

IN THE SUPREME COURT OF INDIA
 [S.C.R. Order XXI Rule 3(1)(a)]
 Civil Appellate Jurisdiction
 (under Article 136 of the Constitution of India)
 Special Leave Petition (Civil) No _____ of 2020
 (Arising from the impugned order and final judgment dated
 20.10.2020 passed by the Hon'ble High Court of Delhi at New Delhi
 in Writ Petition (C) 3037 of 2020)
 (With Prayer for interim relief)

In the matter of:

National Forum for Prison Reforms ...Petitioner

Versus

Govt. of NCT Delhi and Ors. ...Respondents

Paper Book

(for Index please see inside)

I A No _____ of : Application for exemption from filing
 2020 certified copy of the impugned order

I A No _____ of : Application seeking permission to file
 2020 lengthy synopsis

I A No _____ of : Application seeking exemption from
 2020 filing attested affidavit

I A No _____ of : Application seeking permission to file
 2020 the present Special Leave Petition

Filed on: 26.10.2020

Advocate for the Petitioner: Mr Satya Mitra

Index

INDEX				
Sl. No.	Particular of Document	Page No.	Remarks	
		Part I	Part II	
(i)	(ii)	(iii)	(iv)	
1.	Office Report on Limitation	A	A	
2.	Listing proforma	A1- A2	A1- A2	
3.	Cover Page of Paper Book		A3	
4.	Index of Record of Proceeding		A4	
5.	Limitation Report		A5	
6.	Defect List		A6	
7.	Note Sheet		NS1 To	
8.	Synopsis /List of Dates	B - AAAAAA		
9.	True copy of the Impugned final order and judgment dated 20.10.2020 passed by the Hon'ble High Court of Delhi in Writ Petition (C) 3037 of 2020	1 -8		
10.	Special Leave Petition with Affidavit.	9-22		

10A.	Certificate	20A		
11.	Appendix Relevant Articles from the Constitution of India	23		
12.	Annexure P1 True copy of the order dated 6.5.16 in re Inhuman Conditions in 1382 Prisons (2016 14 SCC 815)	24-26		
13.	Annexure P2 True copy of the order dated 02.07.2014 in the matter of Arnesh Kumar vs. State of Bihar (2014 8 SCC 273),	27-36		
14.	Annexure P3: True copy of the order dated 16.3.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020	37-41		

15.	Annexure P4: True copy of the order dated 23.3.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020	42-49		
16.	Annexure P5: True copy of the order dated 25.3.2020 in the matter of in Re: Extension of Interim orders, Suo Motu WP(C)3037/2020	50-52		
17.	Annexure P6: True copy of the Minutes of Meeting dated 28th March 2020 At 3 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive	53-62		

	Chairperson, Delhi State Legal Services Authority			
18.	Annexure P7: True copy of the order dated 07.4.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020	63-66		
19.	Annexure P8: True copy of the Minutes of Meeting dated 7th April, 2020 At 5:30 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority	67-77		
20.	Annexure P9:	78-85		

	True copy of the order dated 13.4.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020			
21.	Annexure P10: True copy of the Minutes of Meeting dated 18th April, 2020 At 3:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services	86-100		
22.	Annexure P11: True copy of the Minutes of Meeting dated 5th May, 2020 At	101-111		

	<p>5:00 PM through Video Conferencing (Cisco Webex)</p> <p>Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority</p>			
23.	<p>Annexure P12;</p> <p>True copy of the order dated 15.5.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court</p>	112-114		
24.	<p>Annexure P13:</p> <p>True copy of the Minutes of Meeting dated 18th May, 2020</p> <p>At 06:00 PM through Video Conferencing (Cisco Webex)</p> <p>Under The Chairpersonship of</p>	115-132		

	Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority			
25.	Annexure P14: True copy of the order dated 15.6.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court	133-135		
26.	Annexure P15: True copy of the Minutes of Meeting dated 20.06.2020 At 12:30 PM through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi &	136-158		

	Executive Chairperson, Delhi State Legal Services Authority			
27.	Annexure P16 True copy of the order dated 01.07.2020 in CrI.A.193/2020 titled as Harpreet Singh vs. State	159-164		
28.	Annexure P17: True copy of the order dated 13.07.2020 in CrI.A.193/2020 titled as Harpreet Singh vs. State	165-167		
29.	Annexure P18: True copy of the order dated 24.07.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court	168-174		
30.	Annexure P19:	175-198		

	True copy of the Minutes of Meeting dated 31st July, 2020 at 5:00 pm through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority			
31.	Annexure P20: True copy of the order dated 24.08.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court	199-200		
32.	Annexure P21: True copy of the Minutes of Meeting dated 30th August, 2020 at 12:00 Noon through	201-219		

	Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority			
33.	Annexure P22: True copy of the order dated 28.09.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court	220-222		
34.	Annexure P23: True copy of the Order dated 29.09.2020 by the High Court Of Karnataka, Bengaluru filed in Writ Petition No 6435 of 2020	223-224		
35.	Annexure P24:	225-226		

	True copy of the PTI report dated 3.10.20 printed in the Deccan Herald			
36.	Annexure P25: True copy of the High Court of Odisha vide its order dated 16.10.2020 in WP(C) 9095 of 2020	227-235		
37.	Annexure P26: True copy of the Status Report dated 16.10.2020 filed by the The Government of NCT of Delhi in Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court	236-238		
38.	Annexure P27: True copy of the Indian Express report dated 19.10.20	239-240		

39.	<p>Annexure P28:</p> <p>True copy of the High Court of Judicature at Allahabad vide its order dated 20.10.2020 in the matter of In Re vs State of U.P. vide (PIL) No. 564 of 2020</p>	241-243		
40.	<p>Annexure P29:</p> <p>True copy of the Minutes of Meeting dated 24.10.2020 at 12:00 Noon through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority</p>	244-265		

41.	Application seeking exemption from filing certified copy of the impugned final order and judgment dated 20.10.2020	266-267		
42.	Application seeking permission to file lengthy synopsis.	268-269		
43	Application seeking exemption from filing attested affidavit	270-271		
44.	Application seeking permission to file the present SLP	272-274		
45.	<u>F/M</u>			
46.	Vakalatnama/Resolution	275-276		
47.	Memo of Parties	277		

IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3(1)(a)]
Civil Appellate Jurisdiction
(under Article 136 of the Constitution of India)
Special Leave Petition (Civil) No _____ of 2020
(Arising from the impugned order and final judgment dated
20.10.2020 passed by the Hon'ble High Court of Delhi at New Delhi
in Writ Petition (C) 3037 of 2020)
(With Prayer for interim relief)

In the matter of:

National Forum for Prison Reforms

...Petitioner

Versus

Govt. of NCT Delhi and Ors.

...Respondents

Office Report on Limitation

1. The petition is/are within time.
2. The petition is barred by time and there is a delay of _____
days in filing the same against order dated 20.10.2020.
3. There is a delay of ____days in re-filing the petition and
petition for condonation of days of delay in refiling has been
filed

BRANCH OFFICER

New Delhi

Dated: 26.10.2020

Proforma for First Listing

SECTION _____

The case pertains to (Please tick/check the correct box):

Central Act: (Title)

Section:

Central rule: (Title)

N.A.

Rule no(s):

N.A.

State Act (Title)

N.A.

Section:

N.A.

State Rule (Title):

N.A.

Rule no(s):

N.A.

Impugned Interim Order date:

N.A.

Impugned Final Order/Decree Date:

20.10.2020

High Court Name: High Court of Delhi at New Delhi

Name of Judges: Justice DN Patel, Justice Siddharth Mridul and
Justice Talwant Singh

Tribunal/Authority(Name):

N.A.

-
- | | | |
|--------------------------------------|------------------------------------|----------------------------------|
| 1. Nature of matter: | ✓ Civil | Criminal |
| 2. (a) Petitioner/Appellant | No.1: | National Forum on Prison Reforms |
| (b) E-mail ID: | | N.A. |
| (c) Mobile Phone Number: | | N.A. |
| 3. (a) Respondent No.1: | Government of NCT of Delhi and Ors | |
| (b) E-mail ID: | | N.A. |
| (c) Mobile Phone Number: | | N.A. |
| 4. (a) Main category classification: | | N.A. |
| (b) Sub classification: | | N.A. |
| 5. Not to be listed before: | | N.A. |

6. (a) Similar disposed of matter N.A.
 with citation, if any. & case details N.A.
 (b) Similar pending matter with
 Case details N.A.
7. Criminal matters:
- a. Whether accused/convict has surrendered: N.A.
 b. FIR No.: N.A. Date: N.A.
 c. Police Station: N.A.
 d. Sentence Awarded: N.A.
 e. Period of Sentence undergone including period of
 detention/custody undergone: N.A.
8. Land Acquisition Matters:
- a. Date of section 4 notification: N.A.
 b. Date of section 6 notification: N.A.
 c. Date of section 17 notification: N.A.
9. Tax Matters: State the tax effect: N.A.
10. Special Category (first petitioner/appellant only): N.A.
 Senior citizen > 65 years - SC/ST Woman/Child
 Disabled Legal Aid case In custody
11. Vehicle No. (In case of Motor Accident Claim matters): N.A.

Date: 26.10.2020



(Satya Mitra)

AOR for Petitioner

Registration No. 1852

E-mail id: satyamitra2003@gmail.com

Synopsis

An order brushing aside 8 HPC minutes

Order of surrender of 2318 undertrials

Failure to enforce directions given in Arnesh Kumar's case

Pushing the Delhi prison population past 18,574 (185% rate of occupancy)

1. The impugned order is completely against the spirit of the order dated 23.3.2020 passed by this Hon'ble Court in Suo Motu Writ Petition: WP (C) no.1 of 2020, Court on its own Motion vs. State & Ors, In Re: Extension of Interim Orders, wherein the Hon'ble High Court has brushed aside, without even perusing, the 8 recommendations/ orders of High Powered Committee (HPC) of the Delhi High Court appointed by this Hon'ble Court for the release of prisoners on account of the real possibility of Covid spreading in the 16 Delhi Jails. This order was made by grossly misunderstanding the data presented to the High Court and wrongly concluding that only 3 Covid cases existed among the 16,000 inmates. Secondly, the observations regarding release of prisoners in jails as undertrials on the allegation that they

had committed so called "heinous crime" was dealt with by the HPC carefully and reasons given, but these have not even been looked at.

2. The orders of this Hon'ble Court set out herein were made principally on the basis that the rate of occupancy in the Delhi jails was in excess of 170% and the spread of Covid in the prisons was a real danger. Hence the High Powered Committees were ordered to be established to define the criteria for release of prisoners so that the prison population went at least down to the capacity of the jails if not lower to maintain the new norm of social distancing.
3. When the first order of this Hon'ble Court dated 16.3.2020 in Suo Motu WP (C) no.1 of 2020 was made, there were 17,440 prisoners in the 16 Delhi jails. The capacity of the Delhi jails is 10,026. At least 7,000 prisoners had to be released to bring the inmate population on par with the capacity. By the time the 6th meeting of the HPC was held dated 20.06.2020, 4129 prisoners had already been released thus bringing the prison population down to 13,677 as on June 19, 2020.

4. In the meanwhile, unmindful of this exercise, the Delhi Police continued arresting persons for non-serious offences contrary to the decision of this Hon'ble Court in 'Arnesh Kumar's case set out hereinafter where this Hon'ble Court directed the police not to routinely arrest persons where the offences attracted a prison sentence of 7 years and less. Therefore, on the one hand, the HPCs were releasing prisoners and on the other hand the police were adding to the prison population by arresting persons who ought not to have been arrested in the first place. Resultantly, though by 19th June 2020 the prison population had been brought down to about 13,677, the subsequent unwarranted arrests by the police took the prison population up to 15,900 which is recorded in the impugned order.
5. Rather than to give recognition to the good work done by the Delhi HPC headed by the second senior most Justice, the Hon'ble High Court in the impugned order, ordered the surrender of 2318 + 356, i.e. 2674 undertrials thus completely undermining and dismantling the 8 recommendations/orders made by the HPC for the decongestion of the Delhi jails. If the impugned order is implemented the population of the Delhi jails

would cross 18,574. Thus the impugned order put back the conditions of Delhi prisons back to square one. The prison population at the time when the HPC was established on 28.3.20 was around 17,440. If the unwarranted arrests continues contrary to the Supreme Court decision in Arnesh Kumar's case then the prison population by the end of year 2020 is estimated to go upto 18,574 (not counting those involved in minor offences) thus taking the rate of occupancy to 185%, which is even higher than the rate as existed before the lockdown.

6. Thus the impugned order would create an unprecedented Covid crisis.

Major mistake that there are only 3 Covid cases

Most of the 16,000 inmates have not been tested

Asymptomatic persons can also transmit the virus

7. The Hon'ble High Court has erroneously concluded that only 3 positive Covid cases existed among the 15,900. The same can be seen in paragraph 6 and the relevant part is as under:

"Mr. Rahul Mehra, Standing Counsel, under instructions from DG Prisons, has submitted that although in the report dated 15th October, 2020 it was shown that 6 prisoners were infected with Covid -19 but out of them 3 have already recovered and now only 3 prisoners are infected from Covid-19."

8. All that this statement means is that there are 3 persons in the Delhi jails who are currently showing the symptoms and suffering from Covid. The Hon'ble High Court ignored that a Covid positive person can be asymptomatic and yet transmit the Covid virus. Secondly, all the 16,000 persons in the Delhi jails have not been tested for Covid. Only new entrants are tested. Thus the statement made is only in respect of new entrants. Thus the Delhi government has no idea as to how many persons in the Delhi jails are Covid positive.
9. Immediately after the status report dated 15.10.20 was filed in the court at least 2 newspapers reported fresh Covid cases. The Indian Express report dated 19.10.20 reported as under:

"Four inmates and nine jail staffers in the three jail complexes of the capital have tested positive for COVID 19 the previous week"

10. The Times of India relying on the PTI report of 18.10.20 reported as under:

"Four inmates and nine jail staff in the three prison complexes of Delhi are presently undergoing treatment for COVID-19"

11. That asymptomatic persons can transmit the virus is clear from the following reports.

- a. 'Transmission of SARS- CoV 2: Implications for infection prevention', Scientific Brief published by the World Health Organization, dated 09.07.2020 states as follows:

"...Transmission can also occur from people who are infected and remain asymptomatic....

.....SARS-CoV-2 infected persons without symptoms can also infect others...

....Early data from China suggested that people without symptoms could infect others...."

- b. 'ICMR Study in UP finds COVID 19 Infectivity May be significantly Higher', published by The Wire, dated 19.08.2020 states as follows:

".. Other findings of the study also reveal crucial insights into the way the disease is spreading, including that the infectivity may be much higher than admitted by the ICMR and that asymptomatic patients might be driving the pandemic."

"...The scientists observed that "asymptomatic cases can silently transmit infection", a finding that is supported by other studies..."

- c. 'Even Asymptomatic People Carry the Coronavirus in High Amounts' published by the New York Times, dated 06.08.2020 states as follows:

"...A new study in South Korea, published Thursday in JAMA Internal Medicine, offers more definitive proof that people without symptoms carry just as much virus in their nose, throat and lungs as those with symptoms, and for almost as long..."

2 Deaths Reported due to Covid

Covid positive jail staff

12. The HPC minutes dated 30.08.2020 reports that DG Prisons has informed as under:

"At the outset, Sh. Sandeep Goel, D.G. (Prisons) informed the Committee that last week has seen substantial rise of Covid-19 (Novel Corona Virus) positive cases, in the country in general and Delhi in particular. ...

DG (Prisons) informed the committee that as on 28.08.2020, cumulative figure of COVID-19 Positive cases is as under:

Prison Inmates: 65 (61 recovered, 02 expired, 02 Active cases)

Prison Staff: 175 (168 recovered, 07 active cases)

....

It is considered that COVID-19 (Novel Corona Virus) can enter the jail premises through:

- (a) New entrants

(b) Jail Staff, Paramilitary Staff, Medical Staff

(c) Other persons entering the Jail premises for delivery of ration and other essential items.”

13. Thus it can be seen that 2 persons have already died due to Covid.
14. Besides, a large number of jail staff are also testing positive for COVID.

Number of Jail Staff tested positive for Covid recorded in the Minutes of the Meeting of High Powered Committee:

S.No	Date of the High Powered committee	No of jail staff
1.	Minutes of the meeting of the High Powered Committee dated 18.05.2020	1

2.	Minutes of the meeting of the High Powered Committee dated 20.06.2020	36
3.	Minutes of the meeting of the High Powered Committee dated 31.07.2020	165
4.	Minutes of the meeting of the High Powered Committee dated 30.08.2020	175

DG Prisons on 30.08.2020 says “dangerous” to recall

Delhi government opposes recall

15. On 30.08.2020, DG Prisons informed the Committee that the period of **extended interim bail** as well as the period of interim bail granted to UTPs on the basis of criteria laid down by the Committee on 31.7.2020 (which constitute **2942 UTPs**) is going to expire w.e.f. 21st September, 2020 onwards.

"DG Prisons informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a dangerous proposition if these 2942 UTPs who were granted interim bail for 45 days are taken back after their surrender.

DG Prisons proposed that in view thereof the interim bail of these 2942 UTPs needs to be extended. A letter dated 28.8.20 written by DG-Prisons to this effect is also brought to the notice of the Committee."

16. In the impugned order it is stated that Delhi Government opposed the making of the order as under:

"Mr. Rahul Mehra has submitted that Covid-19 pandemic is still prevailing and the earlier orders passed by this court need not be modified."

17. In the PTI report dated 3.10.20 printed in the Deccan Herald, it is stated as under:

"The Delhi Prison Department has requested the city government to extend the emergency parole granted to convicts by one month in view of the existing COVID-19 situation."

DG on 24.10.2020 reports to HPC

DG says "unprecedented", "unmanageable"

"Prison population will exceed 22,000"

18. The DG Prisons in the HPC minutes dated 24.10.2020 states as follows:

"D.G. (Prisons) informed that at present the total population of inmates inside Delhi Prisons is approximately 15,900 (15887 to be precise as on today i.e. 24.10.2020). He informed the Committee that owing to the above referred order dated 20.10.2020 passed by Full Bench of Hon'ble High Court about 2300 UTPs/convicts shall surrender in a phased manner from 02.11.2020 to 13.11.2020, raising the population of inmates significantly. He further brought to the notice of the Committee that if 3337 UTPs and 1182 convicts who have been

granted 'interim bail/emergency parole' under different criteria laid down by this Committee, are asked to surrender during the same duration as their 'interim bail/emergency parole' is expiring in a phased manner from 05.11.2020 onwards, then the total population of Delhi Prison is likely to reach 22000, which would be unprecedented and may become unmanageable owing to the present situation and circumstances. He also informed that till date only on one occasion the maximum population of Delhi Prisons has touched 18,000. D.G. (Prisons) thus contended that considering to the present prison population and taking into account surrender of UTPs/convicts by virtue of orders dated 20.10.2020 of Full Bench of Hon'ble High Court, it would be appropriate, if 'interim bail/emergency parole' granted to 3337 UTPs and 1182 convicts under HPC criteria may be extended for a further period of 30 days.

"....Members of the Committee have considered that as on date against this capacity, there already are 15887 inmates. Even if the additional accommodation of 1800 inmates in the newly created 'temporary jail' is taken into consideration, it would be highly inconvenient for the jail authorities to accommodate UTPs/convicts released on 'interim bail/emergency parole' under the criteria laid down by this Committee, alongside those who would be surrendering in terms of orders dated 20.10.2020 passed by Full Bench of Hon'ble Delhi High Court. Considering the fact that UTPs/convicts who would be surrendering as per orders passed by Full Bench of Hon'ble High Court are required to be kept in Isolation Cells for a period of 14 days from their respective dates of surrender, Members of the Committee, therefore, found the contention raised by D.G. (Prisons) to be reasonable. Members of the Committee are of the opinion that it would be appropriate to prevent any

chaos or inconvenience to the jail authorities, if the UTPs/convicts granted 'interim bail/emergency parole' on the basis of criteria laid down by this Committee are asked to surrender from December, 2020. As by that time the quarantined/Isolation period of UTPs/convicts surrendering as per orders dated 20.10.2020 of Full Bench of Hon'ble High Court, would be over"

En masse recall unjustified

19. The High court contrary to the spirit of the orders passed by this Hon'ble Court in SMW(C) 1 of 2020 and recommendations of the HPC committed an error in the impugned order by cancelling the bail and recall the undertrials. There have apparently either been a very few or no cases of disobedience of the conditions of bail. Therefore, there was no tearing urgency or justification for en masse recall. The trial courts could have been authorized to cancel bail in cases of disobedience of the conditions of bail.
20. Subsequent to the impugned order dated 20.10.2020 of the Hon'ble High Court, the HPC in its meeting held on dated

24.10.2020 has laid down the criteria for surrender of the 4500 UTPs/Convicts, in addition to the 2674 UTPs from December 2020.

“Members of the Committee are of the opinion that it would be appropriate to prevent any chaos or inconvenience to the jail authorities, if the UTPs/convicts granted ‘interim/emergency parole’ on the basis of criteria laid down by this Committee are asked to surrender from December 2020.

... Thus, all 4500 UTPs/convicts will surrender on different dates as and when their respective interim bail/emergency parole would expire.”

Courts functioning substantially truncated

21. Another erroneous conclusion of the High Court in the impugned order is as under:

“After considering all aspects and in view of the fact that the interim bail and interim stay extension order was necessitated because functioning of the Courts was curtailed due to complete lockdown declared on

25.03.2020 but now the situation has changed and all Courts at High Court and District Court level are functioning through physical mode/VC mode and since there is no spread of Covid-19 in the jails..”

22. The real situation is actually contrary to the above stated position. The courts are functioning only partially. Though District Courts and High Court of Delhi are functioning through Video Conferencing and few are also functioning in physical mode. But due to the current limited functioning of the courts, the trials of the cases where evidence is being recorded is not possible in near future. The High Court itself vide circular dated 19.10.2020 on administrative side has directed that the cases listed before High Court upto 12.11.2020 stands adjourned en-bloc for Jan 2021 and most of the cases where evidence is to be recorded in trial courts, the same are being adjourned due to administrative instructions.
23. Therefore, according to the impugned order, 2318 undertrials whose bail would be cancelled, would have to approach the court for continuation of bail, that itself would create confusion and stress on the lower courts.

**Prison specific readiness and
response plans to Covid-19 not taken into account**

24. This Hon'ble Court, by order dated 23rd March 2020, had passed another direction – Prison specific readiness and response plans must be developed in consultation with medical experts. This Court vide order dated 23.3.2020 in WP(C)1/2020 had held as under:

“Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings” jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances.”

While the HPC minutes document the several measures undertaken by the prison department since its first meeting, the

Delhi High Court did not call for the updated prison-specific readiness and response plans as would be required in case of return of over two thousand prisoners. It only considered a brief report about the number of prisoners infected with COVID-19 and failed to take into account the prison wise readiness and response plan before making the decision of not granting further extension of interim bails.

Unwise move

25. Therefore, this petition impugns the order dated 20.10.2020 of the Delhi High Court in Writ Petition (C) 3037 of 2020 by which the High Court proposes to reverse the release of undertrials and other prisoners from the jails in Delhi as ordered by the Hon'ble Supreme Court in a series of orders dated 23.3.2020, 7.4.2020, and 13.4.2020 passed in WP(C)1/2020. These orders were passed by the Supreme Court on account of the huge overcrowding in the jails in the country where social distancing was not possible and the spread of the Covid virus was beginning to take place. Now on the basis of insufficient data and incorrect reasoning, the High Court proposes to send 2674 number of prisoners back into the Delhi Jails. Such move would

cause the Covid figures in the jails, even if it is assumed that it is declining, to spike once again leading to the spread of the pandemic in the Delhi jails.

**Supreme Court orders
for the release of prisoners during Covid**

26. By order dated 23.3.2020 in Re: Contagion of Covid 19 Virus in Prisons; Suo Moto Writ Petition (C) 1 of 2020, the Supreme Court held and directed as under:

“By an order dated 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes. Several States and UTs have filed their responses detailing measures and initiatives taken while dealing with Corona virus (COVID-19) in respect of persons detained in Prisons and Remand Homes.

An overview of the responses reflects that considerable measures for protection of health and welfare of the prisoners to restrict the transmission of COVID-19 have been taken by the State Governments. These measures generally include creation of isolation wards, quarantine of new prisoners including prisoners of foreign nationality for a specific period, preliminary examination of prisoners for COVID-19, ensuring availability of medical assistance, entry points scanning of staff and other service providers, sanitisation and cleanliness exercise of prison campus and wards, supply of masks, barring or limiting of personal visit of visitors to prisoners, suspension of cultural and other group activities, awareness and training with regard to stoppage of transmission of COVID-19 and court hearings through video conferencing among others. Many states have also initiated the process of installing digital thermometers for the purpose of examination of the prisoners, staff and

visitors. Some of the States have taken similar measures for Remand Homes as well.

Looking into the possible threat of transmission and fatal consequences, it is necessary that prisons must ensure maximum possible distancing among the prisoners including undertrials.

Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.

We also direct that prison specific readiness and response plans must be developed in consultation with medical experts. “*Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings*” jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. 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.

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.

The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273."

27. Thereafter by order dated 07.04.2020, the Supreme Court directed as under:

"In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes.

They shall also be given an option for staying in temporary shelter homes during the period of lockdown.”

28. Thereafter by order dated 13.4.20, the Supreme court directed as under:

“We have considered the rival submissions and we are of the view that in the circumstances, it would be appropriate to issue the following directions:

(a) No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.

(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.

(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no

transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of coronavirus disease are at a distance from each other.

(d) The order dated 23.03.2020 shall be applicable to correctional homes, detention centres and protection homes."

It is submitted that about 802 prisoners have been declared as foreigners under the provisions of the Foreigners Act, 1946. Learned counsel for the applicants rely on the order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 titled as "Supreme Court Legal Services Committee v. Union of India & Others", this Court directed as follows:

"Insofar as the release of detenues who have served long period of detention in the detention centres awaiting their deportation is concerned, we are of the view that detenues who have completed more than

three years may be released, subject to the following conditions:-

(a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;

(b) He or she specifies verifiable address of stay after release;

(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;

(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of

violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal.”

Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenues who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenues who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10.05.2019, except that they shall not be required to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs.5,000/- (Rupees five thousand only) with two sureties of the like sum of Indian citizens. Rest of the conditions in the said order dated 10.05.2019 reproduced above shall apply.

Ordered accordingly.”

Orders of the Delhi High Court

for the release of prisoners during Covid

29. By an order dated 25.03.2020, in Re: Extension of Interim orders, Suo Motu WP(C)3037/2020 the High Court of Delhi held as under:

“Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this Court and courts subordinate to this Court, wherein such interim orders issued were subsisting as on 16.03.20 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon’ble Supreme Court of India in any particular matter, during the intervening period.”

30. By order dated 15.5.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court held and directed as under:

"2. While taking suo motu cognizance of the extraordinary circumstances, on 25.03.2020, this Court has passed certain directions. The relevant part of the order reads as under:- *"In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020. Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.*

On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. 25.03.2020. In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine

matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020. Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period. Needless to

clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

3. Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period."

31. By order dated 15.6.2020 in Re: Extension of Interim Orders, Court on its own Motion vs. State & Ors., Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court further held and directed as under:

"3. Since some of the restrictions imposed by the Government of India were still in operation, and therefore, taking note of the extraordinary circumstances prevailing at that point of time, by order dated 15th May, 2020, we had extended our directions which were given in order dated 25th March, 2020 till 15th June, 2020.

4. Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020. 5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th

March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions.”

32. In the meanwhile, the Single Bench of the High Court of Delhi in Crl.A.193/2020 titled as Harpreet Singh vs. State vide its order dated 01.07.2020 sought clarification to the following effect:

“The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

- a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter?
- b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and

circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020? 8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby."

33. These questions raised by the Hon'ble Single Bench were clarified by the full bench of this Hon'ble High Court in Crl A 193 of 2020 order dated 13.07.2020 as under:

"In view of the foregoing, and in order to maintain parity, between orders granted on or before 16.03.2020, and those issued thereafter; and further taking note that insofar as, criminal matters are concerned, those enlarged on interim bail/parole may spread the infection amongst the

inmates of the respective jails, where they may be required to surrender; and also in the backdrop of the circumstance, that the jails are overcrowded and have an inherent vulnerability to assist the unchecked spread of Covid-19, owing to space constraints and over congestion, we make it clear that all the directions issued by the Full Bench from time to time in the suo motu proceedings in W.P.(C) 3037/20 have been rendered with a view to check the ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole, granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any particular matter, during the intervening period."

34. At the same time vide order dated 13.7.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court while further extending the implementation of its earlier directions contained in its orders dated 25th March, 2020 and 15th May, 2020 and 15th June, 2020, extended the interim orders till 31st August, 2020, as under:

"In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March 2020, and 15 th May 2020 and 15th June 2020 till 31st August 2020 with the same terms and conditions.

....In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to

maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court or the Courts subordinate to this Court, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.”

35. Meanwhile an application seeking impleadment and clarification of order dated 13.07.2020 passed by the Full Bench of the Hon’ble High Court was sought where the Full Bench of the Delhi High Court in Suo Motu Writ Petition (C) 3037 of 2020, vide order dated 24.07.2020 held and directed as under:

"...From plain reading of the foregoing directions, it is axiomatic that, the full bench while taking suo motu cognizance of the extraordinary circumstances, arising out of the COVID-19 pandemic, had made it clear that in so far as, criminal matters are concerned, in view of the serious threat posed by the possibility of the unchecked spread of the coronavirus pandemic, by those who have been enlarged on interim bail/parole; and who may carry back with them the COVID-19 infection, so as to infect other inmates of the jail, if they are required to surrender, to the already congested and over-crowded jails, which may not be in a position to strictly maintain physical distancing amongst jail inmates; and considering the inherent vulnerability of the jails, owing to serious space constraints, to effectively control, check and prevent the spread of Covid-19; it was directed that, the interim bail/parole granted to such persons by this Court or the Courts

subordinate to this Court, either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period..”

36. Vide order dated 24.8.2020 the Full Bench of the Delhi High Court further extended the interim orders till October 31st, directing as under:

“4. ..In view of the above, we hereby further extend the implementation of the directions contained in our orders dated 25th March, 2020, 15th May, 2020, 15th June, 2020 and 13th July, 2020, till 31st October, 2020 with the same terms and conditions.”

37. Further vide Writ Petition (C) 3080/2020 order dated 18.9.2020, the Hon'ble High Court extended the interim bails of 2942 UTPs on the request of the DG Prisons, as follows:

"Mr. Sandeep Gol, Director General (Prisons) reiterated the same request for extension of interim bails granted to 2942 UTPs, in view of the prevailing pandemic situation.

Mr. Rahul Mehra, learned Standing Counsel (Criminal) for Government of NCT of Delhi has no objection to the extension of interim bails granted to 2942 UTPs by another period of 45 days from the date of respective expiry of their interim bail period.

Accordingly, it is ordered that the interim bails for a period of 45 days granted to 2942 UTPs, in view of the recommendations of the HPC dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020, 31.07.2020, 30.08.2020 and on the basis of orders in WP (C) No.2945/2020 titled as "*Shobha Gupta &Ors. vs. Union of India &Ors.*" are hereby extended by another period of 45 days from the date of their respective expiry of interim bails on the same terms and conditions."

38. Meanwhile, the Additional Sessions Judge (03) (N/E) Karkadooma Courts, Delhi vide a letter dated 8.09.2020 sought clarification from the High Court of Delhi as to whether the interim bails granted in the cases of riots on the humanitarian grounds by the Additional Sessions Judge shall be extended from time to time of the directions contained in the orders passed in the present petition. The High Court of Delhi, while considering the said letter, issued notice to the state vide order dated 28.9.2020 the Delhi High Court in Suo Motu Writ Petition (C) 3037 of 2020, and also directed the learned Standing Counsel for the State to supply the following information to this Court:-

“(a) How many persons in jail are presently infected/suffering from Covid-19?

(b) How many persons involved in heinous crimes are granted the interim bail?

(c) How many persons involved in minor crimes are granted interim bail?

(d) How many persons are granted interim bail by the Delhi High Court?

We also direct the Director General (Prisons) to remain present through Video Conferencing on the next date of hearing so that the application can be finally heard.”

39. The Government of NCT of Delhi through the Superintendent of Prison Headquarters, Tihar, Delhi filed a status report dated 16.10.2020 where it stated as follows:

“2(a) There are 06 prisoners who are presently infected/suffering from COVID-19.

(b) There are 2318 involved in heinous crimes and granted interim bail by Hon’ble Courts.

(c) There are 2907 prisoners involved in minor crimes and granted interim bail.

(d) There are 356 prisoners who have been granted interim bail by the Delhi High Court.”

The Impugned Order

40. The relevant part of the impugned order is to be found in paras 6 and 7 which is as under:

"6. Mr Rahul Mehra, Standing Counsel, under instructions from DG prisons, has submitted that although in the report dated 15th October, 2020, it was shown that 6 prisoners were infected with COVID-19 but out of them 3 have already recovered and now only 3 prisoners are infected from COVID-19 and they have been admitted in LNJP Hospital with a view to segregate them from other prisoners. As far as the capacity of the jails is concerned, it was informed by Mr Rahul Mehra, after consulting DG (Prisons) that overall capacity of all the prisoners is about 10,000 and as on date and they have 15,900 prisoners inside the jails. The information submitted by the jail authority reveals that 2,318 undertrials involved in heinous crimes were granted interim bail by the District Courts, which have been extended from time to time on the strength of orders dated 25.03.2020 and subsequent orders

passed by this Court. 2,907 under trials involved in minor crimes were granted bail as per the recommendations of the High Power Committee and 356 prisoners were granted interim bail by the Delhi High Courts.

7. After considering all aspects and in view of the fact that the interim bail and interim stay extension order was necessitated because functioning of the Courts was curtailed due to complete lockdown declared on 25.03.2020 but now the situation has changed and all Courts at High Court and District Court level are functioning through physical mode/VC mode and since there is no spread of COVID-19 in the jails and out of about 16,000 prisoners only 3 are infected and they have been segregated and are admitted in hospital, we deem it proper to modify our order dated 25th March 2020"

The fundamental mistake

41. The fundamental mistake in the impugned order is the following conclusion found in para 7 as under:

“There is no spread of Covid 19 in the jails.”

Over 185% occupancy rate if the order is implemented

42. The main reason why this Hon’ble Court released prisoners in the first instance is because overcrowding in Indian jails was of a high order and since social distancing norms could not be observed therefore the undertrials were released to reduce overcrowding to acceptable limits in order to prevent the spread of the virus.

43. In para 6 it was found as under:

“As far as the capacity of the jails is concerned... the overall capacity of all the prisons is about 10,000 and as on date they are 15,900 prisoners inside the jails.”

44. From para 6 this fact is also available namely that by the impugned order 2318 +356 prisoners will be returned to the prisons. This means that 5,900 prisoners plus 2674 prisoners i.e. 8547 prisoners above the capacity of 10,000 will be in prison. This amounts to occupancy rate to the extent of 185%.

45. Further, after December, the prison population will further go upto 22,000, with 220% occupancy which will be a very high level of overcrowding, and may render it impossible for the jail officials to control the spike in Covid cases inside the jails, in case the virus spreads. It is further known that the winters will make it worse for the virus to be treated.

Second mistake: Decisions of the High Powered Committee, appointed by this Hon'ble Court and headed by a senior judge of the High Court, brushed aside without even considering the grounds for release of the prisoners

46. This Hon'ble Court by order dated 23.3.20 passed in Suo Motu WP(C)1/2020 set up the High Powered Committees (HPCs) in each state. The relevant part of the order is as follows:

"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 on 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.

High Powered Committee Minutes dated 28.3.20

47. The High Powered Committee (HPC) of Govt. of NCT of Delhi was constituted with the following persons:

1. Sh. Satya Gopal, Principal Secretary (Home)/Additional Chief Secretary, Government of NCT of Delhi.
2. Sh. Sandeep Goel, Director General (Prisons), Delhi.
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

48. The committee considered the following criteria for releasing

prisoners on interim bail:

- (i) Under trial prisoner is the first time offender;
- (ii) Under trial prisoner has been arrested or is facing trial for offence punishable upto 7 years ;
- (iii) Case is triable by Magistrate and;
- (iv) Under trial prisoner is in custody for last 3 months or more ;

49. On the basis of this criterion, the under trial prisoners were identified by the Jail Administration following which applications for interim bail were filed in Court through the empanelled Counsels of concerned District Legal Services Authority (DLSA). The said applications were considered and necessary orders were passed by the Duty Magistrates / Addl. Session Judges on duty.
50. It has further been resolved that following category of UTPs, even if falling in the above criterion, should not be considered:-
- (i) All inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;

(ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;

(iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;

(iv) Those UTPs who are foreign nationals ;

(v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA ; and

(vi) Cases investigated by CBI/ED/NIA/Special Cell Police and Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.

51. The members of the Committee have discussed and deliberated upon the remission of the sentence. It has been resolved that in the case of:-

(i) Convicts who are sentenced for 10 years and have already completed 9 1/2 years of custody including regular remission, may be considered for 6 months special remission of sentence by Home Department, Govt. of NCT

of Delhi;

(ii) Convicts who are sentenced for 7 years or more but less than 10 years, and are left with only 5 months to complete the sentence, may be considered for 5 months special remission of sentence;

(iii) Convicts who are sentenced for 5 years or more but less than 7 years, and left with only 4 months to complete the sentence, may be considered for 4 months special remission of sentence;

(iv) Convicts who are sentenced for 3 years or more but less than 5 years, and left with only 3 months to complete the sentence, may be considered for 3 months special remission of sentence;

(v) Convicts who are sentenced for 1 year or more but less than 3 years, and left with only 2 months to complete the sentence, may be considered for 2 months special remission of sentence ;

52. On 07.04.2020, the Second High Powered Committee meeting took place where the following categories of prisoners were recommended for release on interim bail:

“The Members of the Committee discussed and resolved that following categories of prisoners may now be considered for grant of interim bail for 45 days in view of the circumstances in which we are in, preferably on ‘Personal Bond’:

(i) Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less;

(ii) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for one year or more, facing trial in a case which prescribes a maximum sentence of 10 years or less ;

(iii) Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case

which prescribes a maximum sentence of 7 years or less;

D.G (Prisons) has informed that on the basis of this new criterion, approximately 973 more UTPs would be the beneficiaries and their release would considerably ease out the Jail Population. The Committee has been apprised that on the basis of criteria adopted vide meeting dated 28.03.2020, the Jail Population has come down from 17,552 as on 25.03.2020 to 16,179 as on 07.04.2020. On complete implementation of the said criteria, it would further come down to about 15,500. It is further informed to the Chair that on the basis of criterion adopted hereinabove today for release of UTPs / Remand Prisoners on "interim bail", the same would further come down to 14,500 in a week's time.

Chairperson has directed Member Secretary, DSLSA to take steps for having the applications of UTPs falling in relaxed criterion, be moved.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services

Authority (DSLISA) to request District Judges to pass on directions to the Jail visiting Duty Magistrates as well as Duty Magistrates in courts to take up these applications and if the under trial prisoners are released on bail, they may be released on 'Personal Bond', to the satisfaction of Jail Superintendent, so as to implement the social distancing policy of the Government.

HPC Minutes dated 18.4.20

53. On 18.04.2020, the third High Powered Committee meeting took place wherein the following break-up of the total holding capacity of the jails at Tihar, Mandoli and Rohini jail vis a vis their actual occupancy was considered:

Overall Delhi Prisons	
Total capacity (16 jails)	10,026
Population as on 25.03.20	17,552
Population on 18.04.2020	14,799

54. The Committee after considering the actual occupancy of the 9 Jails in Tihar, Rohini and 6 Jails in Mandoli and taking into

account the fact that in the present circumstances of Coronavirus pandemic, the UTPs are not being physically produced in Courts and their remand is being extended by the Duty Magistrate in the Jails itself, it is expedient that some of the prisoners from Rohini Jail and Tihar Jail can be shifted/transferred to Mandoli Jail.

55. With respect to the Parole of the convicts the following convicts were released:

With respect to parole of convicts	
Total Number of orders issued	1109
Convicts released	953
<p>Note :Though, orders have been issued with respect 1,109 convicts for their release on "emergency parole" but some of them have not been released as they are unwilling and some are residents of States of Punjab, Bihar, West Bengal and Uttar Pradesh.</p>	

56. With respect to interim/regular bail of UTPs, the following UTPs were released:

With respect to interim/regular bail of UTPs	
Number of application moved as per the criteria	2,503
Orders granting bail received as on 06.04.2020	1,877
UTPs already released	1,777
Though, interim bail orders have been issued with respect to 1877 UTPs but some of them are not released owing to the want of permanent address, they being vagabond and some of the UTPs being unwilling.	

57. As a result of the earlier decision passed by the HPC, the following UTPs/Convicts were released on bail till 18.4.2020:

UTPs released on interim bail till 18.04.2020	1777
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 / 2020	207
Convicts released on Emergency Parole till 18.04.2020	953
Convicts released on remission of sentence	25

TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL / PAROLE / REMISSION OF SENTENCE TILL 18.04.2020	2962
---	------

58. Further, following fresh category of prisoners were considered for release on interim bail:

(i) Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for three months or more, facing trial in a case which prescribes a maximum sentence of 7 years or less;

(ii) Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for a period of six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less ;

(iii) UTPs who are suffering from above mentioned illness(es) and are in custody for a period of six months or more and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.

HPC minutes dated 5.5.20

59. On dated 05.05.2020, the Fourth High Powered Committee meeting took place wherein the HPC in its meeting lauded the efforts put in towards the implementation of Resolutions adopted in earlier meetings by Govt of NCT of Delhi, Jail Administration and DSLSA, which led to the following number of UTPs/Convicts having been released on interim bail/parole and on grant of remission:

UTPs released on interim bail till 05.05.2020	2177
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 /2020	301
Convicts released on Emergency Parole till 05.05.2020	1056
Convicts released on remission of sentence	39
TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL/ PAROLE /REMISSION OF SENTENCE TILL 05.05.2020	3573

HPC minutes dated 18.5.20

60. On dated 18.05.2020, the Fifth High Powered Committee meeting took place where the DG of Prisons submitted the multi-pronged approach to tackle the Covid-19 virus in prisons.

The measures included,

a. Conducting thermal screening and medical test of the jail staff, para-military staff and medical staff before letting them enter the jail premises.

b. Minimizing the contact of inmates with outsiders by restricting movement of inmates outside the jails, as well as restricting movement of outsiders into the jails.

c. Creating Medical Isolation Facility for jail staff, security staff, Doctors and Technical Staff, showing symptoms of any disease.

d. Spreading Continuous awareness and briefing the staff as well, on basic hygiene and do's and don'ts to prevent the spread of the disease.

e. Having Quarantine Facility for jail staff, para-military,

medical staff after their return from out station leave.

f. A specific checklist has been designed by the medical staff for COVID -19 screening of all the entrants including jail staff, maintenance staff, security, medical staff and others entering the Jails for delivery of any essentials.

g. Wearing of the mask has been made mandatory for all the jail staff, para-military staff, medical staff, maintenance staff and others entering the Jails for delivery of any essentials.

h. Maintenance staff as well as Jail staff have been provided with Personal Protective Equipment (PPE) kit and they have been directed to wear the same during their respective duties.

i. All the staff has been cautioned to maintain social distancing while interacting with each other as well as with inmates.

61. The Committee was satisfied with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.
62. The Committee also took note of the no. of prisoners that were

released till 18.5.2020, i.e. total UTPs / CONVICTS released on Interim bail/ Parole/ Remission of Sentence till 18.05.2020 were 3678.

63. The Committee further resolved considering the following criteria for grant of interim bail for 45 days, preferably on personal bond:

(i) Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case;

(ii) Under trial prisoners (UTPs) facing trial for offence under Section 304 IPC and are in jail for more than one year with no involvement in any other case;

(iii) Under trial prisoners (UTPs) facing trial in a case under Section 307 or 308 IPC and are in jail for more than six months with no involvement in any other case;

(iv) Under trial prisoners (UTPs) facing trial/remand prisoners in Theft cases and are in jail for more than 15 days;

(v) Male Under trial prisoners (above 65 years of age)

facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

(vi) Female Under trial prisoners (above 60 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

DG (Prisons) informed the Committee that based on this new criterion, approximately 1500-1700 UTPs would be released further to ease out the jail population.

64. It was further resolved that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, should not be considered :-

(i) Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;

(ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;

(iii) Those under trial prisoners who are facing trial for

offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;

(iv) Those UTPs who are foreign nationals ;

(v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;

and

(vi) Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.

HPC minutes dated 20.06.20

65. On dated 20.06.2020, the Sixth High Powered Committee took place and the "The Committee perused the number of UTPs released on Personal Bond, on the basis of orders passed by Hon'ble High Court in WP (Criminal) no. 779/2020, as under:

The TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 20.06.2020 are 4129

The bails were further extended for a further period of 45 days Extensions of Interim Bails and To Consider The Extension Of Interim Bail Granted To Utps On The Basis Of Criterion Laid Down In The Meetings DATED 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 AND 18.05.2020 Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that this Committee in its meeting dated 05.05.2020 on the basis of letter dated 04.05.2020 of AIG (Prisons) and on proposal of DG (Prisons) had recommended to have the interim bail granted to UTPs on the basis of Writ Petition (Civil) 2945/2020, titled "Shobha Gupta & Ors. Vs. Union of India & Ors." as well as on the basis of criteria laid down by this committee in the meetings held prior thereto, extended for a further period of 45 days.

He informed the Committee that pursuant to the directions given to him in the meeting dated 05.05.2020, a letter dated 06.05.2020 was written by him to the Ld. Registrar General, High Court of Delhi. He has further informed that pursuant to said letter, Hon'ble the Chief

Justice, High Court of Delhi had constituted a Special Bench and the said Special Bench in Writ Petition (Civil) No.3080/2020, titled "Court on its own Motion Vs. Govt. of NCT of Delhi & Anr." vide its order dated 09.05.2020 had extended the 'interim bail' so granted to the UTPs for a further period of 45 days from the date their earlier interim bail is expiring.

It has further been informed to the Committee that the period of extended interim bail as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 05.05.2020 and 18.05.2020, is going to expire in last week of June, 2020. DG (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a dangerous proposition, if those UTPs who were granted "interim bail" for 45 days are taken back after their surrender.

DG (Prisons) proposed that in view thereof the "interim

bail" of the UTPs needs to be extended. A letter dated 13.06.2020 written by DG (Prisons) to this effect is also brought to the notice of Committee.

Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that Special Bench so constituted by Hon'ble the Chief Justice, which had earlier extended the interim bail vide order dated 09.05.2020 has listed the said matter on 22.06.2020.

The Committee deliberated and further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of "social distancing" no longer necessary, the Committee is of the opinion that the "interim bail" so granted to such UTPs needs to be extended for a further period of 45 days from the date their respective interim bail is expiring. The Committee is of the opinion that in this regard, a judicial order would be required from

Hon'ble High Court of Delhi and recommends accordingly.

Member Secretary, DSLSA is directed to place these recommendations of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard. In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration shall inform such UTPs of extension of their "interim bail" for a further period of 45 days from the date, the earlier period of interim bail is expiring, telephonically. DG (Prisons) assures that jail administration shall do the needful and shall inform such UTPs about the exact date of their surrender.

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date about 4129 inmates/convicts/UTPs have been released on parole/interim bail etc. Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee about the letter/representation dated 13.06.2020 wherein DG

(Prisons) has submitted about the latest position of COVID-19 (Novel Corona Virus) pandemic in Delhi Prisons. He further stated that despite effective steps already taken towards decongestion of Jails, Delhi still has prison population of 13677 as on 19.06.2020 against the combined holding capacity of 10026 of 16 Jails of Delhi. In view of this situation vide his letter dated 13.06.2020, DG (Prisons) has requested that the criteria adopted earlier needs to be relaxed so as to further decongest the jails as still the present occupancy of the Jail exceeds the optimum capacity of the Jail. Further fresh category of prisoners were considered for release on interim bails: It was noted that despite effective steps already taken towards decongestion of Jails, Delhi still has prison population of 13677 as on 19.6.2020 against the combined holding capacity of 10026 of 16 jails of Delhi, and that the criteria adopted earlier needs to be relaxed further.

The following criteria was therefore considered for grant of interim bail for 45 days:

- (i) Under trial prisoners (UTPs)(who are related as spouse of the deceased) facing trial for a case under Section 498A and 304B IPC and are in jail for more than two years with no involvement in any other case;
- (ii) Under trial prisoners (UTPs) (who are related as father-in-law, mother-in-law, brothers-in-law, sisters-in-law of the deceased) facing trial for offence under Section 498A and 304B IPC and are in jail for more than one year with no involvement in any other case;

Based on the new criterion, approximately 75 UTPs were further considered for release.

Pursuant to the earlier orders passed by the HPC, the Committee in its meeting considered the number of prisoners released till 28.07.2020.

UTPs released on interim bail till 20.06.2020	2651
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal)	310

No.779 /2020	
Convicts released on Emergency Parole till 20.06.2020	1108
Convicts released on remission of sentence	60
TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 20.06.2020	4129

The Committee deliberated and further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of "social distancing" no longer necessary, the Committee is of the opinion that the "interim bail" so granted to these 2901 UTPs needed to be extended for a further period of 45 days from the date their respective interim bail is expiring.

66. On dated 30.08.2020, the Sixth High Powered Committee took place and DG (Prisons) informed the Committee that as on 28.08.2020, cumulative figure of Covid-19 positive cases in jail were as under:

Prison Inmates: 65 (61 recovered, 02 expired, 02 Active cases)

Prison Staff: 175 (168 recovered, 07 active cases)

The number of inmates released pursuant to the criteria adopted earlier in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020 and 31.07.2020 is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on Personal Bond, on the basis of orders passed by Hon'ble High Court in W.P. (Criminal) No.779/2020.

TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL/
PAROLE/ REMISSION OF SENTENCE TILL 28.08.2020
were 4507.

67. Also, the DG Prisons informed the Committee that the Committee that the period of extended interim bail as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 31.07.2020 (which constitute 2942 UTPs) is going to expire w.e.f. 21st September, 2020 onwards. D.G. (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a dangerous proposition, if these 2942 UTPs who were granted "interim bail" for 45 days are taken back after their surrender.
68. D.G. (Prisons) proposed that in view thereof the "Interim Bail" of these 2942 UTPs needs to be extended. A letter dated 28.08.2020 written by D.G. (Prisons) to this effect is also brought to the notice of Committee. Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that Special Bench so constituted by Hon'ble the Chief Justice, which had

earlier extended the interim bail vide order dated 04.08.2020 has listed the said matter on 14.09.2020. The Committee deliberated upon the request so made and also considered the partial resumption of physical hearing in Courts subordinate to Delhi High Court. The Committee has also taken into consideration sudden spurt of fresh COVID-19 positive cases in Delhi. DG (Prisons) proposed that Interim bail is expiring. The Committee was of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and recommended accordingly.

