

THE HIGH COURT OF JUDICATURE FOR MADHYA
PRADESH AT JABALPUR

WP-9320-2021

(IN REFERENCE (SUO MOTU) Vs THE STATE OF MADHYA PRADESH & OTHERS)

Jabalpur, Dated : 10-05-2021

Per: Mohammad Rafiq, Chief Justice.

Mr. Sankalp Kochar, Advocate appeared as *Amicus Curiae*.

Mr. Pushpendra Yadav, Additional Advocate General for the respondent-State alongwith Mr. Arvind Kumar, Director General of Prisons and Mr. Sanjay Pandey, Deputy Inspector General of Jails.

Mrs. Giribala Singh, Member Secretary, M.P. State Legal Services Authority, Jabalpur.

Proceedings in this *suo motu* writ petition were initiated on 07.05.2021 in view of unprecedented situation faced by the country following second wave of Coronavirus (COVID-19). The Coronavirus has engulfed the whole of the Madhya Pradesh and has spread across the width and length of the entire State. No segment of the society has remained untouched. Though not very alarming but reports about prisoners, both under-trial and convicted, being found infected with Coronavirus, keep surfacing at regular intervals here and there. Considering that all the Jails in the State are presently housing prisoners almost double the number of their capacity, need of the hour is to immediately decongest them. Urgency of the situation therefore demands passing of appropriate order towards that end.

2. The matter was heard at some length through Video Conferencing. On 07.05.2021, when this *suo motu* writ petition was registered, but before the

detailed order was signed, it was brought to the notice of the Court that the Supreme Court has also taken note of the ongoing situation of Coronavirus in the country and has passed an order on that very day. This matter was therefore ordered to be listed again today.

3. Mr. Sankalp Kochar, learned *Amicus Curiae* submitted that in the present scenario when the country flounders and is gasping for air in debacle unfurled by the second wave of COVID-19, the state of Madhya Pradesh is amongst those States which are bearing the brunt of it the most. He argued that the capacity of jails in the State of Madhya Pradesh as on 28.02.2021 is 28,675, as against which 49,471 prisoners are lodged therein. Even after releasing 3,700 prisoners on parole, number of prisoners in different jails of the State as on 07.05.2021 is 45,582. Learned *Amicus Curiae* contended that judiciary being the custodian of liberty of citizens, is duty bound to ensure that those who are in the prison under its authority, are also insulated against the perceptible threat posed by COVID-19 and its ramifications. In his submission, the criteria earlier laid down by the High Powered Committee earlier need to be relaxed further to effectively reduce the overcrowding in the prisons of the State. We cannot agree more with him.

4. The World Health Organization (WHO) in its report titled “*Preparedness, Prevention and control of COVID-19 in prisons and other places of detention*” with its guidelines dated 08.02.2021 noted that this category of persons are more vulnerable to Coronavirus disease (COVID-19) than the general population because of the confined conditions in which they live together for prolonged periods of time. The Supreme Court in its order

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dated 16.03.2020, passed in *Re: Contagion Of Covid-19 Virus in Prisons* *Suo Moto Writ Petition (Civil) No.1/2020* acknowledged “a high risk of transmission of COVID-19 to prison inmates”, with prisoners, prison staff, families of prisoners and lawyers entering and leaving jails frequently, and called upon the State Governments and the Union Territories to submit replies on steps being taken by them to prevent the spread of the pandemic among prisoners and juveniles. The Supreme Court in its comprehensive order dated 23.03.2020, suggested that prisoners convicted of or charged with offences involving jail terms of seven years or less could be considered for release on parole or interim bail. The Supreme Court further observed that 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 those prisoners who have been convicted for a lesser number of years than the maximum. It was however left open for 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 or she has been sentenced or severity of offence with which he/she is charged and is facing trial, alongwith any other relevant factor, which the Committee may consider appropriate.

