

ITEM NO.301 Court 1 (Video Conferencing) 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(C) No.1/2020

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS Petitioner(s)

VERSUS

Respondent(s)

(MR. DUSHYANT DAVE, SR. ADV.(A.C) [NAME OF SRISHTI AGNIHOTRI (M-9811629064), ADVOCATE MAY BE SHOWN]MR. SATISH TALEKAR (M-9082577493) & MR. KANHAIYA SINGHAL(M-9212424765)

(IA No. 89470/2020 - APPLICATION FOR PERMISSION, IA No. 49580/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 51847/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 51653/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 48261/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 82741/2020 - CLARIFICATION/DIRECTION, IA No. 55273/2021 - CLARIFICATION/DIRECTION, IA No. 48049/2020 - CONDONATION OF DELAY IN FILING, IA No. 57278/2021 - EARLY HEARING APPLICATION, IA No. 57074/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 49579/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 55276/2021 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 76234/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 66569/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 89471/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 49581/2020 - EXEMPTION FROM FILING AFFIDAVIT, IA No. 48050/2020 - EXEMPTION FROM FILING O.T., IA No. 48031/2020 - EXEMPTION FROM FILING O.T., IA No. 47522/2020 - EXEMPTION FROM FILING O.T., IA No. 47512/2020 - EXEMPTION FROM FILING O.T., IA No. 48335/2020 - INTERVENTION APPLICATION, IA No. 79197/2020 - INTERVENTION/IMPLEADMENT, IA No. 57069/2021 - INTERVENTION/IMPLEADMENT, IA No. 49577/2020 - INTERVENTION/IMPLEADMENT, IA No. 78680/2020 - INTERVENTION/IMPLEADMENT, IA No. 48680/2020 - INTERVENTION/IMPLEADMENT, IA No. 48263/2020 - INTERVENTION/IMPLEADMENT, IA No. 46086/2020 - INTERVENTION/IMPLEADMENT, IA No. 48270/2020 - MODIFICATION, IA No. 48217/2020 - MODIFICATION OF COURT ORDER, IA No. 46091/2020 - PERMISSION TO APPEAR AND ARGUE IN PERSON, IA No. 96394/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 60033/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 57853/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No. 82743/2020 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

CONMT.PET.(C) No. 393/2020 in SMW(C) No. 1/2020 (PIL-W)
(FOR ADMISSION)

Date : 07-05-2021 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

For Petitioner(s)

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Mr. Atul Babasaheb Dakh, AOR
Ms. Madhavi Ayyapan, Adv.

By Courts Motion

For Respondent(s)

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Mr. G. Prakash, AOR

Mr. Colin Gonsalves, Sr. Adv.
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Ms. Harini Raghupathy, Adv.
Mr. Satya Mitra, AOR

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Mr. Arvind Kumar Tripathi, Adv.

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Mr. Vikas Mahajan, AAG, HP

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Ms. Aruna Mathur, AOR
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Mr. Apoorv Kurup, AOR
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UPON hearing the counsel the Court made the following
O R D E R

I.A. Nos.55273 & 55276 of 2021 in I.A. No. 48231 of 2020 in Suo Motu Writ Petition (C) No.1 of 2020:-

1. Application of impleadment is allowed. The applicant who was already permitted to intervene in the Suo Motu Writ Petition filed the above I.A.s seeking the following reliefs:

- i. Pass an order directing the High Powered Committees as constituted vide order dated 23.3.2020 of this Hon'ble Court to examine the current situation of risk of virus spreading in prisons and recommend release of prisoners on interim bail/parole based upon the situation in the concerned State.
- ii. Pass an order directing the State Legal Service Authorities to strictly adhere to the Standard Operating Procedures of National Legal Service Authorities on the functioning of the Undertrial Review Committees as adopted vide order dated 04.12.2018 in WP(C) 406 of 2013 in Re-Inhuman Conditions in 1382 Prisons by this Hon'ble Court.
- iii. Pass an order directing the High Powered Committees/ High Courts to identify and release the vulnerable categories of prisoners on an urgent basis.
- iv. Pass an order directing the High Powered Committees / State Legal Services Authorities to periodically monitor the prison-wise occupancy rates in their respective States, and give a report of the

same to this Hon'ble Court of the prison occupancy as on 31st March, 2021, and the prospective increase in occupancy rate on a monthly basis, in the format as annexed in Annexure A9.

- v. Pass an order directing the DG Prisons to publish the prison-wise occupancy rates of UTPs/ Convicts/Detenues on their website monthly.
 - vi. Pass an order directing the High Powered Committees / monitoring teams to prioritise healthcare in prisons and scrutinise the prison-specific readiness and response plans as directed by this Hon'ble Court vide its order dated 23.03.2020 in the present case.
 - vii. Pass an order directing the State Governments/ Union Territories to undertake a vaccination drive in the prisons across their respective States/ Union Territories.
 - viii. Pass any other order or further directions as this Court may deem fit or proper in the circumstances of the case.
2. On 11.03.2020, the World Health Organisation declared Covid-19 as a pandemic. On 16.03.2020, 107 persons were tested positive for Covid-19 in our country. Anticipating the spread of Covid-19 virus in overcrowded prisons, notices were issued to all the Chief Secretaries, Administrators, Home Secretaries, Director Generals of Prisons and Departments of Social Welfare of all the States and Union Territories seeking their response regarding immediate measures to be adopted for the welfare of inmates in prisons and juveniles lodged in remand homes.
3. On 23.03.2020, this Court directed the State Governments, Union Territories to constitute High Powered Committees to

determine the class of prisoners who can be released on parole or on interim bail for appropriate periods. It was left open to the High Powered Committees to determine the category of prisoners who should be released depending upon the nature of offence, the number of years to which he/she has been sentenced, the severity of offences which he/she is charged with and the stage of trial or any other relevant factor which the Committee thinks appropriate. The High-Powered Committees were directed to take into account the directions contained in para no.11 of the judgment of this Court in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273. The High-Powered Committees were constituted in all the States, except a few. On the basis of recommendations made by the High-Powered Committees, a large number of prisoners were released either on interim bail or on parole.

