regular intervals. Social distancing norms and measures for maintenance of hygiene are set out. The said guidelines also deal with the norms to be followed in respect of the inmate who has tested COVID-19 positive.

26. We find the guidelines in the communication dated June 2, 2020 addressed by the State Public Health Department to the Prison/Jail Authorities to be comprehensive in nature. The guidelines need to be scrupulously followed by the correctional homes and temporary prison facilities. We have no manner of doubt that these guidelines which are issued by the Public Health Department of the State, as regards the measures to be undertaken in the correctional homes regarding the safety and hygiene, the authorities concerned will scrupulously abide by the same.

27. Learned Advocate General also assured this Court that apart from the guidelines of the ICMR for testing of the inmates, the guidelines of the Central Government issued from time to time shall be complied with for High Risk prisoners.

28. In so far as quarantine centres are concerned, learned Advocate General submitted that as these centres are within the temporary prisons, the ICMR guidelines would be followed as far as possible by taking every precaution to protect the health and wellbeing of the inmates. This he would so submit, as according to him, the temporary prisons are located in structures like school buildings and other municipal buildings which may lack all the security features as a regular jail does and therefore,

from the point of view of security, it may not be possible to strictly follow the ICMR guidelines.

29. We are of the opinion that as it is a matter of health and wellbeing of the inmates, the guidelines of the ICMR need to be followed even in respect of the temporary prisons without compromising in any manner the security concerns. Any deviation from the guidelines issued by the ICMR in respect of the temporary prisons can only be on account of security concern or under some exceptional circumstance.

30. Shri Kumbhakoni submits that though it is the ultimate aim of the State Government and the Prison Authorities to test each and every inmate, it may not be possible to immediately do so, as having regard to this unprecedented situation and the challenges faced by the State in reaching out medical aid and help to those who are already affected by the virus, the resources available have to be evenly distributed to all concerned in the society. It is for this reason, in response to Shri Desai's submission, Shri Kumbhakoni submits that it is not immediately possible to test each and every inmate. We do not find this submission of Shri Kumbhakoni unreasonable. In any case, we are satisfied with the measures taken by the State Government for the present. The State has accepted most of the suggestions of the Petitioners during the course of this

hearing. We therefore do not propose to issue any directions on this submission of Shri Desai. We may, however, hasten to add that whenever an inmate shows signs of any physical discomfort or complains of such discomfort like cough, cold, etc. such inmate should be immediately tested.

31. We are also satisfied with the submission of Shri Kumbhakoni that with the passage of some time, the State would review the SOP and would endeavour making improvements in the medical and safety protocol to be followed in respect of the health and wellbeing of the inmates. We hope and trust that the State will continuously endeavour to improve upon the measures regarding the protocol to be followed in respect of health and wellbeing of the inmates. We have no manner of doubt that the concerned authorities of the State will continuously monitor the situation, and after taking into consideration the opinion of the experts in the field of medicine and health care, the standard operating protocol will be revised from time to time ensuring to the benefit of the inmates.

32. We have heard Shri Bhavesh Parmar, learned counsel appearing for the PIL Petitioners in PIL No. 24 of 2020 and Shri Milind Sathe, learned Senior Advocate on behalf of the Respondent No.4.

33. Shri Bhavesh Parmar firstly submits that the Undertrial Review Committee ('URC' for short) contemplated by the Apex Court in *In Re Inhuman Conditions in 1382 Prisons (2016) 3 SCC 700*, has not been constituted. Shri Parmar would then submit that the SOP for URC prepared by the National Human Rights Commission must be adhered to. Inviting our attention to paragraph 24 of this Petition, he next submitted that the categorisation of the prisoners to be released on interim bail/emergency parole by the HPC is not determined correctly and is arbitrary.

34. Shri Kumbhakoni, learned Advocate General pointed out that the URC contemplated by the Apex Court is functional at the District level. This being the position, we have no manner of doubt that the URC will discharge its functions in terms with the decision of the Apex Court.

35. Shri Sathe, learned Senior Advocate appearing for the Respondent No.4, invited our attention to the order dated March 23, 2020 passed by the Apex Court in **Suo Motu Writ Petition (C) No. 1/2020**. Shri Sathe submits that the HPC has been constituted under the orders of the Apex Court, to determine which class of prisoners can be released on parole or on interim bail, for such period as may be thought appropriate. He would submit that the Apex Court left it open for the HPC to determine the category of prisoners who should be released. He would urge that the

HPC has been constituted in the present context of the pandemic of Corona virus (COVID-19) to ensure that the spread of Corona virus within the prisons is controlled. His argument is that the Petitioners have to either approach the Apex Court or the HPC if the Petitioners have any grievance regarding the categorisation made by the HPC. He would therefore submit that it is not open for this Court in the exercise of its writ jurisdiction under Article 226 of the Constitution of India to examine the correctness of the categorisation done by the HPC. Shri Sathe then relied upon the decision of the Apex Court in the case of **In re the Special Courts Bill, 1978 AIR 1979 SC 478.** to submit that even otherwise on merits the categorisation by the HPC is in terms with what is laid down in this decision and therefore cannot be said to be arbitrary.

36. We find force in the submission of learned Senior Advocate Shri Sathe that this Petition challenging the decision of the HPC should not be entertained. In this context it would be useful to refer to the observations of the Apex Court made in the orders dated March 23, 2020 and April 13, 2020 in **Suo Motu Writ Petition (C) No. 1/2020.** The relevant portion of the order dated March 23, 2020 passed by the Apex Court reads thus :

“The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that

the spread of the Corona Virus within the prisons is controlled.

We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.”