5. Part VI-A of the Prisoners Act, 1900 was inserted by way of State Amendment vide the Prisoners (Madhya Pradesh Amendment) Act, 1985 (No.10 of 1985) containing Sections 31-A, 31-B, 31-C, 31-D, & 31-E for grant of leave and emergency leave to the prisoners. Section 31-A of the Prisoners Act, 1900 (for short the “Act of 1900”) provides for grant of leave

to the prisoners and stipulates that subject to the provisions of this Part and to such conditions as may be prescribed, the State Government or any authority to which the State Government may delegate its powers in this behalf, may grant leave to any prisoner who has been sentenced for a term of imprisonment of not less than three years, for a period not exceeding twenty one days in a year, which was subsequently substituted by forty two days by the Prisoners (Madhya Pradesh Amendment) Act, 2012 (M.P. Act 22 of 2012). Section 31-B of the Act of 1900 provides for the power to grant leave to prisoners on ground of emergency and stipulates that notwithstanding anything contained in Section 31-A or in any other law for the time being in force, the State Government or any authority to which the State Government may delegate its powers in this behalf, may sanction emergency leave to a prisoner who is entitled to grant of leave under Section 31-A. Sub-section (2) of Section 31-B provided that emergency leave under sub-section (1) may be granted to a prisoner in case of death of his or her spouse, son, daughter, father, mother, brother, sister, paternal or maternal grand-father or grant-mother or in case of his or her own marriage or the marriage of his or her son, daughter, brother and sister. Section 31-E of the Act of 1900, specially with reference to sub-section (2)(b) thereof, empowers the State Government to make rules for carrying out the purpose of the Part VI-A of the Act of 1900, with regard to the conditions for grant of leave or emergency leave. The State Government in exercise of powers conferred upon it by Section 31 of the Prisoners Act, 1900 framed the Madhya Pradesh Prisoner's Leave Rules, 1989 (for short the "Rules of 1989"). The State Government however in Rule 19 of the Rules of 1989 retains the power to relax any of the provisions of the said Rules so as to issue such special order

as it may deem fit. Rule 4-D of the Rules of 1989 provides for grant of emergency leave to the convicted prisoners on any one of the aforementioned grounds. The State Government in exercise of powers conferred upon it by Section 31-E of the Act of 1900 at the time of first wave of COVID-19, inserted sub-rule (3) in Rule 4-D of the Rules of 1989 to include pandemic and natural calamity, also as the ground for release of the prisoners on emergent parole.

6. As per the available data, following was the position as on 28.02.2021 with regard to the cumulative capacity of all the Central Jails, District Jails, Open Jails and Sub-jails in the State:

No	Type of Jail	Number of Jails	Prisoner Accommodation Capacity		
			Male	Female	Total
1.	Central Jails	11	13359	717	14076
2.	District Jails	41	8757	728	9485
3.	Open Jails	06	94	0	94
4.	Sub-Jails	73	4588	432	5020
	Total	131	26798	1877	28675

As against the above, the actual number of the prisoners, both under-trial and convicted, lodged in various jails of the State as on 28.02.2021 was as follows:

No	Type of Jail	Number of Jails	Number of Confined Prisoners						Total	Children
			Convicted Prisoners		Under-trial prisoners		Other Prisoners			
			Male	Female	Male	Female	Male	Female		
1.	Central Jails	11	13723	617	9778	413	70	1	24602	80
2.	District Jails	41	2460	78	13204	774	60	1	16577	87
3.	Open Jails	06	39	0	0	0	0	0	39	1

4.	Sub-Jails	73	405	5	7739	82	22	0	8253	6
	Total	131	16627	700	30721	1269	152	2	49471	174

7. During the course of submissions before the Court, Mr. Arvind Kumar, Director General of Prisons, fairly admitted that even as on 07.05.2021, there were 45,582 prisoners lodged in different jails of the State as against their capacity of 28,675. He submitted that the overall number has been somewhat reduced by release of near about 4000 prisoners, of which 3,700 are those who have been released on parole, as per the earlier criteria laid down by the High Powered Committee. Break-up of 45582 prisoners in different jails of the State is as under:

Prisoners	Male	Female	Total
Under-trial	29764	1218	30982
Convicted	14007	539	14600

8. The Director General of Prisons submitted that as far as parole is concerned, the cases of only 14600 convicted prisoners can only be considered for that purpose, but the larger chunk of 30982 is of Under Trial Prisoners (UTP) and of them, the under trial prisoners facing trial for offences punishable with maximum sentence of seven years is approximately 6000. Apart from this, there are about 164 children, who are staying in different jails with female or male prisoners. On query by the Court, the Director General of Prisons was unable to readily inform as to how many UTPs are facing trial for offences exclusively triable by the Court of Magistrate and how many of male under-trial prisoners are there who are of more than 60 years of age and female under-trial prisoners who are more than 45 years of age. But he submitted that if the criterion for grant of parole

is relaxed to that extent and under-trial prisoners facing trial for offence punishable upto sentence of seven years are granted temporary bail, the number of inmates in the prisons can be reduced further.