HPC Minutes dated 24.10.2020

69. These minutes are **at Annexure ____to__** and the relevant part is as under:

"...D.G. (Prisons) informed that at present the total population of inmates inside Delhi Prisons is approximately 15,900 (15887 to be precised as on today i.e. 24.10.2020). He informed the Committee that owing to the abovereferred order dated 20.10.2020 passed by Full Bench of Hon'ble High Court about 2300 UTPs/convicts shall surrender in

a phased manner from 02.11.2020 to 13.11.2020, raising the population of inmates significantly. He further brought to the notice of the Committee that if 3337 UTPs and 1182 convicts who have been granted 'interim bail/emergency parole' under different criteria laid down by this Committee, are asked to surrender during the same duration as their 'interim bail/emergency parole' is expiring in a phased manner from 05.11.2020 onwards, then the total population of Delhi Prison is likely to reach 22000, which would be unprecedented and may become unmanageable owing to the present situation and circumstances. He also informed that till date only on one occasion the maximum population of Delhi Prisons has touched 18,000. D.G. (Prisons) thus contended that considering to the present prison population and taking into account surrender of UTPs/convicts by virtue of orders dated 20.10.2020 of Full Bench of Hon'ble High Court, it would be appropriate, if 'interim

bail/emergency parole' granted to 3337 UTPs and 1182 convicts under HPC criteria may be extended for a further period of 30 days."

"....Members of the Committee have considered that as on date against this capacity, there already are 15887 inmates. Even if the additional accommodation of 1800 inmates in the newly created 'temporary jail' is taken into consideration, it would be highly inconvenient for the jail authorities to accommodate UTPs/convicts released on 'interim bail/emergency parole' under the criteria laid down by this Committee, alongside those who would be surrendering in terms of orders dated 20.10.2020 passed by Full Bench of Hon'ble Delhi High Court. Considering the fact that UTPs/convicts who would be surrendering as per orders passed by Full Bench of Hon'ble High Court are required to be kept in Isolation Cells for a period of 14 days from their respective dates of surrender, Members of the Committee, therefore, found the contention raised

by D.G. (Prisons) to be reasonable. Members of the Committee are of the opinion that it would be appropriate to prevent any chaos or inconvenience to the jail authorities, if the UTPs/convicts granted 'interim bail/emergency parole' on the basis of criteria laid down by this Committee are asked to surrender from December, 2020. As by that time the quarantined/Isolation period of UTPs/convicts surrendering as per orders dated 20.10.2020 of Full Bench of Hon'ble High Court, would be over..."

Extension orders passed by other High Courts

70. The High Court of Allahabad vide its order dated 20.10.2020 in PIL No 564 of 2030 extended all the interim orders till 01.12.202 and held as follows:

"The position on account of COVID 19 pandemic has not improved entirely, therefore, this Court is of the opinion that the direction given by this Court on 19.08.2020 to extend the effect of the earlier order till 31.10.2020 needs to be extended and accordingly the order quoted above

in reference to the extension of the interim order and even for the limitation, as given therein, is made operational and effective till 01.12.2020”

71. The High Court of Odisha vide its order dated 16.10.2020 in WP(C) 9095 of 2020 extended the interim orders up to 25.11.2020 and held as follows:

“... In view of the above, protection granted by this Court vide aforesaid order dated 05.05.2020 passed in this case in sub paras (i to (xii) of para 7 is extended up to 25th November 2020 except to the extends with the modification specifically made.”

72. The High Court of Karnataka vide its notice dated 29.09.2020 extended the interim orders upto 29.11.2020 and held as under:

“ The matter was again listed and the Division Bench by order dated September 29, 2020 has extended the above order dated April 16, 2020 till November 29, 2020.”

**No arrest of those involved in crimes
carrying a sentence of less than 7 years**

73. Arnesh Kumar vs. State of Bihar (2014 8 SCC 273) where the Supreme Court held as under:

“Our endeavour ... is to ensure that police officers do not arrest the accused unnecessarily and magistrate do not authorize detention casually and mechanically.”

74. This Hon’ble Court had in its order dated 23.3.20 passed in Suo Motu WP(C)1/2020 specifically directed the HPCs in the country to take note of the decision of the Supreme Court in Arnesh Kumar’s case in the following terms:

“The High Powered Committee shall take into account the directions contained in para 11 in Arnesh Kumar vs. State of Bihar”.

75. Para 11 of Arnesh Kumar vs. State of Bihar is as under:

“Para 11: Our endeavour in this judgement is to ensure that police officers do not arrest the accused unnecessarily and magistrate do not authorize detention

casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1 All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A of the IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Cr.PC;

11.2 All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3 The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4 The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5 The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of police of the district for the reasons to be recorded in writing;

11.6 Notice of appearance in terms of Section 41A of Cr.PC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the District for the reasons to be recorded in writing;

11.7 Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before High Court having territorial jurisdiction;

11.8 Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.”

76. Similarly in the same order dated 23.3.20 passed in Suo Motu WP(C)1/2020 this Hon'ble Court further directed as under:

"The Undertrial Review Committee contemplated by this Court in re Inhuman Conditions in 1382 Prisons (2016 3 SCC 700), shall meet every week and take such decision in consultation with the concerned authority as per the said judgment."

77. While laying down the guidelines for the functioning of the UTRCs this Hon'ble Court vide it's judgement (2016) 3 SCC 700 had noted as follows:

"56.1 The Secretary of the District Legal Services Committee should attend each meeting of the Under Trial Review Committee and follow up the discussions with appropriate steps for the release of undertrial prisoners and convicts who have undergone their sentence or are entitled to release because of remission granted to them.

56.2 The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section

436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty are not subjected to incarceration only for that reason. The Under Trial Review Committee will also look into issue of implementation of the Probation of Offenders Act, 1958 particularly with regard to first time offenders so that they have a chance of being restored and rehabilitated in society.”

78. As per the directions passed by this Hon’ble Court in Re: Inhuman Conditions in 1382 Prisons, (2016) 14 SCC 815, additional categories of undertrial prisoners (UTPs) were added to be considered for release in order to reduce overcrowding in prisons. The order of this Hon’ble Court dated 6.5.16 in re Inhuman Conditions in 1382 Prisons (2016 14 SCC 815) hereto and the relevant part is as under:

“a) Become eligible to be released on bail under Section 167(2)(a)(i)&(ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of section 19 or section 24 or section 27A or for

offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;

b) Are imprisoned for offences which carry a maximum punishment of 2 years;

c) Are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 6 107, 108, 109 and 151 of Cr.P.C.;

d) Become sick or infirm and require specialized medical treatment (S.437 of the Code);

e) Women offenders (S.437 of the Code);

f) Are first time male offenders between the ages 19 and 21 who are in under trial custody for offences punishable with less than 7 years of imprisonment and have suffered atleast 1/4th of the maximum sentence possible;

g) Are of unsound mind and must be dealt under Chapter XXV of the Code;

h) Are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-

bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case;”

79. That the Hon’ble High Court has failed to ensure that these judgements of the Hon’ble Supreme Court are implemented in their true letter and spirit.

Heinous Offences

80. In respect of under trials charged with heinous offences the HPC made the following recommendation:

“The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and resolved that prisoners falling in following criteria may now be considered for grant of interim bail for 45 days in view of the circumstances in which we are in, preferably on 'Personal Bond' :

- (i) Under trial prisoners (UTPs) facing trial for a case under Section 302 IPC and are in jail for more than two years with no involvement in any other case;
- (ii) Under trial prisoners (UTPs) facing trial for

offence under Section 304 IPC and are in jail for more than one year with no involvement in any other case;

(iii) Under trial prisoners (UTPs) facing trial in a case under Section 307 or 308 IPC and are in jail for more than six months with no involvement in any other case;

(iv) Under trial prisoners (UTPs) facing trial/remand prisoners in Theft cases and are in jail for more than 15 days;

(v) Male Under trial prisoners (above 65 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

(vi) Female Under trial prisoners (above 60 years of age) facing trial in a case except the ones excluded hereunder and are in jail for more than six months with no involvement in any other case;

It has further been resolved that following category of UTPs, even if falling in the above criterion or the

criteria adopted in the earlier Meetings, should not be considered :-

- i. Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;
- ii. Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;
- iii. Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;
- iv. Those UTPs who are foreign nationals ;
- v. Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ; and
- vi. Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.

DG (Prisons) has informed that on the basis of this new criterion, approximately 1500 - 1700 UTPs would be benefited and their release would further ease out the Jail

Population.”

List of Dates

Date	Event
06.05.2016	<p>The Hon’ble Supreme Court in the matter of Inhuman Conditions in 1382 Prisons, In re, (2016) 14 SCC 815, passed directions that additional categories of undertrial prisoners (UTPs) were added to be considered for release in order to reduce overcrowding in prisons.</p> <p>True copy of the order dated 6.5.16 in re Inhuman Conditions in 1382 Prisons (2016 14 SCC 815), is annexed herewith as Annexure P-1 at page 24 to 26</p>
02.07.2014	<p>The Hon’ble Supreme Court in the matter of Arnesh Kumar vs. State of Bihar (2014 8 SCC 273) directed the police officers to not arrest the accused unnecessarily and the magistrate to not authorize detention casually and mechanically. The Hon’ble court ordered concise directions to the state</p>

	<p>governments instructing the police officers to comply with the order.</p> <p>True copy of the order dated 02.07.2014 in the matter of Arnesh Kumar vs. State of Bihar (2014 8 SCC 273), is annexed herewith as Annexure P-2 at page 27 to 36.</p>
January 2020	<p>In the early 2020's the world witnessed the spread of a communicable respiratory disease called the Novel CoronaVirus (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The outbreak was first identified in Wuhan, Hubei, China in December 2019. On 11th March 2020, the World Health Organization declared COVID-19 as a pandemic after noting that COVID-19 has increased 13-fold in countries other than China.</p>
16.3.2020	<p>In order to control the spread of the virus in jails, the Hon'ble Supreme Court of India took Suo Moto vide in the matter of Re: Contagion of Covid 19 Virus in</p>

	<p>Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, (2020) SCC OnLine320 and issued notice to all the state governments directing them to submit their reply before 20.3.2020 containing the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of Coronavirus amongst the prisoners/juveniles.</p> <p>True copy of the order dated 16.3.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, (2020) SCC OnLine320 is annexed herewith as Annexure P-3 at page 37 to 41.</p>
23.3.2020	<p>In order to control the spread of the virus in jails, the Hon'ble Supreme Court of India took Suo Moto vide in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, (2020) SCC OnLine344 passed certain directions vide</p>

	<p>its order dated 23.3.2020 directing each State/ Union Territory to interalia,</p> <p>“constitute a High Powered Committee comprising of (i) Chairperson of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, and (iii) Director General of Prison(s), to determine which class of prisoners can be released on parole or 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.” ... “The Under Trial Review Committees (UTRCs) contemplated by this court in Re-Inhuman Conditions in 1382</p>
--	--

	<p>Prisons, 2016 (3) SCC 700, shall meet every week 5 and take such decision in consultation with the concerned authority as per the said judgement.”</p> <p>True copy of the order dated 23.3.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, (2020) SCC OnLine344 is annexed herewith as Annexure P-4 at page 42 to 49.</p>
24.03.2020	<p>On account of the pandemic of Covid 19, a nationwide lockdown was announced all across the country by the Hon’ble Prime Minister and the same was enforced by the Government of India vide Order No. 40-3/2020-DM-1 (A). The unprecedented outbreak of the spread of Novel Coronavirus led to a situation worldwide havoc.</p>
25.03.2020	<p>In compliance with the enforced order of the Government of India vide Order No. 40-3/2020-</p>

	<p>DM-1 (A) dated 24.03.2020, the functioning of the Hon'ble Delhi High Court was restricted only to urgent matters vide Notification No. 51/RG/DHC/dated 13.03.2020. Such restrained functioning was extended till 04.04.2020. Subsequently, the nationwide lockdown was also extended time and again by the GOI. Hence due to the limited functioning of the courts, neither the advocates nor the litigants were in a position to appear in their respective matters, therefore the Hon'ble High Court of Delhi in the matter of in Re: Extension of Interim orders, Suo Motu WP(C)3037/2020 vide its order dated 25.03.2020 observed the following,</p> <p>"Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court,</p>
--	---

	<p>wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period."</p> <p>True copy of the order dated 25.3.2020 in the matter of in Re: Extension of Interim orders, Suo Motu WP(C)3037/2020 is annexed herewith as Annexure P-5 at page 50 to 52.</p>
28.03.2020	<p>In compliance with the Supreme Court order dated 23.3.2020 in Suo Moto vide SUO MOTU WRIT PETITION (C) NO. 1/2020, a High Powered Committee was constituted and on the above mentioned date the first meeting of the committee took place consisting of Sh. Satya Gopal,</p>

	<p>Principal Secretary (Home)/Additional Chief Secretary, Government. of NCT of Delhi and Sh. Sandeep Goel, Director General (Prisons), Delhi, also in attendance was Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA). The agenda of the meeting was the Effective implementation of the directions issued by Hon'ble Supreme Court of India on 23.03.2020 in Suo Motu Petition (Civil) No. 1/2020.</p> <p>The committee considered the following criteria for releasing prisoners on interim bail was :</p> <ul style="list-style-type: none"> (i) Under trial prisoner is the first time offender; (ii) Under trial prisoner has been arrested or is facing trial for offence punishable upto 7 years ; (iii) Case is triable by Magistrate and ; (iv) Under trial prisoner is in custody for last 3 months or more ; <p>On the basis of this criterion, the under trial prisoners were identified by the Jail Administration following</p>
--	--

	<p>which applications for interim bail were filed in Court through the empanelled Counsels of concerned District Legal Services Authority (DLSA). The said applications were considered and necessary orders were passed by the Duty Magistrates / Addl. Session Judges on duty.</p> <p>True copy of the Minutes of Meeting dated 28th March 2020 At 3 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-6 at page 53 to 62.</p>
07.04.2020	<p>Thereafter, the Hon'ble Supreme Court in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, vide its order dated 07.04.2020 directed as under:</p>

	<p>"In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force. We further direct that the States/Union Territories shall ensure through Directors General of Police to provide</p>
--	---

	<p>safe transit to the prisoners who have been released so that they may reach their homes.</p> <p>They shall also be given an option for staying in temporary shelter homes during the period of lockdown.”</p> <p>True copy of the order dated 07.4.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, is annexed herewith as Annexure P-7 at page 63 to 66</p>
07.04.2020	<p>On dated 07.04.2020, the Second High Powered Committee meeting took place where the following categories of prisoners were recommended for release on interim bail:</p> <p>The Members of the Committee discussed and resolved that following categories of prisoners may now be considered for grant of interim bail for 45</p>

	<p>days in view of the circumstances in which we are in, preferably on 'Personal Bond':</p> <p>(i) Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less;</p> <p>(ii) Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for one year or more, facing trial in a case which prescribes a maximum sentence of 10 years or less ;</p> <p>(iii) Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less ;</p>
--	---

	<p>D.G (Prisons) has informed that on the basis of this new criterion, approximately 973 more UTPs would be the beneficiaries and their release would considerably ease out the Jail Population.</p> <p>True copy of the Minutes of Meeting dated 7th April, 2020 At 5:30 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-8 at page 67 to 77.</p>
13.4.2020	<p>Thereafter, the Hon'ble Supreme Court in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, vide its order dated 13.04.2020 directed as under:</p> <p style="padding-left: 40px;">"We have considered the rival submissions and we are of the view that in the circumstances, it</p>

	<p>would be appropriate to issue the following directions:</p> <p>(a) No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.</p> <p>(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.</p> <p>(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who</p>
--	--

	<p>have been found to be free of coronavirus disease are at a distance from each other.</p> <p>(d) The order dated 23.03.2020 shall be applicable to correctional homes, detention centres and protection homes.”</p> <p>In regard to the release of the 802 prisoners have been declared as foreigners under the provisions of the Foreigners Act, 1946, the court saw no reason why the period should not be reduced from three years to two years and that they shall not be required to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs.5,000/- (Rupees five thousand only) with two sureties of the like sum of Indian citizens.</p> <p>True copy of the order dated 13.4.2020 in the matter of Re: Contagion of Covid 19 Virus in Prisons; vide Suo Moto Writ Petition (C) 1 of 2020, is annexed</p>
--	---

	herewith as Annexure P-9 at page 78 to 85
18.4.2020	<p>On dated 18.04.2020, the Third High Powered Committee meeting took place wherein the following break-up of the total holding capacity of the jails at Tihar, Mandoli and Rohini jail vis a vis their actual occupancy was considered. In respect to the Parole of the convicts 953 were released. In respect to interim/regular bail of UTPs, the following UTPs were released. Also as a result of the earlier decision passed by the HPC, 1777 UTPs/Convicts were released on bail till 18.4.2020.</p> <p>Further, following fresh category of prisoners were considered for release on interim bail</p> <p>(i) Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for three months or more, facing</p>

	<p>trial in a case which prescribes a maximum sentence of 7 years or less;</p> <p>(ii) Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for a period of six months or more, facing trial in a case which prescribes a maximum sentence of 10 years or less ;</p> <p>(iii) UTPs who are suffering from above mentioned illness(es) and are in custody for a period of six months or more and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.</p> <p>True copy of the Minutes of Meeting dated 18th April, 2020 At 3:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services</p>
--	--

	Authority is annexed herewith as Annexure P-10 at page 86 to 100.
5.5.2020	<p>On dated 05.05.2020, the Fourth High Powered Committee meeting took place wherein the HPC in its meeting lauded the efforts put in towards the implementation of Resolutions adopted in earlier meetings by Govt of NCT of Delhi, Jail Administration and DSLSA, which led to the release of 3573 Total Utps / Convicts Released On Interim Bail/ Parole /Remission Of Sentence Till 05.05.2020.</p> <p>True copy of the Minutes of Meeting dated 5th May, 2020 At 5:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-11 at page 101 to 111.</p>

15.5.2020	<p data-bbox="560 322 1430 539">By order dated 15.5.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court held and directed as under:</p> <p data-bbox="655 622 1430 1921">"3. Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any</p>
-----------	---

	<p>particular matter, during the intervening period.”</p> <p>True copy of the order dated 15.5.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court is annexed herewith as Annexure P-12 at page 112 to 114</p>
18.5.2020	<p>On dated 18.05.2020, the Fifth High Powered Committee meeting took place where the DG of Prisons submitted the multi-pronged approach to tackle the Covid-19 virus in prisons. The measures included conducting thermal screening and medical test of the staff before letting them enter the jail premises, minimizing the contact of inmates with outsiders by restricting movement of inmates outside the jails, creating a Medical Isolation Facility for anyone showing symptoms of any disease, spreading Continuous awareness and briefing the staff as well,</p>

	<p>on basic hygiene and do's and don'ts to prevent the spread of the disease, Having Quarantine Facility, a specific checklist has been designed by the medical staff for COVID -19 screening of all the entrants, wearing of the mask has been made mandatory for all, Maintenance staff as well as Jail staff have been provided with Personal Protective Equipment (PPE) kit and they have been directed to wear the same during their respective duties and all the staff has been cautioned to maintain social distancing while interacting with each other as well as with inmates. The Committee was satisfied with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same. The Committee also took note of the no. of prisoners that were released till 18.5.202, that which Total Utps / Convicts Released On Interim Bail/ Parole/ Remission Of Sentence Till 18.05.2020 were 3678. The Committee further resolved considering the following criteria for grant</p>
--	--

	<p>of interim bail for 45 days , preferably on personal bond. The DG (Prisons) informed the Committee that based on this new criterion, approximately 1500-1700 UTPs would be released further to ease out the jail population.</p> <p>True copy of the Minutes of Meeting dated 18th May, 2020 At 06:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-13 at page 115 to 132.</p>
15.06.2020	<p>By order dated 15.6.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court further held and directed as under:</p> <p>“3. Since some of the restrictions imposed by the Government of India were still in operation, and therefore, taking note of the extraordinary</p>

	<p>circumstances prevailing at that point of time, by order dated 15th May, 2020, we had extended our directions which were given in order dated 25th March, 2020 till 15th June, 2020.</p> <p>4. Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020. 5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions."</p> <p>True copy of the order dated 15.6.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition</p>
--	--

	(C) 3037 of 2020, the Delhi High Court is annexed herewith as Annexure P-14 at page 133 to 135
20.6.2020	On dated 20.06.2020, the Sixth High Powered Committee took place and the "The Committee perused the number of UTPs released on Personal Bond, on the basis of orders passed by Hon'ble High Court in WP (Criminal) no. 779/2020, as under: The Total Utps / Convicts Released On Interim Bail/ Parole/ Remission Of Sentence till 20.06.2020 are 4129. The bails were further extended for a further period of 45 days. DG (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee \was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a dangerous proposition, if those UTPs who were granted "interim bail" for 45 days are taken back after their surrender.

	<p>DG (Prisons) proposed that in view thereof the "interim bail" of the UTPs needs to be extended. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of "social distancing" no longer necessary, the Committee is of the opinion that the "interim bail" so granted to such UTPs needs to be extended for a further period of 45 days from the date their respective interim bail is expiring.</p> <p>True copy of the Minutes of Meeting dated 20.06.2020 At 12:30 PM through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-15 at page 136 to 158.</p>
01.07.2020	<p>In the meanwhile, the Single Bench of the High Court of Delhi in Crl.A.193/2020 titled as Harpreet Singh</p>

	<p>vs. State vide its order dated 01.07.2020 sought clarification as to whether the orders made in in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to all interim orders, whether made in civil or criminal matters, and regardless of whether such orders were made on or before 16.03.2020 or thereafter. Also, where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020.</p> <p>True copy of the order dated 01.07.2020 in Crl.A.193/2020 titled as Harpreet Singh vs. State is annexed herewith as Annexure P-16 at page 159 to 164.</p>
--	---

13.07.2020	<p>The questions raised by the Hon'ble Single bench were clarified by the full bench of this Hon'ble High Court in Crl A 193 of 2020 order dated 13.07.2020 made it clear that all the directions issued by the Full Bench from time to time in the suo motu proceedings in W.P.(C) 3037/20 have been rendered with a view to check the ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole, granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any particular matter, during the intervening period.</p> <p>True copy of the order dated 13.07.2020 in Crl.A.193/2020 titled as Harpreet Singh vs. State is</p>
------------	--

	annexed herewith as Annexure P-17 at page 165 to 167.
24.07.2020	<p>Meanwhile an application seeking impleadment and clarification of order dated 13.07.2020 passed by the Full Bench of the Hon'ble High Court was sought where the Full Bench of the Delhi High Court in Suo Motu Writ Petition (C) 3037 of 2020, vide order dated 24.07.2020 extended the interim bail/parole till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.</p> <p>True copy of the order dated 24.07.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court is annexed herewith as Annexure P-18 at page 168 to 174</p>

31.7.2020	<p>Pursuant to the earlier orders passed by the HPC, the Committee in its Seventh meeting considered the number of prisoners released till 28.07.2020. The Committee deliberated and further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requiremet of "social distancing" no longer necessary, the Committee is of the opinion that the "interim bail" so granted to these 2901 UTPs needed to be extended for a further period of 45 days form the date their respective interim bail is expiring.</p> <p>True copy of the Minutes of Meeting dated 31st July, 2020 at 5:00 pm through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms.Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services</p>
-----------	--

	Authority is annexed herewith as Annexure P-19 at page 175 to 198.
24.8.2020	<p>The Hon'ble High Court in Re: Extension of Interim Orders; Sua Motu Writ Petition (C) 3037 of 2020, Vide order dated 24.8.2020, Full Bench of the Delhi High Court further extended the interim orders till October 31st directing as under:</p> <p style="padding-left: 40px;">"4. ..In view of the above, we hereby further extend the implementation of the directions contained in our orders dated 25th March, 2020, 15th May, 2020, 15th June, 2020 and 13th July, 2020, till 31st October, 2020 with the same terms and conditions."</p> <p>True copy of the order dated 24.08.2020 in Re: Extension of Interim Orders; Sua Motu Writ Petition (C) 3037 of 2020, the Delhi High Court is annexed</p>

	herewith as Annexure P-20 at page 199 to 200
30.8.2020	<p>On dated 30.08.2020, the Eight High Powered Committee took place and DG (Prisons) informed the Committee that as on 28.08.2020, cumulative figure of Covid-19 positive cases in jail were as under:</p> <p>Prison Inmates : 65 (61 recovered, 02 expired, 02 Active cases)</p> <p>Prison Staff : 175 (168 recovered, 07 active cases)</p> <p>The Number of inmates released pursuant to the criteria adopted earlier in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide earlier meetings. The Total Utps / Convicts Released On Interim Bail/ Parole/ Remission Of Sentence Till 28.08.2020 were 4507. Also, the DG Prisons informed the Committee that the Committee</p>

	<p>that the period of extended interim bail as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 31.07.2020 (which constitute 2942 UTPs) is going to expire w.e.f. 21st September, 2020 onwards. D.G. (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a dangerous proposition, if these 2942 UTPs who were granted "interim bail" for 45 days are taken back after their surrender. D.G. (Prisons) proposed that in view thereof the "Interim Bail" of these 2942 UTPs needs to be extended.</p> <p>True copy of the Minutes of Meeting dated 30th August, 2020 at 12:00 Noon through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson,</p>
--	---

	Delhi State Legal Services Authority is annexed herewith as Annexure P-21 at page 201 to 219
8.09.2020	Meanwhile, the Additional Sessions Judge (03) (N/E) Karkadooma Courts, Delhi vide a letter dated 8.09.2020 sought clarification from the High Court of Delhi as to whether the interim bails granted in the cases of riots on the humanitarian grounds by the Additional Sessions Judge shall be extended from time to time of the directions contained in the orders passed in the present petition.
28.9.2020	The High Court of Delhi, while considering the said letter, issued notice to the state vide order dated 28.9.2020 the Delhi High Court in Suo Motu Writ Petition (C) 3037 of 2020, and also directed the learned Standing Counsel for the State to supply the following information to this Court:-

	<p>“(a) How many persons in jail are presently infected/suffering from Covid-19?</p> <p>(b) How many persons involved in heinous crimes are granted the interim bail?</p> <p>(c) How many persons involved in minor crimes are granted interim bail?</p> <p>(d) How many persons are granted interim bail by the Delhi High Court?”</p> <p>True copy of the order dated 28.09.2020 in Re: Extension of Interim Orders; Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court is annexed herewith as Annexure P-22 at page 220 to 222</p>
--	---

29.09.2020	<p>The High Court of Karnataka vide its notice dated 29.09.2020 extended the interim orders upto 29.11.2020 and held as under:</p> <p>matter was again listed and the Division Bench by order September 29, 2020 has extended the above order April 16, 2020 till November 29, 2020.”</p> <p>True copy of the Order dated 29.09.2020 by the High Court Of Karnataka, Bengaluru filed in Writ Petition No. 6435 of 2020, is annexed herewith as Annexure P-23 at page 223 to 224</p>
03.10.2020	<p>It is apposite to note that the DG Prisons as well as the Delhi Government was in the favor of extending the emergency parole/interim bail as the situation of Covid-19 was still prevailing. In the PTI report dated 3.10.20 printed in the Deccan Herald, it is stated as under:</p> <p style="text-align: right;">“The Delhi prison Department has requested the city government to</p>

	<p>extend the emergency parole granted to convicts by one month in view of the existing COVID-19 situation.”</p> <p>True copy of the PTI report dated 3.10.20 printed in the Deccan Herald is annexed herewith as Annexure P-24 at page 225 to 226.</p>
16.10.2020	<p>The High Court of Odisha vide its order dated 16.10.2020 in WP(C) 9095 of 2020 extended the interim orders up to 25.11.2020 and held as follows:</p> <p>“... In view of the above, protection granted by this Court vide aforesaid order dated 05.05.2020 passed in this case in sub paras (i to (xii) of para 7 is extended up to 25th November 2020 except to the extends with the modification specifically made.”</p>

	<p>True copy of the High Court of Odisha vide its order dated 16.10.2020 in WP(C) 9095 of 2020, is annexed herewith as Annexure P-25 at page 227 to 235</p>
16.10.2020	<p>The Government of NCT of Delhi through the Superintendent of Prison Headquarters, Tihar, Delhi filed a status report dated 16.10.2020 where it stated as follows:</p> <p>“2(a) There are 06 prisoners who are presently infected/suffering from COVID-19.</p> <p>(b) There are 2318 involved in heinous crimes and granted interim bail by Hon’ble Courts.</p> <p>(c) There are 2907 prisoners involved in minor crimes and granted interim bail.</p> <p>(d) There are 356 prisoners who have been granted interim bail by the Delhi High Court.”</p>

	<p>True copy of the Status Report dated 16.10.2020 filed by the The Government of NCT of Delhi in Suo Motu Writ Petition (C) 3037 of 2020, the Delhi High Court is annexed herewith as Annexure P-26 at page 236 to 238.</p>
19.10.2020	<p>Immediately after the status report dated 16.10.20 was filed in the court at least 2 newspapers reported fresh Covid cases. The Indian Express report dated 19.10.20 reported as under:</p> <p style="text-align: center;">“Four inmates and nine jail staffers in the three jail complexes of the capital have tested positive for COVID 19 the previous week”</p> <p>True copy of the Indian Express report dated 19.10.20 is annexed herewith as Annexure P-27 at page 239 to 240.</p>

20.10.2020	<p>The High Court of Allahabad vide its order dated 20.10.2020 in PIL No 564 of 2030 extended all the interim orders till 01.12.202 and held as follows:</p> <p>“The position on account of COVID 19 pandemic has not improved entirely, therefore, this Court is of the opinion that the direction given by this Court on 19.08.2020 to extend the effect of the earlier order till 31.10.2020 needs to be extended and accordingly the order quoted above in reference to the extension of the interim order and even for the limitation, as given therein, is made operational and effective till 01.12.2020”</p> <p>True copy of the High Court of Judicature at Allahabad vide its order dated 20.10.2020 in the matter of In Re vs State of U.P. vide (PIL) No. 564 of</p>
------------	--

	2020, is annexed herewith as Annexure P-28 at page 241 to 243.
24.10.20	On dated 24.10.20, the Ninth High Powered Committee was held and the D.G. (Prisons) informed that at present the total population of inmates inside Delhi Prisons is approximately 15,900 (15887 to be precised as on today i.e. 24.10.2020). He informed the Committee that owing to the abovereferred order dated 20.10.2020 passed by Full Bench of Hon'ble High Court about 2300 UTPs/convicts shall surrender in a phased manner from 02.11.2020 to 13.11.2020, raising the population of inmates significantly. He further brought to the notice of the Committee that if 3337 UTPs and 1182 convicts who have been granted 'interim bail/emergency parole' under different criteria laid down by this Committee, are asked to surrender during the same duration as their 'interim bail/emergency parole' is expiring in a

phased manner from 05.11.2020 onwards, then the total population of Delhi Prison is likely to reach 22000, which would be unprecedented and may become unmanageable owing to the present situation and circumstances. He also informed that till date only on one occasion the maximum population of Delhi Prisons has touched 18,000. D.G. (Prisons) thus contended that considering to the present prison population and taking into account surrender of UTPs/convicts by virtue of orders dated 20.10.2020 of Full Bench of Hon'ble High Court, it would be appropriate, if 'interim bail/emergency parole' granted to 3337 UTPs and 1182 convicts under HPC criteria may be extended for a further period of 30 days."

True copy of the Minutes of Meeting dated 24thOctober, 2020 at 11:00 a.m. through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli,

AAAAAA

	Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority is annexed herewith as Annexure P-29 at page 244 to 265
26.10.20	Hence this SLP.

\$~FB~1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3037/2020 & CM APPL.23830/2020**

COURT ON ITS OWN MOTION

.... Petitioner

Through: Court on its own motion

Versus

STATE & ORS.

....Respondents

Through: Mr. Amit Prasad, SPP with Mr. Rajesh Deo, DCP, Legal Cell in CM APPL.23830/2020. Mr. Rahul Mehra, Standing Counsel (Criminal) for GNCTD.

IN RE:

Extension of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **20.10.2020**

1. Proceedings of the matter have been conducted through Video Conferencing.

2. This Court vide order dated 25th March, 2020 took *suo moto* notice of outbreak of Covid-19 and the restricted functioning of this Courts vide notification number No.51/RG/DHC/dated 13.03.2020 as well as Government notification dated 24th March, 2020 declaring nationwide lockdown for a period of 21 days w.e.f. 25th March, 2020 and passed a detailed order of which operative portion is as under:

“Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised”.

3. Since the lockdown was extended from time to time by the Government with few relaxations and the restrictive functioning of the Courts continued, so the order dated 25th March 2020 was extended from time to time on 15th May, 2020, 15th June, 2020, 13th July, 2020, 31st August, 2020 and lastly vide order dated 24th August, 2020, the interim orders were extended till 31st October, 2020.

4. In the meantime, an application under Section 151 of the Code of Civil Procedure seeking modification of above orders was moved by the Deputy Commissioner of Police, Legal Cell, PHQ, Delhi enclosing therein an order passed by Shri Vinod Yadav, ASJ-03 (NE), KKD COURTS/ DELHI dated 07.09.2020, wherein a request was made by the applicant to modify these orders and pass necessary directions as deemed fit in view of the difficulties faced. The concerned Ld. Judge had also sent a copy of the order to this Court praying for issuance of appropriate guidelines to follow

in the cases of interim bails in the riots cases as to whether the interim bails granted on humanitarian ground would also be extended from time to time in terms of the orders passed by this Court. This application was taken up on 28th September, 2020 and the learned Standing counsel for State was directed to supply the following information to this Court:

- “(a) How many persons in jail are presently infected/suffering from Covid-19?
- (b) How many persons involved in heinous crimes are granted the interim bail?
- (c) How many persons involved in minor crimes are granted interim bail?
- (d) How many persons are granted interim bail by the Delhi High Court?”

5. In response thereto, a Status Report dated 15th October, 2020 has been filed and the relevant paragraph, being para no.2 of the Status Report is reproduced hereunder:

“2. In this regard, Respondent submits that

- (a) There are 06 prisoners who are presently infected/suffering from Covid-19.
- (b) There are 2318 prisoners who are involved in heinous crimes and granted interim bail by Hon'ble Courts.
- (c) There are 2907 prisoners involved in minor crimes and granted interim bail.
- (d) There are 356 prisoners who have been granted interim bail by the Delhi High Court”.

6. The matter has been taken up today. We have perused the report received from jail and we have heard Mr. Rahul Mehra, learned Standing Counsel for Govt. of NCT of Delhi as well as Mr. Amit Prasad, SPP representing the applicant seeking modification. The Director General of Prisons was also present during the proceedings. Mr. Rahul Mehra, Standing Counsel, under instructions from DG Prisons, has submitted that although in the report dated 15th October, 2020, it was shown that 6 prisoners were infected with Covid-19 but out of them 3 have already recovered and now only 3 prisoners are infected from Covid -19 and they have been admitted in LNJP Hospital with a view to segregate them from other prisoners. As far as the capacity of the jails is concerned, it was informed by Mr. Rahul Mehra, after consulting DG (Prisons) that the overall capacity of all the prisoners is about 10,000 and as on date and they have 15,900 prisoners inside the jails. The information submitted by the jail authority reveals that 2,318 undertrials involved in heinous crimes were granted interim bail by the District Courts, which have been extended from time to time on the strength of orders dated 25.03.2020 and subsequent orders passed by this court. 2,907 undertrials involved in minor crimes were granted bail as per the recommendations of the High-Power Committee and 356 prisoners were granted interim bail by Delhi High Courts. Mr. Amit Parsad has highlighted the fact that the undertrials in Riots Cases, who were granted interim bails on humanitarian grounds for short periods are covered under the ambit of the orders passed by this court and their interim bails are extended from time to time. About 20 such accused are on interim bail at this time. On the other hand, Mr. Rahul Mehra has submitted that Covid-19

pandemic is still prevailing and the earlier orders passed by this court need not be modified.

7. After considering all aspects and in view of the fact that the interim bail and interim stay extension order was necessitated because functioning of the Courts was curtailed due to complete lockdown declared on 25.03.2020 but now the situation has changed and all Courts at High Court and District Court level are functioning through physical mode/VC mode and since there is no spread of Covid-19 in the jails and out of about 16,000 prisoners only 3 are infected and they have been segregated and are admitted in hospital, we deem it proper to modify our order dated 25th March, 2020 which was lastly extended on 24th August, 2020 as under:

(i) As far as the first category of 2318 undertrials involved in heinous crimes, who were granted interim bail by the District Courts, there shall be no further extension of interim bails under the orders of this Court. However, to facilitate their surrender before jail authorities and to avoid any inconvenience being caused to the jail authorities during surrender of a large number of under trials, it is ordered that the surrender shall take place in the following phased manner:

(a) The prisoners of Central District, Tis Hazari Courts, shall surrender on 2nd November, 2020.

(b) The prisoners of West District, Tis Hazari Courts, shall surrender on 3rd November, 2020.

- (c) The prisoners of Patiala House Courts, New Delhi District shall surrender on 4th November, 2020.
 - (d) The prisoners of East District, Karkardooma Courts, shall surrender on 5th November, 2020.
 - (e) The prisoners of North East District, Karkardooma Courts shall surrender on 6th November, 2020.
 - (f) The prisoners of Shahdara District, Karkardooma Courts shall surrender on 7th November, 2020.
 - (g) The prisoners of North District, Rohini Court shall surrender on 8th November, 2020.
 - (h) The prisoners of North West District, Rohini Courts shall surrender on 9th November, 2020.
 - (i) The prisoners of South West District, Dwarka Courts shall surrender on 10th November, 2020.
 - (j) The prisoners of South District, Saket Courts, shall surrender on 11th November, 2020.
 - (k) The prisoners of South East District, Saket Courts, shall surrender on 12th November, 2020.
 - (l) The prisoners of Rouse Avenue Courts Complex, New Delhi shall surrender on 13th November, 2020.
- (ii) The above 2,318 prisoners are at liberty to move the respective courts for extension of their interim bails and the concerned courts shall consider the said applications for extension of interim bails on its own merits and take a decision accordingly

without being influenced by any order passed by this Court in the past.

- (iii) As far as 2,907 prisoners, who have been granted bail on the recommendation of High Power Committee are concerned, a request is made to the High Power Committee to take a decision in respect of the said prisoners within ten days from today.
- (iv) As far as 356 prisoners granted interim bail by this Court are concerned, they shall surrender before the concerned jail superintendent(s) on 13th November, 2020. However, as stated above, all the above 356 prisoners are at liberty to move applications for extension of their interim bails before the concerned benches of this Court, if so advised, and their applications will be considered on merit without being influenced by any order passed by this Full Bench.
- (v) As far as interim orders passed in the civil matters are concerned, which were extended vide orders dated 25th March, 2020 and subsequent orders, it is hereby ordered that all such interim orders shall cease to have effect on the next date of hearing in the said matters. However, the parties in the said matters are at liberty to move the concerned courts for extension of the interim orders and the said courts shall consider extension of the interim orders on merit without being influenced by any orders passed by this Court in this matter.

8. The jail authorities shall make appropriate arrangements to ensure surrender of the prisoners as detailed above and take all required steps in view of the guidelines issued by the Government Authorities from time to time to contain the spread of Covid-19.

9. This order shall also apply to any other undertrial, who is granted interim bail in the meantime.

10. In view of the above, no further orders are required to be passed in the instant writ petition and the same is disposed of accordingly.

11. This order be uploaded on the website of this Court and be circulated to all the Hon'ble Judges of High Court of Delhi and be also conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all the District Courts subordinate to this Court.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

OCTOBER 20,2020

nk

To,

THE HON'BLE CHIEF JUSTICE OF INDIA
AND HIS COMPANION JUSTICES
OF SUPREME COURT OF INDIA

HUMBLE PETITION OF
THE PETITIONERS HEREIN

MOST RESPECTFULLY SHOWETH:

1. This Special Leave Petition impugns the final order dated 20.10.2020 passed by the Hon'ble High Court of Delhi in Writ Petition (C) 3037 of 2020, wherein the Hon'ble High Court cancelled the extension of the interim bail orders granted to 2674 prisoners by the High Powered Committee, in order to control the spread of Covid cases in the 16 Delhi jails. The Hon'ble High Court

while cancelling the bail orders failed to consider the reasoning due to which the interim bail had been granted to the prison inmates, and also failed to consider the threat of Covid-19 in the jails. In passing the said order, the Hon'ble High Court has further put at risk the lives of about 16,000 prison inmates who are already living in overcrowded and unhygienic conditions, and will have to now share the already constricted space with atleast 2674 more prisoners, thus ignoring all norms of social distancing and other precautions. The Petitioner, the National Forum for Prison Reforms seeks permission to file the present SLP in view of the unprecedented crisis that this situation will cause in the 16 Delhi jails. The Petitioner which is a non-registered forum of 6 organisations, i.e. Human Rights Law Network (HRLN), Commonwealth Human Rights Initiative (CHRI), Tata Institute of Social Sciences (TISS), International Bridges to Justice India (IBJ India), Lawyers for Human Rights International (LFHRI), and Multiple Action Research Group (MARG), which have agreed to work collectively on prison reforms in the country. That the Applicant, National Forum on Prison Reforms (NFPR) was also an intervenor in the case Re-Inhuman Conditions in 1382

Prisons, WP(C) 406 of 2013; as well as in Re: Contagion of Covid 19 Virus in Prisons, Suo Motu WP (C) No.1/2020, and its members have worked closely with the Amicus Curiae in the above cases, and have assisted this Hon'ble Court in contemplating the various measures to address various issues including overcrowding, medical negligence, and custodial deaths in prisons. That the members of the Petitioner Forum have been working closely with the Delhi State Legal Services Authority and the Delhi Prisons and are concerned that the orders of the Hon'ble High Court may lead to chaos and undo the efforts put in by the jail administration to carefully manage the Covid situation in the prisons. The Petitioner has filed an Application for Permission to file the SLP, wherein the Antecedents of the Petitioner are laid down.

2. 1A. No Writ Appeal or LPA lies against the impugned order/judgment for which the instant SLP is filed.
3. Question of law

The present Special Leave Petition raises the following questions of General importance:

- a. Whether the Hon'ble High Court was justified in recalling 2674 prisoners which had been granted interim bail on the recommendations of the High Powered Committee, as set up under the directions of the Hon'ble Supreme Court?
- b. Whether the Hon'ble High Court was justified in ignoring the orders of the Hon'ble Supreme Court by which the High Powered Committees had been set up to look at the release of the prisoners in order to reduce overcrowding and to decongest the jails in order to contain the spread of the Covid virus in the jails?
- c. Whether the Hon'ble High Court was justified in disregarding the recommendations made by the High Powered Committee, as set up under the directions of the Hon'ble Supreme Court, for reducing the overcrowding in the jails in view of the threat of the Covid virus in the jails?
- d. Whether the Hon'ble High Court was justified in ignoring the various orders of the Hon'ble Supreme Court passed in order to reduce overcrowding in the jails?
- e. Whether the Hon'ble High Court is justified in putting at risk the lives of over 18000 prison inmates?

4. Declaration in terms of order XXII, Rule 3(2):

The petitioner states that no other petition seeking leave to appeal has been filed by petitioner against the impugned final order dated 21.10.2020 passed by the Hon'ble High Court Delhi.

5. Declaration in terms of Order XXII, Rule 5:

The petitioner states that Annexures P1 to P29 annexed along with the instant SLP are true copies of the pleadings/documents which formed part of the record of the case in the Court/Tribunal below against whose order the leave to appeal is sought for in this petition.

6. Grounds

Leave is sought on the following grounds:

- a. That the petitioner in the present case is the 'National Forum on Prison Reforms', which is a non-registered forum of 6 organisations, i.e. Human Rights Law Network (HRLN), Commonwealth Human Rights Initiative (CHRI), Tata Institute of Social Sciences (TISS), International Bridges to Justice India (IBJ India), Lawyers for Human Rights International (LFHRI), and Multiple Action Research Group (MARG), which have agreed to work collectively on prison reforms in the country. That the

Applicant, National Forum on Prison Reforms (NFPR) was also an intervenor in the case Re-Inhuman Conditions in 1382 Prisons, WP(C) 406 of 2013; as well as in Re: Contagion of Covid 19 Virus in Prisons, Suo Motu WP (C) No.1/2020, and its members have worked closely with the Amicus Curiae in the above cases, and have assisted this Hon'ble Court in contemplating the various measures to address various issues including overcrowding, medical negligence, and custodial deaths in prisons. That the members of the Petitioner Forum have been working closely with the Delhi State Legal Services Authority and the Delhi Prisons and are concerned that the orders of the Hon'ble High Court may lead to chaos and undo the efforts put in by the jail administration to carefully manage the Covid situation in the prisons.

- b. That the current situation in the Delhi jails is still quite precarious, as atleast 9 jail officials are still Covid positive, and there maybe many prison inmates who may also be Covid positive. That even one Covid positive person in the jail can spread the virus, if he is asymptomatic and his

condition is not detected in time.

- c. That the Hon'ble High Court failed to consider the fact that 2 persons have died due to Covid in the past 6 months, and if further 2674 prison inmates are brought into the jails, the possibility of the virus spreading in the jails cannot be overruled.
- d. That the additional burden on the prison administration will put a further strain on the already overworked staff which is trying to control the spread of the virus in the jails.
- e. That the Hon'ble High Court failed to consider the fact that 175 jail staff had tested positive in August and that they may easily have spread the virus inside the jails. That the Hon'ble High Court has also failed to consider the fact that the Delhi winter and the overcrowding will add to the already compromised health of the inmates in the jails and will put a further burden on the medical facilities, the doctors, as well as the already overstretched medical infrastructure in Delhi.

- f. That the Hon'ble High Court has also failed to consider the fact that the jails are already overcrowded to the extent of 159% and that additional $2318+356=2674$ inmates will take the overcrowding to 185%, thus ignoring the social distancing norms and the other guidelines as set out by WHO and ICMR.
- g. That the Hon'ble High Court has further ignored the directions passed by the Hon'ble Supreme Court in a series of orders dated 23.3.2020, 7.4.2020, and 13.4.2020 passed in *Suo Motu WP(C)1/2020*, wherein this Hon'ble Supreme Court has tried to contain the overcrowding in jails.
- h. That the Hon'ble High Court has ignored the series of directions passed by the Hon'ble Supreme Court in *Re-Inhuman Conditions in 1382 Prisons*, in order to control the overcrowding in the prisons, and in particular, (2016) 3 SCC 700, and (2016) 14 SCC 815, wherein the Undertrial Review Committees that were constituted by the Hon'ble Supreme Court were required to release the 14 categories of prisoners in order to decongest the jails.

- i. That the Hon'ble High Court has ignored the High Powered Committee's recommendations passed in their meetings that were held in order to address the threat of Covid in the jails and to take steps to contain the Covid virus from spreading. That the Hon'ble High Court while passing the impugned order has undone the careful and meticulous monitoring of the situation in the jails in the past 8 months.
- j. That the Hon'ble High Court failed to consider the fact that the Courts are still not fully functioning, and the trials are not yet being conducted.
- k. That the Hon'ble High Court has also failed to consider the fact that the lawyer's visits in the jails are still curtailed, and therefore the prison inmates are not able to avail of legal services, which is their right.
- l. That in view of the above grounds, the order of the Hon'ble High Court deserves to be set aside.

7. Grounds for interim relief:

That the petitioners are seeking intervention of this Hon'ble Court, inter alia on the following grounds:

- a. Because if the additional 2674 prisoners that are on interim bail are recalled, it would add to the already overburdened and overstretched prison population and the prison administration and may cause chaos and panic in the Delhi jails, while also posing an imminent threat of the outbreak of Corona virus which maybe difficult to contain, one it spreads inside the jails, as there will be no social distancing and no precautionary measures that the jail officials would be able to put in place.
- b. Because if the additional 2674 prisoners are recalled, it would put at risk the lives of over 18,000 prison inmates as well as an additional prison staff, many of whom have already been inflicted by the Virus and have not fully recovered.

8. Main Prayer:

The petitioner prays before this Hon'ble Court, inter alia for following reliefs:

- a. For grant of Special Leave to Appeal against the final order dated 20.10.2020 passed by the Hon'ble Court of Delhi in WP(C) 3037 of 2020;
- b. For any other order or direction that this Hon'ble Court may deem fit and appropriate in the interest of justice.

9. Interim Prayer:

- a) For an order or direction to stay the impugned order dated 20.10.2020 passed by the Hon'ble Court of Delhi in WP(C) 3037 of 2020, recalling the 2674 prisoners and cancelling the extension of their bails; and
- b) For any other order or direction that this Court may deem fit and appropriate in the interest of justice.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS IN DUTY BOUND SHALL EVER BE GRATEFUL

Place: New Delhi

Drawn By: Ritu Kumar, Ankita Wilson and Harini Raghupathy

Drawn on:

Filed on: 26.10.2020



SATYA MITRA

(Advocate for the Petitioners)

IN THE SUPREME COURT OF INDIA
[S.C.R. Order XXI Rule 3(1)(a)]
Civil Appellate Jurisdiction
(under Article 136 of the Constitution of India)
Special Leave Petition (Civil) No _____ of 2020
(Arising from the impugned order and final judgment dated
20.10.2020 passed by the Hon'ble High Court of Delhi at New Delhi
in Writ Petition (C) 3037 of 2020)
(With Prayer for interim relief)

In the matter of:

National Forum for Prison Reforms

...Petitioner

Versus

Govt. of NCT Delhi and Ors.

...Respondents

Certificate

Certified that the Special Leave petition is confined only to the pleadings before the Court/ Tribunal whose order is challenged and the other documents relied upon in those pleadings. No additional facts, documents or grounds have been taken herein or relied upon in the Special Leave petition. It is further certified that the copies of the documents/ annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of instructions given by the petitioner/ person authorized by the petitioner whose affidavit is filed in support of the Special Leave petition.



Place: New Delhi

Filed on: 26.10.2020

SATYA MITRA

(Advocate for Petitioner)

Appendix

Relevant parts of the Constitution of India, 1950

Article 21:

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

INHUMAN CONDITIONS IN 1382 PRISONS, IN RE

815

(2016) 14 Supreme Court Cases 815

(Record of Proceedings)

a (BEFORE MADAN B. LOKUR AND N.V. RAMANA, JJ.)