(emphasis supplied)

37. A reference also needs to be made to the relevant portion of the order dated April 13, 2020 which reads thus :

“We make it clear that we have not directed the States/Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the State/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

38. A reading of the orders passed by Their Lordships will reveal that the HPC was constituted pursuant to the directions of the Supreme Court. The HPC was to determine which class of prisoners may be released on interim bail or parole during the pandemic (COVID 19) for such period as may be thought appropriate. The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of Corona virus in the prisons, the spread of the disease is manageable. The Apex Court further made it clear that it is left open for the HPC to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate. It was further clarified by the Apex Court that it has not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The Apex Court thus observed that the purpose of the order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

39. A reading of the orders of the Apex Court leaves no manner of doubt that it is for the HPC to determine the category of the prisoners, which the Committee may

consider appropriate to release in the light of the observations made by the Apex Court. Again it is for the State to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released. In our opinion, in view of the clear mandate of the Apex Court, it is for the HPC to determine the category of the prisoners who should be released. It would therefore not be permissible for this Court to entertain a Petition against the determination by the HPC unless a clear case of transgression of the prisoners' rights is made out.

40. We are of the view that for seeking intervention of this Court in the exercise of the writ jurisdiction, a clear case of constitutional rights or statutory prescriptions being transgressed has to be made out. The Petitioners contend that the categorisation by the HPC affects their rights. As noted earlier, the HPC has been constituted for a specific purpose by the Apex Court for decongesting the prisons for a specific period in view of the outbreak of the present pandemic and thus it is for the HPC to determine the categories in the light of the observations of the Supreme Court. We are afraid that the case put forth by the Petitioners is not in the nature of transgressing any constitutional right or statutory prescription.

41. There is another reason why we are not inclined to issue the writ of mandamus prayed for by the PIL Petitioners. The HPC has been constituted by the Apex Court to deal with this extra ordinary situation of decongesting the prisons having regard to the outbreak of the present pandemic. In our opinion, determination of the categories by the HPC under these circumstances to release certain prisoners does not confer any right on the PIL Petitioners to contend that similar indulgence may be shown to them or similar such concessions be extended to them. The PIL Petitioners therefore cannot claim any legal right on the basis of categorisation made by the HPC. It is well settled that concession cannot be claimed as a matter of right and therefore a writ of mandamus cannot be issued. In this context a profitable reference can be made to the decision of the Apex Court in the case of **K. V. Rajalakshmiah Setty & another vs State Of Mysore and another (AIR 1967 SC 993)** from which we draw support. Paragraph 12 of the decision which is relevant reads thus :

“12. There is some force in some of the contentions put forward on behalf of the State of Mysore. It is not necessary to test them as we find ourselves unable to uphold the contention of the appellants. No doubt some concession had been shown to the first batch of 41 persons and the batches of persons who had come in after the batch of 63 persons also received some concession but after all these were concessions and not something which they could claim as of right. The State of Mysore might have shown some indulgence to this batch of 63 persons but we cannot issue a writ of mandamus commanding it to do so. There was no service rule which the State had transgressed nor has the State evolved any principle to be followed in respect of persons who were promoted to the rank of Assistant Engineers from surveyors. The indulgences shown to the different batches of persons were really ad-hoc and we are not in a position to say what, if any, ad-hoc indulgence should be meted out to the appellants before us.”

We are therefore not inclined to interfere in the exercise of our writ jurisdiction under Article 226 of the Constitution of India. Resultantly PIL No. 24 of 2020 deserves to be dismissed.

42. Hence the following order.

ORDER

- (i) The directions issued under the interim orders passed in these PIL Petitions will have to be fully complied with by the State Government.
- (ii) The measures to be undertaken in prisons in view of the pandemic of COVID-19 as per the document produced by the State and as reproduced in paragraph 17 of this judgment should be strictly implemented and complied with.
- (iii) The statements of the Advocate General accepting the suggestions of the Counsel for the Petitioners as well as the assurances as recorded in paragraph 20 are accepted. The State is directed to comply with and implement the same immediately.
- (iv) Every possible endeavour shall be made by the Prison Authorities to scrupulously follow the guidelines issued from time to time by the ICMR, Central Government as well as State Government and its authorities regarding the safety measures to be undertaken in the

correctional homes/temporary prisons for its inmates.

- (v) The prison authorities are directed to refer any inmate for testing in case of any signs of physical discomfort like cough, cold, etc.
- (vi) The Respondents are directed to notify the details of the 37 temporary prisons on the website and apart from maintaining the record in terms of Clause 7 of the measures to be undertaken mentioned in paragraph 17, the family members/ close relatives of the inmate shall be immediately informed about his or her health condition relating to the infection of the Corona virus.
- (vii) The assurance of the learned Advocate General that there shall be random testing of inmates across the jail/circles or barracks is accepted and the prison authorities are directed to forthwith implement the measures for random testing.
- (viii) The State shall endeavour to deploy sufficient/ additional staff at the correctional homes and temporary jails and/or Quarantine Centres and/or Covid Care Centres.
- (ix) The correctional homes/temporary prisons shall abide and comply with the guidelines issued by the Public Health Department of the State Government dated June 2, 2020.
- (x) We accept the assurance of the learned Advocate General on behalf of the State that the SOP for the

wellbeing, safety and precautionary measures will be revised from time to time at regular intervals after seeking opinion of the experts in the field of medicine and health care.

43. PIL Petition No. 24 of 2020 is dismissed.

44. The other PIL Petitions are disposed of in above terms.

45. The applications, if any, are disposed of.

46. This order will be digitally signed by the Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(M.S.KARNIK, J.)

(CHIEF JUSTICE)