

“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.”

2 In pursuance of the above orders of the Supreme Court, a High Power Committee was constituted, which has taken a decision in its meeting held on 25th March 2020, laying down norms to release the prisoners/under-trials on interim bail/parole, etc. According to Mr. Talekar, the High Power Committee has made a distinction between

undertrials/convicts under the Indian Penal Code and those falling under the special enactments like MCOCA, PMLA, MPID, NDPS, UAPA, etc.

3 In pursuance to these directions of the Supreme Court, the Hon'ble Home Minister, Government of Maharashtra issued a Public Notice/Press Note dated 26th March 2020 that that State Government has taken a decision to release under-trial prisoners/prisoners convicted up to 7 years imprisonment. It was stated that approximately up to 11000 prisoners would be released on emergency parole, initially for 45 days by undertaking appropriate medical check, etc.

4 Mr. Thakare, learned P.P has stated that in pursuance of the directions of the Supreme Court as also the statement as made by the Hon'ble Home Minister, Government of Maharashtra in the Press Note, as on date, 4060 prisoners are released on bail./interim bail/parole and that the State Government is in the process of releasing the others, as per the Press Release.

5 Mr. Talekar has also brought to the notice of this Court a subsequent order dated 13th April 2020 passed by the Supreme Court, whereby further directions are issued. The directions are also in the

nature of clarifying as to what the Supreme Court had ordered on 23rd March 2020. The following is the relevant extract of the said order which is required to be noted:-

“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 spirits.”

6 Although Mr. Talekar would submit that the aforesaid directions are issued in the context of the State of Bihar (I.A. No. 48260 of 2020), I am unable to agree. It appears to be a general clarification of the order dated 23rd March 2020.

7 Be that as it may, the concern of Mr. Talekar at today’s hearing is two-fold. Firstly, he would submit that the High Power Committee as set-up in pursuance of the order dated 23rd March 2020, has taken a

decision on 25th March 2020, laying down guidelines for release of the prisoners, whose maximum punishment is 7 years or less. While doing so, he has submitted that the High Power Committee ought not to have made a distinction between offenders under the Indian Penal Code and those falling under the other Special Enactments like MCOCA, PMLA, MPID, NDPS, UAPA, etc. Mr. Talekar's grievance is in regard to the following contents of the decision taken by the High Power Committee :

“(iv) The aforesaid directions shall not apply to undetrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOCA, PMLA, MPID, NDPS, UAPA, etc. (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.”

8 Mr. Talekar would submit that such a decision of the High Power Committee is a discrimination *qua* the prisoners/under-trials, inasmuch as, two categories of prisoners; one falling under the IPC and others falling under the Special Enactments, is brought about. It is his submission that there are no such directions of the Supreme Court in the said order dated 23rd March 2020 to classify the prisoners by

differentiating them on the basis of the enactments. Mr. Talekar submits that already three representations are made to the High Power Committee to reconsider its decision in this regard.

9 The second grievance of Mr. Talekar is in regard to the inaction/slow action being taken by the State to release the 11000 prisoners as declared by the Hon'ble Home Minister, as noted above.

10 Mr. Thakare, learned P.P has placed on record a letter dated 20th April 2020 addressed to him by the Additional D.G (Prisons), whereby, it is stated that in none of the prisons in the State of Maharashtra, there is a person affected with Corona Virus. It is also recorded that so far, 4060 prisoners/under-trials are released on bail as per the decision of the High Power Committee and as per the statement as made by the Hon'ble Minister. He states that further action is being taken to release the prisoners so identified and falling within the parameters of the decision of the High Power Committee.

11 In the aforesaid circumstances, I am of the opinion, that as the State Government is already in the process of releasing 11000 prisoners by following the appropriate procedure, it is not necessary to issue any

immediate directions. However, it is clarified that the State Government may expedite such steps which are being taken, so that the orders of the Hon'ble Supreme Court, are implemented in letter and spirit.

12 In regard to the contention of Mr. Talekar about the alleged discrimination being meted out to the prisoners under the decision of the High Power Committee as noted above, it would be appropriate that the High Power Committee considers the representation as made by Mr. Talekar, as early as possible and decide the same.

13 The Office is directed to forward a copy of this order to the Hon'ble members of the High Power Committee, so that, an early hearing in regard to the representation can be fixed.

14 List this petition for further hearing on 30th April 2020.

G. S. KULKARNI, J.