INHUMAN CONDITIONS IN 1382 PRISONS, IN RE

Writ Petition (C) No. 406 of 2013, decided on May 6, 2016

b **A. Constitution of India — Arts. 21, 32 and 226 — Human dignity — Prison reforms — Costs imposed on State Governments for non-implementation of orders — Rs 25,000 costs directed to be given to Supreme Court Legal Services Committee within four weeks to be utilised for Juvenile Justice issues — Prisons, Prisoners and Probation of Offenders — Prison/Jail Reforms (Paras 1 to 3 and 8)**

Inhuman Conditions in 1382 Prisons, In re, (2016) 14 SCC 741, referred to

c **B. Constitution of India — Arts. 21, 32 and 226 — Human dignity — Prison reforms — Model Prison Manual for Juveniles in line with Model Prison Manual, 2016 — 3 months' more time given for completing the exercise (Para 4)**

d **C. Constitution of India — Arts. 21, 32 and 226 — Human dignity — Prison reforms — Overcrowding of prisons to the extent of more than 150% — Identification and action plan — Directions issued to authorities — Authorities directed to identify such prisons where there is overcrowding and prepare action plan for same (Paras 5, 6 and 8)**

e **D. Constitution of India — Arts. 21, 32 and 226 — Human dignity — Prison reforms — Overcrowding of prisons to the extent of more than 150% — Expansion of categories of prisoners/undertrials who could be released — Undertrial Review Committee directed to consider suggestions of Amicus Curiae in this regard**

— Criminal Procedure Code, 1973 — Ss. 167(2)(a)(i) & (ii), 107, 108, 109, 151 and Ch. 25 and S. 437 — Narcotic Drugs and Psychotropic Substances Act, 1985, Ss. 36-A, 19, 24 and 27-A (Para 7)

SS-D/57690/SR

f Advocates who appeared in this case :

g N.K. Kaul, Additional Solicitor General, B.K. Satija and S.S. Shamshery, Additional Advocates General, Yashank Adhyaru, Suryanarayana Singh, Senior Advocates [Gaurav Agarwal (Amicus Curiae), Advocate (By Post), Ms Bina Tamta, R.M. Bajaj, Rajiv Singh, Ms Sushma Suri, Ms Anil Katiyar, Rajesh Kr. Goel (Director, NALSA), V.N. Raghupathy, Parikshit P. Angadi, Soumik Ghosal, Parijat Sinha, Ms Shashi Juneja, Ms Apoorv Kurup, Ms Sakshi Kakkar, C.D. Singh, Ms Sanmya, Rohit Rathi, Sanjay Kr. Visen, Tapesh Kr. Singh, Mohd. Waquas, Anil Shrivastav, Rituraj Biswas, Nikhil Goel, Ashutosh Ghose, Chandra Prakash, Amol Chitale, Nishant Ramakant Rao Katneswakar, Guntur Prabhakar, Ms Perna Singh, Ms Pragati Neekhara, Utkarsh Sharma, V.G. Pragasam, Prabu Ramasubramanian, Ms Aruna Mathur, Avneesh Arputham, Ms Anuradha Arputham, Yusuf Khan (M/s Arputham, Aruna & Co.), K.N. Madhusoodhanan, T.G.N. Nair, B. Balaji, Muthuvel Palani, Ms K. Enatoli Sema, Edward Belho, Amit Kr. Singh, Balasubramanian, K.V. Jagdishvaran, Ms G. Indira, Sapam Biswajit Meitei, Ashok Kr. Misra, Naresh Kr. Gaur, B. Khushbansi,

816 SUPREME COURT CASES (2016) 14 SCC

Ashok Kr. Singh, Amit Sharma, Prateek Yadav, Ms Anu Dixit Kaushik, Gopal Singh, Aditya Raina, Sunny Choudhary, Mishra Saurabh, S. Udaya Kr. Sagar, Krishna Kr. Singh, Pragyam Sharma, Shikhar Garg, P.V. Yogeswaran, T.V.L. Ramachari, K.V.L. Raghavn, Hitesh Kr. Sharma, Anshuman Srivastava, Ms Hemantika Wahi, Ashok Panigrahi, Balaji Srinivasan, D. Mahesh Babu, Kamal Mohan Gupta, Kuldip Singh, Samir Ali Khan, Sudarshan Singh Rawat, Sunil Fernandes, Ms Apoorva Bhumes, Anip Sachthey (M/s Corporate Law Group) and Ms Rachana Srivastava, Advocates] for the appearing parties.

a

Chronological list of cases cited

on page(s)

1. (2016) 14 SCC 741, *Inhuman Conditions in 1382 Prisons, In re*

816c

b

ORDER

In IAs Nos. 3, 4 and 5 of 2016

1. We have heard the learned counsel for the applicants.

2. The costs imposed by our order dated 4-4-2016¹ are waived. However, the learned counsel very graciously say that an amount of Rs 25,000 will be given to the Supreme Court Legal Services Committee for utilisation for juvenile justice issues. Four weeks' time is granted for depositing the amount with Supreme Court Legal Services Committee. The amount shall be utilised for juvenile justice issues.

c

3. Four weeks' time is finally granted to the States which have not yet deposited the costs.

d

Writ Petition (Civil) No. 406 of 2013

4. We have heard the learned counsel for the parties and the learned Amicus Curiae. It is submitted by the learned Amicus Curiae that the Manual for Juveniles may take some more time for preparation. He estimates about three months' time for completing the exercise.

e

5. With regard to overcrowding in prisons, the learned Amicus submits that the extent of overcrowding in each jail needs to be identified rather than looking at the figures relating to the entire State. He submits that in the first instance the States be directed to identify those jails in which overcrowding is to the extent of 150% or more. The learned Additional Solicitor General supports this submission that prisons in which there is overcrowding to the extent of 150% and above should be identified by the States.

f

6. Accordingly, we direct that the States particularly the Inspector General of Prisons should urgently identify those jails in the respective State where overcrowding is to the extent of 150% and above and provide the information to the learned Additional Solicitor General as well as to the learned Amicus Curiae. In addition, the States and the Inspector General of Prisons should prepare a plan of action either to reduce overcrowding or to augment the infrastructure so that there is more space available in the prisons. The cut-off date for calculating the overcrowding will be 30-4-2016.

g

7. The learned Amicus Curiae has also suggested that the Undertrial Review Committee, in addition to the work that it is already doing as earlier

h

¹ *Inhuman Conditions in 1382 Prisons, In re*, (2016) 14 SCC 741

INHUMAN CONDITIONS IN 1382 PRISONS, IN RE

817

directed shall also consider the additional suggestions given by the learned Amicus Curiae which are as follows:

- a* The Committee will examine the cases of undertrials who—
 - (a) become eligible to be released on bail under Section 167(2)(a)(i) and (ii) of the Code read with Section 36-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27-A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days;
- b*
 - (b) are imprisoned for offences which carry a maximum punishment of 2 years;
 - (c) are detained under Chapter VIII of the Criminal Procedure Code i.e. under Sections 107, 108, 109 and 151 CrPC;
 - (d) become sick or infirm and require specialised medical treatment (Section 437 of the Code);
- c*
 - (e) women offenders (Section 437 of the Code);
 - (f) are first time male offenders between the ages 19 and 21 who are in undertrial custody for offences punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible;
- d*
 - (g) are of unsound mind and must be dealt under Chapter XXV of the Code;
 - (h) are eligible for release under Section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.
- e* **8.** The Member Secretary of NALSA is present in Court and he will ensure that this communication is sent to the Member-Secretary of the States Legal Services Authority. The learned counsel for the States and Union Territories should communicate this order to the States and Union Territories and Inspectors General of Police (Prisons).
- f* **9.** With regard to unnatural deaths in prisons, list the matter for hearing on 3-8-2016 as Item 1.

Court Masters

g

h

ARNESH KUMAR v. STATE OF BIHAR

273

(2014) 8 Supreme Court Cases 273

(BEFORE CHANDRAMAULI KR. PRASAD AND P.C. GHOSE, JJ.)

a ARNESH KUMAR . . . Appellant;

Versus

STATE OF BIHAR AND ANOTHER . . . Respondents.

Criminal Appeal No. 1277 of 2014[†], decided on July 2, 2014

b **A. Criminal Procedure Code, 1973 — Ss. 41, 41-A and 57 — Power of police to arrest without warrant — Proper exercise of — Balance between individual liberty and societal order while exercising power of arrest — Directions issued**

c — Directions issued herein, held, shall apply to all such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine — Police officers shall not arrest the accused unnecessarily and Magistrate shall not authorise detention casually and mechanically — Failure to comply with these directions, shall, apart from rendering police officers concerned liable for departmental action, also make them liable to be punished for contempt of court — Authorising detention without recording reasons by Judicial Magistrate concerned shall be liable for departmental action by appropriate High Court — Copy of judgment to be forwarded to Chief Secretaries as also DGs of Police of all States and UT and Registrar General of all High Courts for ensuring compliance therewith — Police — Arrest — Penal Code, 1860 — S. 498-A — Constitution of India, Arts. 21 and 22(2)

e (Paras 11 to 13)

f **B. Penal Code, 1860 — S. 498-A r/w S. 4, Dowry Prohibition Act, 1961 — Exercise of power of arrest — Detailed directions issued — Held, due to the rampant misuse of these provisions, it would be prudent and wise for a police officer, that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegations**

g — Maximum sentence provided under S. 498-A IPC is imprisonment for a term which may extend to 3 yrs and fine and under S. 4 of Dowry Prohibition Act, 2 yrs with fine — Demand of Rs 8 lakhs, a Maruti car, air conditioner, television set, etc. was allegedly made by complainant's mother-in-law and father-in-law and when this fact was brought to appellant's notice, he supported his mother and threatened to marry another woman — Anticipatory bail application was rejected by courts below

h — S. 498-A IPC, held, was introduced with avowed object to combat the menace of harassment to a woman at the hands of her in-laws — The fact that S. 498-A IPC is a cognizable and non-bailable offence has lent it a

[†] Arising out of SLP (Crl.) No. 9127 of 2013. From the Judgment and Order dated 8-10-2013 in Crl. M. No. 30041 of 2013 of the High Court of Patna

274

SUPREME COURT CASES

(2014) 8 SCC

dubious place of pride amongst provisions that are used as weapons rather than shield by disgruntled wives — Simplest way to harass is to get the husband and his relatives arrested under this provision — In a quite number of cases, bedridden grandparents of husbands, their relatives (sisters) living abroad for decades are arrested — Thus, held, it would be prudent and wise for a police officer that no arrest is made without reasonable satisfaction reached after some investigation as to genuineness of allegation — Provisional bail granted to appellant, made absolute — Dowry Prohibition Act, 1961, S. 4 (Paras 3 to 10 and 14)

C. Police — Generally — Colonial attitude of police — Persistence of, even after 60 yrs of Independence — Deprecated (Para 5)

Allowing the appeal and issuing detailed directions on the exercise of the power of arrest, the Supreme Court

Held :

Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive. (Para 5)

No arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. (Para 6)

A person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts. Before arrest first the police officers should have reason to

ARNESH KUMAR v. STATE OF BIHAR

275

believe on basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or more purposes envisaged by sub-clauses (a) to (e) of clause (1) of Section 41 CrPC. (Para 7)

In all cases where arrest of a person is not required under Section 41(1) CrPC, police officer is required to issue notice directing the accused to appear before him at a specified place and time. The law obliges such an accused to appear before police officer and it further mandates that if such an accused complies with terms of notice he shall not be arrested, unless for reasons to be recorded, police officer is of the opinion that the arrest is necessary. At this stage also, condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to same scrutiny by the Magistrate as aforesaid. If the provisions of Section 41 CrPC which authorises police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong committed by police officers intentionally or unwittingly would be reversed and number of cases which come to the Court for grant of anticipatory bail will substantially reduce. Practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued. (Paras 9 and 10)

Arnesh Kumar v. State of Bihar, (2014) 8 SCC 469, *confirmed*

Arnesh Kumar v. State of Bihar, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *reversed*

Hence, the following directions are issued:

(i) All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, 1961, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine, is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

(ii) All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii) CrPC;

(iii) The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(iv) The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

(v) The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

(vi) Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing. (Para 11)

J-D/53425/CR

276 SUPREME COURT CASES (2014) 8 SCC

Advocates who appeared in this case :

Rakesh Kumar and Kaushal Yadav, Advocates, for the Appellant;
Rudreshwar Singh, Samir Ali Khan, Ms Aparna Jha, Braj K. Mishra and Abhishek
Yadav, Advocates, for the Respondents.

a

Chronological list of cases cited

on page(s)

1. (2014) 8 SCC 469, *Arnesh Kumar v. State of Bihar* 282a-b, 282b
2. Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat), *Arnesh Kumar v. State of Bihar (reversed)* 276d

The Judgment of the Court was delivered by

b

CHANDRAMAULI KR. PRASAD, J.— The petitioner apprehends his arrest in a case under Section 498-A of the Penal Code, 1860 (hereinafter called as “IPC”) and Section 4 of the Dowry Prohibition Act, 1961. The maximum sentence provided under Section 498-A IPC is imprisonment for a term which may extend to three years and fine whereas the maximum sentence provided under Section 4 of the Dowry Prohibition Act is two years and with fine.

c

2. The petitioner happens to be the husband of Respondent 2, Sweta Kiran. The marriage between them was solemnized on 1-7-2007. His attempt to secure anticipatory bail has failed¹ and hence he has knocked the door of this Court by way of this special leave petition. Leave granted.

d

3. In sum and substance, allegation levelled by the wife against the appellant is that demand of rupees eight lakhs, a Maruti car, an air conditioner, television set, etc. was made by her mother-in-law and father-in-law and when this fact was brought to the appellant’s notice, he supported his mother and threatened to marry another woman. It has been alleged that she was driven out of the matrimonial home due to non-fulfilment of the demand of dowry. Denying these allegations, the appellant preferred an application for anticipatory bail which was earlier rejected by the learned Sessions Judge and thereafter by the High Court.

e

4. There is a phenomenal increase in matrimonial disputes in recent years. The institution of marriage is greatly revered in this country. Section 498-A IPC was introduced with avowed object to combat the menace of harassment to a woman at the hands of her husband and his relatives. The fact that Section 498-A IPC is a cognizable and non-bailable offence has lent it a dubious place of pride amongst the provisions that are used as weapons rather than shield by disgruntled wives. The simplest way to harass is to get the husband and his relatives arrested under this provision. In a quite number of cases, bedridden grandfathers and grandmothers of the husbands, their sisters living abroad for decades are arrested. “Crime in India 2012 Statistics” published by the National Crime Records Bureau, Ministry of Home Affairs shows arrest of 1,97,762 persons all over India during the year 2012 for the offence under Section 498-A IPC, 9.4% more than the year 2011. Nearly a quarter of those arrested under this provision in 2012 were women i.e. 47,951

f

g

h

¹ *Arnesh Kumar v. State of Bihar*, Criminal Misc. No. 30041 of 2013, order dated 8-10-2013 (Pat)

a which depicts that mothers and sisters of the husbands were liberally included in their arrest net. Its share is 6% out of the total persons arrested under the crimes committed under the Penal Code. It accounts for 4.5% of total crimes committed under different sections of the Penal Code, more than any other crimes excepting theft and hurt. The rate of charge-sheeting in cases under Section 498-A IPC is as high as 93.6%, while the conviction rate is only 15%, which is lowest across all heads. As many as 3,72,706 cases are pending trial of which on current estimate, nearly 3,17,000 are likely to result in acquittal.

b 5. Arrest brings humiliation, curtails freedom and casts scars forever. Lawmakers know it so also the police. There is a battle between the lawmakers and the police and it seems that the police has not learnt its lesson: the lesson implicit and embodied in CrPC. It has not come out of its colonial image despite six decades of Independence, it is largely considered as a tool of harassment, oppression and surely not considered a friend of public. The need for caution in exercising the drastic power of arrest has been emphasised time and again by the courts but has not yielded desired result. Power to arrest greatly contributes to its arrogance so also the failure of the Magistracy to check it. Not only this, the power of arrest is one of the lucrative sources of police corruption. The attitude to arrest first and then proceed with the rest is despicable. It has become a handy tool to the police officers who lack sensitivity or act with oblique motive.

c 6. Law Commissions, Police Commissions and this Court in a large number of judgments emphasised the need to maintain a balance between individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one thing, the justification for the exercise of it is quite another. Apart from the power to arrest, the police officers must be able to justify the reasons thereof. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation. Despite this legal position, the legislature did not find any improvement. Numbers of arrest have not decreased. Ultimately, Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001, Section 41 of the Code of Criminal Procedure (for short "CrPC"), in the present form came to be enacted. It is interesting to note that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the proportionality permeates the amendment relating to arrest.

278

SUPREME COURT CASES

(2014) 8 SCC

7. As the offence with which we are concerned in the present appeal, provides for a maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b) CrPC which is relevant for the purpose reads as follows: a

“41. When police may arrest without warrant.—(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

(a) * * *

(b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely— b

(i) * * *

(ii) the police officer is satisfied that such arrest is necessary— c

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or d

(d) to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to the police officer; or e

(e) as unless such person is arrested, his presence in the court whenever required cannot be ensured,

and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.” f

7.1. From a plain reading of the aforesaid provision, it is evident that a person accused of an offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years with or without fine, cannot be arrested by the police officer only on his satisfaction that such person had committed the offence punishable as aforesaid. A police officer before arrest, in such cases has to be further satisfied that such arrest is necessary to prevent such person from committing any further offence; or for proper investigation of the case; or to prevent the accused from causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the court or the police officer; or unless such accused person is arrested, his g h

presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

a **7.2.** The law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the provisions aforesaid, while making such arrest. The law further requires the police officers to record the reasons in writing for not making the arrest.

b **7.3.** In pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more purposes envisaged by sub-clauses (*a*) to (*e*) of clause (1) of Section 41 CrPC.

c **8.** An accused arrested without warrant by the police has the constitutional right under Article 22(2) of the Constitution of India and Section 57 CrPC to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time necessary for the journey:

d **8.1.** During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it is authorised by the Magistrate in exercise of power under Section 167 CrPC. The power to authorise detention is a very solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution.

e Our experience tells us that it is not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

f **8.2.** Before a Magistrate authorises detention under Section 167 CrPC, he has to be first satisfied that the arrest made is legal and in accordance with law and all the constitutional rights of the person arrested are satisfied. If the arrest effected by the police officer does not satisfy the requirements of Section 41 of the Code, Magistrate is duty-bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that the condition precedent for arrest under Section 41 CrPC has been satisfied and it is only thereafter that he will authorise the detention of an accused.

g **8.3.** The Magistrate before authorising detention will record his own satisfaction, may be in brief but the said satisfaction must reflect from his order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation

h

280

SUPREME COURT CASES

(2014) 8 SCC

of the case or for preventing an accused from tampering with evidence or making inducement, etc. the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording his satisfaction in writing that the Magistrate will authorise the detention of the accused. a

8.4. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant, and secondly, a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny. b

9. Another provision i.e. Section 41-A CrPC aimed to avoid unnecessary arrest or threat of arrest looming large on the accused requires to be vitalised. Section 41-A as inserted by Section 6 of the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), which is relevant in the context reads as follows: c

“41-A. Notice of appearance before police officer.—(1) The police officer shall, in all cases where the arrest of a person is not required under the provisions of sub-section (1) of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice. d

(2) Where such a notice is issued to any person, it shall be the duty of that person to comply with the terms of the notice.

(3) Where such person complies and continues to comply with the notice, he shall not be arrested in respect of the offence referred to in the notice unless, for reasons to be recorded, the police officer is of the opinion that he ought to be arrested. e

(4) Where such person, at any time, fails to comply with the terms of the notice or is unwilling to identify himself, the police officer may, subject to such orders as may have been passed by a competent court in this behalf, arrest him for the offence mentioned in the notice.” f

The aforesaid provision makes it clear that in all cases where the arrest of a person is not required under Section 41(1) CrPC, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged under Section 41 CrPC has to be complied and shall be subject to the same scrutiny by the Magistrate as aforesaid. g

10. We are of the opinion that if the provisions of Section 41 CrPC which authorises the police officer to arrest an accused without an order from a Magistrate and without a warrant are scrupulously enforced, the wrong h

ARNESH KUMAR v. STATE OF BIHAR (*C.K. Prasad, J.*)

281

committed by the police officers intentionally or unwittingly would be reversed and the number of cases which come to the Court for grant of anticipatory bail will substantially reduce. We would like to emphasise that the practice of mechanically reproducing in the case diary all or most of the reasons contained in Section 41 CrPC for effecting arrest be discouraged and discontinued.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:

11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;

11.2. All police officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

11.4. The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy to the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41-A CrPC be served on the accused within two weeks from the date of institution of the case, which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.

282 SUPREME COURT CASES (2014) 8 SCC

13. We direct that a copy of this judgment be forwarded to the Chief Secretaries as also the Director Generals of Police of all the State Governments and the Union Territories and the Registrar General of all the High Courts for onward transmission and ensuring its compliance. a

14. By order dated 31-10-2013², this Court had granted provisional bail to the appellant on certain conditions. We make this order absolute.

15. In the result, we allow this appeal, making our aforesaid order dated 31-10-2013² absolute; with the directions aforesaid. b

(2014) 8 Supreme Court Cases 282

(BEFORE S.J. MUKHOPADHAYA AND KURIAN JOSEPH, JJ.)

RAM KARAN (DEAD) THROUGH LEGAL
REPRESENTATIVE AND OTHERS . . . Appellants; c

Versus

STATE OF RAJASTHAN AND OTHERS . . . Respondents.

Civil Appeal No. 5853 of 2014[†], decided on June 30, 2014

A. Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — S. 42 proviso (as ins. by amending Act 27 of 1956) — Transfer of landholding by member of Scheduled Caste in favour of person not belonging to Scheduled Caste — Held, forbidden and unenforceable under proviso — Hence, such transfer also unlawful under S. 23 of Contract Act and agreement of such transfer void under S. 2(g) of Contract Act — Contract Act, 1872 — Ss. 23 and 2(g) — Transfer of Property Act, 1882 — Ss. 10 and 54 — Statutory bars on alienation (Paras 22, 27 and 29) d e

Triveni Shyam Sharma v. Board of Revenue, AIR 1965 Raj 54, distinguished

B. Tenancy and Land Laws — Rajasthan Tenancy Act, 1955 (3 of 1955) — Ss. 175 and 42 — Limitation period for filing ejectment case — Period should be reasonable when no period is prescribed — Relevant factors for determining reasonable period — Unreasonable delay f

— Sale of landholding effected in 1962 in violation of prohibition under S. 42 — Land mutated in vendee's name in 1963 — No action taken by vendors for restoration of land in their favour — Suit for ejectment of vendees filed by Tahsildar after 31 yrs in 1993 — Application for appointment of Receiver filed in that suit, rejected by Assistant Collector by holding that vendee had been in possession and cultivating suit land for 32 yrs — Held, ejectment suit filed beyond reasonable period of limitation, hence barred by limitation and not maintainable — Practice and Procedure — Delay/Laches/Limitation — Reasonable period (Paras 34 to 39) g

2 *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 469 h

[†] Arising out of SLP (C) No. 16638 of 2012. From the Judgment and Order dated 2-2-2012 in CWP No. 639 of 1996, SA No. 557 of 2002 of the High Court of Rajasthan at Jaipur

ITEM NO.1

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SUO MOTU WRIT PETITION (CIVIL) NO.1/2020

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

Petitioner(s)

VERSUS

Respondent(s)

(FOR ADMISSION)

Date : 16-03-2020 This petition was taken up today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. K.K. Venugopal, Ld. Attorney General
 Mr. Tushar Mehta, Ld. SG
 Ms. Swati Ghildiyal, Adv.
 Mr. Ankur, Adv.

Mr. Dushyant Dave, Sr. Adv. (A.C.)

By Courts Motion, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

In the last few weeks, the world has witnessed the spread of a communicable respiratory disease called the Novel Corona Virus (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2). The outbreak was first identified in Wuhan, Hubei, China in December 2019. On 11th March 2020, the World Health Organization declared COVID-19 as a pandemic after noting that COVID-19 has increased 13-fold in countries other than China. Some State Governments has also declared COVID-19 an epidemic, in order to invoke the emergency provisions of the Epidemic Diseases Act, 1897. Currently, over 110 countries have detected persons suffering from COVID-19 in their territories, and approximately 1,67,291 cases of COVID-19 have been

identified across the world, as of now.

In India, 107 persons have contracted COVID-19. According to some studies, the number of COVID-19 cases in India has doubled within a week, and if prompt measures are not taken, the situation might worsen. Medical experts have noted that there are four stages of the contagion of the COVID-19 virus, which are *firstly*, entry of persons carrying the COVID-19 virus into Indian territory, thereby, importing the COVID-19 into India, *secondly*, local spread i.e. spread of the COVID-19 virus from the carrier to his/her kith and kin, *thirdly*, community spread i.e. spread of the COVID-19 virus to the communities in which a carrier of the COVID-19 virus is resident and finally, the epidemic level. It has been stated by medical professionals that whereas many nations have reached the epidemic level (which is the fourth and final stage), India is still at the second stage where the spread is at the local level. Therefore, if prompt measures are taken, it is believed that COVID-19 can be prevented from reaching the third and fourth stages or in any event, minimise the damage. The Government of India and State Governments are taking all possible steps to curb the contagion of the COVID-19 virus.

The Government of India and the respective State Government have also issued several advisories to the citizens, regarding the prevention of the further spread of the COVID-19 virus. One of the suggestions made by the Government of India is to maintain social distancing, which is considered to be the most effective way of stopping the contagion of COVID-19 virus.

While the Government of India advises that social distancing must be maintained to prevent the spread of COVID-19 virus, the bitter truth is that our

prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively. Like most other viral diseases, the susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as COVID-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. For the reasons mentioned above, our prisons can become fertile breeding grounds for incubation of COVID-19.

We are of the opinion that there is an imminent need to take steps on an urgent basis to prevent the contagion of COVID-19 virus in our prisons. If prisoners are tested positive for the COVID-19 virus, immediate measures have to be taken for their quarantining and medical treatment. We are pleased to note that some State Governments and their Departments of Prisons have already taken preventive measures. For instance, the Director General of Prisons, Kerala has set up isolation cells within prisons across-Kerala. Those suffering with COVID-19 symptoms such as cold and

fever are being moved to these isolation cells. All the new inmates who will be admitted to the prisons in Kerala will be isolated in the isolation cells in the admissions block for six days before permitting their entry into the regular prison cells. Similarly, an isolation ward has been set up in the Tihar Jail, Delhi and all the 17,500 inmates of the said Jail were checked for COVID-19, and it was found that none displayed any symptoms relating to COVID-19. The authorities of the Tihar Jail have also decided that new inmates will be screened and put in different wards for three days. However, we do not have information about the measures taken by the other State Governments in their prisons to prevent the contagion of COVID-19.

For all the above reasons, we consider it appropriate to direct that notices be issued to the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID 19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare.

The respondents shall submit a reply in writing before 20th March, 2020. The reply shall contain the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of the Corona virus among the prisoners/juveniles.

The respondents shall further ensure that a responsible officer of their choice duly authorised to take decision in the matter shall be made available to

this Court on the next date of hearing i.e. 23rd March, 2020.

The respondents may first submit their respective written reply and shall appear in Court as and when called upon to do so. They shall submit their respective responses to this Court, learned Attorney General for India, learned Solicitor General of India, and the learned Amicus Curiae.

It is made clear that we may direct such number of parties to appear in the Court as may be found appropriate on all dates of hearing of the matter.

This order shall be communicated through the Advocates-on-Record of each State/Union Territory forthwith.

We appoint Mr. Dushyant Dave, learned Senior Counsel who is present today in the Court, as Amicus Curiae to assist the Court in the present matter.

The Registry is directed to serve the respondents by their emails.

List the matter on 23.03.2020.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

ITEM NO.8

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SUO MOTU WRIT PETITION (C) NO. 1/2020

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

(WITH IA No. 46086/2020 - FOR INTERVENTION/IMPLEADMENT AND IA No. 46091/2020 - FOR PERMISSION TO APPEAR AND ARGUE IN PERSON)

WITH W.P.(C) No. 450/2020 (PIL-W)
(FOR ADMISSION)W.P.(C) No. 445/2020 (PIL-W)
(FOR ADMISSION and IA No.46113/2020-PERMISSION TO FILE LENGTHY LIST OF DATES)W.P.(C) No. 466/2020 (PIL-W)
(FOR ADMISSION and IA No.48124/2020-EX-PARTE AD-INTERIM RELIEF)Date : 23-03-2020 These matters were called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SURYA KANT

COUNSEL FOR THE PARTIES

Mr. Tushar Mehta, SG
Ms. Swati Ghildiyal, Adv.
Mr. Ankur Talwar, Adv.
Mr. G.S. Makkar, Adv.
Mr. Raj Bahadur, Adv.
Mr. B.V. Balaram Das, AOR

Mr. Dushyant Dave, Sr. Adv. (Amicus Curiae)

Dr. Monika Gusain, Adv.
Mr. Nikhil Goel, AOR

Mr. Suhaan Mukerji, Adv.
Mr. Vishal Prasad, Adv.
For M/s PLR Chambers & Co.

Ms. Astha Sharma, Adv.
With Mr. Ajay Chaudhuri,
Resident Commissioner, Mizoram

Mr. Raghvendra Kumar, Adv.
Mr Narendra Kumar, AOR

Mr. Milind Kumar, AOR

Mr. Vishal Meghwal, Adv.

Mr. Jayanth Muthraj, Sr. Adv./AAG

Mr. M. Yogesh Kanna, AOR

Mr. S. Raja Rajeshwaran, Adv.

Mr. Arun R. Pednekar, Adv.

Mr. Hitesh Kumar Sharma, Adv.

Ms. Mukti Chowdhary, AOR

Ms. Ashima Mandla, Adv.

Mr. Fuzail Ahmad Ayyubi, AOR

Mr. Ibad Mushtaq, Adv.

Mr. Vishal Tiwari, PIP

Mr. Avijit Mani Tripathi, AOR

Mr. V.G. Pragasam, AOR

Mr. S. Prabu Ramasubramanian, Adv.

Mr. K.V. Jagdishvaran, Adv.

Ms. G. Indira, AOR

Mr. Sachin Patil, Adv.

Mr. Geo Joseph, Adv.

Ms. Bansuri, AAG

Dr. Monika Gusain, AOR

With

Mr. Jagjit Singh, IG Prisons (Haryana)

Mr. P. Venkat Reddy, Adv.

Mr. Prashant Tyagi, Adv.

Mr. P. Srinivas Reddy, Adv.

For M/s. Venkat Palwai Law Associates, AOR

Mr. Tapesk Kumar Singh, AOR

Mr. Aditya Pratap Singh, Adv.

Mr. Ahinav Sekhri, Adv.

Mr. Senthil Jagadeesan, AOR

Mr. Ashok Kumar Singh, Adv.

Mr. Hussain Mueen Farooq, Adv.

Ms. Manju Jetley, AOR

Mohd. Kamran Khan, Adv.

Ms. Sudha, Adv.

Mr. Ajeet Kumar Sharma, Adv.

Mr. Vikas Mahjan, AAG

Mr. Vinod Sharma, AOR

Mr. G. N. Reddy, AOR

Mr. T. Vijaya Bhaskar Reddy, Adv.

Mr. M. Shoeb Alam, AOR

Mr. Keshav Mohan, Adv.

Mr. Santosh Kumar - I, AOR

Mr. A.P. Mayee, AOR

Ms. K. Enatoli Sema, AOR

Mr. G. Prakash, AOR

Ms. Garima Prashad, AOR

Mr. Avijit Mani Tripathi, AOR

Mr. V.N. Raghupathy, AOR

Mr. Pukhrambam Ramesh Kumar, AOR

Mr. Fuzail Ahmad Ayyubi, AOR

Mr. Shuvodeep Roy, AOR

Mr. Sumeer Sodhi, AOR

Ms. Uttara Babbar, AOR

Mr. Vinay Arora, AOR

Mr. Abhimanyu Tewari, AOR

UPON hearing the counsel the Court made the following
O R D E R

SUO MOTU WRIT PETITION (CIVIL) NO.1/2020

By an order dated 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes. Several States and UTs have filed their responses detailing measures and initiatives taken while dealing with Corona virus (COVID-19) in respect of persons detained in Prisons and

Remand Homes.

States of Gujarat, Manipur, Meghalaya, Odisha and UTs of Dadar & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi and Puducherry have not filed their responses. The State of Andhra Pradesh, Punjab, Tamil Nadu, Madhya Pradesh, Kerala, Himachal Pradesh and UT of Jammu & Kashmir, though have filed their responses with regard to the measures taken for prisons but have not submitted their response in relation to measures taken for juveniles in Remand Homes.

An overview of the responses reflects that considerable measures for protection of health and welfare of the prisoners to restrict the transmission of COVID-19 have been taken by the State Governments. These measures generally include creation of isolation wards, quarantine of new prisoners including prisoners of foreign nationality for a specific period, preliminary examination of prisoners for COVID-19, ensuring availability of medical assistance, entry points scanning of staff and other service providers, sanitisation and cleanliness exercise of prison campus and wards, supply of masks, barring or limiting of personal visit of visitors to prisoners, suspension of cultural and other group activities, awareness and training with regard to stoppage of transmission of COVID-19 and court hearings through video conferencing among others. Many states have also initiated the process of installing digital thermometers for the purpose of examination of the prisoners, staff and visitors. Some of the States have taken similar measures for Remand Homes as well.

In other significant measures the States of Bihar, Karnataka, Maharashtra, Uttar Pradesh, Tripura, Jharkhand, Goa, Kerala, Telangana and UTs of Jammu & Kashmir and Chandigarh have advised the prison authorities that visitors may be allowed to interact with prisoners only through video calling or telephonic call. States of Goa, Kerala, Telangana, Karnataka and Haryana have adopted screening of prisoners returning from parole to prevent possible transmission.

State of Uttar Pradesh has constituted 'COVID-19 Special Task Force' in all 71 prisons comprising of the Superintendent, the Jailor, Circle Officer/Deputy Jailor, Medical Officer and One member of para-medical staff to monitor the prevention of transmission of infection.

Importantly, Rajasthan and Jharkhand have taken measures to decongest the prison by transferring prisoners from congested prisons to other prisons where the number of prisoners is low. The State of Punjab has directed to identify places in and around the prison, which can be used as a temporary prison in case if there is an outbreak of the virus.

The State of Haryana has directed prisons to prepare block-wise time table relating to food and other services for prevention of overcrowding. Andhra Pradesh, Uttarakhand, Punjab and Maharashtra and UT of Ladakh have identified special groups of prisoners, which are more vulnerable such as old age prisoners with respiratory diseases etc. to infections for special focus and scrutiny.

Looking into the possible threat of transmission and fatal consequences, it is necessary that prisons must ensure maximum possible distancing among the prisoners including undertrials.

Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.

We also direct that prison specific readiness and response plans must be developed in consultation with medical experts. *"Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings"* jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. 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.

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.

The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the

concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

Some States/Union Territories who have not filed responses may file the same within three weeks from today.

List the matter after three weeks.

WRIT PETITION (CIVIL) NOS.450/2020, 445/2020 AND 466/2020

Learned counsel appearing for the petitioners prays for withdrawal of the instant writ petitions with liberty to approach the concerned Ministries, Union of India, New Delhi.

Prayer is allowed.

Copies of these writ petitions shall be served upon Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India and they shall be treated as representations. The concerned Ministries shall dispose of the representations in accordance with law.

It is made clear that if the concerned Ministries deem it appropriate, they may hear the petitioners.

The Writ Petitions are dismissed as withdrawn with the aforesaid liberty.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(MUKESH NASA)
COURT MASTER

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. URGENT2 /2020 (To Be Numbered Subsequently)

COURT ON ITS OWN MOTION

IN RE:

Extension Of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER
25.03.2020

In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020.

Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.

On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. from 25.03.2020.

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such

proceeding, they would be at liberty to seek appropriate relief, as may be advised.

This order be uploaded on the website of this Court and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, CIVIC AUTHORITIES, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this court.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

MARCH 25, 2020

dn

Minutes of Meeting dated 28th March 2020 At 3 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers/Members of High Powered Committee through Video Conferencing:

1. Sh. Satya Gopal, Principal Secretary (Home)/Additional Chief Secretary, Government. of NCT of Delhi Member
2. Sh. Sandeep Goel, Director General (Prisons), Delhi Member

Also in attendance:

Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India on 23.03.2020 in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19

Pursuant to spread of Corona Virus (COVID-19) across the globe and it being declared as pandemic by WHO, Hon'ble Apex Court took the issue of over-crowding of prisons, as a matter of serious concern, by way of above referred Suo-Motu Writ Petition.

Hon'ble Apex Court in order to prevent the outbreak of **Covid-19 (Novel Coronavirus)** and to achieve the target of **“social distancing”** directed various measures to be taken by the concerned Governments / departments with the ultimate object of reducing the population of over-crowded jails. Apart from these directions, State Governments were directed to constitute a **High Powered Committee** consisting of:-

- (a) Executive Chairperson of State Legal Services Authority;

- (b) Principal Secretary Home / Prisons;
- (c) Director General of Prisons ;

for determining the category of persons i.e. convicts and undertrial prisoners for being released on **“Parole”** and **“Interim Bail”**, for such period, as it may find appropriate.

Govt.of NCT of Delhi vide letter no.F.9/63/2020/HG/1409 dated 26.03.2020 constituted the present “High Powered Committee”, which met through “Video Conferencing” to discuss and deliberate on the agenda, emanating from the directions given by Hon’ble Apex Court.

ITEM NO.1:- PREVENTION, SCREENING, IDENTIFICATION, TREATMENT, MITIGATION AND TRANSFER OF PRISONERS ;

Sh. Sandeep Goel, D.G.(Prisons) informed the Chair that Delhi, in all, has **16 jails** located at Tihar, Mandoli and Rohini, having cumulative holding capacity of 10,026 prisoners. He informed that as on 27.03.2020, they are having **17,440 inmates** (consisting of 2997 convicts, 14355 UTPs and 88 Civil Prisoners.)

D.G.(Prisons) has further informed that they on their own with assistance of Jail staff, Home Department of Delhi Government as well as Jail Doctors have taken considerable measures for protection of health of prisoners, so as to prevent the outbreak of COVID-19 in jails.

On being asked by Chairperson, D.G.(Prisons) informed the Committee that they have housed the prisoners in all 16 jails, keeping in mind the capacity of a particular jail, so that none of the jails remain overcrowded or sparsely occupied vis-à-vis other jails. In view of this information, it is **resolved** that there is **no need for transmission** of prisoners from one jail to another.

D.G.Prisons also informed the Committee that they have taken the requisite measures, so as to provide necessary medical assistance to the prisoners as well as jail staff and are

regularly sanitizing and cleaning every nook and corner of the jail campus. He further informed that they have **supplied masks, gloves** and have **limited the visits** of visitors of the prisoners, besides suspending cultural and group activities of prisoners to **avoid mass gathering**.

D.G.(Prisons) apprised the Chair that bathing area, kitchen area and jail telephone area are cleaned up and disinfectants are used frequently. Chair suggested that in these areas for social distancing chalked markings can be done, to which D.G.(Prisons) acceded to.

Chairperson proposed that prisoners can be made aware by Jail Superintendents about the necessary precautions they should undertake and advantages of maintaining a **safe distance** amongst themselves using **“Public Address System”** installed in the Jail Campus, to which D.G.(Prisons) stated that they are already doing it and **assured** the committee that the same shall continue.

Chair was further informed that I.E.C.Material has been displayed within the jail and at entrance including Do's and Don't's for the inmates to prevent the outbreak of COVID-19.

Chair was further apprised by D.G.(Prisons) that with intervention of Hon'ble High Court and support of all District and Session Judges, the undertrial prisoners **are not** being produced for court hearing and for extension of remands. Jail visiting Duty Magistrates have been deputed who are doing the needful while taking the necessary precautions.

D.G.(Prisons) has further informed that measures like creation of **isolation ward, quarantine** of new prisoners including foreign nationals for a period of 4 days as well as **preliminary examination** of prisoners for COVID-19 are put in place. It has been **resolved** that quarantine of fresh entrant foreign nationals and isolation of those with fever / flu should be done for atleast **15 days**. It is stated by D.G.(Prisons) that they are doing it and shall continue to do the same.

Chair on being informed by D.G.(Prisons) that they have inhouse production of soap cakes, liquid soaps, phenyl,

masks and sanitizers for self consumption enquired as to whether the same can be supplied to JJBs, to which D.G.(Prisons) readily agreed and assured to start supply within a week.

D.G.(Prisons) has brought this fact to the knowledge of Chair that as on date, there is **no inmate** with any symptoms of COVID-19, in any of the 16 Jails.

At instance of Chairperson, it is **resolved** that as **personal visits** to the prisoners have been **cut**, they may be permitted to talk to their family members through jail telephone after taking necessary health precaution including sanitization of telephone instrument. It is further **resolved** that CMO and other jail doctors be advised to **frequently examine** the inmates and if they find or suspect anything related to COVID-19 symptoms in any inmate, the same should be brought to the notice of Jail Superintendent immediately for taking necessary steps for isolation / treatment of such inmate, at the earliest strictly in terms of guidelines issued by Ministry of Health, Govt. of India.

**ITEM NO.2:- TAKING STOCK OF EFFECT OF CRITERION
EARLIER ADOPTED TOWARDS
DECONGESTION OF JAILS ;**

Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority, informed the Committee that immediately after passing of the orders by Hon'ble Apex Court, he on instructions from Chairperson of the Committee, had requested the concerned officers of Jail and Govt. of NCT of Delhi for doing the needful, so as to incorporate the provision of **"Emergency Parole"** in Delhi Prison Rules.

He further informed the Committee about receipt of a letter from D.G.(Prisons) whereafter necessary instructions were given by him to Secretary of each District Legal Services Authority (DLSA) to assist the under trial prisoners falling in the criterion mentioned in the orders passed by Division Bench of Hon'ble High Court of Delhi in case titled **"Shobha Gupta &Ors. Vs. Union of India &Ors."** bearing W.P.(C) No.2945 of 2020 decided on 23.03.2020 itself, under intimation to Hon'ble Chairperson of the Committee, so that deserving under trial

prisoners can be released on **“interim bail”**. The criterion adopted was:-

- (i) Under trial prisoner is the first time offender;
- (ii) Under trial prisoner has been arrested or is facing trial for offence punishable upto 7 years ;
- (iii) Case is triable by Magistrate and ;
- (iv) Under trial prisoner is in custody for last 3 months or more ;

On the basis of this criterion, the under trial prisoners were identified by the Jail Administration following which applications for **interim bail** were filed in Court through the **empanelled Counsels** of concerned District Legal Services Authority (DLSA). The said applications were considered and necessary orders were passed by the Duty Magistrates / Addl. Session Judges on duty.

(a) Results with respect to Parole / Furlough of Convicts:-

Sh. Satya Gopal, Principal Secretary (Home) apprised the Committee that necessary notification making amendment in Delhi Prison Rules for incorporating provision of **“emergency parole”** has been issued by Govt. of NCT of Delhi vide notification no.**F 18/191/2015/HG/1379-1392** dated 23.03.2020. It has been informed by Principal Secretary (Home) as well as by D.G.(Prisons) that on the basis of this notification, for grant of this “emergency parole” for a period of 8 weeks, orders have been passed by Department of Home, Govt. of NCT of Delhi, vide order no.**F 18/191/2015/HG/1428-1438** dated 27.03.2020.

D.G.(Prisons) informed the Chair that on the basis of the orders passed by Home Department as well as the notification regarding “Emergency Parole” for **8 weeks**, he has already taken the approval of Committee so constituted by orders dated 27.03.2020 of Home Department for grant of Parole to **63 Convicts**. He further informed the Chair that through this

provision of “Emergency Parole”, they would be in a position to release about 1500 convicts for 8 weeks.

On being asked by the Chair to expedite this process, D.G.(Prisons) assured that this exercise would be completed in the next 4 days.

(b)Results with respect to “Interim Bail” of Under trial prisoners;-

Sh. Sandeep Goel D.G.(Prisons) as well as Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority, informed the Chair that on the basis of criterion as mentioned in the order passed by Delhi High Court in **Shobha Gupta’s Case (supra)** mentioned hereinabove, which is in consonance to the Apex Court’s decision, **382** number of under trial prisoners have already been released on ‘**interim bail**’ till date pursuant to the applications filed through DLSAs and orders passed thereon by Duty Magistrates, so as to decongest the Jails.

In all, “Interim Bail” has been granted to **461 UTPs**, rest are in the process of being released.

The Committee however is of the opinion that the present population of the Jails requires to be further **eased-out**, for which Members have proposed to **relax** the category of prisoners, who **can also be released on interim bail**.

ITEM NO.3:- DETERMINING FRESH CATEGORY OF UNDER TRIAL PRISONERS WHO CAN BE RELEASED ON ‘INTERIM BAIL’:-

Kanwal Jeet Arora, Member Secretary informed the Committee, that immediately on receipt of letter from Govt. of NCT of Delhi regarding formation of present Committee, he on being directed by Hon’ble Chairperson had requested D.G. (Prisons) through the letter dated 26.03.2020 to furnish requisite information for the impact analysis on the **proposed relaxed**

criterion of under trial prisoners. The same is accordingly submitted.

The Members of the Committee discussed and deliberated upon the proposed category of prisoners, who may now be considered for grant of interim bail for **45 days** in view of the circumstances in which we are in, preferably on '**Personal Bond**':-

- (i) Under trial prisoners (UTPs) who are facing trial in a case which prescribes a maximum sentence of **7 years** or less ; or
- (ii) Even If, the UTP has more than one case and in all other cases, he is "on bail", except the one for which he is being considered and the same prescribes punishment for 7 years or less ; and if
- (iii) UTP is in custody for a period of one month or more ;
- (iv) In case of Women UTP, if she is in custody for a period of 15 days or more;

Besides the UTPs falling in above categories, those inmates who are undergoing Civil Imprisonment can also be considered for 'interim bail' of **45 days**.

It has further been **resolved** that following category of UTPs, even if falling in the above criterion, **should not be** considered :-

- (i) All inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;
 - (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;
 - (iii) Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;
 - (iv) Those UTPs who are foreign nationals ;
- and

- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA ; and
- (vi) Cases investigated by CBI/ED/NIA/Special Cell Police and Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.

D.G (Prisons) has informed that on the basis of this criterion, approximately **800 UTPs** may be the beneficiaries and their release would considerably **ease out** the Jail Population.

Chairperson has directed Member Secretary, DSLSA to take steps for having the applications of UTPs falling in relaxed criterion, be moved.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to pass on directions to the Jail visiting Duty Magistrates as well as Duty Magistrates in courts to take up these applications and if the under trial prisoners are released on bail, they may be released on '**Personal Bond**', to the satisfaction of Jail Superintendent, so as to implement the social distancing policy of the Government.

ITEM NO.4:-REMISSION OF SENTENCE:-

The members of the Committee have discussed and deliberated upon this issue. It has been **resolved** that in the case of :-

- (i) Convicts who are sentenced for **10 years** and have already completed **9 ½ years** of custody including regular remission, may be considered for **6 months special remission** of sentence by Home Department, Govt. of NCT of Delhi;
- (ii) Convicts who are sentenced for **7 years or more but less than 10 years**, and are left with only 5 months to complete the sentence, may be considered for **5 months special remission** of sentence ;
- (iii) Convicts who are sentenced for **5 years or more but less than 7 years**, and left with only 4 months to

complete the sentence, may be considered for **4 months special remission** of sentence ;

- (iv) Convicts who are sentenced for **3 years or more but less than 5 years**, and left with only 3 months to complete the sentence, may be considered for **3 months special remission** of sentence ;
- (v) Convicts who are sentenced for **1 year or more but less than 3 years**, and left with only 2 months to complete the sentence, may be considered for **2 months special remission** of sentence ;

Home department, govt. of NCT of Delhi may consider the above criteria for special remission of sentence expeditiously on receipt of recommendation to that effect by D.G.(Prisons).

ADDITIONAL POINT:-

D.G.(Prisons) has raised an issue with respect to those convicts whose interim bail / parole is expiring on or after 16.03.2020.

Chair has informed that Full Bench of Hon'ble High Court in "**Court on its own Motion In RE: Extension of Interim Orders in W.P.URGENT No.2/2020**", vide orders dated 25.03.2020 has extended the interim bail/ parole in pending cases till 15.05.2020, therefore those inmates whose parole / interim bail is expiring on 16.03.2020 or thereafter, may be asked to surrender only on 15.05.2020.

D.G.(Prisons) informed the Chair that in view of the spirit and tenor of orders passed by Full Bench of Hon'ble High Court, he shall adopt the same approach with respect to disposed off matters as well.

It has therefore been **resolved** that this automatic extension of interim relief granted to convicts / UTPs of **parole / interim bail** as stated above, shall also hold good, even for **disposed off** petitions / applications.

Committee during the deliberations have taken into consideration the Lockdown situation of the entire nation for 21

days and has accordingly **resolved** that D.G.(Prisons) will co-ordinate with Nodal Officer of Delhi Police to ensure safe transportation of the released convicts / UTPs from Jail to their houses in Delhi.

In case, the released convict / UTP is resident of any other State then, D.G.(Prisons) shall co-ordinate with concerned S.S.P of the District / State where the released inmate resides, so as to ensure that he / she reaches home after release from Jail.

The Under Trial Review Committees of each district shall continue to meet every week and may come up with any new / fresh criteria to facilitate further decongestion of Jails. D.G. (Prisons) shall direct the Jail Administration to provide online data or necessary information as sought by the Under Trial Review Committee, for achieving the intended result.

Meeting ended with Vote of Thanks to the Chair.

Sandeep Goel

Satya Gopal

Kanwal Jeet Arora

**D.G(Prisons)
Secretary**

Principal Secretary (Home)

Member

DSLSA.

**Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLSA.**

ITEM NO.17

COURT NO.0

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SMW No.1/2020

IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS

(With IA No.48215/2020 - APPLICATION FOR PERMISSION; IA No.48234/2020 - APPROPRIATE ORDERS/DIRECTIONS; IA No.48232/2020 - APPROPRIATE ORDERS/DIRECTIONS; IA No.48216/2020 - CLARIFICATION/DIRECTION; IA No.48233/2020 - INTERVENTION APPLICATION; IA No.48231/2020 - INTERVENTION APPLICATION; and, IA No.48217/2020 - MODIFICATION OF COURT ORDER)

(MR. DUSHYANT DAVE, SR. ADV.(A.C)[NAME OF SRISHTI AGNIHOTRI, ADVOCATE MAY SHOWN UNDER ITEM NO. 17]

Date : 07-04-2020 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO

Counsel for the Parties:

Mr. Dushyant Dave, Sr. Advocate
(Amicus Curiae)

Mr. K.K. Venugopal, AG

Mr. Tushar Mehta, SG

Mr. Salman Khurshid, Sr. Adv.
Ms. Srishti Agnihotri, Adv.

Ms. G. Indira, AOR

Mr. M. Yogesh Kanna, AOR

Mr. Sachin Patil, AOR

Mr. Santosh Kumar - I, AOR

Mr. Raj Bahadur Yadav, AOR

Mr. Abhimanyu Tewari, AOR

Dr. Monika Gusain, AOR

M/s. PLR Chambers & Co., AOR

Mr. G. Prakash, AOR

Ms. Astha Sharma, AOR

Mr. Nikhil Goel, AOR

Ms. Mukti Chowdhary, AOR

Mr. Narendra Kumar, AOR

M/s. Venkat Palwai Law Associates, AOR

Mr. Shuvodeep Roy, AOR

Mr. Milind Kumar, AOR

Mr. Vinod Sharma, AOR

Mr. Sumeer Sodhi, AOR

Ms. K. Enatoli Sema, AOR

Ms. Uttara Babbar, AOR

Mr. Vinay Arora, AOR

Mr. Tapesk Kumar Singh, AOR

Mr. G. N. Reddy, AOR

Mr. M. Shoeb Alam, AOR

Ms. Garima Prashad, AOR

Mr. V. N. Raghupathy, AOR

UPON hearing the counsel the Court made the following
O R D E R

IA No.48232/2020

We have heard Mr. Dushant Dave, learned Amicus Curiae and Mr. K.K. Venugopal, learned Attorney General for India,

It is pointed out by Mr. Dave that the prisoners who have been released according to the guidelines framed by the High Powered Committees in various States are stranded because they have no means to reach their homes or their places of residence.

