

HIGH COURT OF KERALA AT ERNAKULAM

**S. Manikumar, CJ,
C.K. Abdul Rehim &
C.T. Ravikumar JJ.**

W.P. (C) No.9400 OF 2020 (Suo Motu)

Dated this the 25th day of March, 2020

ORDER

Suo motu Writ Petition – COVID-19 - taken up by the High Court.

S. Manikumar, CJ.

1. On 24th March, 2020, the Hon'ble Prime Minister of India announced a complete lock down throughout the Country and consequently, the Ministry of Home Affairs, Government of India, issued a Notification No.40-3/2020-DM-I(A) dated 24th March, 2020, enclosing the guidelines on the measures to be taken by the Ministries/Departments of the Government of India, State/Union Territory Governments, for containment of COVID-19 epidemic in the Country.

2. Having regard to the public announcement of imposing a total lock down in the wake of outbreak of pandemic Corona Virus, resulting in immobilization of public at large, and total stoppage of public transport, litigants would find it difficult to approach the Courts to vindicate their grievances. Therefore, we deem it proper to issue directions in the instant *suo motu* writ petition.

3. On request, Shri Ranjith Thampan, learned Additional Advocate General, Kerala, Shri Suman Chakravarthy, learned Senior Public Prosecutor representing the State, Shri P. Vijayakumar, learned Assistant Solicitor General, representing the Government of India and Public Sector Undertakings owned and controlled by the Government of India, and Shri V. Manu, Senior Government Pleader were present. On behalf of the Kerala High Court Advocates' Association, its President Shri R. Lakshmi Narayan was also present.

4. We are informed that the High Court as well as the Courts in the District Judiciary and Tribunals have granted interim orders for a limited period and inasmuch as the litigants, their respective counsel, will not be in a position to approach the Courts/Tribunals for filing an application for extension, during this total lock down period of 21 days, necessary orders have to be issued, so as to

enable the litigants not to suffer on account of their inability to approach the Courts in the Districts/Tribunals, as the case may be. Therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India, all the interim orders passed by all the Courts/Tribunals upon which High Court exercises supervisory jurisdiction under Article 227, which are due to expire during the lock down period of 21 days, are extended by this Court by one month from today.

5. We also make it clear that, if any application is filed for extending/vacating an interim order and pending for orders in this Court, the interim orders will be extended for one month.

6. In so far as recovery proceedings under the State Laws are concerned, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in all recovery matters, such as electricity, water, Abkari and other matters, Council of Ministers, Government of Kerala has already taken a decision that payment will be deferred upto 30.04.2020, and therefore, no recovery proceedings would be initiated or recovery proceedings already initiated, would not be proceeded further until 30.04.2020. The submission of the learned Additional Advocate General is placed on record.

7. Shri V. Manu, learned Senior Government Pleader expressed the view of the Bar Council of Kerala and the Bar Council of India that, in the wake of the outbreak of the pandemic in the country and the consequent lock down notification issued by the Government of India, there should be a total shut down of Courts during this lock down period. The submission is placed on record.

8. In so far as recovery proceedings by the Government of India and Public Sector Undertakings owned or controlled by the Government of India, attention was invited to an order of this Court passed in W.P.(C) No.8231 of 2020 dated 19.03.2020, which was taken on appeal by the Union of India in Special Leave Petition (Civil) Diary Nos.10669/2020, wherein, the Hon'ble Supreme Court of India on 20.03.2020 has passed the following orders:

"The Registry is directed to accept these special leave petitions against the judgment and order(s) passed by the High Court of Judicature at Kerala, Ernakulam Bench in Writ Petition (Civil) No. 8231/2020 and of the High Court of Judicature at Allahabad, Allahabad Bench in Writ Petition(Civil) No.7014/2020.

Permission to file special leave petitions is granted.

Issue notice.

In the meantime, there shall be ex-parte ad-interim stay of the impugned judgment and order(s) passed in the aforesaid writ petitions and of further proceedings before the High Court(s), in view of the stand taken by the Government of India through learned Solicitor General, before us, that the Government is fully conscious of the prevailing situation and

would itself evolve a proper mechanism to assuage concerns and hardships of every one."