9. Mr. Pushpendra Yadva, learned Additional Advocate General submitted that at the time of first wave of Coronavirus (COVID-19), in view of the order of the Supreme Court, the State Government in exercise of its powers under Section 31-E of the Prisoners Act, 1900, amended the M.P. Prisoners Leave Rules, 1989 vide its notification dated 29.03.2020 thereby inserting sub-rule (3) in its Rule 4-D, to include the pandemic and natural calamity as the ground for release of prisoners for a maximum period of 60 days on emergent parole for the purpose of decongesting the jails. Since those prisoners who were released on parole were granted extension from time to time the maximum period of parole was extended to 120 days by notification dated 13.05.2020, thereafter to 180 days vide notification dated 27.07.2020, thereafter to 240 days vide notification dated 27.09.2020 and then upto maximum 300 days vide notification dated 26.11.2020. The learned Additional Advocate General also placed on record copy of the order dated 27.04.2021 issued by the Director General of Prisons with reference to the last notification issued on 26.11.2020 requiring the various Jail Superintendents to release the prisoners covered by the laid down criterion on emergent parole on furnishing bail bonds and surety for a maximum period of 60 days.

10. As noticed earlier, the Supreme Court in its order dated 23.03.2020 clearly observed that the State Governments/Union Territories can consider

the release of prisoners who have been convicted or are facing trial, for offences for which prescribed punishment is up to seven years or less, with or without fine and those prisoners who have been convicted for a lesser number of years than the maximum. The High Powered Committee constituted pursuant to aforesaid order of the Supreme Court in its meeting dated 26.03.2020 however recommended for grant of parole of 60 days to the prisoners falling in any of the following categories:-

- (1) Male prisoner aged more than 65 years;
- (2) Female prisoners of 50 years and more;
- (3) Female prisoners with children aged about 6 years or less;
- (4) Pregnant female prisoners;
- (5) Male and female prisoners suffering from cancer;
- (6) Prisoners found to suffer from severe heart disease on medical certification such as having under gone bypass surgery or valve replacement.

11. The High Powered Committee further resolved that the District Collector and Superintendent of Police shall decide all the pending applications for grant of first parole within three days. The Committee suggested amendment in the relevant rules for enabling, the Director General of Prisons to release the eligible prisoners on parole of 60 days and the Superintendent of Jail to release the eligible prisoners on parole of 30 days. The Committee further resolved that the State Government make arrangements for transportation of released prisoners nearest to their residence and that the State Government consider granting benefit of remission, generally granted on the occasion of the national festivals, as a special case, as on 10.04.2020. It recommended that the State Government at

the time of release of the prisoners shall pay their earned wages. The State Government should consider granting one time relaxation/waiver to such prisoners who are in jail only because they are unable to pay the amount of fine. As regards the under-trial prisoners, the District and Sessions Judge concerned were required to examine the case of the prisoners for grant of temporary bail for a period of 45 days to only those prisoners who are facing trial for the offences punishable maximum upto to five years on merits on case to case basis. The Superintendents of different Jails were required to obtain applications from such prisoners and forward the same to the respective District and Session Courts. It was also directed that the Superintendent of Jail shall obtain applications for grant of interim bail of 45 days from those under-trial prisoners who are covered by the SOP issued by the National Legal Services Authority in December, 2018 and similarly forward the same to the District and Sessions Judge. It was directed that the SOP issued by the National Legal Services Authority in December, 2018 shall be adhered to for giving effect to the provisions of Section 436-A of CrPC and even those under trial prisoners, who have not been able to furnish adequate surety, shall also be released.