Mr. Venugopal, learned Attorney General submits that it is very unjust that the prisoners who are released have been left stranding and they cannot reach their homes because of lockdown in absence of any transportation.

In these circumstances, we consider it appropriate to direct that Union of India shall ensure that all the prisoners having been released by the States/Union Territories are not left stranded and they are provided transportation to reach their homes or given the option to stay in temporary shelter homes for the period of lockdown. For this purpose, the Union of India may issue appropriate directions under the Disaster Management Act, 2005 or any other law for the time being in force.

We further direct that the States/Union Territories shall ensure through Directors General of Police to provide safe transit to the prisoners who have been released so that they may reach their homes. They shall also be given an option for staying in temporary shelter homes during the period of lockdown. Ordered accordingly.

Copies of all the applications be served on learned Attorney General and learned Solicitor General.

In the meantime, copy of the Status Report(s) be served on the parties concerned.

List the applications on 13.04.2020, on top of the Board.

(CHARANJEET KAUR)
AR-cum-PS

(MUKESH NASA)
Court Master

(INDU KUMARI POKHRIYAL)
Assistant Registrar

Minutes of Meeting dated 7th April, 2020 At 5:30 PM through Video Conferencing Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers/Members of High Powered Committee through Video Conferencing:

1. Sh. Satya Gopal, Principal Secretary (Home)/Additional Chief Secretary, Government. of NCT of Delhi Member
2. Sh. Sandeep Goel, Director General (Prisons), Delhi Member
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

ITEM NO.1:- FOLLOW UP PREVENTION, SCREENING, IDENTIFICATION, TREATMENT, MITIGATION AND TRANSFER OF PRISONERS ;

Feedback was sought pertaining to the resolutions adopted in the last meeting dated 28.03.2020 with respect to **prevention, screening, identification, treatment, mitigation and transfer of prisoners**, so as to prevent the outbreak of **Covid-19 (Novel Corona virus)** and also to achieve **social distancing** amongst the prisoners within the jail premises.

Sh. Sandeep Goel, DG (Prisons) informed the Chair that all resolutions adopted in the previous meeting are being followed **scrupulously**. He further apprised the Chair that the prisoners, jail staff and other persons working in jails are taking necessary precautions and are adhering to the call of social distancing. He apprised the Chair that Bathing area, Kitchen Area and Jail Telephone Area are being cleaned and sanitised on regular basis. He further informed that inmates are being apprised about the necessary precautions i.e. Do's and Don'ts through **"Public Address System"** installed in Jails.

D.G. (Prisons) informed the Chair that the measures like **isolation wards, Quarantine of New Prisoners** as well as **preliminary examination** of the prisoners for Covid-19 are being regularly followed as per the resolution adopted in the last meeting. D.G. (Prisons) further informed the Chair that on an average, 25-30 fresh inmates are being sent to Jail these days. D.G (Prisons) further informed that a separate ward in Jail Number 2 at Tihar and in Jail Number 13 at Mandoli have been carved out for the fresh male inmates above 21 years of age. He informed that all such fresh inmates shall be kept only in these two wards of Jail Number 2 and 13 at Tihar and Mandoli, respectively. Whereas, for fresh women inmates, separate isolation wards have been created in Jail Number 6 while fresh male inmates between the age of 18 to 21 years would be kept at Jail number 5, Tihar. This is done in order to make sure that the fresh inmates **do not intermingle** with those already inside.

DG (Prisons) has further informed that in terms of the resolutions adopted in the previous meeting, out of the in-house manufacturing of soap cakes, liquid soaps, phenyl, masks, and sanitizers, adequate number of these materials have been sent to JJBs/ Observation Homes, as per the requirement received from them, besides the same being put to use in all the Jails.

DG (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the outbreak of Covid-19 (Novel Corona Virus) in the jail premises.

Committee is **satisfied** with the steps being taken by D.G. (Prisons) and directed him to continue doing the same.

**ITEM NO.2:- TAKING STOCK OF EFFECT OF CRITERION
EARLIER ADOPTED TOWARDS
DECONGESTION OF JAILS ;**

Number of inmates released pursuant to the criteria earlier adopted in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed

by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meeting dated 28.03.2020, is put up before the Committee. The same was perused by the Committee, which is as under:-

ITEM NO.2 (A):- WITH RESPECT TO PAROLE OF THE CONVICTS

A. With respect to parole of convicts	
Total Number of orders issued	686
Convicts released	650
Cases under process	261
Note :Though, orders have been issued with respect to 686 convicts for their release on "emergency parole" but some of them have not been released as they are unwilling and some are residents of States of Punjab, Bihar and Uttar Pradesh.	

Committee has considered the Notification bearing number F.18/191/2015/HG/1379/1392 dated 23.02.2020, issued by Govt. of NCT of Delhi, whereby Delhi Prison Rules 2018 were amended and provision of "**Emergency Parole**" has been added in **Rule 1212A**. In order to combat the unprecedented and extraordinary situation of the outbreak of Corona virus, a consequential order bearing No.F.18/191/2015/HG/1428-1438 dated 27.03.2020, was also issued by Govt. of NCT of Delhi, delegating the powers of grant of "Emergency Parole" to D.G. (Prisons) in all cases except those falling in Rule 1211 of Delhi Prison Rules, till 30.04.2020.

It is on the basis of this notification and consequential orders passed by Govt. of NCT of Delhi that this Committee vide Minutes of Meeting dated 28.03.2020 and on assurance of D.G. (Prisons) had passed a "**resolution**" that "Emergency Parole" for a period of eight weeks be granted to the eligible convicts. As per D.G.(Prisons) the number of such convicts eligible for "**Emergency Parole**" was about **1500**. However, as per the report submitted, only **650** convicts have been released so far.

Hon'ble Chairperson has cautioned DG (Prisons) and Principal Secretary (Home) that any delay in release of the eligible convicts on "**Emergency Parole**" so as to complete the

exercise of decongestion of jail, will make the entire effort **futile**.

DG (Prisons) as well as Principal Secretary (Home) assured the Chair that they shall expedite the process of grant of **“Emergency parole”** to the eligible convicts.

It is resolved that this process be completed within **three days**.

ITEM NO.2 (B):- WITH RESPECT TO INTERIM/REGULAR BAIL OF UTPs

B. With respect to interim/regular bail of UTPs	
Number of application moved as per the criteria	1475
Orders granting bail received as on 06.04.2020	823
UTPs already released	775
<i>Note :Though, interim bail orders have been issued with respect to 823 UTPs but some of them are not released owing to the want of permanent address, they being vagabond and some of the UTPs are unwilling.</i>	

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that the Advocates empanelled with DSLSA, visiting jail premises on daily basis, had drafted and filed about 1500 applications (1475 to be precise as on 06.04.2020) for grant of interim bail. The Committee is further informed that out of these bail applications, “interim bail” has already been granted in approximately **823 cases** and it is expected that in a day or two, 100 more UTPs would be granted “interim bail” on the basis of applications filed/pending for consideration, before the concerned Courts. Report submitted by the Jail Authority, however, reveals that all UTPs with respect to whom bail orders have been passed are not released for want of various reasons.

Hon’ble Chairperson directed DG (Prisons) that the jail administration/Jail Superintendent should be directed to ensure release of UTPs **immediately** on receipt of bail orders from the Court while ensuring their safe transit from Jail to their respective homes as per the resolution adopted vide Meeting dated 28.03.2020, in the wake of lockdown declared by the Central Government.

ITEM NO.2 (C):- REMISSION OF SENTENCE :

C. Remission of Sentence	
Number of convicts granted remission of sentence pursuant to the resolution adopted in previous meeting dated 28.03.2020	NIL

Hon'ble Chairperson has expressed her deep **disappointment** and **displeasure** for the *non-implementation* of the '**resolutions**' adopted vide meeting dated 28.03.2020 regarding remission of sentence to the convicts. Principal Secretary (Home) has apprised the Chair that on the basis of resolution adopted in Meeting dated 28.03.2020, Govt. of NCT of Delhi has passed the necessary orders "*granting remission of sentence*". He has further **assured** that the said orders shall be communicated to D.G.(Prisons) during the course of the day.

D.G.(Prisons) has **assured** that he shall expedite the process and shall do the needful within **two-three days** of receipt of the orders from Govt. of NCT of Delhi in order to achieve the object, for which this Committee has been constituted.

It is **resolved** accordingly.

ITEM NO.3:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON 'INTERIM BAIL' TAKING INTO ACCOUNT :-

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date only about 1500 inmates/convicts/UTPs have been released on **parole/interim bail**.

In view thereof the Committee is of the opinion that the criteria needs to be **further relaxed** to give effect to directions of Hon'ble Supreme Court of India. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the

information, for the **impact analysis** qua the proposed relaxed criteria of UTPs. The same is accordingly submitted.

The Members of the Committee discussed and resolved that following categories of prisoners may now be considered for grant of interim bail for **45 days** in view of the circumstances in which we are in, preferably on '**Personal Bond**':

- (i) *Under trial prisoners (UTPs), who are senior citizens more than 60 years of age and are in custody for **six months or more**, facing trial in a case which prescribes a maximum sentence of **10 years** or less;*
- (ii) *Under trial prisoners (UTPs), who are less than 60 years of age and are in custody for **one year or more**, facing trial in a case which prescribes a maximum sentence of **10 years** or less ;*
- (iii) *Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, Charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of **7 years** or less ;*

It has further been **resolved** that following category of UTPs, even if falling in the above criterion, **should not be** considered :-

- (i) *Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;*
- (ii) *Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) *Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;*
- (iv) *Those UTPs who are foreign nationals ;*

- (v) *Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA ; and*
- (vi) *Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.*

D.G (Prisons) has informed that on the basis of this new criterion, approximately **973 more UTPs** would be the beneficiaries and their release would considerably **ease out** the Jail Population.

Committee has been apprised that on the basis of criteria adopted vide meeting dated 28.03.2020, the Jail Population has come down from **17,552** as on 25.03.2020 to **16,179** as on 07.04.2020. On complete implementation of the said criteria, it would further come down to about **15,500**. It is further informed to the Chair that on the basis of criterion adopted hereinabove today for release of UTPs / Remand Prisoners on “**interim bail**”, the same would further come down to **14,500** in a week’s time.

Chairperson has directed Member Secretary, DSLSA to take steps for having the applications of UTPs falling in relaxed criterion, be moved.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to pass on directions to the Jail visiting Duty Magistrates as well as Duty Magistrates in courts to take up these applications and if the under trial prisoners are released on bail, they may be released on ‘**Personal Bond**’, to the satisfaction of Jail Superintendent, so as to implement the social distancing policy of the Government.

It is clarified that the decision taken by this Committee for release of prisoners on “**interim bail**” vide criterion adopted in the meeting dated 28.03.2020 and the one

adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular / interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

D.G.(Prisons) has further apprised the Chair that there are large number of UTPs who have been **granted bail** by different Sessions Courts and Courts of Magistrates, but they are still in jail, for **want of sureties**.

Members of the Committee deliberated and resolved that UTPs in whose favour, the bail orders were passed by different courts may have been **incapacitated** to furnish bail bonds and surety bonds, owing to the outbreak of Covid-19 and scant working of the courts, thus, the bail orders qua such UTPs are required to be modified, to the extent that they may be released on furnishing "Personal Bond", with rest of the conditions if any, imposed remaining unaltered.

Keeping in mind the outbreak of pandemic, the functioning of courts was restricted to very urgent matters only, notification in this regard was issued by Delhi High Court bearing notification no.155/RG/DHC/2020 dated 20.03.2020. On 24.03.2020, Order No.40-3/2020-DM-1(A) was issued by Govt. of India taking strong measures to prevent the spread of Covid-19 and a **nationwide lockdown** for a period of 21 days was declared with effect from 25.03.2020.

Owing to this restricted movement such UTPs despite being granted bail are languishing in jail for not being able to produce and furnish "Surety Bond". Committee is of the opinion that bail orders qua such UTPs are required to be modified through a Judicial Order. Ordinarily, for modification of bail orders / conditions, applications are required to be filed before concerned court. However, keeping in mind the extraordinary conditions, Committee feels that approaching the Court by each

UTP seeking modification of bail order, would result into wastage of time and might go against the measures which are being taken to prevent the spread of Corona virus.

Thus, Committee is of the opinion that a Judicial Order would be required from Hon'ble High Court of Delhi, for modification of such bail orders passed either by **High Court of Delhi** or any court subordinate to it, on or before today's date i.e. 07.04.2020, thereby modifying/ doing away with the condition of **furnishing surety bond** and instead allowing such UTPs to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail.

It may however be clarified that the Committee **does not** recommend change of any other condition (if any) imposed in the bail orders passed by the concerned court.

Member Secretary, DSLSA is directed to place these recommendations of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that Jail Superintendent shall release such UTPs on Personal bonds only on production of the bail orders, so passed by the concerned court in favour of the said UTP.

ITEM NO.4:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR:-

Vide orders dated 23.03.2020, Hon'ble Supreme Court in **Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19** had directed this Committee to take appropriate measures to decongest not only the jails, but also the Remand Homes. This Committee vide Minutes dated 28.03.2020 had directed Member Secretary, DSLSA to gather information regarding the occupancy of Observation homes with the bifurcation of number of CCLs involved in heinous offences and those involved in other offences so that appropriate action

can be taken. However, by a subsequent order dated 03.04.2020, Hon'ble Supreme Court in "**Suo Moto Petition (Civil) No.4/2020- In Re : Contagion of COVID-19 VIRUS IN CHILDREN PROTECTION HOMES**", has issued directions to JJBs, CWCs as well as CCIs to take necessary steps to prevent the outbreak of COVID-19 (Corona virus) in Remand Homes and Children Homes.

Committee has been informed that Juvenile Justice Committee of High Court of Delhi, is taking appropriate steps to implement the directions of Hon'ble Supreme Court. Thus, this Committee is not required to pass any resolution in this regard. However, Member Secretary DSLSA has been directed by the Committee to gather the information with respect to steps taken by JJBs and CWCs towards implementation of directions passed by Hon'ble Supreme Court of India.

Kanwal Jeet Arora, Member Secretary, DSLSA, is further directed by the Committee to ensure that the Retainer Counsels of DSLSA attached with JJBs and CWCs provide necessary assistance to JJBs and CWCs in implementation of directions given by Hon'ble Supreme Court.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with Vote of Thanks to the Chair.

Sandeep Goel

Satya Gopal

Kanwal Jeet Arora

**D.G(Prisons)
Secretary**

Principal Secretary (Home)

Member

DSLSA.

**Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLSA.**

ITEM NO.17

Virtual Court No.1

SECTION PIL-W

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

SUO MOTU WRIT PETITION (CIVIL) No.1 OF 2020

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

(IA No.48215/2020 - FOR APPLICATION FOR PERMISSION; IA No.48216/2020 - FOR CLARIFICATION/DIRECTION; IA No.48261/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48260/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48234/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48232/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48233/2020 - FOR INTERVENTION APPLICATION; IA No.48231/2020 - FOR INTERVENTION APPLICATION; IA No.48263/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.48270/2020 - FOR MODIFICATION; and, IA No.48217/2020 - FOR MODIFICATION OF COURT ORDER)

Date : 13-04-2020 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

Counsel for the Parties

Mr. K.K. Venugopal, AG
Mr. Tushar Mehta, S.G.
Mr. B.V. Balaram Das, AOR

Mr. Dushyant Dave, Sr. Adv. (A.C.)

Mr. Salman Khurshid, Sr. Adv.
Ms. Srishti Agnihotri, AOR

Mr. Colin Gonsalves, Sr. Adv.
Mr. Harmeet Singh Ruprah, AOR

Mr. Sanjay Jain, AOR (Not Present)

Mr. Shuvodeep Roy, AOR

Mr. Milind Kumar, AOR

Ms. Uttara Babbar, AOR

Mr. Vinay Arora, AOR

Mr. M. Shoeb Alam, AOR

Mr. Talha Abdul Rahman, AOR

Mr. Sachin Patil, AOR
Mr. Abhimanyu Tewari, AOR
Mr. Keshav Mohan, Adv.
Mr. Santosh Kumar - I, AOR
Mr. Shibashish Misra, AOR
Mr. Tapeshe Kumar Singh, AOR
Ms. Garima Prashad, AOR
Ms. G. Indira, AOR
Mr. Raj Bahadur Yadav, AOR
Dr. Monika Gusain, AOR
M/s. PLR Chambers & Co., AOR
Mr. G. Prakash, AOR
Ms. Astha Sharma, AOR
Mr. Nikhil Goel, AOR
Ms. Mukti Chowdhary, AOR
Mr. Narendra Kumar, AOR
M/s. Venkat Palwai Law Associates, AOR
Mr. V. N. Raghupathy, AOR
Mr. M. Yogesh Kanna, AOR
Mr. G. N. Reddy, AOR
Mr. Vinod Sharma, AOR
Mr. Sumeer Sodhi, AOR
Ms. K. Enatoli Sema, AOR

UPON hearing the counsel the Court made the following
O R D E R

We have heard Mr. Dushyant Dave, learned Amicus Curiae, Mr. K.K. Venugopal, learned Attorney General for India, Mr. Tushar Mehta,

learned Solicitor General and learned counsel for other parties.

I.A. No.48260 of 2020

By order dated 23.03.2020, we directed the States/Union Territories to constitute High Powered Committees which could decide which prisoners may be released on interim bail or parole during the pandemic (COVID 19). The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable. The operative part of our order reads as follows:

"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 under trial 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."

We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was "accused" of suffering from

coronavirus has been reported.

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 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.

We make it clear that the aforesaid order is intended to be implemented fully in letter and spirits.

The instant application stands disposed of.

I.A. No. 48231/2020, I.A. 48232 of 2020, I.A. No. 48233/2020, I.A. NO.48234 OF 2020, I.A. No. 48270/2020 AND I.A. No. 48217/2020

Applications for intervention are allowed.

As matter stands today, this Court has permitted the release of the prisoners after due recommendations from the High Powered Committee constituted by each State/Union Territory. Secondly, there is a direction to permit transportation of prisoners who have been released to make the release effective.

Learned Attorney General submits that pursuant to this Court's orders dated 23.03.2020 and 07.04.2020, certain prisoners have been released on the recommendation of the High Powered Committees except in the States of Delhi and Goa. Insofar as State of Bihar is concerned, no prisoner has been released as the State Government is of the opinion that their jails are not overcrowded and no prisoner is

suffering from coronavirus (COVID- 19).

Mr. K.K. Venugopal, learned Attorney General for India vehemently submits that the release and transportation of the prisoners would itself result in transmission of coronavirus from prisons or detention centres to locations where the released prisoners have to reach.

We have considered the rival submissions and we are of the view that in the circumstances, it would be appropriate to issue the following directions:

(a) No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.

(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.

(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of coronavirus disease are at a distance from each other.

(d) The order dated 23.03.2020 shall be applicable to correctional homes, detention centres and protection homes.

The instant applications stand disposed of.

I.A. No.48215/2020 AND I.A. No.48216/2020

Application for intervention is allowed.

It is submitted that about 802 prisoners have been declared as foreigners under the provisions of the Foreigners Act, 1946.

Learned counsel for the applicants rely on the order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 titled as "Supreme Court Legal Services Committee v. Union of India & Others", this Court directed as follows:

"Insofar as the release of detenues who have served long period of detention in the detention centres awaiting their deportation is concerned, we are of the view that detenues who have completed more than three years may be released, subject to the following conditions:-

(a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;

(b) He or she specifies verifiable address of stay after release;

(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;

(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal."

The only prayer made by the learned counsel is that the period of three years be reduced to one year so that detenues who have completed

more than two years may be released, subject to the same conditions laid down by this Court vide order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 except the requirement to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only).

Mr. Tushar Mehta, learned Solicitor General submitted that it would be hazardous to release such people since they would again mix with rest of the population and it would be difficult to trace them, in case the Government resorts to certain steps under the law.

We find that after the order dated 10.05.2019, no application has been made by any party for modification of the aforesaid order on any ground whatsoever.

It is important to be cognizant of the fact that the said order dated 10.05.2019 was passed when there was no danger of any pandemic like the present one.

Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenues who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenues who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10.05.2019, except that they shall not be required to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs.5,000/- (Rupees five thousand only) with two sureties of the

like sum of Indian citizens. Rest of the conditions in the said order dated 10.05.2019 reproduced above shall apply.

Ordered accordingly.

The instant application for directions stands disposed of.

I.A. No.48261 OF 2020

None appears on behalf of the applicant.

We have perused the instant application for direction.

No orders need be passed.

The instant interlocutory application stand disposed of accordingly.

(SANJAY KUMAR-II)
Asst. Registrar-cum-PS

(MUKESH NASA)
Court Master

(VIRENDER SINGH)
Branch Officer

Minutes of Meeting dated 18th April, 2020 At 3:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers/Members of High Powered Committee through Video Conferencing:

1. Sh. Satya Gopal, Principal Secretary (Home)/Additional Chief Secretary, Government. of NCT of Delhi Member
2. Sh. Sandeep Goel, Director General (Prisons), Delhi Member
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

Hon'ble Chairperson of the Committee while recapitulating the steps/measures already taken during earlier meetings to implement directions of Hon'ble Supreme Court of India issued vide its order dated 23.03.2020, apprised the participants about the subsequent orders passed by Hon'ble Supreme Court of India on 13.04.2020 in the above mentioned matter.

Hon'ble Chairperson expressed her opinion that further steps are required to be taken by this Committee inconsonance with the spirit/objectives of the fresh directions passed by the Hon'ble Supreme Court on 13.04.2020.

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS

Sh. Sandeep Goel, DG (Prisons) informed the Chair about the successful implementation of the measures taken by the jail administration with respect to creation of **Isolation Wards**, preliminarily examination of the new entrants in jail for **COVID-19 (Novel Corona Virus)** as well as **Quarantine of new prisoners**. He further informed the Chair that the new entrants who are above 21 years of age are kept in

separate wards in Jail No.2 at Tihar and Jail No.13 in Mandoli strictly as per the resolution adopted in the last meeting. He further informed the Chair that separate **Isolation Wards** have been created in Jail No.6 for women inmates and in Jail No. 5 at Tihar for fresh male inmates between 18-21 years of age, so that the fresh inmates immediately on their arrival in Jail, **do not intermingle** with those who are already inside.

DG (Prisons) further informed the Chair about the measures being taken by the jail staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of **social distancing** is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitised using appropriate disinfectant. DG (Prisons) further informed that necessary precaution i.e. Do's and Don'ts are being told to the inmates through "**Public Address System**" installed in Jails.

DG (Prisons) has further informed that in terms of the resolutions adopted in the previous meeting, out of the in-house manufacturing of soap cakes, liquid soaps, phenyl, masks, and sanitizers, adequate number of these materials have been sent to JJBs/ Observation Homes, as per the requirement received from them, besides the same being put to use in all the Jails.

DG (Prisons) has informed that regular medical check up of Jail staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of Covid-19 in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding the necessary steps being taken to practice, promote and demonstrate positive hygiene behaviours in Jails.

DG (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- TO CONSIDER MIGRATION AND TRANSFER OF PRISONERS FROM ONE JAIL TO ANOTHER PURSUANT TO RELEASE OF SOME PRISONERS AS PER CRITERIA ADOPTED IN PREVIOUS RESOLUTIONS OF HPC

On inquiry by the Chair, it is informed by D.G.(Prisons) that on the basis of criteria adopted vide resolutions dated 28.03.2020 and 07.04.2020, approximately 2700 inmates have already been released on interim bail/parole.

In order to find out the requirement of **migration/ transfer** of prisoners from one jail to another in view of the release of the prisoners, on being asked by the Chair, DG (Prisons) has provided the break-up of total holding capacity of the jails at Tihar, Mandoli and Rohini vis a vis their actual occupancy.

Overall Delhi Prisons	
Total capacity (16 jails)	10,026
Population as on 25.03.2020	17,552
Population on 18.04.2020	14,799

Tihar Jail Complex	
Holding capacity of 9 jails	5,200
Actual occupancy on 25.3.2020	11,981
Actual occupancy on 18.04.2020	10,115

Mandoli Jail Complex	
Holding capacity of 6 jails	3,776
Actual occupancy on 25.3.2020	3,747
Actual occupancy on 18.04.2020	3,144

Rohini Jail Complex	
Holding capacity	1,050
Actual occupancy on 25.3.2020	1,824
Actual occupancy on 18.04.2020	1,540

The Committee after considering the actual occupancy of the 9 Jails in Tihar, Rohini and 6 Jails in Mandoli and taking into account the fact that in the present circumstances of Corona virus pademic, the UTPs are not being physically produced in Courts and their remand is being

extended by the Duty Magistrate in the Jails itself, it is expedient that some of the prisoners from Rohini Jail and Tihar Jail can be shifted/transferred to Mandoli Jail.

DG (Prisons) apprised the Committee that some of the prisoners can be shifted from congested Rohini Jail and Tihar Jail complex to Mandoli as the actual occupancy of Mandoli as on date is less than its registered holding capacity.

On being inquired by the Chair regarding the area and outlay of these Jails, DG (Prisons) apprised the Committee that the total area of Tihar Jail, its outlay and particularly the **corridors and open spaces** it has in front of the individual cells and barracks can accommodate more prisoners than its registered holding capacity. Whereas, Rohini Jail Complex does not have that much open spaces to accommodate more prisoners than its actual holding capacity.

Taking into account the Jail population of Rohini Jail, Tihar Court Complex and Mandoli Court Complex, as well as their respective areas and outlays, the Committee has unanimously **resolved** that transferring of **200** prisoners from Rohini Jail and **50** prisoners from Tihar to Mandoli would sufficiently decongest Rohini and Tihar Jail. By doing so, Jail administration would be in a position to implement “**social distancing**” amongst the inmates of all the three Jail complexes.

The Committee in view of the suggestions made by DG (Prisons) has **resolved** that **200 prisoners** from Rohini Jail & **50 prisoners** from Tihar Jail can be shifted to Mandoli Jail on temporary basis i.e. till the time present circumstances prevailing in the country persist so as to enable the jail administration to implement **social distancing** amongst the prisoners.

It is further resolved that transportation of these 250 prisoners shall be done in full compliance of the **Rules and Norms of social distancing**. While transporting them, the Jail administration shall ensure that no transportation in excess of **half or ¼ capacity** of the bus is

carried out so as to ensure that prisoners so transported maintain a considerable distance from each other during these transits.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria earlier adopted in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon’ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meeting dated 28.03.2020 and 07.04.2020, is put up before the Committee. The same was perused by the Committee, which is as under:-

ITEM NO.3 (A):- WITH RESPECT TO PAROLE OF THE CONVICTS

A. With respect to parole of convicts	
Total Number of orders issued	1,109
Convicts released	953
<i>Note :Though, orders have been issued with respect <u>1,109 convicts</u> for their release on “<u>emergency parole</u>” but some of them have not been released as they are unwilling and some are residents of States of Punjab, Bihar, West Bengal and Uttar Pradesh.</i>	

DG (Prisons) has assured the Committee that besides the orders already issued, he shall further initiate the process for grant of **emergency parole** in case any other convict lodged in jail becomes eligible for the same. Principal Secretary (Home), Government of NCT of Delhi, assured that they shall expedite the process, as and when any such recommendation is received from DG (Prisons) for grant of **emergency parole** to the eligible convicts.

It is **resolved** accordingly.

ITEM NO.3 (B):- WITH RESPECT TO INTERIM/REGULAR BAIL OF UTPs

B. With respect to interim/regular bail of UTPs	
Number of application moved as per the criteria	2,503
Orders granting bail received as on 06.04.2020	1,877
UTPs already released	1,777
<i>Though, interim bail orders have been issued with respect to <u>1877 UTPs</u> but some of them are not released owing to the want of permanent address, they being vagabond and some of the UTPs being unwilling.</i>	

Sh. Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that the Advocates empanelled with DSLSA, visiting jail premises on daily basis, had drafted and filed bail applications for the UTPs following the criteria so adopted by the Committee for grant of interim bail. He has further informed that requisite directions have already been given to the empanelled advocates to pursue the pending applications before the concerned Duty Magistrate and/or Sessions Judge on Duty in Courts. Report submitted by the Jail Authority, however, reveals that all UTPs with respect to whom bail orders were passed have not been released for want of other reasons.

Hon'ble Chairperson directed DG (Prisons) that the jail administration/Jail Superintendent should be directed to ensure release of UTPs **immediately** on receipt of bail orders from the Court while ensuring their safe transit from Jail to their respective homes as per the resolution adopted vide Meeting dated 28.03.2020 and 07.04.2020, in the wake of National lockdown declared by the Central Government as well as in terms of directions given by Hon'ble Supreme Court in its order dated 13.04.2020.

ITEM NO.3 (C):- REMISSION OF SENTENCE :

C. Remission of Sentence	
Number of convicts granted remission of sentence and are released pursuant to the resolution adopted in previous meetings dated 28.03.2020 & 07.04.2020	25

In terms of the resolution adopted in meeting dated 28.03.2020, Principal Secretary (Home) apprised this Committee on 07.04.2020, that the Govt. of NCT of Delhi had passed the necessary orders granting remission of sentence which shall be conveyed to the DG (Prisons) for the needful. DG (Prisons) apprised the Committee that pursuant to the receipt of the orders passed by Govt. of NCT of Delhi, they have already released 25 convicts. Whereas, 36 more shall be released up to 30.06.2020 on the basis of remission of sentence granted by Govt. of NCT of Delhi in terms of the resolution of this Committee dated 28.03.2020.

D.G.(Prisons) informed the Chair that there are 11 Convicts who have also become eligible for being released after grant of remission, in terms of Resolution dated 28.03.2020 and subsequent orders passed by Govt. of NCT of Delhi, but could not be released for non-payment of fine.

Being conscious of the fact that COVID-19 pandemic has swept the country, forcing Central Government to declare 'National Lockdown' of 40 days, these convicts or their family members may have become incapacitated to deposit the fine so imposed on them, alongwith the substantial sentence.

It is accordingly **resolved** on suggestion of D.G.(Prisons) that these **11 convicts** who have completed their **substantive sentence** (inclusive of regular and special remission granted) can be released on their furnishing an "Undertaking" to the satisfaction of Jail Superintendent to the effect that they shall deposit the fine within "**15 days of lifting of Lockdown**" failing which they shall surrender to serve remainder of sentence (imposed on them in default of payment of fine).

UTPs RELEASED ON PERSONAL BOND, PURSUANT TO THE ORDERS PASSED BY HON'BLE DELHI HIGH COURT, MODIFYING THE EARLIER BAIL ORDERS

Kanwal Jeet Arora, Member Secretary, DSLSA informed the Committee that pursuant to the directions given to him vide resolution dated 07.04.2020 of this Committee, a letter was sent by him to the Registrar General, High Court of Delhi. He apprised the Committee that

on the basis said letter of his, dated 07.04.2020, Hon’ble High Court of Delhi took cognizance vide **Writ Petition (Criminal) 779/2020** in “**Court on its own Motion Vs. State**”.

High Court of Delhivide its order dated 09.04.2020 modified all the bail orders passed on or before 07.04.2020 with respect to those UTPs who could not submit surety bonds to avail the benefit of bail orders in their favour. The relevant portion of the orders passed by Hon’ble High Court of Delhi being:

Thus, all bail orders passed by this Court or by the Court subordinate to it, on or before 7th April, 2020, in pursuance where to the under-trial prisoners have not been bail owing to failure to satisfy the condition of furnishing surety bond, are modified and be read as granting bail without the condition of furnishing surety bond and instead allowing such under trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail

It has further been informed to the Committee by the Member Secretary, DSLSA and DG (Prisons) that on the basis of these orders dated 09.04.2020 of Hon’ble High Court, the earlier bail orders passed in favour of UTPs were traced with assistance of Learned District & Sessions Judges, pursuant to which the UTPs were released on bail as under:-

Regular bail orders claimed by inmates	811
Bail orders traced from Court records	317
Inmates released on personal bond	207
<i>Note :The other UTPs could not be released despite having regular bail orders in their favor, as they are facing trial in other cases as well wherein they have not been granted bail.</i>	

Chairperson **appreciated and lauded** the efforts put in towards the implementation of Resolutions adopted in earlier meetings by Govt. of NCT of Delhi, Jail Administration and DSLSA which led to the desired results of decongestion of Delhi prisons. As a result of which, number of UTPs / Convicts have been released on interim bail / parole and on grant of remission.

UTPs released on interim bail till 18.04.2020	1777
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 / 2020	207
Convicts released on Emergency Parole till 18.04.2020	953
Convicts released on remission of sentence	25
TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL / PAROLE / REMISSION OF SENTENCE TILL 18.04.2020	<u>2,962</u>

ITEM NO.4:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON 'INTERIM BAIL'

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date about **2700** inmates/convicts/UTPs have been released on **parole/interim bail**.

The Committee taking into account the observations made by Hon'ble Supreme Court vide its subsequent orders dated 13.04.2020, as well as the advisory issued by the ICMR to the effect that the persons suffering from acute illness have lesser immunity and thus, are more prone of getting infected by **COVID-19 (Novel Corona Virus)**, is of the opinion that the criteria needs to be **further relaxed** with respect to those prisoners/ UTPs who are suffering from **HIV, Cancer, Chronic Kidney Dysfunction(UTPs requiringDialysis), Hepatitis B or C, Asthma, and TB**. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the information, for the **impact analysis** qua the proposed relaxed criteria of UTPs suffering from above illness(es). The same is submittedaccordingly.

The Members of the Committee discussed the information so providedqua UTPs suffering from above illness(es) and resolved that following categories of prisoners may now be considered for grant of interim bail for **45 days** in view of the circumstances in which we are in, preferably on '**Personal Bond**':

- (i) *Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for **three months or more**, facing trial in a case which prescribes a maximum sentence of **7 years** or less;*
- (ii) *Under trial prisoners (UTPs), who are suffering from above mentioned illness(es) and are in custody for a period of **six months or more**, facing trial in a case which prescribes a maximum sentence of **10 years** or less ;*
- (iii) *UTPs who are suffering from above mentioned illness(es) and are in custody for a period of **six months or more** and facing trial in a case which prescribes punishment of 10 years upto life imprisonment and are not involved in multiple cases.*

It has further been **resolved** that following category of UTPs, even if falling in the above criterion, **should not be** considered :-

- (i) *Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;*
- (ii) *Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) *Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;*
- (iv) *Those UTPs who are foreign nationals ;*
- (v) *Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;*
and
- (vi) *Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.*

D.G (Prisons) has informed that on the basis of this new criterion, approximately **50 UTPs** suffering from various illness(es) would be the beneficiaries and their release would further **ease out** the Jail Population.

Chairperson has directed Member Secretary, DSLSA to take steps for having the applications of UTPs falling in the above relaxed criterion, be moved.

The applications for interim bail of UTPs failing in abovementioned categories for being considered, should have a certificate of good conduct during their respective custody period from Jail Superintendent and a certificate from Jail Doctor certifying the illness, with which UTP is suffering, for him to qualify in the abovementioned category.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to pass on directions to the Jail visiting Duty Magistrates as well as Sessions Judges on Duty/ Duty Magistrates in courts to take up these applications and if they opine that the under trial prisoners falling in the above mentioned criteria as well as the criteria adopted earlier, are to be released on bail, they may be released on **'Personal Bond'**, to the satisfaction of Jail Superintendent, so as to implement the social distancing policy of the Government.

It is clarified that the decision taken by this Committee for release of prisoners on **"interim bail"** vide criterion adopted in the meeting dated 28.03.2020, 07.04.2020, and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular / interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

SAFE TRANSIT OF THE RELEASED UTPS/CONVICTS TO THEIR RESPECTIVE HOMES

The Chairperson of the Committee while reminding the participants of the observations made by Hon'ble Supreme Court in its order dated 13.04.2020 directed that :

- i. *No prisoner shall be released if he/she has suffered from corona virus disease in communicable form hereafter. For this purpose, appropriate tests be carried out.*
- ii. *Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of corona virus disease are at a distance from each other.*

DG (Prisons) assured the Committee that before releasing any prisoner, he shall get them medically screened and shall transport him in full compliance of the **Norms of social distancing** for which he shall take necessary assistance of Delhi Police as well as Local Government Administration. Principal Secretary (Home) also assured to provide necessary assistance in this regard to DG (Prisons).

It is **resolved** accordingly.

ITEM NO.5:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED

- (a) RELATING TO ISSUES OF SUMMONING, INVESTIGATION AND ARREST OF THE ACCUSED PERSONS DURING LOCKDOWN PERIOD BY DELHI POLICE

Member Secretary, DSLSA brought to the notice of the Committee a representation dated 11.04.2020 addressed to the Chairperson of this Committee concerning issues relating to summoning, detention and arrest of the persons by the police during National Lockdown in connection with the FIRs registered regarding violence in North East area of Delhi in February, 2020.

Members of the Committee perused this representation along with its annexures. After perusing the same, the Members of the Committee are of the considered opinion that the submissions advanced in the representation and prayers made therein, are **beyond the scope and purview** of this Committee, as mandated by Hon'ble Supreme Court vide its order dated 23.03.2020 as per which this Committee was formed. The signatories of the representation are at liberty to move appropriate Courts in case they are aggrieved of the summoning or arrest made by the police.

(b) ISSUES CONCERNING PAROLE OF CONVICTS WHOSE APPEALS AGAINST CONVICTION ARE PENDING BEFORE HON'BLE HIGH COURT

Member Secretary, DSLSA further brought to the notice of the Committee another representation addressed to the Chairperson of this Committee sent by email on 11.04.2020.

Members of the Committee perused the said representation so sent by Kanhiya Singhal, Advocate which pertains to grant of parole to the convicts whose appeals against conviction are pending before Hon'ble High Court.

On perusal of representation and after going through the decisions of Hon'ble Supreme Court in case titled "**K.M. Nanawati Vs. State of Bombay (now Maharashtra)**" reported as **AIR 1961 SC 112**, and that of Hon'ble High Court of Delhi in **Writ Petition (Crl.) NO.235/2016**, titled "**Vikas Yadav Vs. State**", the Committee does not propose to make any recommendation for grant of parole to the convicts, where appeals are pending before Hon'ble High Court of Delhi. Applicant is at liberty to approach appropriate Court in this regard.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to inform the applicants who made the above two representations with respect to the outcome thereto.

It is **resolved** accordingly.

ITEM NO.6:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR:-

As per directions given by the Committee to the Member Secretary, DSLSA in terms of the resolution dated 07.04.2020, the Member Secretary, DSLSA has informed the Committee about the information gathered with respect to the steps taken by the Observation Homes, Children Homes, JJBs and CWCs towards implementation of directions given by Hon'ble Supreme Court and steps taken by them to prevent the outbreak of **COVID-19 (Novel Corona Virus)** in Remand Homes and Children Homes. He informed the Committee that all these OHBs and Children Homes have less **actual occupancy** than their **holding capacity**. He further informed the Committee that Superintendents of these Homes are taking all necessary precautions to prevent the outbreak of **COVID-19 (Novel Corona Virus)** in their respective Homes.

As per the report received, Member Secretary, DSLSA further informed the Committee that the **principle of social distancing** and use of disinfectant in the common areas frequented by the inmates of these Homes is being done regularly. Member Secretary, DSLSA further informed the Committee that to implement the directions of Hon'ble Supreme Court in **"Suo Motu Petition (Civil) No. 4/2020 - In Re: Contagion of COVID-19 VIRUS IN CHILDREN PROTECTION HOMES"** dated 03.04.2020, and its subsequent orders dated 07.04.2020, Juvenile Justice Committee of Hon'ble High Court of Delhi has already passed substantial directions to the all concerned.

The Committee on the basis of information so provided to it by the Member Secretary, DSLSA and considering the separate directions given by Hon'ble Supreme Court in its order dated 03.04.2020, in **"Suo Moto Petition (Civil) No.4/2020- In Re : Contagion of COVID-19 VIRUS IN CHILDREN PROTECTION HOMES"**, and subsequent order dated 07.04.2020, is of the opinion that **no further resolutions** are required to be passed by this Committee in this regard.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with Vote of Thanks to the Chair.

Sandeep Goel
D.G(Prisons)

Satya Gopal
Principal Secretary (Home)

Kanwal Jeet Arora
Member Secretary,
DSLSA.

Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLSA.

Minutes of Meeting dated 5th May, 2020 At 5:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi And Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers/Members of High Powered Committee through Video Conferencing:

1. Sh. Satya Gopal, Principal Secretary (Home)/Additional Chief Secretary, Government. of NCT of Delhi Member
2. Sh. Sandeep Goel, Director General (Prisons), Delhi Member
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS

At the outset, Sh. Sandeep Goel, DG (Prisons) informed the Chair that the jail administration has followed and strictly complied with the guidelines, instructions and resolutions passed by this Committee vide its earlier meetings, as a result of which they could **prevent the eruption/spread of COVID-19 (Novel Corona Virus)** inside the jail premises.

Sh. Sandeep Goel, DG (Prisons) further informed the Chair that to prevent the **intermingling** of the new entrants with other inmates who are already inside the jail, they in terms of resolution adopted in the earlier meetings had created **Isolation Wards**, in Jail No.2 at Tihar and Jail No.13 at Mandoli for the new male entrants who are above 21 years of age and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age, whereas separate **Isolation Wards** were created in Jail No.6 at Tihar for fresh women inmates.

DG (Prisons) further informed that all the new entrants in jail are thermally screened and medically examined. DG (Prisons) also apprised the Committee that in case of medical necessity they are also getting the

CT-PCR test of new prisoners conducted. He further informed that as per the requirement they are **quarantined** in Jail No.2, 5 and 6 at Tihar and Jail No.13 at Mandoli.

On being asked by the Chair regarding the procedure adopted by the jail administration at the time of surrender of UTPs who visit the jail premises after expiry of interim bail granted to them, DG (Prisons) informed that such UTPs after completion of the period of their interim bail, at the time of their surrender and admission are treated as **new prisoners** and are medically examined and kept in **Isolation Wards**.

DG (Prisons) further informed the Chair about the measures being taken by the jail staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of **social distancing** is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitised using appropriate disinfectant. DG (Prisons) further informed that necessary precaution i.e. Do's and Don'ts are being told to the inmates through "**Public Address System**" installed in Jails.

DG (Prisons) has further informed that in terms of the resolutions adopted in the previous meeting, out of the in-house manufacturing of soap cakes, liquid soaps, phenyl, masks, and sanitizers, adequate number of these materials have been sent to JJBs/ Observation Homes, as per the requirement received from them, besides the same being put to use in all the Jails.

DG (Prisons) has informed that regular medical check up of Jail staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding the necessary steps being taken to practice, promote and demonstrate positive hygiene behaviours in Jails.

DG (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria earlier adopted in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meeting dated 28.03.2020, 07.04.2020 and 18.04.2020 is put up before the Committee. The same was perused by the Committee, which is as under:-

ITEM NO.2 (A):- WITH RESPECT TO PAROLE OF THE CONVICTS

A. With respect to parole of convicts	
Total Number of orders issued	1156
Convicts released	1056
<i>Note :Though, orders have been issued with respect <u>1156 convicts</u> for their release on "<u>emergency parole</u>" but some of them have not been released as they are unwilling and some are residents of States of Punjab, Bihar, West Bengal and Uttar Pradesh.</i>	

DG (Prisons) has assured the Committee that besides the orders already issued, he shall further initiate the process for grant of **emergency parole** in case any other convict lodged in jail becomes eligible for the same. Principal Secretary (Home), Government of NCT of Delhi, assured that they shall expedite the process, as and when any such recommendation is received from DG (Prisons) for grant of **emergency parole** to the eligible convicts.

It is **resolved** accordingly.

ITEM NO.2 (B):-WITH RESPECT TO INTERIM BAIL OF UTPs

B. With respect to interim bail of UTPs	
Number of application moved as per the criteria	2728
Orders granting bail received as on 06.04.2020	2247
UTPs already released	2177
<i>Though, interim bail orders have been issued with respect to <u>2247 UTPs</u> but some of them are not released owing to the want of permanent address, they being vagabond, some are from far off States and some of the UTPs being unwilling.</i>	

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that the Advocates empanelled with DSLSA, visiting jail premises on daily basis, had drafted and filed bail applications for the UTPs following the criteria so adopted by the Committee for grant of interim bail. He has further informed that requisite directions have already been given to the empanelled advocates to pursue the pending applications before the concerned Duty Magistrate and/or Sessions Judge on Duty in Courts. Report submitted by the Jail Authority, however, reveals that all UTPs with respect to whom bail orders were passed have not been released for want of other reasons.

Hon'ble Chairperson directed DG (Prisons) that the jail administration/Jail Superintendent should be directed to ensure release of UTPs **immediately** on receipt of bail orders from the Court while ensuring their safe transit from Jail to their respective homes as per the resolution adopted vide Meeting dated 28.03.2020, 07.04.2020 and 18.04.2020 in the wake of National lockdown declared by the Central Government as well as in terms of directions given by Hon'ble Supreme Court in its order dated 13.04.2020.

ITEM NO.2 (C):- REMISSION OF SENTENCE :

C. Remission of Sentence	
Number of convicts granted remission of sentence and are released pursuant to the resolution adopted in previous meetings dated 28.03.2020, 07.04.2020 and 18.04.2020	39

Vide Minutes of meeting dated 18.04.2020, it was apprised by DG (Prisons) that till 18.04.2020, they have already released **25 convicts** on the basis of order granting remission of sentence passed by Govt. of NCT of Delhi and another 36 are due to be released upto 30.06.2020. Out of said 36, eight (08) have been released and now 28 more shall be released upto 30.06.2020.

In the last minutes, it was informed to the Chair that there are **11 Convicts** who have also become eligible for being released after grant of remission, in terms of the Resolution dated 28.03.2020 and subsequent orders passed by Govt. of NCT of Delhi, but could not be released for non-payment of fine.

In the last meeting, it was resolved on suggestions of D.G. (Prisons) that these **11 Convicts** who have completed their **substantive sentence** (inclusive of regular and special remission granted) can be released on their furnishing an "Undertaking" to the satisfaction of Jail Superintendent to the effect that they shall deposit the fine within "**15 days of lifting of Lockdown**" failing which they shall surrender to serve remainder of sentence (imposed on them in default of payment of fine).

D.G.(Prisons) has informed that in terms of the resolution dated 18.04.2020 he had offered those **11 convicts** to furnish the said "Undertaking". However, **five convicts refused** to furnish any such undertaking, stating that they are willing to undergo the punishment imposed on them, in default of payment of fine. Whereas, the other **six have deposited the fine** and have been released pursuant to the remission of sentence so granted to them.

UTPs RELEASED ON PERSONAL BOND, PURSUANT TO THE ORDERS PASSED BY HON'BLE DELHI HIGH COURT, MODIFYING THE EARLIER BAIL ORDERS

D.G. (Prisons) has informed the Chair that on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**, as of now **301 UTPs** have been released on personal bond.

Chairperson **appreciated and lauded** the efforts put in towards the implementation of Resolutions adopted in earlier meetings by Govt. of NCT of Delhi, Jail Administration and DSLSA, which led to the desired

results of decongestion of Delhi prisons. As a result of which, following number of UTPs/Convicts have been released on interim bail / parole and on grant of remission.

UTPs released on interim bail till 05.05.2020	2177
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 /2020	301
Convicts released on Emergency Parole till 05.05.2020	1056
Convicts released on remission of sentence	39
TOTAL UTPs/ CONVICTS RELEASED ON INTERIM BAIL/ PAROLE /REMISSION OF SENTENCE TILL 05.05.2020	3573

ITEM NO.3:- TO CONSIDER THE EXTENSION OF INTERIM BAIL GRANTED TO UTPs BY COURTS OF DUTY MAGISTRATES AND SESSION JUDGES ON THE BASIS OF CRITERION LAID DOWN IN WRIT PETITION (CIVIL) 2945/2020, TITLED "SHOBHA GUPTA & ORS. VS. UNION OF INDIA & ORS." AND CRITERION LAID DOWN IN THE MEETINGS DATED 28.03.2020, 07.04.2020 AND 18.04.2020

Sh. Sandeep Goel, DG (Prisons) as well as Kanwal Jeet Arora, Member Secretary, DSLSA apprised the Chair that large number of UTPs have been granted interim bail on the basis of *Writ Petition (Civil) No.2945/2020* titled, "*Shobha Gupta & Ors. Vs. Union of India & Ors.*" as well as on the basis of criteria laid down by this Committee in the meetings dated 28.03.2020, 07.04.2020 and 18.04.2020.

As per records, it is informed to the Committee that **as on date 2177 UTPs** were granted interim bail for a period of **45 days**, from the date of their release in order to decongest the jail, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** inside the jail premises and to facilitate the jail administration to maintain "**social distancing**", in the jails. It has further been informed to the Committee that the said period of 45 days with respect to some of such UTPs is going to expire on **09.05.2020** and for others it shall expire in coming days of May, 2020 and in the first week of June, 2020.

DG (Prisons) informed the Committee that the situation of

pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India and as there is no rapid test available of **COVID-19 (Novel Corona Virus)**, it would be a **dangerous proposition**, if those UTPs who were granted "interim bail" for 45 days are taken back in jail.

DG (Prisons) proposed that in view thereof the "interim bail" of the UTPs needs to be extended. A letter dated 04.05.2020 to this effect written by AIG (Prisons) is also brought to the notice of the Committee.

Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that for getting the period of "interim bail" extended for such large number of UTPs, it would be difficult to file separate applications before the concerned Courts. Therefore, a judicial order, if passed by the Hon'ble High Court for modification/extension of "**interim bail**" so granted to such UTPs who were released on bail, in terms of criteria adopted by High Powered Committee, **would serve the purpose**.

The Committee deliberated upon the prevailing situation and also considered the fact that **Central Government has extended the lockdown up to 17.05.2020**.

The Committee further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of "**social distancing**" no longer necessary, the Committee is of the opinion that the "interim bail" so granted to such UTPs needs to be extended for a further period of 45 days from the date their respective interim bail is expiring.

The Committee is of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and **recommends** accordingly.

Member Secretary, DSLSA is directed to place these **recommendations** of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration **shall inform** such UTPs of extension of their "interim bail" for a further period of 45 days from the date, the earlier period of interim

bail is expiring, telephonically. DG (Prisons) assures that jail administration shall do the needful and shall inform such UTPs about the exact date of their surrender.