9. The learned Assistant Solicitor General of India submitted that the order of the Hon'ble Supreme Court dated 20.03.2020 would implicitly be adhered to by Government of India and above-said Public Sector Undertakings.

10. Taking note of the submission of the Government of India before the Hon'ble Supreme Court that a proper mechanism will be evolved, in exercise of the powers under Articles 226 and 227 of the Constitution of India, we also deem it fit to state that until such time, we hope that no action would be taken.

11. In so far as Criminal matters are concerned, we are also informed by Shri Suman Chakravarthy, learned Senior Public Prosecutor that High Court/Sessions Courts would have granted anticipatory bail for a limited period, which may expire during this lock down period, and inasmuch as the High Court/Sessions Courts are not functioning, orders have to be issued by the High Court in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India and under the inherent powers of the High Court under Sec.482 Cr.P.C.

12. Having regard to the above said submissions, orders of bail or anticipatory bail, restricted for a limited period, which may expire in the lock down period, have to be extended. Therefore, in exercise of the powers conferred under Articles 226 and 227 of the Constitution of India and Sec.482 Cr.P.C., interim orders in the above matters will stand extended for one month from today.

13. Attention of this Court was also invited to the order of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020 In Re: Contagion of COVID 19 Virus in Prisons dated 23.03.2020, wherein, after considering the outbreak of COVID-19, hardships faced by the litigants/lawyers, staff in the Courts, convict prisoners, as well as under-trials, the Hon'ble Supreme Court , taking note of Article 21 of the Constitution of India, has issued the following directions:

"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."

14. Apart from the above, Shri Suman Chakravarthy, learned Senior Public Prosecutor submitted that, Government of Kerala have already constituted a High Powered Committee comprising of (1) Executive Chairman of the State Legal Services Authority; (2) the Principal Secretary (Home/Prisons) as the case may be; (3) Director General of Prisons to adhere to the directions issued by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020.

15. While passing orders in the Suo Motu Writ Petition, the Hon'ble Supreme Court has made it clear that, State/Union Territories could consider release of persons who are convicted or 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.

16. The Hon'ble Apex Court has also made it clear that, it is open to 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.

17. In so far as the above directions are concerned, the Government of Kerala have issued a Notification dated 25.03.2020, which is extracted below:

“(Emblem)

GOVERNMENT OF KERALA

Abstract

Home Department – Prisons – Outbreak of Covid 19 pandemic – Controlling of overcrowding – Directives of the Hon’ble Supreme Court – Implemented – Orders issued.

HOME (B) DEPARTMENT

G.O.(Rt)No. 970/2020/HOME Dated, Thiruvananthapuram
25/03/2020

Read 1. Order of the Hon’ble Supreme Court Suo motu Writ
Petition (C) No.1/2020 dtd 23/03/2020.

2. Letter No. WP2-7212/2020/Pr.HQ dtd. 23.03.2020 of the Director General of Prisons and Correctional Services.

ORDER

As per the order read as 1st paper above the Hon'ble Supreme Court of India ordered all State Governments and UTs to take urgent measures to reduce overcrowding in Prisons across the Country to control the outbreak of pandemic Covid 19. The Director General of Prisons and Correctional Services also vide letter read as 2nd paper above requested Government to implement certain measures for reducing overcrowding in Prisons.

Government have examined the matter in detail and are pleased to order as follows.

- 1) A High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Additional Chief Secretary (Home & Vig) (iii) Director General of Prison(s), is hereby constituted, to determine which class of prisoners can be released on parole or on interim bail.
 - a) The committee shall consider and recommend to Govt. 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.
 - b) High Powered Committee shall 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 and forward such recommendation to Govt.
- 2) Physical presence of all the undertrial prisoners before the Courts shall be stopped forthwith and recourse to video conferencing for all purposes.

3) 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.

3)The Director General of Prisons & Correctional Services shall develop Prison specific readiness and response plans in consultation with medical experts. "*Interim guidance on Scaling-up Covid-19 Out break 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.