12. We may at this stage notice the SOP issued by the National Legal Services Authority in December, 2018 in respect to under-trial prisoners for grant of interim bail by the District and Session Court concerned for a maximum period of 45 days, which provides as under:

- (a) UTPs/Convicts falling under covered under Section 436-A of CrPC.
- (b) UTPs released on bail by the court, but have not been able

to furnish sureties;

- (c) UTPs accused of compoundable offences;
- (d) UTPs eligible under Section 436 of CrPC;
- (e) UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Section 379, 380, 381, 404, 420 IPC or alleged to be an offence not more than 2 years imprisonment;
- (f) UTPs become eligible to be released on bail u/s 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 27 A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 day;
- (g) UTPs who are imprisoned for offences which carry a maximum punishment of 2 years;
- (h) UTPs who are detained under Chapter CrPC. i.e. u/s 107, 108, 109 and 151 of CrPC;
- (i) UTPs who are sick or infirm and require specialized medical treatment;
- (j) UTPs women offenders;
- (k) UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with than 7 years of imprisonment and have suffered at least $\frac{1}{4}$ of the maximum sentence possible;
- (l) UTPs who are of unsound mind and must be deal with Chapter XXV of the Code;
- (m) UTPs eligible of release under Section 437(6) of CrPC. Where 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 60 days from the first date

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fixed for taking evident in the case;

- (n) UTPs Convicts who have undergone their sentence of are entitled to release because of remission granted to them.

13. The Supreme Court in its recent order dated 7.5.2021 has directed that the High Powered Committees constituted by the State Governments 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 and further that those inmates who were granted parole in pursuance of the earlier order passed by the Supreme Court, should be again granted a parole for a period of 90 days in order to tide over the pandemic. It was directed that all decisions of the High Powered Committees should be published on the websites of the respective State Legal Service Authorities/State Governments/High Courts in order to enable effective dissemination of information. Observing that 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, the authorities were directed to be considerate to their concerns. A direction has also been issued to ensure that proper medical facilities should be provided to all prisoners who are imprisoned. Regular testing of the prisoners should be done to control the spread of Coronavirus among them. It was also directed that the appropriate steps be taken for transportation of the released inmates of the prisons, if necessary, in view of the curfew and lockdown in the States.

14. Considering the submissions made by the learned *Amicus Curiae* and the learned Additional Advocate General, this Court is inclined to agree with the Director General of Prisons that mere grant of parole to the convicts as

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per the earlier criteria is not going to achieve the desired object of decongestion of the prisons of the State because there are presently maximum 14600 convicted prisoners (of which 539 are females) and approximately 3700 covered by the criteria last laid down by the High Powered Committee have already been released on parole. According to the Director General of Prisons, the overcrowding of the jails in the State can be reduced by requiring the District and Sessions Judges of the State to consider granting temporary bail to atleast those who are facing trial for the offences having maximum sentence of seven years. We see no reason not to adopt that course, more particularly when even the Supreme Court in its order dated 23.03.2020 had observed so. Learned *Amicus Curie* has submitted that criteria of age for grant of parole to male convicts aged 65 years and above and female convicts aged 50 years and above deserves to be reduced by further five years to achieve the desired purpose. In his submission, all those convicts who have with them any minor child inside the prison regardless of age and those suffering from serious ailment of any kind, should be granted benefit of parole. Learned *Amicus Curie* in this connection has invited attention of the Court towards the recommendation made by the High Powered Committee appointed by the NCT, Delhi and the High Powered Committee of the State of Haryana, who, apart from laying down certain additional criteria for grant of parole to convicts, suggested for release of all such under-trial prisoners on temporary bail, facing trial for the offences for which maximum punishment prescribed is seven years. In our considered opinion, in order to effectively decongest the prisons, the criteria laid down earlier needs to be somewhat relaxed further.