ITEM NO.4:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED

(a) RELATING SECURING ADEQUATE LEGAL REPRESENTATION FOR INMATES AT REMAND HEARINGS DURING LOCKDOWN PERIOD

Member Secretary, DSLSA brought to the notice of the Committee a representation dated 30.04.2020 sent by Sh. Mahmood Parcha, Advocate addressed to the Chairperson of this Committee concerning issue of securing adequate legal representation for inmates at remand hearings during lockdown period.

Members of the Committee perused this representation. After perusing the same, the Members of the Committee are of the considered opinion that the submissions advanced in the representation and prayers made therein, are **beyond the scope and purview** of this Committee, as mandated by Hon'ble Supreme Court vide its order dated 23.03.2020, as per which this Committee formed.

Kanwal Jeet Arora, Member Secretary, DSLSA however, brought to the notice of the Committee that "**Remand Advocates**" are deputed on regular basis during Court proceedings in Court complexes as well as in the Courts situated in Tihar and Mandoli jail complex, whenever new prisoners are produced before Magistrate and also inside the jail premises at the time of extension of remand. He assures the Committee to oversee that Remand Advocates, so deputed, continue to provide legal representations to the prisoners during remand proceedings.

Hon'ble Chairperson of this Committee in her capacity as Executive Chairperson of DSLSA taking note of the representation and the situation explained by Member Secretary, DSLSA directed him to make sure that remand advocates continue to be present in Tihar and Mandoli Court complexes, as well as inside the jails to give legal representation, to the fresh arrestees as well as UTPs at the time of "remand hearings".

(b) **ENSURING HEALTHCARE NEEDS OF MS.SAFOORA ZARGAR AND OTHER PREGNANT WOMEN PRISONERS WHILE IN JUDICIAL CUSTODY**

Member Secretary, DSLSA further brought to the notice of Committee another representation addressed to the Chairperson of this Committee dated 29.04.2020.

Members of the Committee perused the said representation so sent by Sh. Wazahat Habibullah, Chairperson, CHRI for healthcare needs of Ms. Safoora Zargar and other pregnant women prisoners while in judicial custody.

After perusing the same, Hon'ble Chairpersons of this Committee has directed DG (Prisons) to ensure that adequate medical assistance is provided to Ms. Safoora Zargar and other pregnant prisoners.

DG (Prisons) has informed the Chair that the same has already been provided and assures that the same shall continue to be provided. He informed that including Ms. Safoora Zargar there are three pregnant prisoners who are not only being provided adequate **medical care** but also are provided **special diet**.

Chairperson directed DG(Prisons) to continue doing the same.

Committee directed Kanwal Jeet Arora, Member Secretary, DSLSA to **inform the applicants**, who made the above two representations with respect to the outcome thereof.

ITEM NO.5:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR:

Hon'ble Chairperson enquired from DG (Prisons) regarding **migration and transfer** of prisoners from Tihar and Rohini to Mandoli Jail in terms of the resolution adopted in the last meeting dated 18.04.2020.

DG (Prisons) informed the Chair that as per the resolution adopted in the last meeting dated 18.04.2020, they have transferred **207 prisoners** from Rohini and **53 prisoners** from Tihar Jail to Mandoli Jail on temporary basis. DG (Prisons) has further informed that while transferring/transporting these 260 prisoners, they had complied with the **rules and norms of social distancing** during their transits by Bus.

After transfer of **260 prisoners** from Rohini and Tihar Jail to Mandoli and release of number of UTPs on interim bail, the members of the

Committee have considered the actual jail population of these three jails complexes as on **04.05.2020**. Taking the same into account **vis-a-vis** the holding capacity of these jails, their respective areas and outlays, the Committee has unanimously **resolved** that transferring of **100 more** prisoners from Tihar Jail to Mandoli Jail would **adequately decongest** Tihar Jail. By doing so, jail administration would be in a position to implement "**social distancing**" amongst the inmates of all three jail complexes.

It is further resolved that transportation of these **100 prisoners** shall be done in full compliance of the **Rules and Norms of social distancing**. While transporting them, the Jail administration shall ensure that no transportation in excess of **half or 1/4 capacity** of the bus is carried out so as to ensure that prisoners so transported maintain a considerable distance from each other during these transits.

SAFE TRANSIT OF THE RELEASED UTPs/CONVICTS TO THEIR RESPECTIVE HOMES

The Chairperson of the Committee while reminding the participants of the observations made by Hon'ble Supreme Court in its order dated 13.04.2020 directed that :

- i. No prisoner shall be released if he/she has suffered from corona virus disease in communicable form hereafter. For this purpose, appropriate tests be carried out.*
- ii. Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of corona virus disease are at a distance from each other.*

Hon'ble Chairperson inquired as to whether UTPs/Convicts who have been released on "interim bail" / parole, belonging to other states, have or have not been provided adequate transportation so as to facilitate them to reach their native places in terms of the resolution adopted in the last meeting. To this, DG (Prisons) has informed that out of list of **151 such prisoners** given by jail administration to **DAP III Battalion of Delhi Police** and **Govt. of NCT of Delhi** for their safe transit to their native places, **65**

prisoners have been provided transportation and have **already reached** their respective places.

DG (Prisons) has also informed the Committee that for the rest of the **prisoners who belong to U.P., Bihar, Madhya Pradesh, Jharkhand, West Bengal and other States**, he has **already sent request** to Delhi Police, Govt. of NCT of Delhi and respective Resident Commissioners.

Shri Satya Gopal, Principal Secretary (Home), Govt. of NCT of Delhi informed the Chair that Govt. of NCT of Delhi has requested **Ministry of Railways** for providing special trains to U.P., Bihar, Madhya Pradesh and Jharkhand for sending the stranded/migrant laborers to their native places. He assured that as and when they shall receive the information from Ministry of Railways regarding sanctioning of **special trains**, then along with the migrant laborers, they shall also provide the **transportation to release UTPs/Convicts** belonging to these four States.

DG (Prisons) as well as Principal Secretary (Home) Govt. of NCT of Delhi assured that during the course of transportation the **Norms of social distancing** shall be complied with, besides complying with the directions of Hon'ble Supreme Court of India vide its order dated 13.04.2020.

It is **resolved** accordingly.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with Vote of Thanks to the Chair.

Sandeep Goel
D.G (Prisons)

Satya Gopal
Principal Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLISA

Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLISA

\$~FB-1.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3037/2020

COURT ON ITS OWN MOTION

..... Petitioner

versus

STATE & ORS.

..... Respondents

IN RE:

Extension of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

15.05.2020

%

1. Proceedings of the matter has been conducted through video conferencing.

2. While taking suo motu cognizance of the extraordinary circumstances, on 25.03.2020, this Court has passed certain directions.

The relevant part of the order reads as under:-

“In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020.

Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.

On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. 25.03.2020.

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

3. Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this

Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

4. In case, the extension as mentioned hereinabove of the interim order causes any hardship of an extreme nature to any party to such proceeding, they are at liberty to avail appropriate remedy as per law.

5. This order be uploaded on the website of this Court today itself and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this Court.

6. Registry is directed to list this matter on 15.06.2020 for further directions.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

MAY 15, 2020
kks

Minutes of Meeting dated 18th May, 2020 At 06:00 PM through Video Conferencing (Cisco Webex) Under The Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers / Members of High Powered Committee through Video Conferencing:

1. Shri Azimul Haq, Special Secretary (Home) for Sh. Satya Gopal, Principal Secretary (Home)/ Additional Chief Secretary, Govt. of NCT of Delhi **Member**
2. Sh. Sandeep Goel, Director General (Prisons), Delhi **Member**
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS AND JAIL STAFF

At the outset, Chair on the basis of **news reports and letter dated 16.05.2020 of DG (Prisons) regarding 16 inmates and one jail staff of Rohini Jail, found to be COVID-19 (Novel Corona Virus) positive** had enquired from DG (Prisons) about immediate steps taken by the Jail Administration to tackle the situation, before the same turns exacerbated for the prisoners.

Sh. Sandeep Goel, DG (Prisons) informed the Chair that the jail administration has been following and complying with the **guidelines, instructions and resolutions** passed by this Committee vide its earlier meetings, as a result of which they were in a position to **prevent the eruption/spread of COVID-19 (Novel Corona Virus)** inside the jail premises till **13.05.2020**.

He further informed that owing to the spread of this virus in the society and despite their best efforts and multifaceted approach to prevent the eruption of **COVID-19 (Novel Corona Virus)** inside the jail

premises, the same had taken place when one inmate "K" was found **Positive**. He informed that Jail administration immediately took requisite steps and got the necessary **COVID-19 (Novel Corona Virus)** test conducted of 19 inmates who were sharing the barrack with "K" besides 5 Jail Staff members. He reported that out of them, 15 inmates and 1 Jail Staff were found Corona Positive. He informed the Chair that said inmate "K" who had undergone a surgery in DDU Hospital on 11.05.2020, after being found Positive, was shifted to dedicated Covid-19 Hospital i.e. LNJP Hospital where he is recuperating.

DG Prisons informed **that** they have created Isolation Wards in each Jail for such like cases. DG (Prisons) further informed that Special Task Force (STF) has been formed for "*Contact Tracing*" of suspected **COVID-19 (Novel Corona Virus)** cases in all the jails including Rohini Jail. He informed that in the present case, all the other 15 inmates have been separately quarantined and are being provided with requisite medication. The Jail staff found positive have been home quarantined. Contact Tracing of these 15 inmates with other inmates of Rohini Jail is under process and they shall get the necessary **COVID-19 (Novel Corona Virus)** test conducted, if necessary, for other inmates as well, who may have come in contact with these **COVID-19 (Novel Corona Virus) positive** cases, in the recent past. It however, has been reported by DG (Prisons) that all these 15 inmates as well as the Jail Staff are **asymptomatic**.

The Members of the Committee deliberated upon the possible steps which can be taken to prevent the spread of **COVID-19 (Novel Corona Virus)** in jail premises. It is considered that **COVID-19 (Novel Corona Virus)** can enter the jail premises only through the new entrants or through Jail Staff, Paramilitary Staff, Medical Staff and other persons entering the Jail premises for delivery of ration and other essential items. It is, therefore, necessary that new entrants in terms of the resolution adopted in the earlier meeting should be kept in **Isolation Wards/Cells** so as to prevent their **intermingling** with other inmates who are already inside the jail. Requisite steps are also required to be take so as to ensure that necessary precautions be taken by Jail Staff, Medical Staff, Maintenance Staff and other persons entering the premises for delivery of essentials so that they may not come in direct contact with the inmates inside the Jail premises.

In the earlier meeting it was informed to the Committee by DG (Prisons) regarding creation of **Isolation Wards** in Jail No.2 at Tihar and Jail No.13 at Mandoli for the new male entrants who are above 21 years of age and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age, whereas **separate Isolation Wards** were created in Jail No.6 at Tihar for fresh women inmates.

Feeling concerned about this issue, Chair asked DG (Prisons) regarding availability of **individual cells** in any prison which can be converted into **Isolation Cells**, for keeping the new entrants atleast for an initial period of 14 days so that they may not intermingle with other inmates. DG (Prisons) informed that Jail No.15 Mandoli which has an **overall capacity of 280 prisoners**, does have **248 individual Cells (with attached toilets)**. He further informed that presently this Jail has **178 inmates (UTPs-139, Convicts-38, Detenue-1)**.

On being asked by the Chair, whether these can be shifted to other jails, so that Jail No.15 having Individual Cells, can be made available for keeping the new entrants in **Separate Cells in Isolation**. DG (Prisons) informed that all these inmates are **High Risk Prisoners** but they can easily be shifted to different Jails in Tihar as those Jails do have **High Risk Wards** to accommodate them.

Members of the Committee deliberated on this issue and after getting the feedback from DG (Prisons), it is **resolved** that out of **178 inmates**, who are presently lodged in Jail No.15, **18** who are working as '**Sahayak/Convict**' will remain in this Jail itself, whereas remaining **160 inmates** shall be **shifted to different Jails in Tihar** as under:

Central Jail No.1 Tihar	31 inmates
Central Jail No.3, Tihar	45 inmates
Central Jail No.4, Tihar	39 inmates
Central Jail No.8/9, Tihar	45 inmates
<i>Total</i>	<i>160 inmates</i>

Chair directed DG (Prisons) that while transporting them, the Jail administration shall ensure that no transportation in excess of **half or 1/4 capacity** of the bus shall be carried out, so as to ensure that prisoners maintain a considerable distance from each other during these transits.

After transferring the existing inmates of Jail No.15, the same shall be available for keeping the new entrants in **Isolation Cells/Rooms**. This shall take care of all the new male entrants who are above 21 years of age.

It is made clear that fresh male inmates who are between 18 to 21 years of age and fresh women inmates shall continue to be kept in separate **Isolation Wards** at Jail No.5 and 6 respectively at Tihar, in terms of the earlier resolution. It is **resolved** that these new inmates shall be permitted to intermingle with other inmates only after keeping them in **Isolation Wards for 14 days** and before lodging them, they should be **thermally screened** and **medically examined** and in case of any medical necessity, their **CT-PCR test** be conducted.

On being asked by the Chair regarding the procedure adopted by the jail administration at the time of surrender of UTPs who visit the jail premises after expiry of interim bail granted to them, DG (Prisons) informed that such UTPs after completion of the period of their interim bail, at the time of their surrender and admission are treated as **new prisoners** and before lodging them, they shall be medically examined and kept in **Isolation Wards**.

DG (Prisons) further informed the Chair about the measures being taken by the jail staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of **social distancing** is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitized using appropriate disinfectant. DG (Prisons) further informed that necessary precautions i.e. Do's and Don'ts are being told to the inmates through "**Public Address System**" installed in Jails.

DG (Prisons) has further informed that in terms of the resolutions adopted in the previous meeting, out of the in-house manufacturing of soap cakes, liquid soaps, phenyl, masks, and sanitizers, adequate number of these materials have been sent to JJBs/ Observation Homes, as per the requirement received from them, besides the same being put to use in all the Jails.

DG (Prisons) has informed that regular medical checkup of Jail staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding the necessary steps being taken to practice, promote and demonstrate positive hygiene behaviour in Jails.

DG (Prisons) has submitted that besides the above they have adopted a multi-pronged approach to tackle the threat of **COVID-19 (Novel Corona Virus)**, i.e. :

- a. **Discontinuation of all visit** of outside agencies, including NGOs.
- b. **Restriction of movements** of inmates outside the wards in Jails.
- c. **Sanitization and disinfection** of the lodgment areas of the inmates and residential complexes of staff, on **regular basis**.
- d. **All new inmates are pre-screened** at CPRO before lodging them in jail.
- e. **Procurement and distribution** of Personal Protective Equipment (PPE) Kit, Mask, Gloves, Alcohol-based hand rubs and Soaps.
- f. **Formation of Special Task Force (STF) for Contact Tracing** of suspected **COVID-19 (Novel Corona Virus)** cases in all Jails.
- g. **Psychological screening** of newly admitted inmates to properly manage their mental health issues.

- h. **Emphasis on Kitchen hygiene** and proper handling of vegetables and other essentials by personnel in kitchen/canteen.

DG (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- STEPS TAKEN TOWARDS SCREENING OF JAIL STAFF, PARA-MILITARY AND MEDICAL STAFF

Considering the possibility of **COVID-19 (Novel Corona Virus)** entering the jail premises through jail staff, para-military staff and medical staff besides others and through them, its outbreak amongst the inmates, is considered and deliberated upon by the Committee.

On being asked by the Chair regarding measures taken and adopted by jail administration, D.G. (Prisons) has informed that they have adopted a multi-pronged strategies to tackle the threat of the spread of **COVID-19 (Novel Corona Virus)** through jail staff and others to inmates. He informed that besides the above mentioned precautions, they are also:

- a. **Conducting thermal screening and medical test** of the jail staff, para-military staff and medical staff before letting them enter the jail premises.
- b. **Minimizing the contact** of inmates with outsiders by restricting movement of inmates outside the jails, as well as restricting movement of outsiders into the jails.
- c. **Creating Medical Isolation Facility** for jail staff, security staff, Doctors and Technical Staff, showing symptoms of any disease.
- d. **Spreading Continuous awareness** and briefing the staff as well, on basic hygiene and do's and don'ts to prevent the spread of the disease.
- e. **Having Quarantine Facility** for jail staff, para-military, medical staff after their return from out station leave.

- f. A **specific checklist** has been designed by the medical staff for COVID -19 screening of all the entrants including jail staff, maintenance staff, security, medical staff and others entering the Jails for delivery of any essentials.
- g. **Wearing of the mask** has been made **mandatory** for all the jail staff, para-military staff, medical staff, maintenance staff and others entering the Jails for delivery of any essentials.
- h. Maintenance staff as well as Jail staff have been **provided with Personal Protective Equipment (PPE) kit** and they have been directed to wear the same during their respective duties.
- i. All the staff has been cautioned to **maintain social distancing** while interacting with each other as well as with inmates.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria earlier adopted in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meeting dated 28.03.2020, 07.04.2020, 18.04.2020 and 05.05.2020 is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on **Personal Bond**, on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**.

The same was perused by the Committee which is as under:-

UTPs released on interim bail till 18.05.2020	2258
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 /2020	310
Convicts released on Emergency Parole till 18.05.2020	1069
Convicts released on remission of sentence	41
TOTAL UTPs/ CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 18.05.2020	3678

Chairperson **appreciated** the efforts put in towards the implementation of resolution adopted in earlier meetings, by Govt. of NCT of Delhi, Jail Administration and DSLSA.

ITEM NO.4:- FEEDBACK REGARDING EXTENSION OF INTERIM BAIL GRANTED TO UTPs IN TERMS OF RESOLUTION ADOPTED IN THE MEETING DATED 05.05.2020

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that pursuant to the directions given to him in the meeting dated 05.05.2020, a **letter dated 06.05.2020** was written by him to the Ld. Registrar General, High Court of Delhi. He has further informed that vide that letter, recommendation made by this Committee, were conveyed to Ld. Registrar General stating that the '**interim bail**' granted to about **2200 UTPs**, on the basis of criteria adopted by High Powered Committee in its earlier resolution, needs to be extended, as the threat of spread of **COVID-19 (Novel Corona Virus)** still looms large. Further, the facility of getting the rapid test conducted on the persons surrendering after expiry of interim bail before letting them inside the Jail, being still not available.

On the basis of said letter, **Hon'ble the Chief Justice, High Court of Delhi** had **constituted a Special Bench** and the said Special Bench in *Writ Petition (Civil) Number 3080/2020*, titled "*Court on its own Motion Vs. Govt. of NCT of Delhi & Anr.*" vide its order dated **09.05.2020** had **extended** the '**interim bail**' so granted to the UTPs for a **further period of 45 days** from the date their earlier interim bail is expiring.

The Committee is **satisfied** with this **outcome**, on the basis of its resolution dated 05.05.2020.

ITEM NO.5:- FEEDBACK REGARDING EXTENSION OF "EMERGENCY PAROLE" GRANTED TO THE CONVICTS BY GOVT. OF NCT OF DELHI FOR A FURTHER PERIOD OF 8 WEEKS

Kanwal Jeet Arora, Member Secretary, DSLSA has informed that on directions of Hon'ble Executive Chairperson, DSLSA, he had written a letter dated **08.05.2020** to the D.G. (Prisons) requesting him to send a letter/representation to the Govt. of NCT of Delhi seeking amendment/modification in the **Notification bearing No.F.18/191/2015/HG/1379/1392 dated 23.03.2020** vide which the provision of **"Emergency Parole"** was incorporated in **Rule 1212A**, so that the **"Emergency Parole"** of 8 weeks granted earlier can be further extended, which is the need of the hour.

DG (Prisons) informed the Committee that in terms of the said letter, so received from Member Secretary, DSLSA, they had written to the Govt. of NCT of Delhi vide letter dated **11.05.2020**, for doing the needful.

It is reported by Shri Azimul Haq, Special Secretary (Home), Govt. of NCT of Delhi that the necessary *modification in the Notification shall be made by Govt. of NCT of Delhi within two days* and the **"Emergency Parole"** granted to the convicts earlier shall be **further extended for 8 weeks** from the date their earlier **"Emergency Parole"** is expiring.

The Chair has **directed** Special Secretary (Home), Govt. of NCT of Delhi to make sure that the needful is done **at the earliest** and the copy of revised Rules/Notification be sent to DG (Prisons) and Member Secretary, DSLSA.

ITEM NO.6:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON INTERIM BAIL

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date **3678** inmates/convicts/UTPs have been released on **parole/interim bail**.

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee about the letter/representation dated 16.05.2020 wherein DG (Prisons) submitted that **first case of COVID-19 (Novel Corona Virus) positive** has been **detected in Delhi Prisons (Rohini Jail)**. He has informed that one inmate was admitted in DDU Hospital on 10.05.2020 for intestinal problem where he was operated. After operation, he was also tested for **COVID-19 (Novel Corona Virus)** on **11.05.2020** and was found **positive on 13.05.2020**. It is also submitted by DG (Prisons) that before being admitted to DDU Hospital, this inmate, namely "K" was **sharing barrack with 19 other inmates**, all of whom along with five jail staff were tested for **COVID-19 (Novel Corona Virus)**. He informed that as per the report received, **15 inmates and one staff have** been found to be **COVID-19 positive**.

In view of this situation vide his letter dated 16.05.2020, DG (Prisons) has requested that the criteria adopted earlier **needs to be relaxed** so as to further decongest the jails as still the present occupancy of the Jail exceeds the optimum capacity of the Jail.

In view of the prevailing situation and to prevent the spread of **COVID-19 (Novel Corona Virus)** and to ensure social distancing amongst prisoners, the Committee is of the opinion that the criteria needs to be **further relaxed** to give effect to directions of Hon'ble Supreme Court of India. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the information, for the **impact analysis** *qua* the proposed relaxed criteria of UTPs. The same is accordingly submitted.

The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated 16.05.2020 and **resolved** that prisoners falling in following criteria may now be considered for grant of interim bail for **45 days** in view of the circumstances in which we are in, preferably on '**Personal Bond**' :

- (i) *Under trial prisoners (UTPs) facing trial for a case under **Section 302 IPC** and are **in jail for more than two years** with no involvement in **any other case**;*
- (ii) *Under trial prisoners (UTPs) facing trial for offence **under Section 304 IPC** and are **in jail for more than one year** with no involvement in **any other case**;*

- (iii) *Under trial prisoners (UTPs) facing trial in a case **under Section 307 or 308 IPC** and are **in jail for more than six months** with no involvement in **any other case**;*
- (iv) *Under trial prisoners (UTPs) facing trial/remand prisoners in **Theft cases** and are **in jail for more than 15 days**;*
- (v) ***Male Under trial prisoners (above 65 years of age)** facing trial in a case except the ones excluded hereunder and are **in jail for more than six months** with no involvement in **any other case**;*
- (vi) ***Female Under trial prisoners (above 60 years of age)** facing trial in a case except the ones excluded hereunder and are **in jail for more than six months** with no involvement in **any other case**;*

It has further been **resolved** that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, **should not be** considered :-

- (i) *Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;*
- (ii) *Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) *Those under trial prisoners who are facing trial for offences under section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;*
- (iv) *Those UTPs who are foreign nationals ;*
- (v) *Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;*
and
- (vi) *Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.*

DG (Prisons) has informed that on the basis of this new criterion, approximately **1500 - 1700 UTPs** would be benefited and their release would further **ease out** the Jail Population.

Chairperson has directed Member Secretary, DSLSA to take

steps for having the applications of UTPs falling in the above relaxed criterion, be moved through the Panel Lawyers of DSLSA, annexing the copy of custody warrants with the applications.

The applications for interim bail of UTPs falling in abovementioned categories for being considered, should have **a certificate of good conduct** during their respective custody period **from Jail Superintendent** for him to qualify in the abovementioned category.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to depute a **Designated Court/Special Additional Sessions Judge, if feasible** for hearing the applications for interim bail preferred by the panel lawyers of DSLSA on the basis of criteria laid down by this Committee, so as to have expeditious disposal of the applications. In the event of Court **being satisfied** that the under trial prisoners falling in the above mentioned criteria as well as the criteria adopted earlier, are to be released on interim bail, they may be released on **'Personal Bond'**, to the satisfaction of Jail Superintendent so as to implement the **social distancing policy** of the Government.

It is clarified that the decision taken by this Committee for release of prisoners on **"interim bail"** vide criterion adopted in the meeting dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular / interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

ITEM NO.7:- CONSIDERATION OF THE REPRESENTATION RECEIVED :

SEEKING RELIEF FOR UTPs HELD FOR ALL NON-HEINOUS CRIMES INCLUDING FRAUD, CHEATING AND OTHER ECONOMIC OFFENCES IN LIGHT OF COVID-19 GLOBAL PANDEMIC

Member Secretary, DSLSA brought to the notice of the

Committee a **representation dated 16.05.2020** sent by **Ms. Neeha Nagpal and Mr. Vishvendra Tomar, Advocates** addressed to the Chairperson of this Committee seeking relief for UTPs held for all non-heinous crimes including fraud, cheating and other economic offences in light of COVID-19 global pandemic.

Members of the Committee perused the representation which has been filed by the applicants relying upon the Minutes of Meeting dated 11.05.2020 of High Powered Committee constituted by State of Maharashtra. Vide this representation, the applicants has alleged discrimination against a set of UTPs, who are facing trial for offences relating to fraud, cheating, cases under Prevention of Corruption Act and under PMLA.

For considering the representation, it is pertinent to refer to order dated 23.03.2020 of Hon'ble Supreme Court in **Suo Motu Petition (Civil) No. 1/2020 – In Re: Contagion of COVID-19,** vide which the High Powered Committee was constituted. The same read as under:

“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 or 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)

Hon'ble Supreme Court while disposing of the above mentioned petition vide its subsequent order dated 13.04.2020 clarified its earlier order as under:

"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 that 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.

On bare perusal of the observations/directions given by the Hon'ble Supreme Court vide its order dated 23.03.2020, it is apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated 13.04.2020 of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he falls and whatever nature of offence he is facing trial, can seek or claim to be released from prison **as a matter of right**.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail herein above, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to exclude certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, NDPS, PMLA, UAPA, Terror related Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime

Branch, SFIO, from consideration zone for being released on "**interim bail**". The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having a particular *prisoner-centric approach*. The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited and the same is accordingly rejected**.

It is however made clear that for release of prisoners on "**interim bail**" vide criterion adopted by this Committee in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

Consequently, the applicants are at liberty to file bail applications for their clients before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA) to inform the applicants who made the above representation with respect to the outcome thereof.

It is **resolved** accordingly.

ITEM NO.8:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR :

(a) MEETING OF SENTENCE REVIEW BOARD

With permission of the Chair, DG (Prisons) has brought to the notice of the Committee, the orders dated 11.05.2020 passed by Hon'ble High Court in *Writ Petition (Civil) No.3095/2020, titled "Amit Sahni Vs. The State (Govt. of NCT of Delhi) & Anr."*.

The Chairperson of the Committee has perused the orders passed by Hon'ble High Court dated **11.05.2020** and inquired from DG (Prisons) and Special Secretary (Home), Govt. of NCT of Delhi as to when the Meeting of **Sentence Review Board** was last conducted.

DG (Prisons) and Special Secretary (Home), Govt. of NCT of Delhi informed the Chair that two meetings of **Sentence Review Board** were held this year , first of which was held on **28.02.2020** whereafter another meeting was conducted on **11.05.2020** wherein cases of some of the convicts were recommended for remission/sentence review. It has been informed to the Committee by Special Secretary (Home), Govt. of NCT of Delhi that they shall receive the file from the office of Hon'ble Lieutenant Governor, Govt. of NCT of Delhi soon. Special Secretary (Home), Govt. of NCT of Delhi also apprised the Chair that they shall conduct **the next meeting of Sentence Review Board** tentatively in **first week of June, 2020**.

Chair directed DG (Prisons) as well as Special Secretary (Home), Govt. of NCT of Delhi to do the needful in this regard so that the cases of eligible convicts can be considered at the earliest and if approved they can be released, so as to decongest the jail.

(b) SAFE TRANSIT OF THE RELEASED UTPs/CONVICTS TO THEIR RESPECTIVE HOMES

The Chairperson of the Committee while reminding the participants of the observations made by Hon'ble Supreme Court in its order dated 13.04.2020 directed that :

- i. No prisoner shall be released if he/she has suffered from corona virus disease in communicable form hereafter. For*

this purpose, appropriate tests be carried out.

- ii. Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of corona virus disease are at a distance from each other.*

Hon'ble Chairperson inquired as to whether UTPs/Convicts who have been released on **"interim bail"/ parole**, belonging to other states, have or have not been provided adequate transportation so as to facilitate them to reach their native places in terms of the resolution adopted in the last meeting.

To this, DG (Prisons) has informed that out of list of **155 such prisoners** given by jail administration to **DAP III Battalion of Delhi Police** and **Govt. of NCT of Delhi** for their safe transit to their native places, **65 prisoners** had been provided transportation and had **reached** their respective places by **05.05.2020**. Thereafter, in terms of the last resolution, and pursuant to the **trains provided by the Ministry of Railways**, on request of Govt. of NCT of Delhi, for transportation of migrant laborers, **02 inmates had left for Madhya Pradesh, 33 for Bihar and 15 for Uttar Pradesh in those trains**. It is informed by DG (Prison) that these inmates were transported from Jail to Railway Stations by **DAP III Battalion of Delhi Police** following the norms of **social distancing**.

It is further stated by DG (Prisons) that on the basis of request already sent by him to Govt. of NCT of Delhi and respective Resident Commissioners, **08 inmates belonging to West Bengal** are expected to **board the train in coming week**.

DG (Prisons) as well as Special Secretary (Home) Govt. of NCT of Delhi assured that during the course of transportation the **Norms of social distancing** shall be complied with, besides complying with the directions of Hon'ble Supreme Court of India vide its order dated 13.04.2020.

It is **resolved** accordingly.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with *Vote of Thanks* to the Chair.

Sandeep Goel
D.G (Prisons)

Azimul Haq
Special Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLISA

Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLISA

\$~FB-1.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3037/2020

COURT ON ITS OWN MOTION

..... Petitioner

versus

STATE & ORS.

..... Respondents

IN RE:

Extension of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **15.06.2020**

1. Proceedings of the matter have been conducted through video conferencing.

2. While taking suo motu cognizance of the extraordinary circumstances arising on account of COVID-19 pandemic, on 25.03.2020, this Court has passed certain directions. The relevant part of the order reads as under:-

“In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020.

Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.

On 24.03.2020, the Government of India has issued order

No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f. 25.03.2020.

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

3. Since some of the restrictions imposed by the Government of India were still in operation, and therefore, taking note of the extraordinary circumstances prevailing at that point of time, by order dated 15th May, 2020, we had extended our directions which were given in order dated 25th March, 2020 till 15th June, 2020.

4. Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020.
5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions.
6. This order be uploaded on the website of this Court today itself and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this Court.
7. List this matter on 13th July, 2020 for further directions.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

JUNE 15, 2020/ 'anb'

Minutes of Meeting dated 20.06.2020 At 12:30 PM through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers / Members of High Powered Committee through Video Conferencing:

1. Shri Azimul Haque, Special Secretary (Home) for Principal Secretary(Home)/ Additional Chief Secretary, Govt. of NCT of Delhi
..... **Member**
2. Sh. Sandeep Goel, Director General (Prisons), Delhi **Member**
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS AND JAIL STAFF

Chair feeling concerned after having learnt about the latest position of COVID-19 Positive Cases of Jail inmates and Jail Staff from letter dated 18.06.2020 of D.G.(Prisons), had asked about the steps taken by:

- (a) Jail Administration to tackle the situation and arrest the infection from escalating in the Jail premises;
- (b) D.G.(Prisons) and Jail Administration with respect to compliance of guidelines, instructions and resolutions passed by the Committee in its earlier meetings;

Sh. Sandeep Goel, DG (Prisons) informed the Chair that the jail administration has been scrupulously following and complying with the **guidelines, instructions and resolutions** passed by this Committee vide its earlier meetings, as a result of which they were in a position to **prevent the spread of COVID-19 (Novel Corona Virus)** inside the jail premises till middle of May 2020.

He further informed that owing to the spread of this virus in Delhi NCR and despite their best efforts as well as multipronged approach to prevent the eruption of **COVID-19 (Novel Corona Virus)**, the same did enter the jail premises. D.G. (Prisons) informed the committee that till 20.06.2020, **20 Jail Inmates**, besides 36 **Prison Staff** were found COVID-19 Positive.

On being asked D.G. (Prisons) informed that out of 20 Jail inmates who were found Covid-19 Positive, 16 have recovered after they were separately quarantined in jail premises. He further informed that 3 inmates required hospitalization accordingly, 2 of them were admitted in LNJP Hospital and 1 in AIIMS, where they are recuperating.

D.G. (Prisons) further informed that 1 jail inmate, 'K', aged 62 years who being convict was serving his sentence in jail number 14, Mandoli. D.G. (Prisons) informed that on 15.06.2020, the said inmate was found dead while asleep and accordingly inquest proceedings were conducted. D.G.(Prisons) further informed that Covid-19 test on his mortal remains was conducted which reported Positive on 19.06.2020.

On enquiry, by the Chair, D.G.(Prisons) informed that the said 'K' was sharing his barrack with 28 other inmates, all of whom as of now are in good health. Committee **resolved and directed** D.G.(Prisons) to get the Covid-19 test of these 28 inmates conducted and as per medical need and advice, they be separately quarantined. D.G. (Prisons) **assured** the Committee to get the Covid tests of these 28 inmates done today itself or latest by tomorrow.

Committee has resolved that extra precautions with respect to inmates who are more than **55 years of age** have to be taken, so that they are not immuno-compromised. D.G. (Prisons) has ensured the Committee to do the needful.

D.G(Prisons) had further informed that till date 36 Jail Staff have been found Covid Positive. He informed that immediately on getting their reports, they were relieved from their respective duties and were asked to remain home-quarantined, as all of them were 'asymptomatic'. D.G.(Prisons) further informed that contact tracing was done and all those who came in contact with these Jail Staff were medically screened and tested. D.G.(Prisons) further informed that out of the 36 Jail Staff who were found

Positive, 7 have already been recovered and have now tested '**Negative**'. He informed that only 2 of those Jail Staff required hospitalization, 2 are in institutional quarantine facility whereas the remaining 25 are home-quarantined.

The Members of the Committee deliberated upon the possible steps which can be taken to prevent the spread of **COVID-19 (Novel Corona Virus)** in jail premises. It is considered that **COVID-19 (Novel Corona Virus)** can enter the jail premises only through the new entrants or through Jail Staff, Paramilitary Staff, Medical Staff and other persons entering the Jail premises for delivery of ration and other essential items. It is, therefore, necessary that new entrants in terms of the resolution adopted in the earlier meeting should be kept in **Isolation Wards/Cells** so as to prevent their **intermingling** with other inmates who are already inside the jail. Requisite steps are also required to be taken so as to ensure that Jail Staff, Medical Staff, Maintenance Staff and other persons entering the premises for delivery of essentials, may not come in direct contact with the inmates inside the Jail premises.

In the earlier meeting, it was informed to the Committee by DG (Prisons) regarding creation of **Isolation Wards** in Jail No.2 at Tihar and Jail No.13 at Mandoli for the new male entrants who are above 21 years of age and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age, whereas **separate Isolation Wards** were created in Jail No.6 at Tihar for fresh women inmates.

Feeling concerned about the requirement of '**individual cells**' in prison to be used as "**isolation facility**", a resolution was adopted in the meeting dated 18.05.2020, whereby it was resolved that Jail No.15 Mandoli, having **248 individuals cells (with attached toilets)** shall be used for this facility. It was further resolved in the last meeting that out of 178 inmates, who were lodged in Jail No.15, 160 inmates be shifted to different jails in Tihar, leaving 18 inmates who were working as "**Sahayakas**" in the said jail itself.

D.G.(Prisons) informed that the said resolution has been **complied** with. He informed that having regard to the number of new entrants, the **individual cells** in Jail No.15 are now totally occupied. On

being asked by the Chair for exploring the possibility of using some other Jail, D.G.(Prisons) has informed that Jail No. 7 can be put to use as they have vacated a ward by adjusting the inmates in other wards of this Jail. He informed the Chair that separate **"isolation cells"** have been carved out from the vacated ward of Jail No. 7 for new inmates who are above 21 years of age, where they can be housed for initial period of 14 days.

An inquiry was made by the Chair regarding availability of some other space which can be converted into a **'temporary jail'**. D.G.(Prisons) has informed that in consultation with Delhi Police, they have identified Police Quarters Mandoli, which are situated adjacent to the Mandoli Jail and are presently being used as Government's Medical Quarantine Facility for Covid's Patients. He informed that he, along with Delhi Police have spoken to Govt. of NCT of Delhi for making the same available as the said Quarters can be converted into **'temporary jail'**. He informed that the said quarters comprises of 12 Towers having 30 flats each. D.G.(Prisons) further informed that these 360 Flats can be used for creating **isolation facility** for new entrants and for Covid Positive cases. He informed that these flats have the capacity to hold **1800 new inmates**.

Getting to know about the potential availability of these 360 Flats, Chair directed D.G (Prisons) as well as Special Secretary (Home) to make **concerted efforts** for getting the nod from Govt. of NCT of Delhi at the earliest, as the same would resolve the problem to a large extent.

On being asked by the Chair regarding the procedure adopted by the jail administration at the time of surrender of UTPs who visit the jail premises after expiry of interim bail granted to them, DG (Prisons) informed that such UTPs after completion of the period of their interim bail, at the time of their surrender and admission are treated as **new prisoners** and before lodging them, they shall be medically examined and kept in **Isolation Wards**.

It is made clear that fresh male inmates who are between 18 to 21 years of age and fresh women inmates shall continue to be kept in separate **Isolation Wards** at Jail No.5 and 6 respectively at Tihar, in terms of the earlier resolution.

Members of the Committee deliberated upon having the facility of '**Rapid Tests**', being conducted of all the new entrants in Jail before lodging them so as to protect the inmates who are already in Jail. Committee opined that '**Rapid Tests**' need to be conducted to tackle the situation and to prevent the inmates already in Jail from catching the infection. On directions of the Chair, D.G.(Prisons) readily agreed to check the *feasibility* of getting these '**Rapid Tests**' conducted as per the ICMR guidelines. It is **resolved** accordingly.

Chairperson made enquiries regarding availability of sufficient number of oximeters as well as essential medicines and equipments in Jail Hospital and Dispensaries for dealing with suspected cases of Covid-19. D.G. (Prisons) informed the Committee that there are two Jail Hospitals, one in Tihar and other in Mandoli Jail. He further informed that besides the two hospitals, they have separate Dispensaries in each Jail which are manned by sufficient number of Doctors and Para-medical staff. D.G. (Prisons) informed that they have sufficient availability and regular supply of essential medicines and equipments including oximeters and oxygen cylinders. ON the suggestion of Chairperson, it is **resolved** by the Committee, that Jail Hospitals must be equipped with "**Oxygen concentration machines**" and two such machines for each of the two Jail Hospitals must be procured at the earliest. D.G. (Prisons) **assured** to do the needful at the earliest.

DG (Prisons) further informed the Chair about the measures being taken by the Jail Staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of **social distancing** is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitized using appropriate disinfectant. DG (Prisons) further informed that necessary precautions i.e. Do's and Don'ts are being told to the inmates through "**Public Address System**" installed in Jails.

DG (Prisons) has informed that regular medical checkup of Jail Staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any

symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding the necessary steps being taken to practice, promote and demonstrate positive hygiene behaviour in Jails.

DG (Prisons) has submitted that besides the above they have adopted a multi-pronged approach to tackle the threat of **COVID-19 (Novel Corona Virus)**, i.e. :

- a. **Discontinuation of all visit** of outside agencies, including NGOs.
- b. **Restriction of movements** of inmates outside the wards in Jails.
- c. **Sanitization and disinfection** of the lodgment areas of the inmates and residential complexes of staff, on **regular basis**.
- d. **All new inmates are pre-screened** at CPRO before lodging them in jail.
- e. **Procurement and distribution** of Personal Protective Equipment (PPE) Kit, Mask, Gloves, Alcohol-based hand rubs and Soaps.
- f. **Formation of Special Task Force (STF) for Contact Tracing** of suspected **COVID-19 (Novel Corona Virus)** cases in all Jails.
- g. **Psychological screening** of newly admitted inmates to properly manage their mental health issues.
- h. **Emphasis on Kitchen hygiene** and proper handling of vegetables and other essentials by personnel in kitchen/canteen.

DG (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- STEPS TAKEN TOWARDS SCREENING OF JAIL STAFF, PARA-MILITARY AND MEDICAL STAFF

Considering the possibility of **COVID-19 (Novel Corona Virus)** entering the jail premises through Jail Staff, para-military staff and medical staff besides others and through them, its outbreak amongst the inmates, is considered and deliberated upon by the Committee.

On being asked by the Chair regarding measures taken and adopted by jail administration, D.G. (Prisons) has informed that as per resolution of previous meeting, they have already adopted multi-pronged strategies to tackle the threat of the spread of **COVID-19 (Novel Corona Virus)** through Jail Staff and others to inmates. He informed that besides the above mentioned precautions, they are also:

- a. **Conducting thermal screening and medical test** of the Jail Staff, para-military staff and medical staff before letting them enter the jail premises.
- b. **Minimizing the contact** of inmates with outsiders by restricting movement of inmates outside the jails, as well as restricting movement of outsiders into the jails.
- c. **Creating Medical Isolation Facility** for Jail Staff, security staff, Doctors and Technical Staff, showing symptoms of any disease.
- d. **Spreading Continuous awareness** and briefing the staff as well, on basic hygiene and do's and don'ts to prevent the spread of the disease.
- e. **Having Quarantine Facility** for Jail Staff, para-military, medical staff after their return from out station leave.
- f. A **specific checklist** has been designed by the medical staff for COVID -19 screening of all the entrants including Jail Staff, maintenance staff, security, medical staff and others entering the Jails for delivery of any essentials.
- g. **Wearing of the mask** has been made **mandatory** for all the Jail Staff, para-military staff, medical staff, maintenance staff and others entering the Jails for delivery of any essentials.
- h. Maintenance staff as well as Jail Staff have been **provided with Personal Protective Equipment (PPE) kit** and they have been directed to wear the same during their respective duties.
- i. All the staff has been cautioned to **maintain social distancing** while interacting with each other as well as with inmates.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons). However, being alive to the possibility of spread of Covid-19 amongst the Jail Inmates through Jail Staff, Para-military staff and medical

staff, D.G.(Prisons) has been asked to start getting the “**Rapid Tests**” of all the **above referred Jail Staff** conducted according to the ICMR guidelines. This is to ensure that the suspected cases of Corona Positive Jail Staff could be prevented from getting in touch with the jail inmates. D.G. (Prisons) as well as Sh. Azimul Haque, Special Secretary (Home) **assured “Rapid Tests”** of Jail Staff, Para-military staff and medical staff shall be done right away.

It is **resolved** accordingly.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria earlier adopted in terms of the orders passed by the Division Bench of High Court of Delhi dated 23.03.2020 headed by Hon’ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide meeting dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 and 18.05.2020 is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on **Personal Bond**, on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**.

The same was perused by the Committee which is as under:-

UTPs released on interim bail till 20.06.2020	2651
UTPs released pursuant to modification of bail orders by Hon’ble High Court in W.P.(Criminal) No.779 /2020	310
Convicts released on Emergency Parole till 20.06.2020	1108
Convicts released on remission of sentence	60
TOTAL UTPs / CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 20.06.2020	4129

Chairperson **appreciated** the efforts put in towards the implementation of resolution adopted in earlier meetings, by Govt. of NCT of Delhi, Jail Administration and DSLSA. Chair further directed DG (Prisons) to take up the matter of other eligible convicts with Govt. of NCT of Delhi for “**Remission of Sentence**”.

ITEM NO.4:- TO CONSIDER THE EXTENSION OF INTERIM BAIL GRANTED TO UTPS ON THE BASIS OF CRITERION LAID DOWN IN THE MEETINGS DATED 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020 AND 18.05.2020

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that this Committee in its meeting dated 05.05.2020 on the basis of letter dated 04.05.2020 of AIG (Prisons) and on proposal of DG (Prisons) had recommended to have the interim bail granted to UTPs on the basis of *Writ Petition (Civil) 2945/2020, titled "Shobha Gupta & Ors. Vs. Union of India & Ors."* as well as on the basis of criteria laid down by this committee in the meetings held prior thereto, extended for a further period of 45 days.

He informed the Committee that pursuant to the directions given to him in the meeting dated 05.05.2020, a **letter dated 06.05.2020** was written by him to the Ld. Registrar General, High Court of Delhi. He has further informed that pursuant to said letter, **Hon'ble the Chief Justice, High Court of Delhi** had **constituted a Special Bench** and the said Special Bench in *Writ Petition (Civil) No.3080/2020, titled "Court on its own Motion Vs. Govt. of NCT of Delhi & Anr."* vide its order dated **09.05.2020** had **extended** the **'interim bail'** so granted to the UTPs for a **further period of 45 days** from the date their earlier interim bail is expiring.

It has further been informed to the Committee that the period of extended interim bail as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 05.05.2020 and 18.05.2020, is going to **expire in last week of June, 2020.**

DG (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a **dangerous proposition**, if those UTPs who were granted "interim bail" for 45 days are taken back after their surrender.

DG (Prisons) proposed that in view thereof the "interim bail" of the UTPs needs to be extended. A letter dated **13.06.2020** written by DG (Prisons) to this effect is also brought to the notice of Committee.

Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that **Special Bench** so constituted by Hon'ble the Chief Justice, which had earlier extended the interim bail vide order dated **09.05.2020** has **listed** the said matter on **22.06.2020.**

The Committee deliberated and further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of **"social distancing"** no longer necessary, the Committee is of the opinion that the "interim bail" so granted to such UTPs needs to be extended for a further period of 45 days from the date their respective interim bail is expiring.

The Committee is of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and **recommends** accordingly.

Member Secretary, DSLSA is directed to place these **recommendations** of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration **shall inform** such UTPs of extension of their "interim bail" for a further period of 45 days from the date, the earlier period of interim bail is expiring, telephonically. DG (Prisons) assures that jail administration shall do the needful and shall inform such UTPs about the exact date of their surrender.

ITEM NO.5:- FEEDBACK REGARDING EXTENSION OF "EMERGENCY PAROLE" GRANTED TO THE CONVICTS BY GOVT. OF NCT OF DELHI FOR A FURTHER PERIOD OF 8 WEEKS

Kanwal Jeet Arora, Member Secretary, DSLSA has informed that on directions of Hon'ble Executive Chairperson, DSLSA, he had written a letter dated **08.05.2020** to the D.G. (Prisons) requesting him to send a letter/representation to the Govt. of NCT of Delhi seeking amendment/modification in the **Notification bearing No.F.18/191/2015/HG/1379/1392 dated 23.03.2020** vide which the provision of **"Emergency Parole"** was incorporated in **Rule 1212A**, so that the **"Emergency Parole"** of 8 weeks granted earlier can be further extended, which is the need of the hour.

DG (Prisons) informed the Committee that in terms of the said letter, so received from Member Secretary, DSLSA, they had written to the Govt. of NCT of Delhi vide letter dated **11.05.2020** for doing the needful.

It is reported by Shri Azimul Haque, Special Secretary (Home), Govt. of NCT of Delhi that the necessary modification in the Notification has been made by Govt. of NCT of Delhi vide **Notification bearing No.F.18/191/2015-HG/1649-62 dated 20.05.2020** whereby it has been notified that, “ ... *in order to secure the interest of inmates the prison administration and the society at large, the Government may grant up to eight weeks parole in one spell in addition to the regular parole as provided in these Rules. Further, the number of spells may be increased if emergent situation so warrant*”.

Shri Azimul Haque, Special Secretary (Home), Govt. of NCT of Delhi has further informed the Chair that on the basis of this notification, *Hon'ble Minister (Home) Govt. of NCT of Delhi directed to extend the emergency parole for a period of another eight weeks* to all such convicts who were earlier released on emergency parole on or before **30.04.2020**. An order to this effect was issued by Deputy Secretary (Home), Govt. of NCT of Delhi **dated 22.05.2020**.

The Committee is **satisfied** with this **outcome** on the basis of its resolution dated 18.05.2020.

ITEM NO.6:- DETERMINING FRESH CATEGORY OF PRISONERS WHO CAN BE RELEASED ON INTERIM BAIL

Members of the Committee have taken into consideration that on the basis of the criteria adopted earlier, as on date about **4129** inmates/convicts/UTPs have been released on **parole/interim bail etc.**

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee about the letter/representation dated **13.06.2020** wherein DG (Prisons) has submitted about the latest position of **COVID-19 (Novel Corona Virus)** pandemic in Delhi Prisons. He further stated that despite effective steps already taken towards decongestion of Jails, Delhi still has prison population of **13677** as on **19.06.2020** against the combined holding capacity of **10026** of **16 Jails of Delhi**.

In view of this situation vide his letter dated 13.06.2020, DG (Prisons) has requested that the criteria adopted earlier **needs to be relaxed** so as to further decongest the jails as still the present occupancy of the Jail exceeds the optimum capacity of the Jail.

In view of the prevailing situation and to prevent the spread of **COVID-19 (Novel Corona Virus)** and to ensure social distancing amongst prisoners, the Committee is of the opinion that the criteria needs to be **further relaxed** to give effect to directions of Hon'ble Supreme Court of India. On directions of Hon'ble Chairpersons, DG (Prisons) was requested to furnish the information, for the **impact analysis** *qua* the proposed relaxed criteria of UTPs. The same is accordingly submitted.

The Members of the Committee discussed the report submitted by DG (Prisons) vide his letter dated **13.06.2020** and **resolved** that prisoners falling in following criteria may now be considered for grant of interim bail for **45 days** in view of the circumstances in which we are in, preferably on '**Personal Bond**' :

- (i) *Under trial prisoners (UTPs)(who are related as spouse of the deceased) facing trial for a case under **Section 498A and 304B IPC** and are **in jail for more than two years** with no involvement in **any other case**;*
- (ii) *Under trial prisoners (UTPs) (who are related as father-in-law, mother-in-law, brothers-in-law, sisters-in-law of the deceased) facing trial for offence **under Section 498A and 304B IPC** and are **in jail for more than one year** with no involvement in **any other case**;*

It has further been **resolved** that following category of UTPs, even if falling in the above criterion or the criteria adopted in the earlier Meetings, **should not be** considered :-

- (i) *Those inmates who are undergoing trial for intermediary/ large quantity recovery under NDPS Act ;*
- (ii) *Those under trial prisoners who are facing trial under Section 4 & 6 of POCSO Act;*
- (iii) *Those under trial prisoners who are facing trial for offences under section 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB, and 376E and Acid Attack;*
- (iv) *Those UTPs who are foreign nationals ;*
- (v) *Those under trial prisoners who are facing trial under Prevention of Corruption Act (PC Act) / PMLA, MCOCA ;*
and

- (vi) *Cases investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, Terror related Cases, Riot cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.*

Apart from the above six categories, Committee **resolved** to exclude those UTPs who after having availed the benefit of the criteria adopted hereinabove and the one adopted in the earlier meetings, had committed fresh crimes while on interim bail. Thus, the following seventh category is also included in the **exclusion clause**.