4. Due to the reduction of the number of active cases, the released prisoners were directed to report back to prisons. We are informed that almost 90% of the prisoners who have been released last year have returned to prisons in February and March, 2021.
5. An unprecedented surge in Covid-19 during the last few weeks has resulted in a steep spike in the number of people who are affected by Covid-19. In the present situation there is a serious concern about the spread of Covid-19 in overcrowded prisons where there is lack of proper sanitation, hygiene and

medical facilities.

6. Mr. Colin Gonsalves, learned Senior Counsel appearing for the Applicant submitted that the High Powered Committees which have been constituted pursuant to the orders passed by this Court on 25.03.2020 should be directed to release all those prisoners who have been released last year on regular bail. Such of those inmates who have been granted parole last year should be granted 90 days parole by this Court. He requested that all orders of the High-Powered Committees shall be put on the website of the Governments. Mr. Gonsalves argued that the Standard Operating Procedure (SOP) formulated by the National Legal Services Authority for release of prisoners should be taken into account by the High-Powered Committees.
7. The learned Attorney General submitted that prisons need to be decongested by release of some prisoners in view of the grim situation. He submitted that the High-Powered Committees may be permitted to adopt the procedure that was followed earlier and release the prisoners on the basis of the guidelines formulated by them last year. The learned Attorney General requested for relaxation of handcuffing of the prisoners as during the present outbreak of Covid-19 there is a great danger of spread of the virus to the police personnel who have to hold the hands of the accused while being escorted. The learned Solicitor General of India and Ms. Aishwarya Bhati, learned Additional Solicitor General also supported the

learned Attorney General. A further request was made on behalf of the Union of India that the Commissioner of Police, Delhi be made a member of the High-Powered Committee to be constituted by the Delhi Government.

8. We may notice that India has more than four lakh prison inmates. It is observed that some of the prisons in India are overburdened and are housing inmates beyond optimal capacity. In this regard, we may notice that the requirement of de-congestion is a matter concerning health and right to life of both the prison inmates and the police personnel working. Reduction of impact of Covid-19 requires this Court to effectively calibrate concerns of criminal justice system, health hazards and rights of the accused. From limiting arrests to taking care of Covid-19 Patients, there is a requirement for effective management of pandemic from within the prison walls so as to defeat this deadly virus.

9. As a first measure, this Court, being the *sentinel on the qui vive* of the fundamental rights, needs to strictly control and limit the authorities from arresting accused in contravention of guidelines laid down by this Court in *Arnesh Kumar v. State of Bihar (supra)* during pandemic. It may be relevant to quote the same:

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.

10. Second, the rapid proliferation of the virus amongst the inmates of congested prisons is a matter of serious concern. The High-Powered Committees constituted by the State Governments/Union Territories shall consider release of prisoners by adopting the guidelines (such as *inter alia*, SOP laid down by NALSA) followed by them last year, at the earliest. Such of those States which have not constituted High

Powered Committees last year are directed to do so immediately. Commissioner of Police Delhi shall also be a member of the High-Powered Committee, Delhi.

11. Third, due to the immediate concern of the raging pandemic, this court has to address the issue of de-congestion. We find merit in the submission of Mr. Colin Gonsalves, learned Senior Counsel appearing on behalf of the applicant, that the High-Powered Committee, in addition to considering fresh release, should forthwith release all the inmates who had been released earlier pursuant to our order 23.03.2020, by imposing appropriate conditions. Such an exercise is mandated in order to save valuable time.
12. Fourth, further we direct that, those inmates who were granted parole, pursuant to our earlier orders, should be again granted a parole for a period of 90 days in order to tide over the pandemic.
13. Fifth, the fight against the pandemic is greatly benefitted by transparent administration. In this regard, our attention was drawn to example of Delhi, wherein the prison occupancy is updated in websites. Such measures are required to be considered by other States and should be adopted as good practice. Moreover, all the decisions of High-Powered Committees need to be published on respective State Legal Service Authorities/State Governments/High Courts websites in order to enable effective dissemination of information.

14. Overcrowding of prisons is a phenomenon, plaguing several countries including India. Some prisoners might not be willing to be released in view of their social background and the fear of becoming victims of the deadly virus. In such extraordinary cases, the authorities are directed to be considerate to the concerns of the inmates. The authorities are directed to ensure that proper medical facilities are provided to all prisoners who are imprisoned. The spread of Covid-19 virus should be controlled in the prisons by regular testing being done of the prisoners but also the jail staff and immediate treatment should be made available to the inmates and the staff. It is necessary to maintain levels of daily hygiene and sanitation required to be improved. Suitable precautions shall be taken to prevent the transmission of the deadly virus amongst the inmates of prisons. Appropriate steps shall be taken for transportation of the released inmates of the prisons, if necessary, in view of the curfews and lockdown in some States.

(VISHAL ANAND)
ASTT. REGISTRAR-cum-PS

(PRADEEP KUMAR)
BRANCH OFFICER