15. Having heard the learned *Amicus Curiae* and the learned Additional Advocate General, this Court, in view of extraordinary situation prevailing in the State, deems it appropriate to direct the respondents to place before the High Powered Committee the following suggestions given by both the Director General of Prisons and the learned *Amicus Curiae*:

I. For convicted prisoners:

The jail authorities should consider granting emergent parole, of atleast 90 days, on usual conditions to the following categories of prisoners:

- i. All male prisoners, who are more than 60 years of age;
- ii. All female prisoners, who are more than 45 years of age;
- iii. All female prisoners, regardless of their age, who are lodged in jail alongwith with their minor children;
- iv. All female prisoners who are carrying pregnancy of whatever duration;
- v. All prisoners on the basis of medical certification found to be suffering from cancer, serious heart ailments such as having: (i) undergone bypass surgery, (ii) valve replacement surgery, (iii) HIV, (iv) Cancer, (v) Chronic Kidney Dysfunction (UTPs requiring Dialysis), (vi) Hepatitis B or C, (vii) Asthma, (viii) Tuberculoses and (ix) disablement of body to the extent of 40% or more;

II. For under-trial prisoners:

- i. The Superintendent of the concerned Jail, should, in respect of those under-trial prisoners, who are facing trial

for the offence punishable up to maximum of seven years, with or without fine, obtain their applications for interim bail and forward the same to the District and Session Judge concerned, who shall have the same considered and decided within four days for their release on temporary bail for atleast a period of 90 days, on execution of bail bond and surety, as may be deemed appropriate;

- ii. The Superintendent of Jail, should in respect of those under-trial prisoners, who are covered by the SOP issued by the National Legal Services Authority in December, 2018, obtain their applications for grant of interim bail and similarly forward the same to the District and Session Judge concerned, who shall have the same considered and decided within four days for their release on temporary bail for atleast a period of 90 days, on execution of bail bond and surety, as may be deemed appropriate. In this regard, the assistance of the District Legal Services Authority may be taken if necessary;
- iii. The following category of under-trial prisoners, may not however be considered for release on interim/temporary bail:-
 - a. those under trial prisoners, who are now in custody for an offence committed by them during the period of interim bail earlier granted to them; and
 - b. those under trial prisoners, who were granted

interim bail on the basis of criteria adopted earlier but failed to surrender in time in terms of the bail order and were taken in custody, pursuant to execution of non-bailable warrant.

The meeting of the High Powered Committee for this purpose be convened on 12.05.2021 at the time fixed by the Executive Chairman of the M.P. State Legal Services Authority, either by physical or virtual mode, as may be deemed possible.

16. In addition to above, this Court deems it appropriate to issue following directions:

- I.** The respondent/State Authorities shall periodically subject all the prisoners to RT-PCR test, once in every fortnight, so as to screen and segregate those who are found corona positive.
- II.** All new inmates, before being lodged in any Jail, should be first subjected to RT-PCR test and kept in a separate ward till they have tested negative.
- III.** If any prisoner covered under any of the aforesaid categories for releasing him/her on parole or temporary bail, or otherwise, is found corona positive or suffering from any other ailment, may be provided treatment at the nearest Government Hospital.
- IV.** The respondent/State Authorities shall also get the details of all the juveniles lodged either in Children Home or those in conflict with law, kept in Reformatory/Rehabilitation Centres and subject them to RT-PCR test once in every fortnight, so as to screen and segregate those, who are found corona positive.

- V. If any prisoner is found to be detained in jail for the reason of his/her inability to pay the fine imposed, the State Government shall take steps to waive off such fine and ensure their release at the earliest.
- VI. The Jail Authorities shall place the data of such under-trial prisoners who are facing trial for offences exclusively triable by the Court of Magistrate before the High Powered Committee for their consideration.
- VII. The respondents-State authorities should divide all the inmates in the jails on the basis of age group of (i) 18 to 45 years and (ii) those above 45 years for their vaccination on priority and shall place on record the action plan for their vaccination.
17. In the meanwhile, the learned *Amicus Curiae* shall give suggestions for other reforms that can be introduced in the Jails of the State to ameliorate the conditions of the prisoners.
18. Let a copy of this order be forwarded to the Member Secretary, M.P. State Legal Services Authority, Jabalpur and the learned Additional Advocate General for needful.
19. List the matter for further consideration on **17.05.2021**.

(MOHAMMAD RAFIQ)
CHIEF JUSTICE

(ATUL SREEDHARAN)
JUDGE

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