- (vii) *Those Under Trial Prisoners who are now in custody for an offence committed by him during the period of interim bail granted to him on the basis of criteria adopted by High Powered Committee in its earlier meetings;*

DG (Prisons) has informed that on the basis of this new criterion, approximately **75 UTPs** would be benefited and their release would further **ease out** the Jail Population as the total number of inmates released on Parole and Interim Bail shall go up to 4200 approximately.

The UTPs falling in above relaxed criteria or the criteria adopted earlier may move their application for bail either through **their private counsel** or through **Panel Lawyers of DSLSA**, annexing the copy of custody warrants with the applications.

The applications for interim bail of UTPs falling in abovementioned categories for being considered, should have **a certificate of good conduct** during their respective custody period **from Jail Superintendent** for him to qualify in the abovementioned category.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to apprise all the Judicial Officers that in the event of Court **being satisfied** that the under trial prisoners falling in the above mentioned criteria as well as the criteria adopted earlier, are to be released on bail, they may be released on **'Personal Bond'**, to the satisfaction of Jail Superintendent so as to implement the **social distancing policy** of the Government.

It is clarified that the decision taken by this Committee for release of prisoners on “**interim bail**” vide criterion adopted in the meeting dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

ITEM NO.7:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED :

(A) REPRESENTATION FILED ON BEHALF OF MALVINDER MOHAN SINGH SEEKING REVISION OF THE CRITERIA SET FORTH BY HIGH POWERED COMMITTEE THROUGH SHRI NEOMA VASUDEV AND SHRI ABHINAV MUKHERJEE, ADVOCATES

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 22.05.2020** whereby applicant have stated that the classification drawn by the High Powered Committee to exclude those persons who have been alleged to have committed economic crime from being released on interim bail, is neither reasonable nor just. It is stated that though Hon'ble Supreme Court vide orders dated 23.03.2020 had left it open to the Committee to devise a criteria. However, the same should have been based on reasonable differentia so as to lead to effective implementation of the order. The present representation has been filed by the Applicant pursuant to liberty granted to applicant by Hon'ble High Court in terms of order dated **15.05.2020** passed in **WP (Crl) No. 814/2020**, titled "*Malvinder M. Singh v. State and Anr.*", whereby the application for bail filed by the applicant was dismissed.

Members of the Committee perused the **representation** and have also gone through the orders dated **15.05.2020** passed by Hon'ble High Court whereby the **relief sought** by the applicant was **declined**. Members of the Committee have also gone through the documents annexed with the representation. It is apparent that the applicant is an Under Trial Prisoner,

lodged in Tihar Jail since 11.10.2019 and is accused in connection with the following cases:

- a) FIR No. 50/2019 dated 27.03.2019 at P.S. EOW u/s 420/409/120B IPC culminating in Chargesheet on 6.1.2020
- b) ECIR dated 10.1.2020 culminating in Chargesheet being ECIR No. 05/DLZO-II/2019 dated 24.7.2019 u/s. 3,4 PMLA read with Schedule I, read with 420/120B IPC
- c) FIR No. 189/2019 dated 23.9.2019 at P.S. EOW u/s 409/120B culminating in Chargesheet on 23.3.2020

For effective considering the representation, Members of the Committee have considered it pertinent to refer to order dated 23.03.2020 of Hon'ble Supreme Court in **Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19,** vide which the High Powered Committee was constituted. The same reads as under:

"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 or 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)

Hon'ble Supreme Court while disposing of the above mentioned petition vide its subsequent order dated 13.04.2020 clarified its earlier order as under:

"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 that 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.

We make it clear that the aforesaid order is intended to be implemented fully in letter and spirit."

(emphasis supplied)

On bare perusal of the observations/directions given by the Hon'ble Supreme Court vide its order dated 23.03.2020, it is apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated 13.04.2020 of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he falls and whatever nature of offence he is facing trial, can seek or claim to be released from prison **as a matter of right**.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail herein above, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to **exclude** certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, NDPS, PMLA, UAPA, Terror

related Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, to be excluded from consideration zone for being released on "**interim bail**". The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having *prisoner-centric approach*. The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**. The submissions made in the representation in hand, relates to the applicant only. However, the Committee as stated earlier, was not formed to look into merits or demerits of an individual case for being released on interim bail, rather it was formed to lay down a criteria taking into consideration a particular class and not any particular prisoner or inmate.

In view thereof, this Committee is of the opinion that the representation is **unmerited and the same is accordingly rejected**.

It is however made clear that this Committee for release of prisoners on "**interim bail**" vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

In view thereof, the applicant is at liberty to file bail application before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

(B) REPRESENTATION FILED BY SHRI ALOK TRIPATHI, ADVOCATE FOR CONSIDERING THE CATEGORY OF CASES UNDER SECTION 304B IPC FOR GRANT OF INTERIM BAIL.

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 24.05.2020** sent by **Shri Alok Tripathi, Advocates** for considering release of UTPs facing trial for a case under Section 304B IPC and are in jail for more than two years with no involvement in any other case.

Considering the resolution adopted by this Committee hereinabove today, the present representation does not require any further deliberation, as the same has become **infructuous**.

(C) APPLICATION FOR GRANT OF PAROLE TO RAJINDER @ JINDER FILED BY THE APPLICANT THROUGH SH.SIDDHARTH YADAV, ADVOCATE

Member Secretary, DSLSA brought to the notice of the Committee **application dated 26.05.2020** filed by **Shri Siddharth Yadav, Advocates** on behalf of applicant Rainder @ Jinder S/o Nathu Ram.

Members of the Committee have perused the application/representation and also perused the order dated **08.05.2020** passed by Hon'ble High Court in *WP (Crl.) 795/2020*, titled "*Rajinder alias Jinder Vs. State (NCT of Delhi)*" whereby the applicant had withdrawn his petition seeking parole with liberty to approach the **Competent Authority**.

Perusal of the application as well as order passed by Hon'ble High Court however reveals that liberty was granted to the applicant to approach the Competent Authority seeking parole. The present High Powered Committee was constituted by Hon'ble Supreme Court for decongestion of jails. This Committee is not the Competent Authority to decide the application for parole filed by the applicant.

Consequently, the present application is **disposed off** with directions to the petitioner **to approach the appropriate authority**.

(D) REPRESENTATION ON THE BEHALF OF UNDER TRIAL PRISONER JOYCE KAROUNG FACING CHARGES UNDER SECTION 21(C)/29 NDPS ACT SEEKING INTERIM BAIL.

Member Secretary, DSLSA brought to the notice of the Committee **representation** filed on behalf of applicant by **Shri Jubail Ahmad Khan, Advocate** sent through email dated 07.06.2020 .

Members of the Committee perused the representation filed by the applicant. Bare perusal of the observations/directions given by the Hon'ble Supreme Court vide its order dated **23.03.2020**, makes it apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he falls and whatever nature of offence he is facing trial, can seek or claim to be released from prison **as a matter of right**.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail herein above, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to exclude certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, **NDPS**, PMLA, UAPA, Terror related Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, to be excluded from consideration zone for being released on "**interim bail**". The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having a particular *prisoner-centric approach*. The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited and the same is accordingly rejected**.

It is however made clear that this Committee for release of prisoners on “**interim bail**” vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and the one adopted hereinabove today, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

In view thereof, the applicant is at liberty to file bail application before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

(E) REPRESENTATION DATED 12.06.2020 OF SHRI JAI A. DEHADRAI, ADVOCATE SEEKING DIRECTIONS TO JAIL AUTHORITIES TO CONDUCT COVID-19 TESTING OF ALL THE JAIL INMATES AS WELL AS JAIL STAFF

Members of the Committee considered the representation dated **12.06.2020** of the applicant addressed to the Chairperson of this Committee along with the supporting documents.

Members of the Committee though **appreciates** the concern of the applicant regarding **risk of outbreak of COVID-19 (Novel Corona Virus) infection** to the prison population because of the cloistered living conditions, however, Committee is of the opinion that it is neither *feasible nor desirable* at this stage to conduct **COVID-19 tests** of all inmates.

Committee is alive to the cause and have already taken requisite steps to prevent the spread of COVID-19 inside the Jail Premises. For the same, this Committee, vide resolutions adopted in its earlier meetings as well as one adopted hereinabove today, has directed DG (Prisons) for having *regular medical checkup of the entire Jail Staff and inmates* through Jail Doctors and to strictly follow the advisory and guidelines issued by ICMR and Ministry of Health, Govt. of India, Health Department, Govt. of NCT of Delhi. Further directions have been given to DG (Prisons) for creation of separate

Isolation Ward for the fresh inmates so that they be **not permitted** to **intermingle** with other inmates immediately on their arrival in the Jail.

Directions have also been given to Jail Staff to continue to conduct Thermal Screening and Medical Examination of any suspected case. Jail Administration is also conducting CT-PCR test in cases of any medical necessity.

In view thereof, as well as directions given to D.G.(Prisons) for getting **“Rapid Tests”** conducted of entire Jail Staff and also to see the *feasibility of getting rapid-tests* conducted the new entrants before their lodging in the Jail, in consonance with the ICMR Guidelines, **no further directions** are required to be passed on the present representation.

Before parting with this representation, Members of the Committee directed DG (Prisons) to take **extra precautions** with respect to inmates who are more than **55 years of age**, so that they are not **immuno-compromised**. DG (Prisons) is further directed that in case any suspected case comes to the notice of jail administration, then the contact tracing of all other inmate and Jail Staff be got done and if necessary **COVID-19** test of all such persons be conducted.

Representation dated **12.06.2020** of **Sh.Jai.A.Dehadrai, Advocate** stands disposed off accordingly.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA) to inform the applicants who made the above representations with respect to the *outcome thereof*.

It is **resolved** accordingly.

ITEM NO.8:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR :

(A) MEETING OF SENTENCE REVIEW BOARD;

With permission of the Chair, DG (Prisons) has brought to the notice of the Committee, the orders dated 11.05.2020 passed by Hon'ble High Court in *Writ Petition (Civil) No.3095/2020, titled "Amit Sahni Vs. The State (Govt. of NCT of Delhi) & Anr."*.

The Chairperson of the Committee has perused the orders passed by Hon'ble High Court dated **11.05.2020** and inquired from DG (Prisons) and Special Secretary (Home), Govt. of NCT of Delhi as to when the Meeting of **Sentence Review Board** was last conducted.

DG (Prisons) and Special Secretary (Home), Govt. of NCT of Delhi inform the Chair that the meeting of **Sentence Review Board** was held on **28.02.2020** whereafter a meeting was conducted on **11.05.2020** wherein case of some of the convicts was recommended for remission/sentence review.

Special Secretary (Home) Govt. of NCT of Delhi apprised the Chair that a meeting of "**Sentence Review Board**" was initially fixed for **09.06.2020** but could not be held and was rescheduled for **16.06.2020**.

Special Secretary (Home) Govt. of NCT of Delhi further informed that the meeting **could not take place** on **16.06.2020** as well, as Hon'ble Minister who had to Chair the meeting was hospitalized. Special Secretary (Home) apprised that the next meeting **shall take place at an early date**.

Chair directed DG (Prisons) as well as Special Secretary (Home), Govt. of NCT of Delhi to do the needful in this regard so that the cases of eligible convicts can be considered and if approved they can be released so as to decongest the jail.

(B) CLARIFICATION REGARDING MINUTES DATED 18.05.2020 QUA BAIL APPLICATION NO.291/2019 VIDE ORDERS DATED 17.06.2020 OF HON'BLE HIGH COURT;

With Permission of the Chair, D.G.(Prisons) has brought to the notice of the Committee orders dated 17.06.2020 passed by Hon'ble High Court in bail application no.291/2019 titled "*Satnam @ Raju vs. State*".

Members of the Committee have perused the said order passed by Hon'ble High Court with respect to the petitioner who is an under trial prisoner in FIR No.491/2017 under section 364A/506/342/323/34 IPC PS Paschim Vihar. A submission was raised on behalf of the petitioner that as High Powered Committee in meeting dated 18.05.2020 had resolved that UTPs facing trial under section 302 IPC and in Jail, for more than 2 years and not involved in any other case, may be released on "Interim Bail" therefore,

petitioner who is involved for offence under section 364A IPC entailing same punishment should also be released on Bail.

Members of the committee have perused the orders dated 17.06.2020 passed by Hon'ble High Court and as required, it is hereby clarified that while categorizing the *class / category* of offences, this Committee in its last meeting had intentionally omitted such like offences i.e. kidnapping for ransom and dacoity etc. The said **class/ category** of cases and sections of IPC therefore, have not been mentioned in the Minutes while laying down the criteria in the Meeting dated 18.05.2020.

Considering that the above referred Bail matter is listed before Hon'ble High Court on 30.06.2020, copy of these minutes may be placed before the Court through Ld. Registrar General.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with *Vote of Thanks* to the Chair.

Sandeep Goel
D.G (Prisons)

Azimul Haque,
Special Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLISA

Hon'ble Ms. Justice Hima Kohli
Executive Chairperson DSLISA

via Video-conferencing

\$~4

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CRL. A. 193/2020

HARPREET SINGH

..... Appellant

Through: Mr. Ankit Sharma, Advocate.

Versus

STATE

.... Respondent

Through: Mrs. Neelam Sharma, APP for the
State.**CORAM:****HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI****ORDER**

%

01.07.2020**Crl. M.A. No.8453/2020 (exemption)**

Exemption granted, subject to just exceptions and subject to the applicant completing all requirements of filing duly affirmed affidavits and court fees within 10 days of physical reopening of the court.

The application stands disposed of.

Crl. M.A. No.8452/2020 (for extension of interim bail)

The appellant, who has been convicted *vidé* judgment dated 16.12.2019 in case FIR No.254/2012 registered under sections 363/366/376/377/511 IPC at PS: Khyala and sentenced to rigorous imprisonment for 07 years *vidé* sentencing order dated 24.12.2019, seeks extension of interim suspension of sentence granted to him *vidé* order dated 04.05.2020 in Crl. M.(B) No.304/2020.

2. *Vidé* order dated 04.05.2020, this court was persuaded to grant interim suspension of sentence to the appellant for a period of 45 days on the ground that the appellant was suffering from serious mental illness, by reason of which he would not have been able to take precautions and maintain the hygiene levels required for preventing infection during the prevalent coronavirus pandemic; and would therefore have been vulnerable to catching and spreading the disease in prison. Another consideration in the mind of the court was that the health and safety of other inmates would also have been affected thereby.

3. Interim suspension of sentence granted *vidé* order dated 04.05.2020 expired 21.06.2020. However, it is recited in the application, that since the appellant did not surrender, on 26.06.2020 the appellant received a call from the jail authorities directing him to surrender.

4. Mr. Ankit Sharma, learned counsel for the appellant submits that the appellant verily believes that the interim suspension of sentence granted to him by order dated 04.05.2020 stands automatically extended by order dated 15.06.2020 made by an Hon'ble Full Bench of this court in W.P.(C) No.3037/2020 titled ***Court on its own Motion vs. State & Ors.*** whereby, as per the appellant's interpretation, all interim orders, including orders of interim suspension of sentence, stand automatically extended till 15.07.2020. Accordingly it is the appellant's contention that there was no obligation on him to surrender and the appellant has therefore not yet surrendered to prison.

5. This court has however taken a view contrary to the one canvassed on behalf of the appellant, inasmuch, in the opinion of this court, upon a conjoint reading of a series of orders, including last order dated 15.06.2020, made by the Hon'ble Full Bench in W.P.(C) No.3037/2020, the extension granted applies only to a certain category of cases, *namely those cases where interim orders were subsisting as on 16.03.2020*. The relevant portion of order dated 25.03.2020 made by the Hon'ble Full Bench reads as under :

“

x x x x x

*In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, **on or before 16.03.2020**. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.*

*Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, **wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.***

x x x x x

”

(Emphasis supplied)

The relevant portion of order dated 15.05.2020 made in W.P.(C) No.3037/2020 reads as under :

“
 x x x x x
Since some of the restrictions imposed by the Government of India are still in operation, and taking note of the extraordinary circumstances, in continuation of this Court's order dated 25th March, 2020, we hereby order that in all matters pending before this Court and Courts subordinate to this Court, wherein the interim orders issued, as mentioned in our order dated 25th March, 2020, were subsisting as on 15.05.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.06.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.
 ”

x x x x x

(Emphasis supplied)

The relevant portion of order dated 15.06.2020 made in W.P.(C) No.3037/2020 reads as under :

“
 x x x x x
 4. Now taking note of the prevalent situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 30.06.2020.

“5. In view of the above, we hereby further extend the implementation of the directions contained in our order dated 25th March, 2020 and 15th May, 2020 till 15th July, 2020 with the same terms and conditions.
 ”

x x x x x

(Emphasis supplied)

6. However, since a contrary view has been canvassed by various applicants before this court from time-to-time in certain matters; and it is evident that the jail authorities are also in doubt as to the exact scope, ambit and application of the orders of the Hon'ble Full Bench, this court considers it appropriate and in the interests of justice that the matter be referred for an authoritative clarification to the Hon'ble Full Bench, subject to orders of Hon'ble the Chief Justice.

7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

- a. Whether the orders made by the Hon'ble Full Bench in W.P.(C) No.3037/2020, including last order dated 15.06.2020, apply to *all* interim orders, whether made in civil or criminal matters, and *regardless* of whether such orders were made on or before 16.03.2020 or thereafter ?
 - b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020 ?
8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby.
9. The Hon'ble Full Bench may also consider that the basis for granting general extensions, which was the restrictions on functioning of courts and the consequent inability of litigants and

lawyers to approach the courts, have now eased. This is evidenced by the fact that applications for extension of interim orders are being routinely made before courts, such as in the present case.

10. The Full Bench may also consider that in the meantime, orders *declining* extension of interim bail/interim suspension of sentence are also being passed by various Benches.
11. The above aspects have been highlighted since these appear to be creating conflicting situations, that may need to be resolved.
12. Accordingly, Hon'ble the Chief Justice may, if deemed appropriate, refer the foregoing queries for clarification and guidance to the Hon'ble Full Bench in W.P.(C) No.3037/2020.
13. Insofar as the present application is concerned, without commenting on the merits of the extension sought, and considering the reference made as aforesaid, for the time being the interim suspension of sentence granted to the appellant by order dated 04.05.2020 shall stand extended till the next date.
14. List on 16th July 2020.
15. A copy of this order be placed before Hon'ble the Chief Justice for appropriate directions.

ANUP JAIRAM BHAMBHANI, J.

JULY 01, 2020

Ne

\$~F.B.-2.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL. A. 193/2020 & CrI.M.A.No.8452/2020

HARPREET SINGH. Petitioners

Through: Mr.Manish Baidwan, Adv.

Versus

STATE Respondent

Through: Mr.Rahul Mehra, Standing Counsel
for State.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

13.07.2020

%

The Hon'ble Single Judge vide his order dated 01.07.2020, has referred the following queries seeking clarification and guidance of the Hon'ble Full Bench, that has rendered orders in W.P.(C) No.3037/2020, titled as '*Court on its Own Motion vs. State and Others*';

'7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

- a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to *all* interim orders, whether made in civil or criminal matters, and *regardless* of whether such orders were made on or before 16.03.2020 or thereafter?
- b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may

consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby.”

A plain reading of the order of reference dated 01.7.2020 and in particular paragraph 11 thereof, clearly reflects that the implementation of the directions contained in the orders dated 25.03.2020, 15.05.2020 and 15.06.2020, rendered by the Full Bench are stated to have created conflicting situations between the interpretation given thereto by different Single Judges that need to be resolved.

In this behalf, at the very outset it is observed that this Court was pleased to pass certain directions, whilst taking suo motu cognizance of the extraordinary circumstances, that arose on account of the Covid-19 pandemic.

In this behalf, it is further observed that the functioning of this Court had been restricted only to urgent matters, on account of the outbreak of Covid-19 w.e.f. 16.03.2020.

On the 24.03.2020, the Government of India issued orders whereunder strong measures were enforced to prevent the spread of Covid-19 and a nationwide lockdown was declared, initially for a period of 21 days w.e.f. 25.03.2020, which was thereafter extended from time to time.

In view of the foregoing, and in order to maintain parity, between orders granted on or before 16.03.2020, and those issued thereafter; and further taking note that insofar as, criminal matters are concerned, those enlarged on interim bail/parole may spread the infection amongst the inmates of the respective jails, where they may be required to surrender; and

also in the backdrop of the circumstance, that the jails are overcrowded and have an inherent vulnerability to assist the unchecked spread of Covid-19, owing to space constraints and over congestion, we make it clear that all the directions issued by the Full Bench from time to time in the suo motu proceedings in W.P.(C) 3037/20 have been rendered with a view to check the ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole, granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any particular matter, during the intervening period.

List this application on 16th July, 2020 for further proceedings in accordance with the directions issued hereinabove.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

JULY 13, 2020

\$~FB-1

*

IN THE HIGH COURT OF DELHI AT NEW DELHI+ **W.P.(C) 3037/2020****COURT ON ITS OWN MOTION**

.....Petitioner

Through: Court on its own motion

versus

STATE & ORS

.....Respondents

Through: Mr. Maninder Singh, Advocate with
Ms. Aekta Vats, Advocate for the
Applicants/Intervener
Mr. Rahul Mehra, Standing Counsel
(Criminal), GNCTDIN RE:

Extension of Interim Orders

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SIDDHARTH MRIDUL****HON'BLE MR. JUSTICE TALWANT SINGH****ORDER**

%

24.07.2020**CM APPL.16289/2020 & CM APPL.16292/2020 (Exemption)**

Exemption granted subject to all just exceptions.

The application is disposed of accordingly.

CM APPL.16290/2020 & CM APPL.16293/2020 (Exemption)

The present applications under Section 151 of the Code of Civil Procedure, 1908 have been filed on behalf of the applicant/intervener seeking exemption from filing duly signed and affirmed affidavits in support of the accompanying applications and to pay the requisite court fees.

For the reasons stated in the applications and in view of the present prevailing situation, the same are allowed. The applicant/intervener is allowed to file the duly signed and affirmed affidavits within a period of one week from the date of resumption of regular functioning of the Court. Further, the applicant/intervener is allowed to file the requisite court fee within a period of 72 hours from the date of resumption of regular functioning of the Court.

With the above directions, the present applications are disposed of.

CM APPL.16287/2020 (Impleadment & Clarification)

By way of the present application Irshad Ali, son of Shaid Ahmed, seeks to be impleaded in Writ Petition (Civil) No.3037/2020, titled as '*Court on its own motion vs. State and Others*', limited to the purpose of seeking impleadment and clarification of the order dated 13.07.2020 rendered by this Full Bench.

Notice.

Mr. Rahul Mehra, learned Standing Counsel (Criminal) accepts notice on behalf of the official respondent.

Having heard learned counsel appearing on behalf of the parties and in view of the circumstance that, it is considered necessary to clarify the scope and ambit of this Full Bench's order dated 13.07.2020, in view of the conflicting interpretations stated to be given to the said order by different

Single Benches of this Court, the present application is allowed only for the limited purpose of clarifying the said order dated 13.07.2020, passed by this Full Bench.

This Full Bench by way of its order dated 13.07.2020 directed in paragraph 7 thereof, as follows:-

“7. In this regard, we make it clear that all the directions issued from time to time in this case are based on the ongoing pandemic situation in Delhi. So far as the criminal matters are concerned, these directions have been issued keeping in view the fact that the jail authorities have limited space to keep the inmates and in case of spread of Covid-19 pandemic in the jail, it would not be in a position to maintain physical distancing amongst jail inmates. Looking to this aspect and the possible threat of spreading of viral infection by those persons who are on interim bail/bail/parole granted by this Court or the Courts subordinate to this Court, to other inmates of the jail on their return to the jail, the decision of extension of interim bail/bail/parole has been taken from time to time. It is clarified that this order of extension of bail/interim bail/parole shall be applicable to all undertrials/convicts, who are on bail/interim bail or parole as on date irrespective of the fact that they were released on bail/interim bail or parole before or after 16th March, 2020.

The above directions were in continuation of our orders dated 25.03.2020, 15.05.2020 and 15.06.2020.

By way of order of even date viz. 13.07.2020, in Criminal Appeal No.193/2020, titled as '*Harpreet Singh vs. State*', the Full Bench also answered the following queries, referred to it by the Hon'ble Single Judge vide his order dated 01.07.2020, seeking clarification and guidance from

the Hon'ble Full Bench of the orders passed in the said Writ Petition (Civil) No.3037/2020, titled as '*Court on its motion vs. State & Ors.*':-

"7. The queries that the Hon'ble Full Bench may consider and decide for the guidance of all concerned are as follows:

- a. Whether the orders made by the Hon'ble Full Bench in W.P. (C) No.3037/2020, including last order dated 15.06.2020, apply to *all* interim orders, whether made in civil or criminal matters, and *regardless* of whether such orders were made on or before 16.03.2020 or thereafter?
- b. Where interim bail or interim suspension of sentence has been granted by a Bench of this court exercising discretion and based upon specific facts and circumstances of a given case, would such orders also stand automatically extended by operation of orders made by the Full Bench in W.P.(C) No.3037/2020?

8. While deciding the issue, the Hon'ble Full Bench may consider the aspect of parity, namely that, on a plain reading of the orders in W.P.(C) No.3037/2020, interim orders granted on or before 16.03.2020 appear to be getting extended by general directions; but those made after 16.03.2020 appear not to be covered thereby."

The Full Bench observed as follows in this behalf:-

"...A plain reading of the order of reference dated 01.7.2020 and in particular paragraph 11 thereof, clearly reflects that the implementation of the directions contained in the orders dated 25.03.2020, 15.05.2020 and 15.06.2020, rendered by the Full Bench are stated to have created conflicting situations between the interpretation given thereto by different Single Judges that need to be resolved.

In this behalf, at the very outset it is observed that this Court was pleased to pass certain directions, whilst taking suo motu

cognizance of the extraordinary circumstances, that arose on account of the Covid-19 pandemic.

In this behalf, it is further observed that the functioning of this Court had been restricted only to urgent matters, on account of the outbreak of Covid-19 w.e.f. 16.03.2020.

On the 24.03.2020, the Government of India issued orders whereunder strong measures were enforced to prevent the spread of Covid-19 and a nationwide lockdown was declared, initially for a period of 21 days w.e.f. 25.03.2020, which was thereafter extended from time to time.

In view of the foregoing, and in order to maintain parity, between orders granted on or before 16.03.2020, and those issued thereafter; and further taking note that insofar as, criminal matters are concerned, those enlarged on interim bail/parole may spread the infection amongst the inmates of the respective jails, where they may be required to surrender; and also in the backdrop of the circumstance, that the jails are overcrowded and have an inherent vulnerability to assist the unchecked spread of Covid-19, owing to space constraints and over congestion, we make it clear that all the directions issued by the Full Bench from time to time in the *suo motu* proceedings in W.P.(C) 3037/20 have been rendered with a view to check the ongoing spread of the pandemic in Delhi as also the spread of the disease in prisons resultantly, persons who are enlarged on interim bail/parole, granted by this Court or the Courts subordinate to this Court either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except there any orders to the contrary have been passed by the Hon'ble Supreme Court of India, in any particular matter, during the intervening period."

It is relevant to observe that, no clarification of the above order/orders of the Full Bench have been sought, either on behalf of the Government of NCT of Delhi or the Director General of Prisons.

From a plain reading of the foregoing directions, it is axiomatic that, the Full Bench while taking *suo motu* cognizance of the extraordinary circumstances, arising out of the Covid-19 pandemic, had made it clear that insofar as, criminal matters are concerned, in view of the serious threat

posed by the possibility of the unchecked spread of the coronavirus pandemic, by those who have been enlarged on interim bail/parole; and who may carry back with them the Covid-19 infection, so as to infect other inmates of the jail, if they are required to surrender, to the already congested and over-crowded jails, which may not be in a position to strictly maintain physical distancing amongst jail inmates; and considering the inherent vulnerability of the jails, owing to serious space constraints, to effectively control, check and prevent the spread of Covid-19; it was directed that, the interim bail/parole granted to such persons by this Court or the Courts subordinate to this Court, either before or after the 16.03.2020, upto date, shall stand automatically extended till the 31.08.2020 or until further orders, except where there are any orders to the contrary, passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period. It is further clarified that this order of extension of interim bail/parole shall be applicable to all under trials/convicts, who have been enlarged on interim bail or parole, as on date, irrespective of the fact that they were so released on interim bail/parole, before or after 16.03.2020.

With the above clarification, the present application is disposed of.

CM APPL.16288/2020 (Stay) & CM APPL.16291/2020 (Exemption to Surrender)

In view of the clarification issued hereinabove, as well as, the circumstance that, this Full Bench was neither seized off nor considered individual applications, that may have been instituted, praying for grant of interim bail/parole, on their merits in these proceedings, the present applications are not maintainable before this Bench.

The applications are accordingly dismissed, whilst reserving liberty to the applicant to institute appropriate proceedings, in accordance with law.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

JULY 24, 2020

dn/di

Minutes of Meeting dated 31st July, 2020 at 5:00 pm through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers / Members of High Powered Committee through Video Conferencing:

1. Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi **Member**
2. Sh. Sandeep Goel, Director General (Prisons), Delhi **Member**
3. Sh. Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS AND JAIL STAFF

Chair feeling concerned after having learnt about the latest position of COVID-19 Positive Cases of Jail inmates and Jail Staff from the letter dated 28.07.2020 of D.G.(Prisons), had asked about the steps taken by D.G. (Prisons) and Jail Administration to tackle the situation and arrest the infection from escalating in the Jail premises.

Sh. Sandeep Goel, D.G. (Prisons) informed the Chair that the jail administration has been scrupulously following and complying with the **guidelines, instructions and resolutions** passed by this Committee in its earlier meetings, as a result of which they have been in a position to bring down the active cases of **COVID - 19 (Novel Corona Virus)** inside the jail premises.

D.G. (Prisons) apprised the Chair that despite several precautionary measures **COVID-19 (Novel Corona Virus)** did enter the jail

premises but Jail Administration is putting their best efforts and have adopted a multi-pronged approach to fight it and to prevent its spread in Jail Premises. D.G. (Prisons) informed the committee that as on **30.07.2020**, cumulative figure of COVID -19 Positive cases in jail is as under:

Prison Inmates	:	61 (55 recovered, 02 expired, 03 Active cases , 01 released on bail who is presently in Home Quarantine)
Prison Staff	:	165 (143 recovered, 22 active cases)

On being asked, D.G. (Prisons) has informed that out of above stated **03** active cases of jail inmates, **02** are '**asymptomatic**' and are separately quarantined in jail premises itself whereas **01** is admitted in LNJP Hospital where he is recuperating.

D.G. (Prisons) further informed that one jail inmate "M" aged 70 years being convict was serving his sentence in Jail No.14, Mandoli. D.G. (Prisons) informed that on the basis of contact tracing, the said inmate was tested for COVID-19 and was found positive on 26.06.2020. On same date, the said inmate developed uneasiness due to heart related symptoms and was referred to DDU Hospital wherefrom he was sent to LNJP Hospital. D.G. (Prisons) further informed that on the request of family of jail inmate, he was sent to Akash Health Care Hospital, Dwarka (in custody) where he expired on **04.07.2020**.

D.G. (Prisons) informed that contact tracing of all inmates who had been in casual or direct contact with said "M" has been done and necessary action has been taken as per the medical protocol.

D.G. (Prisons) informed the Committee that in terms of the resolution adopted vide meeting dated 20.06.2020, Jail Administration is taking extra precautions with respect to inmates who are more than **55 years of age**, so that they are not '**immuno-compromised**'. D.G. (Prisons) has further assured the Committee that they shall continue doing the needful.

The Members of the Committee deliberated upon the possible steps which can further be taken to prevent the spread of **COVID-19 (Novel Corona Virus)** in jail premises. It is considered that **COVID-19 (Novel**

Corona Virus) can enter the jail premises only through the new entrants or through Jail Staff, Paramilitary Staff, Medical Staff and other persons entering the Jail premises for delivery of ration and other essential items.

D.G.(Prisons) had further informed that in view of resolutions passed by this Committee in the last meeting, they are **carrying out 'Rapid Tests'** of jail staff, para military staff and others. He informed that till date 165 Jail Staff have been found Covid Positive. He further informed that immediately on getting their reports, they were relieved from their respective duties and were asked to remain home-quarantined, as most of them were **'asymptomatic'**. D.G.(Prisons) further informed that contact tracing was done and all those who had come in contact with these Jail Staff were medically screened and tested.

D.G.(Prisons) further informed that out of the **165** Jail Staff who were found Positive, **143** have already been recovered. He apprised the Chair that at present there are only **22** active cases, who are mostly home quarantined.

Members of the Committee after deliberations reiterated that in terms of the resolution adopted in the earlier meeting, new entrants should be kept in **"Isolation Wards/Cells"** so as to prevent their **intermingling** with other inmates who are already inside the jail. Requisite steps are also required to be taken so as to ensure that Jail Staff, Medical Staff, Maintenance Staff and other persons entering the premises for delivery of essentials, may not come in direct contact with the inmates inside the Jail premises.

In the earlier meetings of this Committee, it was resolved to create **Isolation Wards** in Jail No.2 at Tihar and Jail No.15 at Mandoli which had **248 individual cells** (with attached toilets) for the new male entrants who are above 21 years of age and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age, whereas **separate Isolation Wards** were resolved to be created in Jail No.6 at Tihar for fresh women inmates.

Considering the fact that individual cells in Jail No. 15 are fully occupied, D.G. (Prisons) had informed that in terms of the suggestions given

to him in the last meeting, some “**Isolation Cells**” were carved out by Jail Administration from the vacated wards of Jail No.7. Besides that, some “**Isolation Cells**” were also created in Jail No. 1, Jail No. 4, and Jail No. 8/9 for housing new inmates who are above 21 years of age, where they can be housed for initial period of 14 days.

Chair had inquired about the progress made in allocation of Police Quarters, Mandoli situated adjacent to Mandoli Jail for being converted into a “**Temporary Jail**” in terms of directions given in meeting dated 20.06.2020.

Principal Secretary (Home) as well as D.G.(Prisons) informed the Chair that they had made **concerted efforts** for getting allocation of 12 towers, each having 30 flats from the Govt. of NCT of Delhi. Principal Secretary (Home) informed the Committee that Govt. of NCT of Delhi vide Notification bearing No.9/70/2020/HG/2427-2441 dated 31.07.2020 has been pleased to declare Police quarters in the Police Housing Complex adjoining Mandoli Jail, Delhi as “**Temporary Jail**”, till further order, in view of COVID-19 pandemic.

D.G. (Prisons) informed that these flats shall be used by them for creating ‘**isolation facility**’ for new entrants. D.G. (Prisons) informed that this notification issued by Govt. of NCT of Delhi has resolved their problem of keeping the new entrants separately, for an initial period of 14 days, to a large extent.

It is made clear that fresh male inmates who are between 18 to 21 years of age and fresh women inmates shall continue to be kept in separate ‘**Isolation Wards**’ at Jail No.5 and 6 respectively at Tihar, in terms of the earlier resolution.

Chairperson made enquiries regarding procurement of “**Oxygen Concentration Machines**” in terms of the suggestion made in the last meeting. D.G. (Prisons) has informed that they have procured 04 “**Oxygen Concentration Machines**” out of which two have been installed in the Jail Hospital at Tihar and one each at Mandoli and Rohini Jail Complex. D.G. (Prisons) in terms of the resolution adopted in the last meeting, has also informed the Chair that they have started ‘**Rapid Antigen Test**’ facility at

Tihar Jail Hospital and Mandoli Jail Hospital where the inmates are being tested as per the ICMR guidelines. It is further informed that till date, 56 inmates have been tested inside the Jail premises at these two Hospitals. D.G. (Prisons) **assured** that they shall ensure to have sufficient availability and regular supply of essential medicines and equipments including oximeters and oxygen cylinders in the Jail Hospitals and shall continue to make use of '**Rapid Antigen Test**' facility at the jail hospitals for testing the inmates as per ICMR guidelines.

D.G. (Prisons) further informed the Chair about the measures being taken by the Jail Staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of '**social distancing**' is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitized using appropriate disinfectant. D.G. (Prisons) further informed that necessary precautions i.e. Do's and Don'ts are being told to the inmates through "**Public Address System**" installed in Jails.

D.G. (Prisons) has informed that regular medical checkup of Jail Staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding necessary steps being taken to practice, promote and demonstrate positive hygiene behaviour in Jails.

D.G. (Prisons) has submitted that besides the above, they have adopted a multi-pronged approach to tackle the threat of **COVID-19 (Novel Corona Virus)**, i.e. :

- a. **Discontinuation of all visit** of outside agencies, including NGOs.
- b. **Restriction of movements** of inmates outside the wards in Jails.

- c. **Sanitization and disinfection** of the lodgment areas of the inmates and residential complexes of staff, on **regular basis**.
- d. **All new inmates are pre-screened** at CPRO before lodging them in jail.
- e. **Procurement and distribution** of Personal Protective Equipment (PPE) Kit, Mask, Gloves, Alcohol-based hand rubs and Soaps.
- f. **Formation of Special Task Force (STF)** for Contact Tracing of suspected **COVID-19 (Novel Corona Virus)** cases in all Jails.
- g. **Psychological screening** of newly admitted inmates to properly manage their mental health issues.
- h. **Emphasis on Kitchen hygiene** and proper handling of vegetables and other essentials by personnel in kitchen/canteen.

D.G. (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- STEPS TAKEN TOWARDS SCREENING OF JAIL STAFF, PARA-MILITARY AND MEDICAL STAFF

Considering the possibility of **COVID-19 (Novel Corona Virus)** entering the jail premises through Jail Staff, para-military staff and medical staff, besides others and its outbreak amongst the inmates, deliberations were made by the Committee about the additional measures to be taken.

D.G. (Prisons) has informed the Chair that in terms of directions given by this Committee for conducting **“Rapid Test”** of **above referred jail staff** according to ICMR guidelines, they have started getting this test conducted of the jail staff, as per need.

On being asked by the Chair regarding implementation of resolutions adopted in the previous meeting, D.G. (Prisons) has informed that they are strictly abiding by those directions and have adopted multi- pronged

strategies to tackle the spread of **COVID-19 (Novel Corona Virus)** through Jail Staff and others, to inmates. He informed that besides the above mentioned precautions, they are also:

- a) **Conducting thermal screening and medical test** of the Jail Staff, para-military staff and medical staff before letting them enter the jail premises.
- b) **Minimizing the contact** of inmates with outsiders by restricting movement of inmates outside the jails, as well as restricting movement of outsiders into the jails.
- c) **Creating Medical Isolation Facility** for Jail Staff, security staff, Doctors and Technical Staff, showing symptoms of any disease.
- d) **Spreading Continuous awareness** and briefing the staff as well, on basic hygiene and do's and don'ts to prevent the spread of the disease.
- e) **Having Quarantine Facility** for Jail Staff, para-military, medical staff after their return from out station leave.
- f) A **specific checklist** has been designed by the medical staff for COVID -19 screening of all the entrants including Jail Staff, maintenance staff, security, medical staff and others entering the Jails for delivery of any essentials.
- g) **Wearing of the mask** has been made **mandatory** for all the Jail Staff, para-military staff, medical staff, maintenance staff and others entering the Jails for delivery of any essentials.
- h) Maintenance staff as well as Jail Staff have been **provided with Personal Protective Equipment (PPE) kit** and they have been directed to wear the same during their respective duties.
- i) All the staff has been cautioned to **maintain social distancing** while interacting with each other as well as with inmates.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed them to continue following the same. It is

resolved accordingly.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria adopted earlier in terms of the orders passed by the Division Bench of High Court of Delhi dated **23.03.2020** headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide **meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020** is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on **Personal Bond**, on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**.

The same was perused by the Committee which is as under:-

UTPs released on interim bail till 28.07.2020	2901
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779 /2020	310
Convicts released on Emergency Parole	1165
Convicts released on remission of sentence	63
TOTAL UTPs/ CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 28.07.2020	4439

INTERIM BAIL:

Members of the Committee taking into account all the relevant circumstances including the Office Order No.26/DHC/2020 dated 30.07.2020 of Hon'ble High Court regarding resumption of functioning of the Courts subordinate to Delhi High Court though through Video Conferencing have decided not to further relax the criteria for the purposes of recommending grant of interim bail to UTPs.

It is, however, clarified that all the UTPs falling in any of the criteria adopted by this Committee in its earlier meetings are at liberty till 31st

August, 2020 to move appropriate applications seeking interim bail for the period of 45 days either through **their private counsels** or through the **panel lawyers of Delhi State Legal Services Authority**. The applications for interim bail of such UTPs for being considered, should be accompanied with a **certificate of good conduct** during their respective custody period **from Jail Superintendent**.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to request District Judges to apprise all the Judicial Officers that in the event of Court **being satisfied** that such Under Trial Prisoners falling in criteria adopted in the earlier meetings, are to be released on bail, they may be released on **'Personal Bond'**, to the satisfaction of Jail Superintendent so as to implement the **social distancing policy** of the Government.

It is further clarified that the criteria adopted by this Committee for release of prisoners on **"Interim Bail"** in its meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

REMISSION:-

On inquiry by Chairperson, it is informed by D.G. (Prisons) that **'remission to the eligible convicts'** was granted by Hon'ble LG in terms of recommendations of High Powered Committee dated 28.03.2020 vide order No.F.9/63/2020 dated 07.04.2020. He further informed that as per the said Office Order, benefit, till date has been extended to **63 convicts** who have been released on remission of sentence.

D.G. (Prisons) further informed the Committee that Hon'ble LG vide order No.F.9/63/2020/HG/2184 dated 21.07.2020 has directed to extend the **benefit of remission to the convicts** who would become eligible for the

same upto **30th September, 2020**. D.G. (Prisons) informed that on the basis of this fresh order about **32 convicts** would become the beneficiaries and can be released.

Chairperson **appreciated** the efforts put in towards the implementation of resolution adopted in earlier meetings, by Govt. of NCT of Delhi, Jail Administration and DSLSA.

ITEM NO.4:- FEEDBACK REGARDING EXTENSION OF INTERIM BAIL GRANTED TO UTPs IN TERMS OF RESOLUTION ADOPTED IN THE MEETING DATED 20.06.2020

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that pursuant to the directions given to him in the meeting dated 20.06.2020, a **letter dated 21.06.2020** was written by him to the Ld. Registrar General, High Court of Delhi. He has further informed that vide that letter, recommendation made by this Committee, were conveyed to Ld. Registrar General stating that the '**interim bail**' granted to about **2651 UTPs**, on the basis of criteria adopted by High Powered Committee in its earlier resolution, **needs to be extended**, as the threat of spread of **COVID-19 (Novel Corona Virus)** still looms large and the facility of getting the rapid test conducted on the persons surrendering after expiry of interim bail before letting them inside the Jail, being still not available.

On the basis of said letter, **Hon'ble Special Bench in Writ Petition (Civil) Number 3080/2020**, titled "**Court on its own Motion Vs. Govt. of NCT of Delhi & Anr.**" vide its order dated **22.06.2020** had **extended** the '**interim bail**' so granted to the UTPs for a **further period of 45 days** from the date their earlier interim bail is expiring.

D.G (Prisons) has informed the Committee that the period of **extended interim bail** as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 20.06.2020 (which constitute **2901 UTPs**) is going to expire w.e.f. **07th August, 2020** onwards.

D.G. (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a

dangerous proposition, if these **2901 UTPs** who were granted "**interim bail**" for **45 days** are taken back after their surrender.

D.G. (Prisons) proposed that in view thereof the "**Interim Bail**" of these **2901 UTPs** needs to be extended. A letter dated **28.07.2020** written by D.G. (Prisons) to this effect is also brought to the notice of Committee.

Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that **Special Bench** so constituted by Hon'ble the Chief Justice, which had earlier extended the interim bail vide order dated **22.06.2020** has **listed** the said matter on **04.08.2020**.

The Committee deliberated and further considered that it may not be possible at this juncture to predict definite cutoff date for resumption of normal functioning of the Court system. In view of the fact that, there is no certainty when the threat of pandemic shall be over and requirement of "**social distancing**" no longer necessary, the Committee is of the opinion that the "**interim bail**" so granted to these **2901 UTPs** needs to be extended for a further period of **45 days** from the date their respective interim bail is expiring.

The Committee is of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and **recommends** accordingly. It is **clarified** that these **2901 UTPs** for whom recommendation is being made, are the ones who fall in any one of the criteria laid down by this Committee in its previous meetings, irrespective of the fact as to whether the application for interim bail on their behalf, was filed by **any private counsel** or by **panel lawyer of DSLSA**.

Member Secretary, DSLSA is directed to place these **recommendations** of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration **shall inform** such UTPs about extension of their "**interim bail**" for a further period of 45 days from the date, the earlier period of interim bail is expiring, telephonically. D.G. (Prisons) **assures** that jail administration shall do the needful and shall inform such UTPs about the exact date of their surrender.

ITEM NO.5:- FEEDBACK REGARDING EXTENSION OF "EMERGENCY PAROLE" GRANTED TO THE CONVICTS BY GOVT. OF NCT OF DELHI FOR A FURTHER PERIOD OF 8 WEEKS

It is reported by Shri B.S, Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi that in compliance of the resolutions adopted by this Committee in its earlier meetings regarding extension of **Emergency Parole** to eligible convicts, Govt. of NCT of Delhi has passed following orders:

- a. Vide Office Order No. F.18/191/2015-HG/2094-2100 dated 07.07.2020 regarding extension of **Emergency Parole** to the eligible convicts, *Hon'ble Minister (Home) Govt. of NCT of Delhi directed to extend the emergency parole for a further period of eight weeks* to all such convicts who were earlier released on emergency parole which is going to expire on or before 31.07.2020.
- b. Vide Office Order No. F.18/191/2015-HG/2366-2372 dated 30.07.2020 regarding extension of **Emergency Parole** to the eligible convicts, *Hon'ble Minister (Home) Govt. of NCT of Delhi directed to extend the emergency parole for a further period of eight weeks* to all such convicts who were earlier released on emergency parole which is going to expire on or before 31.08.2020.

The Committee is **satisfied** with this **outcome**.

ITEM NO.6:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED :

- (A) **REPRESENTATION DATED 22.05.2020 OF DEEPAK KHERWAL, INMATE LODGED IN JAIL NO.3, TIHAR SEEKING HIS RELEASE ON INTERIM BAIL AS PER RESOLUTION OF COMMITTEE DATED 18.05.2020**

Member Secretary, DSLSA brought to the notice of the Committee, a representation **though dated 22.05.2020 but received through post** only in the **second week of July, 2020**.

Members of the Committee perused the **representation** and have gone through the Minutes of Meeting dated **18.05.2020** relied upon by the applicant. It is apparent that the applicant Deepak Kherwal is an Under Trial Prisoner, lodged in Jail No.3, Tihar for **8 years** being accused in FIR No.8/2012 U/s 302/397 IPC, P.S. Swaroop Nagar.

It is pertinent to mention here that this Committee in its meeting dated **18.05.2020** had recommended release of, "Under trial prisoners (UTPs) facing trial for a case under **Section 302 IPC** and are **in jail for more than two years** with no involvement in **any other case**", for grant of interim bail for a period of 45 days. It is apparent that the applicant in the present FIR is facing trial for an additional offence U/s 397 IPC besides offence U/s 302 IPC. Members of the Committee while laying down the criteria on 18.05.2020 had intentionally omitted such like offences i.e. dacoity, robbery, kidnapping for ransome etc., The said class/category of cases and sections of IPC, therefore, were not mentioned in the minutes while laying down criteria in meeting dated 18.05.2020.

Thus, the case of present applicant is '**not covered**' under the criteria laid down by the High Powered Committee in its Meeting dated **18.05.2020**. Further, the applicant has made a prayer seeking his release on interim bail before this Committee which apparently is '**not maintainable**' as this Committee is not "**Court**" as prescribed under the Code of Criminal Procedure.

In view thereof, this Committee is of the opinion that the representation is **unmerited and the same is accordingly rejected**. However, the applicant is at liberty to file bail application before the concerned Court, which as and when filed, may be considered on merits, in accordance with law.

(B) REPRESENTATION DATED NIL OF FOREIGN INMATES LODGED IN JAIL NO.4, TIHAR SEEKING INCLUSION OF MATTERS UNDER NDPS ACT RELATING TO FOREIGN NATIONALS IN THE CRITERIA FOR GRANT OF INTERIM BAIL.

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated NIL** sent by Foreign inmates lodged in Jail No.4, Tihar seeking inclusion of matters under NDPS ACT relating to foreign Nationals in the criteria for being released on interim bail. Although, the said representation is neither dated nor signed, however, Members of the Committee still perused the same, for its disposal on merits.

For effective disposal of this representation, Members of the Committee have perused order dated 23.03.2020 passed by Hon'ble Supreme Court in Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19, vide which the High Powered Committee was constituted. The same reads as under:

*"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 under trial 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 or 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)

On bare perusal of the observations/directions given by the

Hon'ble Supreme Court vide its order dated **23.03.2020**, it is apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he/she falls and for whatever nature of offence he/she is facing trial, can seek or claim to be released from prison, as a matter of right and/or inclusion of his/her category in the recommendations so made.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail hereinabove, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to **exclude** certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, **NDPS**, PMLA, UAPA, Terror related Cases, Riot Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, **to be excluded** from consideration zone for being released on "**interim bail**". The Committee further on the basis of deliberations made had excluded the category of '**foreign Nationals**' from the consideration zone. The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category of offences in mind and not having prisoner-centric approach**.

The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited** and the same is accordingly **rejected**.

It is, however, made clear that this Committee for release of prisoners on "**interim Bail**" vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

In view thereof, the applicants are at liberty to file bail application before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

(C) REPRESENTATION DATED 02.07.2020 OF SHRI SARTHAK MAGOON, ADVOCATE REQUESTING TO PROVIDE COPIES OF MINUTES OF MEETING OF THE HIGH POWERED COMMITTEE TO PRISON INMATES AND CONVICTS IN 'HINDI' LANGUAGE

Member Secretary, DSLSA brought to the notice of the Committee **representation dated 02.07.2020 of Shri Sarthak Magoon, Advocate**.

Members of the Committee have perused the representation. Kanwal Jeet Arora, Member Secretary apprised the Committee that jail inmates were being informed in **Hindi** about the criteria laid down by this Committee from time to time through PLVs and Jail Visiting Panel lawyers. D.G. (Prisons) was also requested to direct Jail Superintendents to provide a copy of Hindi translation of the criteria as and when demanded by any jail inmate.

Members of the Committee finding merits in the representation made by Sh. Sarthak Magoon, Advocate have resolved that '**Hindi**'

Translation of all Minutes of Meeting of this Committee including the minutes of today's meeting be uploaded on the website of DSLSA.

The representation is **disposed off** accordingly.