4) A monitoring team consist of Deputy Inspector General in the respective Zone, Superintendents of Prisons in the respective Prisons and Medical officer in the respective Prison is constituted to ensure that the directives issued in item (3) with regard to prison and remand homes are being complied with scrupulously.

5) The Under-trial Review Committee contemplated by the Apex 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 said judgment.

6) The Director General of Prisons and Correctional Services is empowered to grant Ordinary leave to eligible prisoners in a single spell of 60 days, subject to all other conditions of leaves, in relaxation to rule 397 (b) of Kerala Prisons and Correctional Services (Management) Rules 2014 to reduce the number of prisoners in prisons.

7) Due to the lack of public transport system as the prisoners cannot report back in prison after the expiry of their period of leave in time, such overstayal period upto April 15 shall be considered as bail (shall not be considered as sentence undergone), provided that such prisoners shall report to the police station nearby and the Station House Officer shall report the position to prison authorities concerned.

The Director General of Prisons and Correctional Services shall implement item(6) of this order with immediate effect.

(By order of the Governor)

DR. VISHWAS MEHTA
ADDITIONAL CHIEF SECRETARY"

18. As regards bail applications of convicts and under-trial prisoners, the High Court, on the administrative side, had taken a decision to hear applications seeking bail/anticipatory bails/suspension of sentence, as the case may be, and posted some of the cases for hearing tomorrow (26.03.2020). Now, the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1/2020 has issued directions to the State Governments/Union Territories to constitute a High Powered Committee in respect of bail matters, which has already been done. Hence, this Court deems it fit that those applications need not be taken up for hearing and it is left to the High Powered Committee to decide.

19. In the interim order of the Hon'ble Supreme Court, there is no reference to the anticipatory bail applications. On instructions, Shri Ranjith Thampan, learned Additional Advocate General submitted that, in view of the National lock down for 21 days declared by the Hon'ble Prime Minister, and the difficulties

expressed by the staff and Law officers attached to the Office of the Advocate General, they may not be able to attend the office or Courts. It is the further submission that it is not possible to get instructions from the officers concerned, and therefore, the learned Additional Advocate General, by letter dated 25.03.2020, has requested the Registrar General, High Court of Kerala that all the proceedings have to be postponed.

20. Representing the Advocates, Shri R. Lakshmi Narayan, President of the Kerala High Court Advocates' Association reiterated that, same difficulty and hardship is faced by the staff attached to the learned counsel, litigants, and having regard to the right of personal liberty guaranteed under Article 21 of the Constitution of India, a general order, as regards anticipatory bail applications, is required to be passed.

21. Therefore, taking note of the above said situation, we are of the firm view that, right of personal liberty guaranteed under Article 21 of the Constitution of India should not, at any rate, be infringed by arresting an accused, except in matters where arrest is inevitable. However, the State is at liberty to take appropriate decision in respect of heinous/serious offences and in rest of the cases, State may act accordingly.

22. In the event of any arrest, the Constitutional obligation under Article 20(2) shall be followed in letter and spirit. Over-crowding in prisons is one of the issues taken up by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C) No.1/2020*. Therefore, learned Magistrates/Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police custody is required or not. Needless to state that, bail is the rule and jail is an exception. We make it clear that, the above said directions stand excluded to subjects relating public order/law and order and any action taken by the State Government to combat the outbreak of COVID-19 and actions taken thereof.

23. Shri Ranjith Thampan, learned Additional Advocate General also submitted that, in so far as Local Self Government Institutions are concerned, Government have issued instructions not to take any coercive action. It is sincerely expected that, due to the outbreak of COVID-19, State Government, LSG Institutions, Government of India, and Public Sector Undertakings owned and controlled by the State/Central Governments that no coercive action be taken since there is no opportunity to the persons to approach the Courts at present.

24. A copy of this order shall be published in the official website of the High Court of Kerala. Copy shall be sent to the District Courts and Tribunals, through e-mail. Copy of this order be sent to all concerned. The order be communicated to the media, both print and visual, for information to the public.

(Sd/-)
**S. MANIKUMAR,
CHIEF JUSTICE.**

(Sd/-)
C.K. ABDUL REHIM, JUDGE

(Sd/-)
C.T. RAVIKUMAR, JUDGE