(D) APPLICATION DATED 10.07.2020 FILED BY THE APPLICANT DEEPAK KUMAR @ BHUPINDER KUMAR @ DEEPU YADAV, S/O AYODHYA PRASAD YADAV FOR GRANT OF PAROLE

Member Secretary, DSLSA brought to the notice of the Committee **application dated 10.07.2020** filed by the applicant Deepak Kumar @ Bhupinder Kumar @ Deepu Yadav through Rajbir (Maternal Uncle/Mausa & Pairokar).

Members of the Committee have perused the application whereby the applicant, who is a convict in **FIR No.59/2009**, under Section **363/376/302/201 IPC**, P.S. Khayla, seeks parole for a period of 60 days. In the application, it is stated that the applicant is undergoing his sentence of life imprisonment and has completed 10 years of incarceration with clean antecedents.

On inquiry made by the Chair for disposal of this representation, D.G. (Prisons) informed the Committee that Hon'ble High Court while dismissing Criminal Appeal No.**1200/2012** filed by the present applicant had directed that the applicant shall not be considered for any remission till he undergoes actual incarceration of 25 years. In view of the orders passed by Hon'ble High Court, the applicant is not entitled for being considered for '**Emergency Parole**'.

D.G. (Prisons) has further informed that applicant has already applied for regular parole before Govt. of NCT of Delhi for disposal of which report has been sought from them.

Consequently, the present application is **dismissed/disposed of** with directions to D.G. (Prisons) to submit the report sought by Govt. of NCT of Delhi with them **within three days** and the application for regular parole may be considered by Govt. of NCT of Delhi thereafter **at the earliest**.

(E) **REPRESENTATION DATED 11.07.2020 OF SHRI RAKESH KUMAR SHARMA, ADVOCATE SEEKING INCLUSION OF SECTION 467 IPC IN THE CRITERIA FOR RELEASE OF INTERIM BAIL**

Member Secretary, DSLSA brought to the notice of the Committee **representation** dated 11.07.2020 of **Shri Rakesh Kumar Sharma, Advocate** sent through email vide which the applicant seeks inclusion of another category of offence in the criteria to be adopted by this Committee.

Members of the Committee have perused the present representation and for disposal of the same have gone through the observations/directions given by the Hon'ble Supreme Court vide its order dated **23.03.2020**.

From bare perusal of the observations made by Hon'ble Supreme Court, it is apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class**, he/she falls and whatever nature of offence he/she is facing trial, can seek or claim to be released from prison **as a matter of right**.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail herein above, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The

committee had also considered to exclude certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, **NDPS**, PMLA, UAPA, Terror related Cases, Riot Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, to be excluded from consideration zone for being released on "**interim bail**". The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/ category** of offences in mind and not having a particular *prisoner-centric approach*. The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited and the same is accordingly rejected**.

It is however made clear that this Committee for release of prisoners on "**Interim Bail**" vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020, shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

In view thereof, the applicant is at liberty to file bail application for his clients before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

(F) REPRESENTATION DATED 29.07.2020 OF SHRI HARSHIT VASHISHT, ADVOCATE SEEKING CLARIFICATION OF DIRECTIONS ISSUED EARLIER VIDE RESOLUTIONS ADOPTED IN MEETING DATED 18.05.2020.

Member Secretary, DSLSA brought to the notice of the Committee a **representation of Shri Harshit Vashisht, Advocate** dated 29.07.2020 vide which the applicant seeks clarification of directions issued

earlier vide resolutions adopted in meeting dated 18.05.2020.

Members of the Committee have gone through the criteria adopted while recommending grant of interim bail in the meeting dated 18.05.2020. It is apparent on bare perusal of the said criteria so laid down that recommendations were made only for those UTPs facing trial for a case U/s 302 IPC and who are in jail for more than two years with **“No involvement in any other case”**.

Hon’ble Supreme Court in *Suo Motu Petition (Civil) No. 1/2020 – In Re: Contagion of COVID-19*, vide which the High Powered Committee was constituted had observed as under:

*“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 under trial 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 or 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)

On bare perusal of the observations/directions given by the Hon’ble Supreme Court vide its order dated **23.03.2020**, it is apparent that the High Powered Committee so constituted was given **an absolute discretion**

to determine which class/category of the prisoners can be released on interim bail or parole depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he/she falls and for whatever nature of offence he/she is facing trial, can seek or claim to be released from prison, as a matter of right and/or inclusion of his/her category in the recommendations so made.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail hereinabove, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the categories/class of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to **exclude** certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, **NDPS**, PMLA, UAPA, Terror related Cases, Riot Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, **to be excluded** from consideration zone for being released on "**interim bail**". The Committee further on the basis of deliberations made had excluded the category of 'foreign Nationals' from the consideration zone. The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having *prisoner-centric approach*. The object was only to release some of the prisoners and not all the prisoners on a reasonable

classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

The Committee as stated earlier, was not formed to look into merits or demerits of an individual case for being released on interim bail, rather it was formed to lay down a criteria taking into consideration a particular **class/category** and not any particular prisoner or inmate. It is further clarified that the criteria adopted by this Committee were for only making the recommendation for grant of interim bail. The ultimate discretion to grant or reject the application for bail lies with the '**Court**'.

In the present case, it is apparent from the representation that the applicant is facing trial not only for offence U/s 302 IPC but also for additional offences U/s 307 IPC and U/s 27 of Arms Act in FIR No.181/2018, P.S. Mehrauli.

Involvement of the applicant in other cases as well as their severity is to be seen and considered by the Court dealing with the bail application as going into the **merits/demerits** and facts of each case is beyond the **scope and purview** of this Committee.

It is also made clear that the criteria adopted by this Committee for recommending the release of prisoners on "**Interim Bail**" in its meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020 and 20.06.2020, in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

In view thereof, the present representation is **disposed of**. Applicant is at liberty to file bail application before the concerned Court, which as and when filed, may be considered on merits, in accordance with law.

(G) **REPRESENTATION DATED 29.07.2020 OF SHRI DHANANJAI, ADVOCATE SEEKING CLARIFICATION OF DIRECTIONS ISSUED EARLIER VIDE RESOLUTIONS ADOPTED IN MEETING DATED 07.04.2020.**

Member Secretary, DSLSA brought to the notice of the Committee a **representation** of **Shri Dhananjai, Advocate** dated 29.07.2020 vide which the applicant seeks clarification of directions issued earlier vide resolutions adopted in meeting dated 07.04.2020.

Members of the Committee have perused the said representation and have also gone through the criteria laid down in the meeting dated 07.04.2020 regarding

“Under trial prisoners (UTPs)/Remand Prisoners (with respect to whom, charge sheets are yet to be filed), who are in custody for 15 days or more, facing trial in a case which prescribes a maximum sentence of 7 years or less.....

In this regard, it is **clarified** that all the criteria including the one adopted in the meeting dated 07.04.2020 mentioned hereinabove still **holds valid** and any jail inmate falling in any one of the criteria so adopted, is eligible to move application seeking interim bail either through his **private counsel** or **panel lawyer of DSLSA**. The representation is **disposed of** accordingly.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to inform the applicants who made the above representations with respect to the *outcome thereof*.

It is **resolved** accordingly.

ITEM NO.7:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR :

(A) MEETING OF SENTENCE REVIEW BOARD;

Chair enquired from D.G. (Prisons) and Principal Secretary (Home) regarding meeting of **“Sentence Review Board”** in terms of directions given in the last meeting dated 20.06.2020.

Principal Secretary (Home) Govt. of NCT of Delhi apprised the

Chair that meeting of “**Sentence Review Board**” which was earlier scheduled for **16.06.2020** could not take place as Hon’ble Minister who had to chair the meeting was hospitalized.

Principal Secretary (Home) Govt. of NCT of Delhi further apprised that Hon’ble Minister after recuperating had scheduled this meeting for 03.08.2020. However, owing to the festival of Raksha Bandhan on 03.08.2020, the said meeting of “**Sentence Review Board**” has now been rescheduled for **05.08.2020**.

Chair directed D.G. (Prisons) as well as Principal Secretary (Home), Govt. of NCT of Delhi to do the needful in this regard so that the cases of eligible convicts can be considered in the forthcoming meeting and if approved they can be released, so as to decongest the jail.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with *Vote of Thanks* to the Chair.

Sandeep Goel
D.G (Prisons)

B.S.Bhalla,
Principal Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLISA

Hon’ble Ms. Justice Hima Kohli
Executive Chairperson DSLISA

\$~FB-1.

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3037/2020

COURT ON ITS OWN MOTION Petitioner

Through: Court on its own motion

Versus

STATE & ORS Respondents

Through: Mr. Rahul Mehra, Standing Counsel
with Mr. Chaitanya Gosain, Adv. for the State

IN RE:

Extension of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

% **24.08.2020**

Proceedings of the matter have been conducted through video conferencing.

1. While taking suo motu cognizance of the extraordinary circumstances arising on account of COVID-19 pandemic, on 25.03.2020, this Court has passed certain directions. The relevant part of the order reads as under:-

“In view of the outbreak of COVID-19, the functioning of this Court is restricted only to urgent matters vide Notification No.51/RG/DHC/dated 13.03.2020.

Such restricted functioning has been in place from 16.03.2020 and has been extended till 04.04.2020.

On 24.03.2020, the Government of India has issued order No.40-3/2020-DM-1(A) whereunder strong measures have been enforced to prevent the spread of COVID-19 and a nationwide lockdown has been declared for a period of 21 days w.e.f.

25.03.2020.

In view of the lockdown in the State of Delhi and the extremely limited functioning of courts, routine matters have been adjourned en bloc to particular dates in the month of April. Thus advocates and litigants have not been in a position to appear in the said matters, including those where stay/bails/paroles have been granted by this Court or the courts subordinate to this Court, on or before 16.03.2020. As a result, interim orders operating in favour of parties have expired or will expire on or after 16.03.2020.

Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 16.03.2020 and expired or will expire thereafter, the same shall stand automatically extended till 15.05.2020 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

2. Taking note of the extraordinary circumstances prevailing at that point of time and taking note of the directions of Hon'ble Administrative and General Supervision Committee of this Court issued from time to time regarding functioning of Delhi High Court and Courts subordinate to Delhi High Court, the directions contained in our order dated 25th March, 2020 were further extended vide our orders dated 15th May, 2020, 15th June, 2020, and 13th July, 2020 and the latest extension is effective till 31st August, 2020

3. Now taking note of the prevalent Covid-19 pandemic situation in Delhi, Hon'ble Administrative and General Supervision Committee of this Court has been pleased to order that the regular functioning of this Court as well Courts subordinate to this Court shall continue to remain suspended till 31st August, 2020.
4. In view of the above, we hereby further extend the implementation of the directions contained in our orders dated 25th March, 2020, 15th May, 2020, 15th June, 2020 and 13th July, 2020, till 31st October, 2020 with the same terms and conditions.
5. This order be uploaded on the website of this Court and be conveyed to all the Standing Counsel, UOI, GNCTD, DDA, Civic Authorities, Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all District Courts subordinate to this Court.
6. List this matter on 20th October, 2020 for further directions.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

AUGUST 24, 2020/ 'anb'

Minutes of Meeting dated 30th August, 2020 at 12:00 Noon through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers /Members of High Powered Committee through Video Conferencing:

1. Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi
..... **Member**
2. Shri Sandeep Goel, Director General (Prisons), Delhi
..... **Member**
3. Shri Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No.1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS AND JAIL STAFF

At the outset, **Sh. Sandeep Goel, D.G. (Prisons)** informed the Committee that last week has seen **substantial rise** of **COVID - 19 (Novel Corona Virus)** positive cases, in the country in general and Delhi in particular. He informed the Chair that concerted efforts of officers and officials of Jail Administration by following and complying with the **guidelines, instructions and resolutions** passed by this Committee in its earlier meetings, however have brought down the active cases of **COVID - 19 (Novel Corona Virus)** inside the jail premises.

D.G. (Prisons) informed the committee that as on **28.08.2020**, cumulative figure of **COVID -19** Positive cases in jail is as under:

<i>Prison Inmates</i>	:	65 (61 recovered, 02 expired, 02 Active cases)
<i>Prison Staff</i>	:	175 (168 recovered, 07 active cases)

On being asked, D.G. (Prisons) has informed that both the jail inmates who are **COVID-19** positive, are '**asymptomatic**'. He informed that one of them is separately quarantined in jail premises itself, whereas the other is recuperating in G.T.B. Hospital.

D.G. (Prisons) informed the Committee that in terms of the resolution adopted vide meeting dated **20.06.2020**, Jail Administration is taking extra precautions with respect to inmates who are more than 55 years of age, so that they are not '**immuno-compromised**'. D.G. (Prisons) has further assured the Committee that they shall continue doing the needful.

The Members of the Committee deliberated upon the possible steps which can further be taken to prevent the spread of **COVID-19 (Novel Corona Virus)** in jail premises. It is considered that **COVID-19 (Novel Corona Virus)** can enter the jail premises only through:

- (a) New entrants
- (b) Jail Staff, Paramilitary Staff, Medical Staff
- (c) other persons entering the Jail premises for delivery of ration and other essential items.

Precautionary Measures for Jail Staff etc.

D.G. (Prisons) had informed that in view of resolutions passed by this Committee in the last meeting, they are **carrying out 'Rapid Tests'** of jail staff, para military staff and others, as per ICMR guidelines. He further informed that '**thermal screening**' of the jail staff is also being conducted before letting them enter the jail premises. He informed that jail staff are cautioned to wear **Personal Protective Equipment Kit, Mask** and to **maintain social distance**, while interacting with each other as well as with inmates. Chair has suggested D.G. (Prisons) that staff should use two layer protection. Apart from using Mask, they should also start using visor. D.G. (Prisons) has assured the Chair to comply with this suggestion.

He informed that till date **175 Jail Staff** were found **COVID-19** Positive, out of which **168** have already recovered. He apprised the Chair that at present there are only **07** active cases of jail staff who are home quarantined.

DG (Prisons) further informed that as and when any jail staff is tested **COVID-19 Positive**, he/she is relieved from their respective duties and is asked to remain home quarantined. D.G.(Prisons) further informed that contact tracing is being done in such cases and all those who had come in contact with these Jail Staff, are being medically screened and tested. DG (Prisons) further informed that they have minimized the contact of jail staff, para military staff and others with the inmates, so as to prevent spread of **COVID-19** inside the jail premises.

Precautionary Measures qua New Entrants

Members of the Committee after deliberations reiterated that in terms of the resolution adopted in the earlier meeting, **new entrants** should be kept in "**Isolation Cells**" so as to prevent their **intermingling** with other inmates who are already inside the jail.

In the earlier meetings of this Committee, it was resolved to create "**Isolation Cells**" in Jail No.1, Jail No.2, Jail No.4, Jail No.7, and Jail No.8/9 at Tihar and Jail No.15 at Mandoli which had **248** individual cells (with attached toilets) for the new male entrants who are above 21 years of age and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age. Whereas separate "**Isolation Cells**" were resolved to be created in Jail No.6 at Tihar for fresh women inmates.

Considering the fact that "**Isolation Cells**" so carved out became fully occupied, therefore, it was resolved in the earlier meeting that requisition be made to Govt. of NCT of Delhi for allocation of Police Quarters, Mandoli situated adjacent to Mandoli Jail. For converting the said flats into a "**Temporary Jail**", so that the same can be put to use for creation "**Isolation Cells**" to keep the **new entrants** who are above 21 years of age, for initial period of 14 days.

Temporary Jail

Principal Secretary (Home) as well as D.G. (Prisons) informed the Chair that they had made **concerted efforts** for getting allocation of **12 towers**, each having **30 flats** from the Govt. of NCT of Delhi. Principal Secretary

(Home) informed the Committee that Govt. of NCT of Delhi vide Notification bearing **No.9/70/2020/HG/2427-2441 dated 31.07.2020** has been pleased to declare Police quarters in the Police Housing Complex adjoining Mandoli Jail, Delhi as **"Temporary Jail"**, till further order, in view of **COVID-19** pandemic.

Chair has been apprised that Police Housing Complex, Mandoli consists of **12 Towers**, each having **30 flats**. DG (Prisons) has informed that right now Two Towers i.e. **D-Block** and **E-Block** have already been put to use as **"Temporary Jail"** whereas in rest of the Towers certain civil work is going on so that the same can be used as **"Temporary Jail"**. D.G. (Prisons) has further informed that as on 28.08.2020, they have housed **70 inmates** in these two towers of **"Temporary Jail"** and once all the Towers are made fully functional this **"Temporary Jail"** can house about **2000 inmates**. DG (Prisons) informed the Chair that this **"Temporary Jail"** shall be used for housing **new entrants** including those who shall surrender after expiry of the period of their interim bail/parole, for a period of 14 days, so that they should not come in contact with other inmates who are already in jail.

DG (Prisons) further informed the Committee that Delhi Police has provided **75 police personnel** and **one Armed Company** of Tripura Reserve Police for security of this **"Temporary Jail"**.

The Committee after getting this information from D.G. (Prisons) is of the view that the problem of creation of **"Isolation Cells"** for the **new entrants** in jails would be solved to a considerable extent.

It is made clear that fresh male inmates who are between 18 to 21 years of age and fresh women inmates shall continue to be kept in separate **"Isolation Cells"** at Jail No.5 and 6 respectively at Tihar, in terms of the earlier resolution.

Jail Hospital

Chairperson made enquiries regarding usage of **"Oxygen Concentration Machines"** in Jail Hospital as well as regarding **"Rapid Antigen Test Facility"** for the inmates. D.G. (Prisons) has informed that they had procured **04 "Oxygen Concentration Machines"** whereafter Delhi Health Department had supplied them **15 "Oxygen Concentration Machines"**. Thus,

sufficient number of **“Oxygen Concentration Machines”** are available in the Jail Hospital at Tihar, Mandoli and Rohini Jail Complex. D.G. (Prisons) had informed that inmates are being tested as per the ICMR guidelines with **‘Rapid Antigen Test’**. D.G. (Prisons) has further informed that they have **sufficient availability** and regular supply of **essential medicines** and **equipments** including **oximeters** and **oxygen cylinders** in the Jail Hospitals.

Other Precautionary Measures

D.G. (Prisons) further informed the Chair about the measures being taken by the Jail Staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of **‘social distancing’** is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitized using appropriate disinfectant. D.G. (Prisons) further informed that necessary precautions i.e. Do’s and Don’ts are being told to the inmates through **“Public Address System”** installed in Jails.

D.G. (Prisons) has informed that regular medical checkup of Jail Staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding necessary steps being taken to practice, promote and demonstrate positive hygiene behaviour in Jails.

D.G. (Prisons) has submitted that besides the above, they have adopted a multi-pronged approach to tackle the threat of **COVID-19 (Novel Corona Virus)**, i.e. :

- a. **Discontinuation of all visit** of outside agencies, including NGOs.
- b. **Restriction of movements** of inmates outside the wards in Jails.
- c. **Sanitization and disinfection** of the lodgment areas of the inmates and residential complexes of staff, on **regular basis**.

- d. **All new inmates are pre-screened** at CPRO before lodging them in jail.
- e. **Procurement and distribution** of Personal Protective Equipment (PPE) Kit, Mask, Gloves, Alcohol-based hand rubs and Soaps.
- f. **Formation of Special Task Force (STF)** for Contact Tracing of suspected **COVID-19 (Novel Corona Virus)** cases in all Jails.
- g. **Psychological screening** of newly admitted inmates to properly manage their mental health issues.
- h. **Emphasis on Kitchen hygiene** and proper handling of vegetables and other essentials by personnel in kitchen/canteen.

D.G. (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEM NO.2:- STEPS TAKEN TOWARDS SCREENING OF JAIL STAFF, PARA-MILITARY AND MEDICAL STAFF

Considering the possibility of **COVID-19 (Novel Corona Virus)** entering the jail premises through Jail Staff, para-military staff and medical staff, besides others and its outbreak amongst the inmates, deliberations were made by the Committee about the additional measures to be taken.

On being asked by the Chair regarding implementation of resolutions adopted in the previous meeting, D.G. (Prisons) has informed that all the officers and officials of Jail Administration are strictly abiding by those directions and have adopted multi-pronged strategies to tackle the spread of **COVID-19 (Novel Corona Virus)** through Jail Staff and others, to inmates.

D.G. (Prisons) has further informed the Chair that in terms of directions given by this Committee for conducting **“Rapid Test”** of **above referred jail staff** according to ICMR guidelines, they have started getting this test conducted of the jail staff, as per need.

D.G. (Prisons) has further informed that **wearing of Mask** by the jail staff has been made **mandatory** and they have been cautioned to **maintain social distancing** while interacting with the inmates.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed them to continue following the same. It is **resolved** accordingly.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria adopted earlier in terms of the orders passed by the Division Bench of High Court of Delhi dated **23.03.2020** headed by Hon'ble Chairperson as well as on the basis of criteria adopted by High Powered Committee vide **meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020 and 31.07.2020** is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on **Personal Bond**, on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**.

The same was perused by the Committee which is as under:-

UTPs released on interim bail till 28.08.2020	2942
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779/2020	310
Convicts released on Emergency Parole	1170
Convicts released on remission of sentence	85
TOTAL UTPs/ CONVICTS RELEASED ON INTERIM BAIL/ PAROLE/ REMISSION OF SENTENCE TILL 28.08.2020	4507

INTERIM BAIL:

Members of the Committee taking into account all the relevant circumstances including the Office Order **No.418/RG/DHC/2020 dated 27.08.2020** of Hon'ble High Court regarding resumption of partial functioning of Courts subordinate to Delhi High Court physically and functioning of

remaining courts though Video Conferencing have decided **not to further relax** the criteria for the purposes of recommending grant of interim bail to UTPs.

It is, however, clarified that all the UTPs falling in any of the criteria adopted by this Committee in its earlier meetings are at liberty till **30th September, 2020** to move appropriate applications seeking interim bail for the period of 45 days either through **their private counsels** or through the **panel lawyers of Delhi State Legal Services Authority**. The applications for interim bail of such UTPs for being considered, should be accompanied with a **certificate of good conduct** during their respective custody period **from Jail Superintendent**.

Chairperson of the Committee has directed Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA) to request District Judges to apprise all the Judicial Officers that in the event of Court **being satisfied** that such Under Trial Prisoners falling in criteria adopted in the earlier meetings, are to be released on bail, they may be released on **'Personal Bond'**, to the satisfaction of Jail Superintendent so as to implement the **social distancing policy** of the Government.

It is further clarified that the criteria adopted by this Committee for release of prisoners on **"Interim Bail"** in its meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020 and 31.07.2020 shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

REMISSION:

On inquiry by Chairperson, it is informed by D.G. (Prisons) that **'remission to the eligible convicts'** was granted by Hon'ble Lieutenant Governor of Delhi in terms of recommendations of High Powered Committee dated **28.03.2020** vide **order No.F.9/63/2020 dated 07.04.2020**. He further informed that as per the said Office Order, benefit was initially extended to **72 convicts**, who were released on remission of sentence.

D.G. (Prisons) further informed the Committee that Hon'ble LG vide order No.F.9/63/2020/HG/2184 dated 21.07.2020 has directed to extend the **benefit of remission to the convicts** who would become eligible for the same upto **30th September, 2020**. It is brought to the notice of the Committee that on the basis of fresh Office Order till date **13 convicts** have been released on remission on sentence. Thus, till date benefit of **remission** has been extended to **85 convicts**.

D.G. (Prisons) informed that on the basis of this fresh order about **20 more convicts** would become the beneficiaries by **30th September, 2020** and can be released.

Chairperson **appreciated** the efforts put in towards the implementation of resolution adopted in earlier meetings, by Govt. of NCT of Delhi, Jail Administration and DSLSA.

ITEM NO.4:- FEEDBACK REGARDING EXTENSION OF INTERIM BAIL GRANTED TO UTPs IN TERMS OF RESOLUTION ADOPTED IN THE MEETING DATED 31.07.2020

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that a **letter dated 01.08.2020** was written by him to the Ld.Registrar General, High Court of Delhi in terms of directions given in the meeting dated **31.07.2020**.

On the basis of said letter, **Hon'ble Special Bench in Writ Petition (Civil) Number 3080/2020**, titled "**Court on its own Motion Vs. Govt. of NCT of Delhi & Anr.**" vide its order dated **04.08.2020** had **extended** the '**interim bail**' so granted to the **2901 UTPs** for a **further period of 45 days** from the date their earlier interim bail is expiring.

D.G (Prisons) has informed the Committee that the period of **extended interim bail** as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 31.07.2020 (which constitute **2942 UTPs**) is going to expire w.e.f. **21st September, 2020** onwards.

D.G. (Prisons) informed the Committee that situation of pandemic is still the same, as it was, when this High Powered Committee was constituted on directions of Hon'ble Supreme Court of India, therefore, it would be a **dangerous proposition**, if these **2942 UTPs** who were granted "**interim bail**" for **45 days** are

taken back after their surrender.

D.G. (Prisons) proposed that in view thereof the "**Interim Bail**" of these **2942 UTPs** needs to be extended. A letter dated 28.08.2020 written by D.G. (Prisons) to this effect is also brought to the notice of Committee.

Kanwal Jeet Arora, Member Secretary, DSLSA further apprised the Committee that **Special Bench** so constituted by Hon'ble the Chief Justice, which had earlier extended the interim bail vide order dated **04.08.2020** has **listed** the said matter on **14.09.2020**.

The Committee deliberated upon the request so made and also considered the partial resumption of physical hearing in Courts subordinate to Delhi High Court. The Committee has also taken into consideration sudden spurt of fresh **COVID-19** positive cases in Delhi in past six days which are as under:

Data of COVID -19 in Delhi		
S.No.	Date	No. of Fresh Positive Cases
1.	22.08.2020	1412
2.	23.08.2020	1450
3.	24.08.2020	1061
4.	25.08.2020	1544
5.	26.08.2020	1693
6.	27.08.2020	1840

In view of the current situation, Committee is of the opinion that there is no certainty when the threat of pandemic shall be over and requirement of "**social distancing**" no longer necessary. At present, it is also not clear as to when normal functioning of the Courts shall resume. Thus, the Committee is of the opinion that the "interim bail" so granted to these **2942 UTPs** needs to be extended for a further period of **45 days** from the date their respective interim bail is expiring.

The Committee is of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and **recommends** accordingly. It is **clarified** that these **2942 UTPs** for whom recommendation is being made, are the ones who fall in any one of the criteria laid down by this Committee in its previous meetings, irrespective of the fact as to whether the

application for interim bail on their behalf, was filed by **any private counsel** or by **panel lawyer of DSLSA**.

Member Secretary, DSLSA is directed to place these **recommendations** of the Committee by forwarding a copy of these minutes to Ld. Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration **shall inform** such UTPs about extension of their "**interim bail**" for a further period of 45 days from the date, the earlier period of interim bail is expiring, telephonically. D.G. (Prisons) **assures** that jail administration shall do the needful and shall inform such UTPs about the exact date of their surrender.

ITEM NO.5:- FEEDBACK REGARDING EXTENSION OF "EMERGENCY PAROLE" GRANTED TO THE CONVICTS BY GOVT. OF NCT OF DELHI FOR A FURTHER PERIOD OF 8 WEEKS

D.G. (Prisons) has informed that on the basis of recommendation made by this Committee, Govt. of NCT of Delhi "**Emergency Parole**" had granted to the convicts for a period of 8 weeks, which was subsequently extended from time to time by orders of Department of Home, Govt. of NCT of Delhi. He further informed that on the basis of orders so passed, **1168 convicts** were released on "**Emergency Parole**" and their period of "**Emergency Parole**" is going to expire on or before 30.09.2020.

In compliance of the resolutions adopted by this Committee in its earlier meetings and also considering the present situation of pandemic in Delhi, D.G. (Prisons) was directed to send a requisite requisition to Govt. of NCT of Delhi for extension of "**Emergency Parole**" already granted to the convicts, who were released on "**Emergency Parole**" and whose period is going to expire **on or before 30th September, 2020**. D.G. (Prisons) was directed to seek extension of "**Emergency Parole**" so granted to the convicts for a further period of **4 weeks**.

DG (Prisons) has submitted that to prevent the spread of disease and maintain social distancing in Delhi Prisons, he on the basis of directions given by this Committee has sent a letter bearing **No.10(003598848/CJ/Legal/PHQ/2020/43027** dated **24.08.2020** to the Special Secretary (Home), Govt. of NCT

of Delhi seeking **extension of "Emergency Parole"** so granted to the convicts for a further period of **4 weeks**.

Shri B.S, Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi brought to the notice of the Committee orders bearing **F.No.18/191/2015-HG/2673-79 dated 26.08.2020** whereby on the basis of letter of DG (Prisons) and the recommendations made by this Committee, **"Emergency Parole"** of all the convicts whose period of **"Emergency Parole"** is going to expire **on or before 30th September, 2020** is **extended** for a further period of **4 weeks**.

The Committee is **satisfied** with this **outcome**.

ITEM NO.6:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED :

- (A) REPRESENTATION DATED 17.08.2020 OF DR. UMA CHAKRAVARTI, & ORS. FOR TREATING ALL WOMEN, CHILDREN AND TRANSPERSONS AS A CLASS FOR BEING RELEASED ON INTERIM BAIL IRRESPECTIVE OF THE OFFENCE FOR WHICH THEY ARE ACCUSED OF**

Member Secretary, DSLSA brought to the notice of the Committee, a representation **dated 17.08.2020 of Dr. Uma Chakravarti & Ors.**

Members of the Committee perused the **representation** and have gone through the same as well as the prayer made to this Committee. It is suggested by the applicants that all women and transperson owing to their social status, resources and access should be considered as a class for being released on **interim bail**. Besides this, prayers were made to the effect that fresh admission of women and transperson in prison be not allowed during the pandemic.

For effective disposal of this representation, Members of the Committee have perused order dated **23.03.2020** passed by Hon'ble Supreme Court in **Suo Motu Petition (Civil) No. 1/2020 - In Re: Contagion of COVID-19**, vide which the High Powered Committee was constituted. The same reads as under:

"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 or 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)

On bare perusal of the observations/directions given by the Hon'ble Supreme Court vide its order dated **23.03.2020**, it is apparent that the High Powered Committee so constituted was given **an absolute discretion to determine which class/category of the prisoners can be released on interim bail or parole** depending not only upon the severity of the offence, but also the **nature of offence** or any other **relevant factor**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he/she falls and for whatever nature of offence he/she is facing trial, can seek or claim to be released from prison, as a matter of **right** and/or **inclusion of** his/her/their category in the recommendations so made.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail hereinabove, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the **categories/class** of prisoners

depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to **exclude** certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, NDPS, PMLA, UAPA, Terror related Cases, Riot Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, **to be excluded** from consideration zone for being released on "**interim bail**". The Committee further on the basis of deliberations made had excluded the category of '**foreign Nationals**' from the consideration zone. The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having *prisoner-centric approach*.

Further, this Committee while adopting various criterias in its earlier meetings had taken into consideration women as separate class and accordingly relaxed some of the condition with respect to them vis a vis the male prisoners.

The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited** and the same is accordingly **rejected**.

It is, however, made clear that this Committee for release of prisoners on "**interim Bail**" vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020 and 31.07.2020, shall in **no way** affect the rights of other UTPs, **who do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

The applicants are at liberty to file bail application for such UTP before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.

(B) REPRESENTATION DATED 17.08.2020 OF MR.SARTHAK MAGOON, ADVOCATE RECEIVED VIA EMAIL ON 26.08.2020 WHEREBY APPLICANT HAS REQUESTED FOR STARTING E-MULAKAT OF INMATES WITH THEIR COUNSELS AND THEIR FAMILIES THROUGH ALL POSSIBLE MODES.

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 17.08.2020 received via email dated 26.08.2020 of Mr. Sarthak Magoon**, Advocate. The applicant has requested this Committee to direct the Jail Authorities for **e-mulakat** of inmates with their counsels and their families through all possible modes.

Members of the Committee have perused the **representation** filed by the applicant. During pre-pandemic period, inmates used to have physical meeting with their advocates and families. Owing to the pandemic of **COVID-19** and in order to prevent its spread inside the jail premises, physical meetings were stopped.

However, during earlier meetings of this Committee, D.G. (Prisons) was directed to explore the possibilities of having **E-Mulakat** of the inmates with their advocates and family.

D.G. (Prisons) has informed that Video Conferencing Facility is available in all the three Jail Complexes and meeting of inmate through video conferencing with **panel lawyers of Delhi High Court Legal Services Committee** was started on **22.06.2020** and with **private lawyers** with effect from **06.07.2020**.

This **legal mulakat** through video conferencing can be availed by an inmate **twice a week** each spanning **30 minutes duration**.

E-Mulakat of the inmate with their family through **Jitsi online VC link** has been also started from Jail Nos.1, 2, 4, 5, 6, 7, 8/9, 11 and 14.

Finding **merits** in the representation of the applicant, D.G. (Prisons) is directed **to extend** this facility in the remaining jails at the earliest so that the inmate can interact with their family members.

Considering the fact that **mobile phones/smart phones** are **prohibited** inside the jail premises, therefore, the suggestion of the applicant for **E-Mulakat** of inmates with their families through video call **cannot be acceded to**.

Chair however, taking note of **onset of Unlock-4 w.e.f.01.09.2020**, deliberated on the aspect of **resumption of physical Mulakat** of inmate with their respective families. Considering the fact that life is on track of returning to normalcy, deliberations were made for exploring this possibility in a **phased/graded manner**.

Chair directed D.G. (Prisons) to take all the necessary precautions before **resumption of physical mulakat**. D.G. (Prisons) has been directed to prepare **Standard Operating Procedure (SOP)** in this regard. It is further decided that the mulakat area should have **touch free microphones** with **glass shields**. D.G. (Prisons) has assured that they shall fix a definite number of mulakats per day, so that all norms of social distancing can be adhered to. He further assured the Committee that the mulakat area would not be **over crowded** and shall be **sanitized, after every hour**. D.G. (Prisons) assured the Committee that all necessary aspects to prevent transmission/spread of virus from the visitors to inmates/jail staff shall not only be mentioned in **SOP** but shall also be adhered to, before **resuming physical mulakat**, which he assured to start soon.

In view of the above, the representation of the applicant is **disposed of** accordingly as no further directions are called for.

(C) **REPRESENTATION DATED 17.08.2020 OF MR.SARTHAK MAGOON, ADVOCATE RECEIVED VIA EMAIL ON 27.08.2020 SETTING UP OF NORMS/ INFRASTRUCTURE FOR PRESENTING OF SURETY THROUGH VIDEO CONFERENCING TO AVOID TRAVEL TO THE COURTS.**

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 17.08.2020 received via email dated 27.08.2020 of Mr. Sarthak Magoon, Advocate**. The applicant has requested for setting up of norms/infrastructure for presenting of surety through video conferencing to avoid travel to the Courts.

Members of the Committee have perused the **representation**. The present Committee was constituted by Hon'ble Supreme Court for decongestion of jails.

In order to achieve the object for which it was constituted, this Committee in its meeting **dated 07.04.2020** had observed that some of the inmates despite having bail orders passed in their favour during **pre-pandemic period** by different Courts, could not be released for their failure to furnish the '**surety bond**' as functioning of Courts at that time were restricted.

In the said meeting, this Committee had recommended for **review/modification** of such bail orders by a single order of Hon'ble High Court. On the basis of recommendations of this Committee in the meeting dated **07.04.2020**, Division Bench of Hon'ble High Court vide **orders dated 09.04.2020** in *Writ Petition (Crl.) 779/2020*, titled "*Court on its own Motion Vs. State*" had modified all such orders. Relevant portion of the orders passed by Hon'ble High Court is as under:

"Thus all bail orders, passed by this Court or by the Courts subordinate to it, on or before 7th April, 2020, in pursuance where to the under-trial prisons have not been released on bail owing to failure to satisfy the condition of furnishing surety bond, are modified and be read as granting bail without the condition of furnishing surety bond and instead allowing such under-trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail."

Thus, this Committee had done what was expected of it, in order to achieve the object for which it was so constituted.

The prayer made by the applicant in the present representation pertains to the **mode** and **manner** of production of surety before the Court and satisfaction of the Court with respect to the **genuineness** of the **surety** and his **documents**. The same is **beyond the scope and purview** of this Committee, therefore, it cannot be entertained. The representation stands **disposed of** accordingly.

The applicant is at liberty to approach the concerned authority i.e. Hon'ble High Court of Delhi on judicial/administrative side.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA) to inform all the applicants who made the above representations with respect to the *outcome thereof*.

ITEM NO.7:- ANY OTHER ISSUE WITH PERMISSION OF THE CHAIR :

MEETING OF SENTENCE REVIEW BOARD:

Chair enquired from D.G. (Prisons) and Principal Secretary (Home) regarding meeting of “**Sentence Review Board**” in terms of directions given in the last meeting dated 31.07.2020.

Principal Secretary (Home) Govt. of NCT of Delhi as well as D.G. (Prisons) apprised the Chair that meeting of “**Sentence Review Board**” was held on **5th and 6th of August, 2020**. It was further informed by D.G. (Prisons) that cases of **184 convicts** were considered by the “**Sentence Review Board**” during these two days. He further informed the Chair that **47 convicts** have been recommended by the “**Sentence Review Board**” for their **pre mature** release.

Principal Secretary (Home), Govt. of NCT of Delhi informed that the file of these **47 convicts**, as on date is pending consideration with Govt. of NCT of Delhi.

Chair directed Principal Secretary (Home), Govt. of NCT of Delhi for expeditious disposal of the same, as if approved, it would lead to further decongestion of the jails. Principal Secretary (Home), Govt. of NCT of Delhi **assured** that he shall do the needful at the earliest..

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with *Vote of Thanks* to the Chair.

Sandeep Goel
D.G (Prisons)

B.S.Bhalla,
Principal Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLISA

Hon’ble Ms. Justice Hima Kohli
Executive Chairperson DSLISA

\$~F.B.-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 3037/2020

COURT ON ITS OWN MOTION Appellants

Through: Court on its own motion.

versus

STATE & ORS Respondents

Through: Mr.Amit Prasad, SPP with Mr.Rajesh
Deo, DCP, Legal Cell in C.M.No.23830/2020
Mr.Rahul Mehra, Standing Counsel (Criminal) for
GNCTD.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

ORDER

%

28.09.2020

The proceedings in the matter have been conducted through video conferencing.

1. This matter is listed today before us for consideration of the letter dated 08.09.2020 put up by the Registry of Delhi High Court received from Additional Sessions Judge (03) (N/E), Karkardooma Courts, Delhi seeking therein clarification as to whether the interim bails granted in the cases of riots on the humanitarian grounds by the Additional Sessions Judge shall be extended from time to time in terms of the directions contained in the orders passed in the present petition. An order dated 7th September, 2020 passed in Bail Matter No.921/2020 titled “*State vs. Suhaib Saife*” by Sh.Vinod Yadav,

Additional Sessions Judge (03) (N/E), Karkardooma Courts, Delhi is also enclosed with the said letter.

2. The Registry is directed to list this matter on 16th October, 2020 for consideration of the aforesaid letter.

CM APPL.23830/2020

3. This matter is also listed before us for considering the present application which has been preferred by Mr.Rajesh Dev, Dy. Commissioner of Police through Mr.Amit Prasad, Special Public Prosecutor for State, with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon’ble Court may be pleased to accordingly modify the Orders dated 13.07.2020 and 24.07.2020 passed by this Hon’ble High Court, including in light of the Minutes of the High-Powered Committee of this Hon’ble Court, and pass necessary directions as deemed fit, in the interest of justice.”

4. Issue notice to the respondents.

5. Mr.Rahul Mehra, the learned Standing Counsel (Criminal) accepts notice on behalf of the State.

6. The learned Standing Counsel for the State is directed to supply the following information to this Court:-

- (a) How many persons in jail are presently infected/suffering from Covid-19?
- (b) How many persons involved in heinous crimes are granted the interim bail?
- (c) How many persons involved in minor crimes are granted interim bail?
- (d) How many persons are granted interim bail by the Delhi High

Court?

7. We also direct the Director General (Prisons) to remain present through Video Conferencing on the next date of hearing so that the application can be finally heard.
8. Counsel for the applicant shall supply a copy of this application to Mr. Rahul Mehra, the learned Standing Counsel (Criminal).
9. List on 16th October, 2020.

CHIEF JUSTICE

SIDDHARTH MRIDUL, J

TALWANT SINGH, J

SEPTEMBER 28, 2020

kks

**HIGH COURT OF KARNATAKA,
BENGALURU**

September 29, 2020

NOTICE

The Division Bench of Hon'ble the Chief Justice and Hon'ble Mrs Justice B V Nagarathna, in Writ Petition No 6435 of 2020 and connected matters, passed the following order on April 16, 2020:

“Our attention is invited to our Order dated 24th March, 2020 and in particular, the direction regarding extension of interim orders. The directions are contained in clause (i) to (iii). Clause (iv) is regarding agencies and instrumentalities of the State Government taking action of demolition and eviction. The material part of the said order read thus:

“Only with the view to ensure that citizens are not deprived of their right to approach the Courts of law, we propose to exercise our jurisdiction under Articles 226 and 227 of the Constitution of India by issuing certain directions. The directions are required to be issued to ensure that litigants should not suffer on account of their inability to approach the Courts of law. We issue the following directions:

- (i) All interim orders passed by the Karnataka High Court, all the District Courts, Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and all other Tribunals in the State over which this Court has power of superintendence, which are due to expire within a period of one month from today, will continue to operate for a period of one month from today. We, however, make it clear that those interim orders which are not of a limited duration and are to operate till further orders will remain unaffected;

- (ii) If the Criminal Courts in the State have granted bail orders or anticipatory bail for a limited period which are likely to expire in one month from today, the said orders will stand extended for a period of one month from today;
- (iii) If any orders of eviction, dispossession or demolition are already passed by the High Court, District or Civil Courts, the same shall remain in abeyance for a period of one month from today;
- (iv) Considering the fact that it will be practically impossible for the citizens to approach the Courts for redressal of their grievances for a period of twenty-one days specified in the order of the Ministry of Home Affairs dated 24th March 2020, we sincerely hope that the State Government, Municipal Authorities and the agencies and instrumentalities of the State Government will be slow in taking action of demolition and eviction of persons.

The Division Bench had extended the above order dated April 16, 2020 from time to time, which will expire on September 30, 2020.

The matter was again listed and the Division Bench by order dated September 29, 2020, has extended the above order dated April 16, 2020 till November 29, 2020.

BY ORDER OF HON'BLE THE CHIEF JUSTICE

Sd/-
(Rajendra Badamkar)
Registrar General

Deccan Herald

Covid-19: Delhi Prisons dept urges city govt to extend convicts' emergency parole

PTI, Oct 03, 2020 17:32 IST | Updated Oct 03 2020, 17:32 IST

The Delhi Prisons department has requested the city government to extend the emergency parole granted to convicts by one month in view of the existing COVID-19 situation, officials said on Saturday. In a letter to the home department, it said the emergency parole can be given considering the current pandemic situation. According to the officials, there are currently 4,250 such inmates, comprising 3,100 undertrials on interim bail and 1,150 convicts on emergency parole, who are out of jails as part of the prisons department's recent decongestion drive.

"We have written to the government to extend emergency parole of convicts by one month," a senior jail official said.

The Delhi Prisons are overcrowded. Before the process of decongesting jails began in March, the population in jails was 180 per cent of the capacity -- the three jails were housing 18,000 inmates against the capacity of 10,000.

After the decongestion drive, the number of inmates has reduced to over 13,000. The official said Delhi's home department can take a decision on extension of parole given by it.

Another official said that due to overcrowding of the city jails, it is very difficult to maintain social distancing inside the prisons to contain the spread of coronavirus.

Recently, 260 inmates and jail staff had tested positive for the novel coronavirus.

According to the data shared by the prison authorities on September 13, the number of active COVID-19 cases in Delhi Prisons stood at 25, including 20 jail staff.

Director General of Delhi Prisons Sandeep Goel had also tested positive for COVID-19. He is currently under isolation.

Among prisons in the national capital, the first case of the coronavirus was reported in Rohini Jail on May 13. Two coronavirus positive inmates of Mandoli Jail had died on June 15 and July 4. Both were senior citizens.



(True Copy)

19.	16.10.2020	Mr. B.K. Ragada	: Petitioner in person
		Mr. S. Panda	: For Intervenor
		Mr. N.K. Das	: For Intervenor
		Mr. S. Mishra	: For Intervenor
		Mr. M.S. Sahoo, AGA	: For State-opposite parties

ORDER

Heard learned counsel for the parties by video conferencing mode.

2. In view of the pandemic situation of COVID-19 and the lockdown throughout the country, this Court granted certain protections to the litigating public and by order dated 05.05.2020 passed the following:

“5. On the face of the crisis, we are sincerely concerned with the plight of the citizens and the litigants, majority of whom in our State are poor. They are not in a position to come to the Court in such a situation to seek legal remedies. We also do not want rush of litigants in the Courts in contravention of the “Social Distancing” discipline.

6. For the consequential lockdown due to COVID19 in three phases including the present one, working of this Court, other subordinate courts as well as judicial and quasi-judicial authorities working under the superintendence of this Court, has been affected to a great extent. The situation has resulted in hardship for the litigants and ordinary citizens to approach the court of law to take recourse to legal remedies. With a view to ensure that the litigants and citizens do not suffer on account of their inability to approach the court of law, we propose to invoke our plenary power under Article 226 and power of superintendence under Article 227 of the Constitution of India, our inherent power over the criminal matters under Section 482, Cr.P.C., our power of superintendence over criminal courts under Section

483, Cr.P.C. and our inherent power over the civil matters under Section 151 of the C.P.C.

7. We do not see a fathomable end to the present crisis, but we hope that, by the end of the ensuing Summer Vacation of this Court as well as the subordinate judiciary of the State, the situation shall be normal or at least near to normal. Keeping such hope in mind, in exercise of our power under Articles 226 and 227 of the Constitution of India read with Sections 482 & 483, Cr.P.C. and Section 151 of the Code of Civil Procedure, we issue the following directions to at least contain the plight of the litigants and non-litigants.

(i) That all interim orders/directions issued or protection granted including any order requiring any compliance by the parties to such proceedings, passed by this Court or any court subordinate to it or any Family Court or Labour Court or any Tribunal or any other Judicial or Quasi Judicial forum in the State of Odisha, over which this Court has power of superintendence, which were subsisting as on the date of commencement of national lockdown, shall stand extended till 18th June 2020.

(ii) That it is further directed that the interim orders or directions of any court in the State, which are not of a limited duration and were meant to operate till further orders, shall continue to remain in force until modified/altered/vacated by specific order of the court concerned in a particular case.

(iii) Filing of written-statement or return in any Suit or proceeding pending before any Civil Court or any other forum, unless specifically directed, shall stand extended 4 till 18th of June, 2020. It is however clarified that, if the parties are in a position to file such written-statement or return, they may file it before such date, i.e. 18.06.2020.

(iv) That it is further directed that the orders of eviction, dispossession, demolition, etc. passed by this Court or any court subordinate to it or any Tribunal or judicial or quasi judicial forum, shall remain in abeyance till 18th of June 2020.

v) *Interim protection given in all the anticipatory bail applications by the High Court or Sessions Court for a limited period, which are likely to expire by today or has expired in the meantime, shall stand extended till 18th of June, 2020. However, any party aggrieved by the conduct of the accused on such interim protection, may move the Court in seisin over the matter for cancellation of the interim protection, if prejudice is caused to him/her.*

vi) *All the interim bail granted under Section 439, Cr.P.C. by the High Court or Sessions Courts and limited by time-frame specifying an expiry date, stands extended till 18th of June, 2020, subject to the condition that, on every 10th day from today the defence counsel shall file a petition supported by affidavit before the competent court in seisin over the matter, to the effect that the person on interim bail is not abusing his/her liberty and he/she is living within the jurisdiction of the Court. If the 5 10th day falls on a holiday, such affidavit may be filed on the re-opening day succeeding next.*

vii) *Parole granted to a person through orders passed by a Court exercising the criminal jurisdiction and limited by time-frame specifying an expiry date, stands extended till 18th of June, 2020, subject to the condition specified in Point No.(ix).*

viii) *Unless there is necessity of arrest for maintenance of law and of course order, in a cognizable offence prescribing sentence up to seven years imprisonment, the police should not be in a hurry to arrest the accused without complying with the provision of Section 41(A), Cr.P.C. This shall be effective till 18th June, 2020. (This is however not an interdict or a direction to curb power of the police to arrest, but on the face of the crisis, an advisory to be followed by the police so far as it is practicable and possible).*

(ix) *It is further directed that the State Government or any of its Department or any Municipal Corporation/Council/Board or any Gram Panchayat or any other local body or any*

other agency and instrumentality of the State shall not take any action for eviction, and demolition in respect of the property, over which any citizen or person or party or any Body Corporate has physical or symbolic possession as on today till 18th June, 2020.

x) That, it is further directed that, any Bank or Financial Institution shall not take action for auction in respect of any property of any citizen or person or party or any Body corporate till 18th June, 2020.

(xi) That it is further directed that if the Government of Odisha and/or any of its Department and/or functionaries, Central Government and/or its departments or functionaries or any Public Sector Undertakings or any Public or Private Companies or any Firm or any individual or person is/are, by the order of this Court or any Court subordinate to it or the Tribunals, required to do a particular thing or carry out certain direction in a particular manner in a time frame, which expired or is going to expire at any time, during the period of lockdown or the extended lockdown, time for compliance of such order shall stand extended up to 18th June 2020, unless specifically directed otherwise.

xii) To dispel ambiguity, it is clarified that :-

(a) Those interim orders / directions, which are not for a limited duration and are to operate until further orders, shall remain unaffected.

(b) That, in case, extension of interim order(s)/ direction(s) as directed by us cause undue hardship and prejudice of any extreme nature to any of the parties to such proceeding(s), such parties would be at liberty to seek appropriate relief before the competent Court(s), Tribunal, 7 Judicial or Quasi-Judicial Forum, and these directions shall not be a bar for such Courts / Forums to consider such petition(s) filed by the aggrieved party, on its merit, after due notice to the other side.

(c) Our directions vide Point No.(ix) shall have no effect if the State is required to resort to

eviction or demolition for any urgent public purpose in the larger interest of the public.

(d) All Courts, Tribunals, judicial and quasi-judicial authorities are directed to abide by these directions, and the parties seeking relief(s) covered by these directions can file hard copy or soft copy of this order before the competent court/forum, and such copy of the order shall be given due weightage.”

3. The aforesaid order was extended subsequently on 11.06.2020 till 15.07.2020 and thereafter on 15.07.2020 the said protections were extended till 31.08.2020 and on 31.8.2020 the protection was extended up to 15.10.2020.

4. Mr. B.K. Ragada, petitioner who appeared in person, prayed for extension of different kinds of protections referred to in sub-paras (i) to (xii) of para-7 of the order dated 05.05.2020 (quoted above), which have been extended from time to time, till 31.08.2020, taking into consideration the prevailing aggravated pandemic situation of COVID-19 in the State of Odisha.

5. In view of the above, protection granted by this Court vide aforesaid order dated 05.05.2020 passed in this case in sub-paras (i) to (xii) of para-7 is extended up to 25th November, 2020 except to the extends with the modification specifically made.

Put up this matter on 25th November, 2020.

Learned counsel for the parties may utilize the soft copy of this order available in the High Court's website or print out thereof at par with certified copies in

the manner prescribed, vide Court's Notice No. 4587, dated 25.03.2020.

(Dr. B.R. Sarangi)
Judge

(Mohammad Rafiq)
Chief Justice

I.A. No. 11851 of 2020

&

I.A. No. 12030 of 2020

20. 16.10.2020 Heard learned counsel for the parties by Video Conferencing mode.

Prayer for intervention made in I.A. No. 11851 of 2020 is allowed.

I.A. No. 12030 of 2020 been filed by the intervenor petitioner- Cholamandalam Investment and Finance Company Limited (CHOLA) with a prayer to allow it to auction the vehicles, which were seized prior to imposition of the lock-down during COVID-19 pandemic situation.

Learned counsel for the intervenor-petitioner submitted that the vehicles were seized prior to lockdown and they are all hypothecated. Since the customers were unable to repay the loan dues, the vehicles were seized which are still lying in the open air and its value deteriorates and will not benefit to anyone including the loanees. It is submitted that the intervenor-petitioner has seized the vehicles and pre-sale notice for the vehicles have been issued to the loanees intimating them about

the auction that if they wish to clear the outstanding amount, they can take back the vehicle but they have not done so.

Having regard to the submission made by learned counsel for the intervenor-petitioner, this Court is inclined to relax/modify the clause-x of condition stipulated in the order passed by this Court earlier to the extent that the intervenor-petitioner shall issue fresh pre-sale notice to the loanees about the auction of the vehicles from whom the vehicles were seized referred to in Annexure-1 (series) and in the event of their inability to take back the vehicles by repaying the loan dues, the intervenor-applicant shall proceed to put them to auction as per the law.

Accordingly, the interlocutory application is disposed of.

(Dr. B.R. Sarangi)
Judge

(Mohammad Rafiq)
Chief Justice

I.A. No. 11922 of 2020
and
I.A. No. 11924 of 2020

21. 16.10.2020 Heard learned counsel for the parties by Video Conferencing mode.

Prayer for intervention made in I.A. No. 11922 of 2020 is allowed.

I.A. No. 11924 of 2020 been filed by the intervenor petitioner- Sundaram Finance Limited with a

prayer to allow it to auction the vehicles, which were seized prior to imposition of the lock-down during COVID-19 pandemic situation.

Learned counsel for the intervenor-petitioner submitted that the vehicles were seized prior to lockdown and they are all hypothecated. Since the customers were unable to repay the loan dues, the vehicles were seized which are still lying in the open air and its value deteriorates and will not benefit to anyone including the loanees. It is submitted that the intervenor-petitioner has seized the vehicles and despite pre-sale notice for the vehicles have been issued to the loanees intimating them about the auction that if they wish to clear the outstanding amount, they can take back the vehicle but they have not done so.

Having regard to the submission made by learned counsel for the intervenor-petitioner, this Court is inclined to relax/modify the clause-x of condition stipulated in the order passed by this Court earlier to the extent that the intervenor-petitioner shall issue fresh pre-sale notice to the loanees about the auction of the vehicles from whom the vehicles were seized referred to in as I.A. No.11924 of 2020 and in the event of their inability to take back the vehicles by repaying the loan dues, the intervenor-applicant shall proceed to put them to auction as per the law.

Accordingly, the interlocutory application is disposed of.

(Dr. B.R. Sarangi)
Judge

(Mohammad Rafiq)
Chief Justice

I.A. No. 12126 of 2020

22. 16.10.2020 Learned counsel for the intervenor petitioner shall serve a copy of this I.A. application within three days on the petitioner- Mr. B.K. Ragada, who shall give reply to the same by the next date.

(Dr. B.R. Sarangi)
Judge

(Mohammad Rafiq)
Chief Justice

IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (C.) NO. 3037/2020

IN THE MATTER OF-

COURT ON ITS MOTION

.....APPELLANTS

VERSUS

**THE STATE (GOVT. OF NCT)
OF DELHI AND ORS.**

.....RESPONDENTS

NDOH-16.10.2020

STATUS REPORT

Most respectfully sheweth:

1. That the present status report is being filed in compliance of order dated 28.09.20 passed by this Hon'ble High Court in WP (C) No.3037 of 2020. This Hon'ble Court has directed the Respondent to provide following information :-
 - (a) How many persons in jail are presently infected/suffering from Covid-19?
 - (b) How many persons involved in heinous crimes are granted the interim bail?
 - (c) How many persons involved in minor crimes are granted interim bail?
 - (d) How many persons are granted interim bail by the Delhi High Court?
2. In this regard, Respondent submits that
 - (a) There are 06 prisoners who are presently infected/suffering from Covid-19.

237

- (b) There are 2318 prisoners who are involved in heinous crimes and granted interim bail by Hon'ble Courts.
 - (c) There are 2907 prisoners involved in minor crimes and granted interim bail.
 - (d) There are 356 prisoners who have been granted interim bail by the Delhi High Court.
3. This is for kind information and perusal of the Hon'ble Court.

Yours faithfully,

[Signature]
15.10.2020
A-Superintendent

Prisons Headquarter, Tihar, New Delhi

JAIL NO.	PRISONERS INFECTED WITH COVID-19	PRISONERS INVOLVED IN MAJOR CRIMES	PRISONERS INVOLVED IN MINOR CRIMES	PRISONERS GRANTED INTERIM BAIL BY HIGH COURT
CJ-1	-	335	224	42
CJ-2	-	-	89	21
CJ-3	01	386	294	22
CJ-4	-	326	436	41
CJ-5	-	59	335	03
CJ-6	-	94	64	25
CJ-7	02	97	307	21
CJ-8/9	03	333	263	43
CJ-10	-	246	303	39
CJ-11	-	73	177	11
CJ-12	-	186	177	26
CJ-13	-	103	156	16
CJ-14	-	45	31	33
CJ-15	-	05	07	02
CJ-16	-	30	44	11
TOTAL	06	2318	2907	356

The Indian Express

By: Express News Service | New Delhi | October 19, 2020 1:13:01 am

13 new Covid cases in Delhi prisons

The number of active cases in the three jails is presently 13. All infected persons have been isolated and are being treated inside the jail complexes. DG (Prisons) Sandeep Goel said 88 inmates have tested positive in the three jails so far.

“We are not concerned with the capacity of jails and the nature of offence. The order was passed only due to Covid and only three persons are there... Hundred or two hundred or three hundred persons are not having Covid,” Chief Justice Patel said.”

Four inmates and nine jail staffers in the three jail complexes of the capital have tested positive for Covid-19 the previous week, said officials Sunday.

The three jails, Mandoli, Tihar and Rohini, had earlier been declared Covid-free, but a few cases have emerged since last month. The number of active cases in the three jails is presently 13. All infected

persons have been isolated and are being treated inside the jail complexes. DG (Prisons) Sandeep Goel said 88 inmates have tested positive in the three jails so far. Goel himself had tested positive, but has recovered and will rejoin work this week.

"In May, we had made special barracks for infected people and started testing inmates regularly. There are four active cases among the inmates. Over 82 inmates have recovered and two died," said Goel. Over 10,000 inmates are lodged in the jails now. After the lockdown, 4,491 inmates were either given interim bail or emergency parole to decongest the jails. Goel said over 215 staffers had tested positive, of whom 206 have recovered so far.



(True Copy)

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 29

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 564 of 2020

Petitioner :- In Re

Respondent :- State of U.P.

Counsel for Petitioner :- Suo Moto,Ashutosh Upadhyay,S.M.Faraz

I. Kazmi

Hon'ble Munishwar Nath Bhandari,J.

Hon'ble Piyush Agrawal,J.

This Court took Suo Moto cognizance on the issue pertaining to expiry of the interim orders and the limitation during the period of lockdown because the Courts were not functional in the month of March, 2020 due to lockdown and their working was otherwise affected even for the subsequent period. The Court passed a detailed order to extend the period of interim order and the

period of limitation, if it was expiring during the intervening period.

The last order dated 19.08.2020 passed by this Court reads as under-:

"On account of COVID-19 pandemic and the lockdown, as the regular working of High Court, both at Allahabad and Lucknow, and that of most of the District Courts, Civil Courts, Family Courts, Labour Courts, Industrial Tribunals and other Tribunals is disturbed and they are not in a position to work regularly, we consider it appropriate in the interest of justice to extend the terms of interim orders passed by any of these Courts, which may be expiring during this period to remain in force till 31.10.2020.

In addition to above, we also provide that the period of 90 days during which the caveats filed under Section 148-A CPC remain in force shall exclude the lockdown period and the period in which the working of courts and tribunals have remained suspended or disturbed.

A copy of this order be provided to all concerned Courts and Tribunals, Advocate General, Additional Solicitor General of India,

Assistant Solicitor General of India, State Public Prosecutor and the Chairman of Bar Council of Uttar Pradesh.

Let the petition be listed again on 19.10.2020."

The position on account of COVID-19 Pandemic has not improved entirely, therefore, this Court is of the opinion that the direction given by this Court on 19.08.2020 to extend the effect of the earlier order till 31.10.2020 needs to be extended and, accordingly, the order quoted above in reference to the extension of the interim order and even for the limitation, as given therein, is made operational and effective till 01.12.2020.

Let this petition be listed again on 01.12.2020 for appropriate order.

Order Date :- 20.10.2020

Sinha_Nirmal

Minutes of Meeting dated 24thOctober, 2020 at 11:00 a.m. through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Ms. Justice Hima Kohli, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers /Members of High Powered Committee through Video Conferencing:

1. Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi
.....**Member**
2. Shri Sandeep Goel, Director General (Prisons), Delhi
.....**Member**
3. Shri Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No.1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020

ITEM NO.1:- FOLLOW UP OF RESOLUTION ADOPTED EARLIER WITH RESPECT TO PREVENTION, SCREENING, IDENTIFICATION & TREATMENT OF PRISONERS AND JAIL STAFF

At the outset, **Sh. Sandeep Goel, D.G. (Prisons)** informed the Chair about concerted efforts of officers and officials of Jail Administration being made in following and complying with the **guidelines, instructions and resolutions** passed by this Committee in its earlier meetings. He further informed that by scrupulously complying with the resolutions adopted earlier they have been successful in bringing down the active cases of **COVID - 19 (Novel Corona Virus)** inside the jail premises.

D.G. (Prisons) informed the committee through his letter **No.PS/DG(P)/2020/1925-1926 dated 21.10.2020** that as on **20.10.2020**, cumulative figure of **COVID -19** Positive cases in Delhi Prisons is as under:

<i>Prison Inmates</i>	:	89 (84 recovered, 02 expired, 03 Active cases)
<i>Prison Staff</i>	:	219 (209 recovered, 10 active cases)

On being asked about the **three active cases** of **COVID-19** of jail inmates, D.G. (Prisons) has informed that one of the jail inmate is admitted in LNJP Hospital; whereas the other is recuperating in DDU Hospital. He further informed that third jail inmate, in terms of order passed by the Court, is admitted in Maharaja Agarsen Hospital.

D.G. (Prisons) also informed the Committee that in terms of the resolution adopted vide meeting dated **20.06.2020**, Jail Administration is taking extra precautions with respect to inmates who are more than **55 years** of age, so that they are not '**immuno-compromised**'. D.G. (Prisons) has further assured the Committee that they shall continue doing the needful.

The Members of the Committee also deliberated upon the possible ways through which **COVID-19 (Novel Corona Virus)** can enter the jail premises. Deliberations were made for taking possible steps to prevent the spread of **COVID-19 (Novel Corona Virus)** through:

- (a) New entrants including the one's coming back to surrender after expiry of period of interim bail/emergency parole/furlough
- (b) Jail Staff, Paramilitary Staff, Medical Staff
- (c) Other persons entering the Jail premises for delivery of ration and other essential items.

Precautionary Measures for Jail Staff etc.

D.G. (Prisons) had informed that in view of resolutions passed by this Committee in the last meeting, they are **carrying out 'Rapid Tests'** of jail staff, para military staff and others, as per ICMR guidelines. He further informed that '**thermal screening**' of the jail staff is also being conducted before letting them enter the jail premises. He informed that jail staff are cautioned to wear **Personal Protective Equipment Kit, Mask** and to also **maintain social distance**, while interacting with each other as well as with inmates. DG (Prisons) has further informed that as suggested by the Chair, the jail staff is taking **two layer protection**, i.e. in addition to using face Mask they have also been provided with visor's, which they are using regularly.

He also informed that till 20.10.2020, **219 Jail Staff** were found **COVID-19 Positive**, out of which **209** have already recovered. He apprised the Chair that at present there are only **10** active cases of jail staff, who are home quarantined.

D.G. (Prisons) further informed that as and when any jail staff is tested **COVID-19 Positive**, he/she is relieved from their respective duties and is asked to remain home quarantined. D.G.(Prisons) further informed that contact tracing is being done in such cases and all those who had come in contact with these Jail Staff, are being medically screened and tested. D.G. (Prisons) further informed that they have minimized the contact of jail staff, para military staff and others with the inmates, so as to prevent spread of **COVID-19** inside the jail premises.

Precautionary Measures qua New Entrants including the one's coming back to surrender after expiry of period of interim bail/emergency parole/furlough

Members of the Committee after deliberations, **reiterated** that in terms of the resolution adopted in the earlier meeting, **new entrants** should be kept in "**Isolation Cells**" so as to prevent their **intermingling** with other inmates who are already inside the jail.

In the earlier meetings of this Committee, it was resolved to create "**Isolation Cells**" in Jail No.1, Jail No.2, Jail No.4, Jail No.7, and Jail No.8/9 at Tihar and Jail No.15 at Mandoli comprising of **248** individual cells (with attached toilets) for the new male entrants who are above 21 years of age; and in Jail No.5 at Tihar for fresh inmates who are between 18-21 years of age. Whereas separate "**Isolation Cells**" were resolved to be created in Jail No.6 at Tihar for fresh women inmates.

Considering the fact that "**Isolation Cells**" so carved out, may become fully occupied, therefore, it was resolved in the earlier meeting that requisition be made to Govt. of NCT of Delhi for allocation of Police Quarters, Mandoli situated adjacent to Mandoli Jail, for converting the said flats into a "**Temporary Jail**". So that the same can be put to use for creation of "**Isolation Cells**", to keep the **new entrants** who are above 21 years of age, for initial period of 14 days.

Temporary Jail : Additional accommodation in Jail

Principal Secretary (Home) as well as D.G. (Prisons) informed the Chair that, for the creation of “**Temporary Jail**”, to be used as “**Isolation Cells**”, they have made **concerted efforts** for getting allocation of **12 towers**, each having **30 flats** from the Govt. of NCT of Delhi. Principal Secretary (Home) informed the Committee that Govt. of NCT of Delhi vide Notification bearing **No.9/70/2020/HG/2427-2441 dated 31.07.2020** has been pleased to declare Police quarters in the Police Housing Complex adjoining Mandoli Jail, Delhi as “**Temporary Jail**”, till further order, in view of **COVID-19** pandemic.

DG (Prisons) has also informed the Chair that Police Housing Complex, Mandoli consists of **12 Towers**, each having **30 flats**. He has submitted that 4 towers out of 12 towers viz. B, C, D & E are **fully functional**. It is also submitted that they have already housed **248 inmates** in these towers, which have been converted into “**Temporary Jail**”. He has also submitted that Towers G, H, I, J, K & L are also ready for housing the inmates and two towers i.e. A & F have been kept reserved for accommodating outside security forces.

Upon being apprised about the fact that **248 inmates** have already been housed in the “Temporary Jail”, and others are likely to be housed on their surrender, the Chair enquired about the **security measures** put in place by the Prison Authorities, in the said “Temporary Jail” for ensuring safety and security of the inmates; and for also ensuring that no untoward incident takes place while the inmates are housed in “Temporary Jail”.

In response to the Chair's **curiosity** for the safety and security of the inmates housed in the “Temporary Jail”, D.G. (Prisons) apprised the Chair about adequate measures undertaken for 'safety' and 'security' of the inmates housed in the “Temporary Jail”.

He assured that all necessary precautions as per the **Standard Operating Procedures (S.O.P.)** and other protocols to be followed at the Jails, for the safety and security of the inmates, have been put in place in the “Temporary Jail”. He also informed that requisite support has been taken by the Prison Administration from P.W.D to **seal** the portions of the “Temporary Jail”, so as to check the unnecessary movement of the inmates inside the

“Temporary Jail”, especially restricting their accessibility to the Balconies of the Flats/Apartments which have been converted into “Temporary Jail”. As such, the chances of escape of inmates from the Temporary Jails have also been checked and necessary precautions have been taken.

D.G. (Prisons) has further informed that once all Towers are made fully functional, then this “**Temporary Jail**” can house about **2000 inmates**. The Committee after getting this information from D.G. (Prisons) is of the view that the problem of creation of “**Isolation Cells**” for the **new entrants** in jails stand solved to a considerable extent.

The Committee had also taken into consideration orders dated **20.10.2020** passed by Full Bench of Hon’ble High Court in “Writ Petition (Civil) No. 3037/2020, Court on its own Motion - In Re : Extension of Interim Orders”, whereby Hon’ble Full Bench had directed UTPs/Convicts (*who were granted interim bail/parole/furlough outside the criteria laid down by this Committee*) to surrender in **staggered manner from 02.11.2020 till 13.11.2020**.

The Chair suggested that all those UTPs/Convicts who shall surrender pursuant to orders passed **Full Bench of Hon’ble High Court** may be **housed** initially for a period of 14 days in the **Temporary Jail** before sending them in the concerned Jail. D.G. (Prisons) assured the Chair to comply with this suggestion.

It is made clear that fresh male inmates who are between 18 to 21 years of age and fresh women inmates shall continue to be kept in separate “**Isolation Cells**” at Jail No.5 and 6 respectively at Tihar, in terms of the earlier resolution.

Jail Hospital

Chairperson made enquiries regarding usage of “**Oxygen Concentration Machines**” in Jail Hospital as well as regarding “**Rapid Antigen Test Facility**” for the inmates. D.G. (Prisons) has informed that they have procured **04 “Oxygen Concentration Machines”** whereafter Delhi Health Department has also supplied them **15 “Oxygen Concentration Machines”**. Thus, sufficient number of “**Oxygen Concentration Machines**” are available in the Jail Hospital at Tihar, Mandoli and Rohini Jail Complex. D.G. (Prisons) has

further informed that inmates are being tested as per the ICMR guidelines with '**Rapid Antigen Test**'. D.G. (Prisons) has further informed that they have **sufficient availability** and regular supply of **essential medicines** and **equipments** including **oximeters** and **oxygen cylinders** in the Jail Hospitals.

Other Precautionary Measures

D.G. (Prisons) further informed the Chair about the other measures being taken by the Jail Staff, prisoners and other persons working in Jail so as to prevent the outbreak of **COVID-19 (Novel Corona Virus)**. He apprised the Chair that the principle of '**social distancing**' is being followed **scrupulously**. It has further been informed that common areas which are frequented by the inmates like Bathing area, Kitchen Area and Jail Telephone Area are being regularly cleaned and sanitized using appropriate disinfectant. D.G.(Prisons) further informed that necessary precautions i.e. **Do's and Don'ts** are being told to the inmates through "**Public Address System**" installed in Jails.

D.G. (Prisons) has informed that regular medical checkup of Jail Staff and inmates is being done through Jail doctors who have been advised to immediately inform the Jail Superintendent if they find or suspect any symptoms of **COVID-19 (Novel Corona Virus)** in any inmate so that necessary steps in terms of the advisory/guidelines issued by ICMR and Ministry of Health, Government of India, can be taken. He further informed the Chair regarding the necessary steps that are being taken to practice, promote and demonstrate **Positive Hygiene Behaviour** in Jails.

D.G. (Prisons) has submitted that besides the above, they have adopted a multi-pronged approach to tackle the threat of **COVID-19 (Novel Corona Virus)**, i.e. :

- a **Discontinuation of all visit** of outside agencies, including NGOs.
- b **Restriction of movements** of inmates outside the wards in Jails.
- c **Sanitization and disinfection** of the lodgment areas of the inmates and residential complexes of staff, on **regular basis**.

- d. **All new inmates are pre-screened** at CPRO before lodging them in jail.
- e. **Procurement and distribution** of Personal Protective Equipment (PPE) Kit, Mask, Gloves, Alcohol-based hand rubs and Soaps.
- f. **Formation of Special Task Force (STF)** for Contact Tracing of suspected **COVID-19 (Novel Corona Virus)** cases in all Jails.
- g. **Psychological screening** of newly admitted inmates to properly manage their mental health issues.
- h. **Emphasis on Kitchen hygiene** and proper handling of vegetables and other essentials by personnel in kitchen/canteen.

D.G. (Prisons) has **assured** that the jail administration shall continue following these precautions and resolutions, so as to prevent the spread of **COVID-19 (Novel Corona Virus)** in the jail premises.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed him to continue doing the same.

ITEMNO.2:- STEPS TAKEN TOWARDS SCREENING OF JAIL STAFF, PARA-MILITARY AND MEDICAL STAFF

Considering the possibility of **COVID-19 (Novel Corona Virus)** entering the jail premises through Jail Staff, para-military staff and medical staff, besides others and its outbreak amongst the inmates, deliberations were made by the Committee about the additional measures to be taken.

On being asked by the Chair regarding implementation of resolutions adopted in the previous meeting, D.G. (Prisons) has informed that all the officers and officials of Jail Administration are strictly abiding by all those directions and have adopted multi-pronged strategies to tackle the spread of **COVID-19 (Novel Corona Virus)** through Jail Staff and others, to the inmates.

D.G. (Prisons) has further informed the Chair that in terms of the directions given by this Committee for conducting **“Rapid Test”** of **above referred jail staff** according to ICMR guidelines, they have started getting this test conducted of the jail staff, as per need.

D.G. (Prisons) has further informed that **wearing of Mask** by the jail staff has been made **mandatory** and they have been cautioned to **maintain social distancing** while interacting with the inmates.

Committee is **satisfied** with the above steps being taken by D.G. (Prisons) and directed them to continue following the same. It is **resolved** accordingly.

ITEM NO.3:- TAKING STOCK OF THE EFFECT OF CRITERION EARLIER ADOPTED TOWARDS DECONGESTION OF JAIL

Number of inmates released pursuant to the criteria adopted earlier in terms of the orders passed by the Division Bench of High Court of Delhi dated **23.03.2020** headed by Hon'ble Chairperson; as well as on the basis of criteria adopted by High Powered Committee vide **meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020, 31.07.2020 and 30.08.2020** is put up before the Committee. Besides the number of inmates released pursuant to criteria adopted earlier, Committee has further perused the number of UTPs released on **Personal Bond**, on the basis of orders passed by Hon'ble High Court in **W.P. (Criminal) No.779/2020**.

The same was perused by the Committee which is as under:-

UTPs released on interim bail till 20.10.2020	3337
UTPs released pursuant to modification of bail orders by Hon'ble High Court in W.P.(Criminal) No.779/2020	310
Convicts released on Emergency Parole	1182
Convicts released on remission of sentence	105
TOTAL UTPs/ CONVICTS RELEASED ON INTERIM BAIL/PAROLE/ REMISSION OF SENTENCE TILL 20.10.2020	4934

INTERIM BAIL:

Members of the Committee, reminded themselves of the object for which it was formed by **Hon'ble Supreme Court of India** in "*Suo Motu Petition (Civil) No.1/2020 – In Re: Contagion of COVID-19*" i.e. for determining **class/category** of prisoners who can be released on **interim bail/parole** depending not only upon severity of offence, but also the nature of offence and/or any other relevant factor.

This Committee was constituted by Hon'ble Supreme Court owing to the unprecedented circumstances of pandemic, resultant lockdown and restricted functioning of the Courts, for decongesting the jails so that **principle of social distancing** can be followed and spread of **COVID -19** can be prevented. Members of the Committee also reminded themselves of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court, whereby Hon'ble Supreme Court has clarified that it has not directed the States to **compulsorily** release the prisoners.

Members of the Committee have observed on the basis of directions of Hon'ble Supreme Court, that this Committee was formed for the stated object, only for the purposes of finding a solution to help decongestion and **to avoid** the spread of virus and while doing so, it was to be kept in mind that the benefit of interim bail granted in such circumstances, cannot be to the detriment of social order.

Members of the Committee are of the opinion that this arrangement is only made on **temporary basis** and was never meant to supplement the otherwise recognized 'principles of grant/refusal' of bail. Further, these measures were taken when owing to the lockdown and prevailing circumstances there was restricted functioning of the Courts. The situation however has changed considerably now, therefore, this temporary measures **cannot be extended** till perpetuity.

Keeping in mind the orders **No.40-3/2020-DM-I(A)** dated **30.09.2020** passed by Govt. of India regarding **Unlock-5** effective from **15.10.2020** and taking into consideration consequent change in circumstances including the Office Order **No.538/RG/DHC/2020** dated **19.10.2020** of Hon'ble

High Court whereby all the Courts including High Court of Delhi and Courts subordinate thereto have **resumed functioning** through physical mode/Video Conferencing mode, this Committee has decided **not to further relax** the criteria for the purposes of recommending grant of interim bail to the UTPs. It is also made clear that benefit of the criteria adopted by this Committee in its earlier meeting, which as per the last meeting were to continue till **30.09.2020**, is **not being extended** any further.

Members of the Committee are of the considered opinion that as all the Courts i.e. Hon'ble High Court as well as subordinate thereto are **fully functional**, therefore, all such UTPs are at **liberty** to approach the concerned Court for regular bail. Needless to say that such applications as and when filed shall be **considered** on the basis of **legal principles** in accordance with law by the concerned Courts.

It was **though clarified** earlier but the same is **reiterated** that the criteria adopted by this Committee for release of prisoners on “**Interim Bail**” in its meetings dated **28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020, 31.07.2020** and **30.08.2020** shall in **no way** affect the rights of other UTPs, who **do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned courts on filing of applications by such UTPs may **consider** the same **on merits**, in accordance with law.

REMISSION:

On inquiry by Chairperson, it is informed by D.G. (Prisons) that ‘**remission to the eligible convicts**’ was granted by Hon'ble Lieutenant Governor of Delhi in terms of recommendations of High Powered Committee dated **28.03.2020** vide **order No.F.9/63/2020 dated 07.04.2020**. He further informed that as per the said Office Order, benefit was initially extended to **72 convicts**, who were released on remission of sentence.

D.G. (Prisons) further informed the Committee that Hon'ble L.G. vide order No.F.9/63/2020/HG/2184 dated 21.07.2020 has directed to extend the **benefit of remission to the convicts** who would become eligible for the

same upto **30th September, 2020**. It is brought to the notice of the Committee that on the basis of fresh Office Order till date **33 more convicts** have been released on remission on sentence. Thus, till date benefit of **remission** has been extended to **105 convicts**.

Chairperson **appreciated** the efforts put in towards the implementation of resolution adopted in earlier meetings, by Govt. of NCT of Delhi, Jail Administration and DSLSA.

ITEM NO.4:- FEEDBACK REGARDING EXTENSION OF INTERIM BAIL GRANTED TO UTPs IN TERMS OF RESOLUTION ADOPTED IN THE MEETING DATED 30.08.2020

Kanwal Jeet Arora, Member Secretary, DSLSA has informed the Committee that a **letter dated 01.09.2020** was written by him to the Ld.Registrar General, High Court of Delhi in terms of directions given in the meeting dated **30.08.2020**.

On the basis of said letter, **Hon'ble Special Bench** in "Writ Petition (Civil) 3080/2020", titled "Court on its own Motion Vs. Govt. of NCT of Delhi & Anr." vide its order dated **18.09.2020** had **extended** the 'interim bail' so granted to the **2942 UTPs** for a **further period of 45 days** from the date their earlier interim bail is expiring.

D.G (Prisons) has informed the Committee that period of **extended interim bail** as well as the period of interim bail granted to UTPs on the basis of criteria laid down by this Committee on 30.08.2020 (which constitute **3337 UTPs**) is going to expire w.e.f. **05.11.2020** onwards.

D.G. (Prisons) informed the Committee that some of the UTPs/ convicts (who did not fall under the criteria laid down by this Committee) were granted **interim bail/parole** by **Hon'ble High Court** as well as Courts subordinate to it. He contended that the said interim bail/parole granted to such UTPs/ convicts were extended from time to time by **Full Bench of Hon'ble High Court** in "Writ Petition (Civil) 3037/2020", titled "Court on its own Motion Vs. State" and lastly vide *order dated 24.08.2020*, the said interim orders were extended till 31.10.2020. He also apprised the Committee that **Full Bench of Hon'ble High Court**, vide its order dated 20.10.2020 has now **withdrawn** the said

order granting further **extension of interim bail/parole** and has directed such UTPs/convicts to **surrender** in a phased manner **from 02.11.2020 to 13.11.2020**.

D.G. (Prisons) informed that at present the total **population** of inmates inside Delhi Prisons is approximately **15,900 (15887 to be precised as on today i.e. 24.10.2020)**. He informed the Committee that owing to the above-referred order dated **20.10.2020** passed by Full Bench of Hon'ble High Court about **2300** UTPs/convicts shall **surrender** in a **phased manner** from **02.11.2020 to 13.11.2020**, raising the population of inmates significantly. He further brought to the notice of the Committee that if **3337 UTPs** and **1182 convicts** who have been granted '*interim bail/emergency parole*' under different criteria laid down by this Committee, are asked to surrender during the same duration as their '*interim bail/emergency parole*' is expiring in a phased manner from 05.11.2020 onwards, then the total population of Delhi Prison is likely to **reach 22000**, which would be **unprecedented** and may become **unmanageable** owing to the present situation and circumstances.

He also informed that till date only on one occasion the maximum population of Delhi Prisons has touched **18,000**.

D.G. (Prisons) thus contended that considering to the present prison population and taking into account surrender of UTPs/convicts by virtue of orders dated **20.10.2020** of **Full Bench of Hon'ble High Court**, it would be appropriate, if '*interim bail/emergency parole*' granted to **3337 UTPs** and **1182 convicts** under HPC criteria may be **extended** for a further period of **30 days**.

A letter dated **23.10.2020** written by D.G. (Prisons) to this effect is also brought to the notice of Committee.

Members of the Committee have gone through the letter dated **23.10.2020** written by D.G. (Prisons) and deliberated on the contentions raised by D.G (Prisons). Members of the Committee have also taken into consideration that the total capacity of Delhi Prison, which is as under:

S.No.	Jail Complex	No. of inmates
(a)	Tihar	5200
(b)	Rohini	1050
(c)	Mandoli	3776
Total		10026

Members of the Committee have considered that as on date against this capacity, there already are **15887 inmates**. Even if the additional accommodation of **1800 inmates** in the newly created 'temporary jail' is taken into consideration, it would be highly **inconvenient** for the jail authorities to accommodate UTPs/convicts released on '*interim bail/emergency parole*' under the criteria laid down by this Committee, alongside those who would be surrendering in terms of orders dated **20.10.2020** passed by Full Bench of Hon'ble Delhi High Court.

Considering the fact that UTPs/convicts who would be surrendering as per orders passed by Full Bench of Hon'ble High Court are required to be **kept in Isolation Cells** for a period of 14 days from their respective dates of surrender, Members of the Committee, therefore, found the contention raised by D.G. (Prisons) to be reasonable.

Members of the Committee are of the opinion that it would be appropriate to prevent any **chaos or inconvenience** to the jail authorities, if the UTPs/convicts granted '*interim bail/emergency parole*' on the basis of criteria laid down by this Committee are asked to **surrender from December, 2020**. As by that time the **quarantined/Isolation** period of UTPs/convicts surrendering as per orders dated **20.10.2020** of Full Bench of Hon'ble High Court, **would be over**.

Taking into account the cumulative effect of all these relevant factors, i.e. :

- (a) *Actual holding capacity of Delhi Prison,*
- (b) *Present occupancy,*
- (c) *No. of UTPs/convicts surrendering from 02.11.2020 till 13.11.2020, as per orders dated 20.10.2020 of Full Bench of Hon'ble High Court and*
- (d) *Period of 14 days for keeping them in Isolation Cells before sending them to regular jail.*

Members of the Committee are of the opinion that **interim bail** granted to **3337 UTPs** under HPC criteria needs to be **extended** for a further period of **30 days**.

Member Secretary, DSLSA has further apprised the Committee that **Special Bench** so constituted by Hon'ble the Chief Justice, which had earlier extended interim bail vide order dated **18.09.2020** has listed the said matter on **03.11.2020**.

The Committee is of the opinion that in this regard, a judicial order would be required from Hon'ble High Court of Delhi and **recommends** accordingly. It is **clarified** that these **3337 UTPs** for whom recommendation is being made, are the ones who fall in any one of the criteria laid down by this Committee in its previous meetings, irrespective of the fact as to whether the application for interim bail on their behalf, was filed by **any private counsel** or by **panel lawyer of DSLSA**.

Member Secretary, DSLSA is directed to place these **recommendations** of the Committee by forwarding a copy of these minutes to Ld.Registrar General High Court of Delhi, for necessary action in this regard.

In the event of passing of any such order by Hon'ble High Court of Delhi on the basis of recommendations of this Committee, it is made clear that jail administration **shall inform** such UTPs about extension of their "**interim bail**" for a further period of **30 days** from the date, the earlier period of interim bail is expiring, telephonically. D.G. (Prisons) **assures** that jail administration shall do the needful and shall inform all such UTPs about the exact date of their surrender.

It is though apparent but is still being **clarified** that interim bail was granted to UTPs under the criteria laid down by this Committee by different Courts on **different dates for a period of 45 days**. This period of interim bail was extended on recommendations made by this Committee by **Division Bench of Hon'ble High Court** in "W.P.(C) 3080/2020, titled *"Court on its own Motion Vs. State"*, initially vide orders dated **09.05.2020** for a further period of **45 days** from the date their respective interim bail were expiring and the same **were extended** from time to time on **22.06.2020, 04.08.2020** and lastly on **18.09.2020** for a further period of **45 days**. Considering that these **3337 UTPs** were granted interim bail on **different dates**, thus their interim bail shall expire in a phased manner, therefore, **no separate dates are required** to be given for their **surrender**.

Needless to add that **no further extension of interim bail** shall be made by this Committee. All such UTPs are at **liberty** to move their respective Courts seeking **regular bail** through their **private counsel** or by **panel lawyer of DSLSA**, as the case may be, and all such Courts shall consider the bail application so filed **on merits, de hors** the criteria laid down by this Committee.

ITEM NO.5:- FEEDBACK REGARDING EXTENSION OF "EMERGENCY PAROLE" GRANTED TO THE CONVICTS BY GOVT. OF N.C.T. OF DELHI FOR A FURTHER PERIOD OF 4 WEEKS

D.G. (Prisons) has informed that on the basis of recommendation made by this Committee, Govt. of NCT of Delhi had granted “**Emergency Parole**” to the convicts for a period of 8 weeks, which was subsequently extended from time to time by orders of Department of Home, Govt. of NCT of Delhi.

In compliance of the resolutions adopted by this Committee in its earlier meetings and also considering the situation of pandemic in Delhi at that time, D.G. (Prisons) was directed to send a requisite requisition to Govt. of NCT of Delhi for extension of “**Emergency Parole**” already granted to the convicts. In the last meeting dated **30.08.2020**, Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi brought to the notice of the Committee orders bearing **F.No.18/191/2015-HG/2673-79 dated 26.08.2020** whereby on the basis of letter of DG (Prisons) and the recommendations made by this Committee, “**Emergency Parole**” of all the convicts whose period of “**Emergency Parole**” is going to expire **on or before 30th September, 2020** is **extended** for a further period of **4 weeks**.

The Principal Secretary (Home), Govt. of NCT of Delhi further brought to the notice of the Committee order **No. 18/191/2015-HG/3263-68 dated 06.10.2020** whereby this period of emergency parole of all convicts which is going to expire on or before 31.10.2020 is **extended** for a further period of **4 weeks**.

Considering the deliberations made by Members of the Committee in Item No.4 hereinabove and taking into account the present prison population, orders dated 20.10.2020 of Full Bench of Hon'ble High Court, the Committee is of the view that emergency parole of **1182 convicts** which is going to **expire on or before 30.11.2020** may be **extended one last time** for a further period of **4 week**.

D.G. (Prisons) may send a letter to that effect, to Govt. of NCT of Delhi. Principal Secretary (Home) stated that he would get necessary orders/directions issued thereon from Govt. of NCT of Delhi at the earliest.

**ITEM NO.6:- TO ASSESS THE REQUIREMENT OF VIDEO
CONFERENCING EQUIPMENT IN THE JAILS**

Member Secretary, DSLSA had brought to the notice of Chair a **letter dated 02.09.2020, received via email, of Mr.Atul Kurhekar, Member (Processes) eCommittee, Supreme Court of India.**

Chair had directed D.G. (Prisons) to assess additional requirement of the equipments for Video Conferencing in Delhi Prisons.

On the basis of directions issued by Chairperson, D.G. (Prisons) after assessing the existing video conferencing facility and taking into consideration the additional requirement, submitted a letter bearing **No.F.21(117)/Comp/PHQ/NPIP/2017/CD-003471288/479 dated 21.10.2020.**

Members of the Committee have taken into consideration the change in circumstances and enhanced use of virtual mode being made in not only the '*Court appearances*' but also in '*legal and personal mulakat*' of the inmates with their lawyers and family members.

Members of the Committee have also gone through the additional requirement mentioned by D.G. (Prisons) in his letter and have sought necessary clarifications from D.G. (Prisons), in that regard.

Members of the Committee on the basis of the letter dated **21.10.2020** of D.G. (Prisons) are satisfied that there is additional requirement of **Sixteen (16)- I.P. based V.C. system for 16 jails** situated at Tihar, Mandoli and Rohini. In addition to that there is requirement of **Sixteen (16)- 138 cm Full**

H.D. LED and Sixteen (16)- 1.0 KVA online UPS system. Members of the Committee are also of the opinion that existing LAN available in Tihar is to be **upgraded from 1 GBPS to 10 GBPS** and existing **lease line** connectivity from **34 MBPS to 100 MBPS on (main line)** and **MTNL Circuit from 2 MBPS to 50 MBPS (support line).**

In view of the deliberations made, it is **resolved** that this additional requirement so submitted by D.G. (Prison) vide letter bearing No.F.21(117)/Comp/PHQ/NPIP/2017/CD-003471288/479 dated 21.10.2020 be forwarded to Ld.Registrar General, High Court of Delhi for sending the same to **eCommittee**, Supreme Court of India for the needful.

ITEMNO.7:- CONSIDERATION OF THE REPRESENTATIONS RECEIVED:

- (A) **REPRESENTATION DATED 13.09.2020 OF MR.SARTHAK MAGOON, ADVOCATE RECEIVED VIA EMAIL DATED 23.09.2020 SEEKING APPROPRIATE DIRECTIONS FOR EARLY CONSIDERATION OF WRIT PETITIONS CHALLENGING THE MINUTES OF MEETING OF SENTENCE REVIEW BOARD OF GOVT. OF NCT OF DELHI**

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 13.09.2020, received via email dated 23.09.2020 of Mr.Sarthak Magoon, Advocate.**

Members of the Committee have perused the representation whereby the applicant has requested for issuance of directions to Hon'ble High Court for considering the writ petitions, whereby minutes of the meeting of Sentence Review Board of Govt. of NCT of Delhi have been challenged by the applicant.

It is pertinent to mention here that as per directions given by the Hon'ble Supreme Court vide its order dated **23.03.2020**, this High Powered Committee was constituted **to determine class/category of the prisoners who can be released on interim bail or parole** depending not only upon the severity of the offence, but also upon the **nature of offence**, or upon any other **relevant factor**. The purpose for which this Committee was constituted by the Hon'ble Supreme Court of India was decongestion of jails so that the **principle of social distancing** can be observed inside the prisons.

Bare perusal of the present representation reveals that the same **does not** fall within the purpose and object for which this Committee was constituted. Member of the Committee are of unanimous opinion that the prayer/relief sought by the applicant is **beyond the scope and purview** of this Committee. Hence, this representation is **rejected**.

(B) REPRESENTATION DATED 23.09.2020 OF MS. IMRANA, SEEKING EXTENSION OF PAROLE GRANTED TO HER

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 23.09.2020, received via email dated 24.09.2020** of **Ms.Imrana, W/o Late Sh. Nasir** seeking extension of emergency parole.

Members of the Committee have gone through the representation filed by the applicant and have also gone through the **Order bearing No.F.No.18/191/2015-HG/3263-68 dated 06.10.2020** issued by Dy. Secretary, (Home), Govt. of NCT of Delhi whereby it is stated that Hon'ble Minister (Home) Govt. of NCT of Delhi has decided to extend Emergency Parole by a period of four weeks, to all such convicts whose Emergency Parole is going to expire after 30.09.2020 and on or before 31.10.2020.

In view of this order so passed by Govt. Of NCT of Delhi, the present representation has become **infructuous** and **disposed of** accordingly.

(C) REPRESENTATION DATED 29.09.2020 OF MR. AMIT SAHNI, ADVOCATE SEEKING EXTENSION OF PAROLE GRANTED TO THE PRISONERS/CONVICTS BY GOVT. OF NCT OF DELHI

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 29.09.2020** of **Mr.Amit Sahni, Advocate** addressed to Shri Satyender Jain, Hon'ble Minister for Jail, a copy of which was addressed to Chairperson of this Committee seeking extension of emergency parole.

Members of the Committee have gone through the representation filed by the applicant and have also gone through the **Order bearing No.F.No.18/191/2015-HG/3263-68 dated 06.10.2020** issued by Dy. Secretary, (Home), Govt. of NCT of Delhi whereby it is stated that Hon'ble Minister

(Home) Govt. of NCT of Delhi has decided to extend Emergency Parole by a period of four weeks, to all such convicts whose Emergency Parole is going to expire after 30.09.2020 and on or before 31.10.2020.

In view of this order so passed by Govt. Of NCT of Delhi, the present representation has become **infructuous** and **disposed of** accordingly.

(D) REPRESENTATION DATED 30.09.2020 OF MR. VINOD KUMAR GARG, SEEKING EXTENSION OF EMERGENCY PAROLE GRANTED TO HIM

Member Secretary, DSLSA brought to the notice of the Committee a **representation dated 30.09.2020 of Mr.Vinod Kumar Garg, S/o Late Shri Ram Kishan Garg**, seeking extension of Emergency Parole.

Members of the Committee have gone through the representation filed by the applicant and have also gone through the **Order bearing No.F.No.18/191/2015-HG/3263-68 dated 06.10.2020** issued by Dy. Secretary, (Home), Govt. of NCT of Delhi whereby it is stated that Hon'ble Minister (Home) Govt. of NCT of Delhi has decided to extend Emergency Parole by a period of four weeks, to all such convicts whose Emergency Parole is going to expire after 30.09.2020 and on or before 31.10.2020.

In view of this order so passed by Govt. Of NCT of Delhi, the present representation has become **infructuous** and **disposed of** accordingly.

(E) REPRESENTATION OF MR. PRAVEER RANJAN, SPECIAL C.P. VIDE NO.306/P.SEC/SPL.C.P. CRIME & EOW DATED 18.06.2020 SEEKING MODIFICATION OF THE RECOMMENDATION MADE EARLIER BY THIS COMMITTEE

Member Secretary, DSLSA brought to the notice of the Committee **letter dated 18.06.2020 of Mr.Praveer Ranjan, Special Commissioner of Police, Crime & EOW** forwarded to the Member Secretary, DSLSA by Hon'ble High Court vide letter **No.13717/E-11/Estt.II/DHC/2020 dated 14.10.2020** seeking modification of the recommendation made earlier by this Committee.

Members of the Committee have gone through the recommendation made by Special Commissioner of Police and have also gone through the minutes of its earlier meeting.

It is apparent that this Committee vide its meeting dated **20.06.2020** have already taken into consideration that all those UTPs who after having availed the benefit of the recommendation made by this committee and are released on bail, if **indulge in any illegal activity or commit any offence while on interim bail**, then the benefit **need not be extended** to such UTP. In this regard, it is pertinent to mention that this Committee vide minutes of meeting dated **20.06.2020** had **inserted an exclusion clause** for such UTPs so that benefit of the recommendation **may not be extended** to them.

The relevant extracts of the same are reproduced as under:

"..... Apart from the above six categories, Committee resolved to exclude those UTPs who after having availed the benefit of the criteria adopted hereinabove and the one adopted in the earlier meetings, had committed fresh crimes while on interim bail. Thus, the following seventh category is also included in the exclusion clause.

(vii) Those Under Trial Prisoners who are now in custody for an offence committed by him during the period of interim bail granted to him on the basis of criteria adopted by High Powered Committee in its earlier meetings;"

In view of the above, Members of the Committee are of this opinion that **no further direction are required** on this representation, the same stands **disposed of**.

(F) REPRESENTATION OF MR. DHAN MOHAN, ADVOCATE DATED 05.10.2020 REGARDING SUGGESTION FOR FRAMING GUIDELINES AT THE TIME OF SURRENDER OF CONVICTS/UTPS RELEASED BY THIS COMMITTEE AS WELL AS BY THE ORDERS OF HON'BLE HIGH COURT AND TRIAL COURTS

Member Secretary, DSLSA brought to the notice of the Committee **representation dated 05.10.2020 of Mr.Dhan Mohan, Advocate** regarding suggestion for framing guidelines to be observed at the time of surrender of convicts/UTPs released on interim bail, upon the recommendations given by this Committee; as well as by the orders of Hon'ble High Court and Trial Courts.

Members of the Committee have gone through the representation containing suggestions given by the applicant, for framing of guidelines to be observed at the time of surrender of the Under Trial Prisoners/Convicts after expiry of period of **interim bail/parole/furlough**.

As per the applicant, it would be difficult for jail authorities to accept about **4500 UTPs/Convicts** on same date. Therefore, some **different dates** may be **notified** for different UTPs/Convicts of their respective surrender.

Members of the Committee have considered this suggestion of the applicant. In this regard, it is apparent that this Committee gave various recommendations categorizing different category of UTPs for grant of interim bail in its different meetings. It is apparent that on the basis of recommendations, UTPs were released on **interim bail** on different dates. Similarly, convicts were also released from jail on **emergency parole** in the phased manner.

Further, **interim bail** as well as **emergency parole** of UTPs and convicts **were extended** from time to time for a period of **45 days** and/or **eight weeks** from the date their earlier period of **interim bail** and **emergency parole**, respectively were expiring.

In view thereof, **interim bail** and **emergency parole** of UTPs and convicts would expire on different dates in a phased manner. Thus, all **4500 UTPs/convicts** will surrender on different dates as and when their respective **interim bail/emergency parole** would expire. Rather, giving a **particular** date for their surrender would not only create confusion but would also be **counterproductive**. Further, the UTPs/convicts who are on **interim bail/emergency parole/furlough** are in constant touch through **telephone** with jail authorities and are aware of their respective **dates of surrender**. D.G. (Prisons) has further been directed not only by this Committee but also by Hon'ble High Court in "Writ Petition (Civil) Number 3080/2020", titled "Court on its own Motion Vs. Govt. of NCT of Delhi & Anr." to inform UTPs/convicts of their respective dates of surrender.

Coming to next suggestion of the applicant regarding “**COVID-19 test” before surrender**. Members of the Committee have gone through this suggestion, it would be definitely be **advisable** in case a UTP/convict **at the time of his/her surrender** comes along with his/her **COVID-19 status report**. However, this cannot be enforced as a condition on any UTP/convict for his/her surrender. Even otherwise, it has already been resolved by this Committee that all the UTPs/Convicts shall at the time of their surrender be treated as **new entrants** to jail and shall be **kept in Isolation Cell** initially for a **period of 14 days**.

In view of above, **no further observations/directions** are **required** to be passed on the representation/suggestion made by the applicant. Hence, the same is **disposed of** accordingly.

Committee directs Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLSA) to inform all the applicants who made the above representations with respect to the *outcome thereof*.

Minutes of this Meeting **be implemented** by all concerned, in anticipation of the signatures of Members and Chairperson of the Committee.

Meeting ended with *Vote of Thanks* to the Chair.

Sandeep Goel
D.G (Prisons)

B.S.Bhalla,
Principal Secretary
(Home), GNCTD

Kanwal Jeet Arora
Member Secretary,
DSLSA

Hon’ble Ms. Justice Hima Kohli
Executive Chairperson DSLSA

276

**RESOLUTION PASSED AT THE MEETING OF THE CORE GROUP OF
NATIONAL FORUM FOR PRISON REFORMS
HELD ON ZOOM ON
TUESDAY, 2nd JUNE 2020 AT 4 PM**

"RESOLVED THAT the consent of the members of the National Forum for Prison Reforms present is hereby given to appoint Dr. Vijay Raghavan, Professor and Project Director, Prayas, Tata Institute of Social Sciences (TISS), as Convenor of the National Forum for Prison Reforms (NFPR) for a period of two years with effect from 02.06.2020 to work towards the mission and vision of the Forum."

"RESOLVED THAT Prof. Vijay Raghavan is hereby authorized to represent the National Forum for Prison Reforms (NFPR) in respect of all matters including Legal Matters where the Forum wishes to intervene or intends to be a party and he is further authorized to sign on behalf of the Forum to do all other acts, things and deeds as required to do to work towards the mission and vision of the Forum."

"RESOLVED THAT the Commonwealth Human Rights Initiative (CHRI) be appointed as the Secretariat for conducting the activities of the Forum in consultation with the Core Group and the Convenor, to further the objectives of the Forum."

"RESOLVED THAT the key decision making process will be done in consultation with the Core Group comprising of the following organisations: (a) Human Rights Law Network (HRLN) (b) Commonwealth Human Rights Initiative (CHRI) (c) Prayas, Tata Institute of Social Sciences (TISS) (d) International Bridges to Justice India (IBJ India) (e) Multiple Action Research Group (MARG) and (f) Lawyers for Human Rights International (LFHRI)."

"RESOLVED that the Convenor in consultation with the Core Group will file appropriate petitions, applications before Hon'ble Supreme Court of India and/ or the High Courts on behalf of the Forum."

"RESOLVED further that the Convenor in consultation and coordination with the Core Group would assist the Hon'ble Court and seek directions on relevant issues for the improvement in the overall functioning of the prisons, reducing overcrowding in prisons especially in view of the current crisis of Covid-19 virus, improving legal aid in prisons in coordination with State Legal Services Authorities, improving health and hygiene in prisons, implementation of Supreme Court directions, NALSA guidelines, NHRC guidelines, implementation of Probation of Offenders Act, MHA advisories, introducing alternatives to incarceration, addressing issues of unnatural deaths in prison, issue of inadequacy of prison staff, training and filling up of vacancies of prison staff, improving the Jail Visiting System and the functioning of Prison Monitoring Committees, addressing issues faced by foreign prisoners, and the functioning of detention centres, and any other issues/ items as the Convenor in coordination with the members may decide."

National Forum for Prison Reforms (NFPR)
Dated: 2.6.2020

