

Meeting of High Power Committee dated 11-05-2020 to consider the representation dated 08-04-2020 of Advocate Mr. Talekar pursuant to the order dated 23-04-2020 of the Hon'ble High Court

1. In pursuance of the direction of the Hon'ble the Chief Justice of the Bombay High Court, the representation dated 08-04-2020 (addressed to the Hon'ble the Chief Justice of India and a copy marked to the Hon'ble Chief Justice) of Advocate Shri S.B. Talekar is numbered as Suo Moto Criminal PIL (Stamp) No 1 of 2020. Subsequently, an order dated 23-04-2020 in the said Suo Moto Criminal PIL was passed by the Hon'ble High Court. Paragraphs 11, 12 and 13 of the said order read as follows:

“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.”

2. This Committee has accordingly heard Advocate Shri Talekar through Video Conferencing on the issue of alleged discrimination under the decision dated 23-03-2020 of this Committee whereby under trial/convicted prisoners charged/convicted under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc. are excluded from availing the benefit of interim bail/parole which benefit has been granted to other under trial/convicted prisoners charged/convicted for offences carrying a maximum punishment of 7 years or less. Mr. Talekar contends that a blanket exclusion of the prisoners who are charged/convicted for offences made under the Special Acts like MCOC, PMLA, MPID, NDPS, UAPA, etc. is arbitrary and defeats the thrust of

the directions of the Hon'ble Supreme Court in the order dated 23-02-2020 in *Suo Moto Writ Petition (C) No. 1 of 2020*. Insofar as the issue of non-release of prisoners on parole as stated in the representation of Mr. Talekar is concerned, in paragraph 12 of the order dated 23-04-2020, the Hon'ble Court has already issued necessary directions to expedite the process of their release.

3. In the order dated 23-02-2020, the Hon'ble Supreme Court, while directing constitution of High Power Committee, has stated thus:

*"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)

4. By a subsequent order dated 13-04-2020, the Hon'ble Supreme Court has further clarified its order dated 23-03-2020 as follows:

*"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)

In the order dated 23-04-2020, the Hon'ble High Court has, while directing the representation to be heard and decided, noted the above clarification of the Hon'ble Supreme Court and has rejected the contention of Advocate Shri. Talekar that the aforesaid clarification was in the context of the matter pertaining to the State of Bihar (I.A. No. 48260 of 2020) and has observed that the same appears to be a general clarification of the order dated 23-03-2020.

5. From the above, it would be apparent that the Hon'ble Supreme Court in its order dated 23-03-2020 has left it to the absolute discretion of this Committee 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**. Moreover, in its subsequent order dated 13-04-2020, the Hon'ble Supreme Court has clarified that it has not directed the States/Union Territories to compulsorily release the prisoners from their respective prisons.

6. This Committee in arriving at its decision dated 25-03-2020 has considered the nature of the offences under the Special Acts like MCOCA, PMLA, MPID, NDPS, UAPA, etc. and also considered other relevant factors and after subjective satisfaction arrived at a conclusion that the directions contained in the said decision to release certain prisoners should not be made applicable to the class of prisoners charged/convicted for offences under such Special Acts. In the said decision dated 25-03-2020 of the Committee, it was made clear that since the Hon'ble Supreme Court was in seisin of the matter the said decision/directions would be subject to further orders of the Hon'ble Supreme Court. It appears that till date the Hon'ble Supreme Court has not interfered with the decision dated 25.03.2020 of the Committee. Mr. Talekar upon a query being raised candidly stated that though he has filed an IA in the Hon'ble Supreme Court long ago, he has not been granted circulation.

7. It is required to be noted in the present representation dated 08-04-2020, which has been converted to Suo Moto Criminal PIL (Stamp) No. 1 of 2020, Advocate Shri Talekar has not disclosed that he represents his clients Shri Nitin Shelke and Shri Madhukar Suryawanshi who are incarcerated in Harsul prison in Aurangabad *inter alia* for offences under the MPID Act, which is a Special Act. The aforesaid persons had filed Criminal WP No 483 of 2020 in the Aurangabad Bench of the Bombay High Court challenging the decision dated 25-03-2020 of the High Power Committee excluding the prisoners who are charged/convicted of offences punishable under Special Acts including MPID Act, from availing temporary bail/parole. While disposing of the said Criminal Writ Petition vide order dated 15-04-2020, it is recorded that the Hon'ble Court was not inclined to entertain the said Writ Petition. The said Writ Petition was withdrawn by Mr. Talekar with liberty to file a representation. It is only in the subsequent additional representation dated 18-04-2020 addressed to the Hon'ble the Chief Justice (not to be confused with the representation dated 18-04-2020 addressed by Mr. Talekar on behalf of his clients Mr. Nitin Shelke and Mr. Madhukar Suryawanshi for release on interim bail to the Member Secretary, High Power Committee, pursuant to the liberty granted by the Court in the order dated 15-04-2020 in Criminal Writ Petition No. 483 of 2020) that the filing of the aforesaid Criminal Writ Petition is disclosed, however, again without disclosing that Shri Talekar was representing the Petitioners therein.

8. Be that as it may, it appears that Shri Talekar is primarily representing his clients Shri Nitin Shelke and Shri Madhukar Suryawanshi who are incarcerated in Harsul prison in Aurangabad for offences *inter alia* under the MPID Act, which is a Special Act. It is contended by Mr. Talekar that the classification between the prisoners who are convicted or accused of offences under the IPC and the Special Act, more particularly, the MPID Act is artificial and does not satisfy the twin test of classification under section 14 of the Constitution of India and does not have a reasonable nexus with the object sought to be achieved i.e decongestion of prisons and measures to be adopted for protection of health and welfare of prisoners in light of the outbreak of COVID-19. He relied upon the seven judge Bench of Hon'ble Supreme Court in *State of West Bengal vs. Anwar Ali Sarkar* *vs. Mohammed*, 1952 SCR 284. We are unable to agree with the contention of Mr. Talekar. The object was only to release some of the prisoners and not all

the prisoners. There is a reasonable basis for the classification which has been done under the orders of the Hon'ble Supreme Court to release some of the prisoners. It is an admitted position that the order of the Hon'ble Supreme Court was passed essentially to determine the **class/category of prisoners** to be released so as to decongest prisons considering the threat of COVID – 19 pandemic. As stated earlier, the Hon'ble Supreme Court has left it to the absolute discretion of the Committee 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**. In any event, the prisoners charged/convicted under the Special Acts including MPID Act cannot claim to be released from prison as of right. It is required to be noted that the offences under MPID Act are against large number of victims who are mostly poor depositors, and whose interests are required to be safeguarded and recoveries made from properties. The MPID Act is enacted to protect the interest of the depositors and the prisoners charged/convicted for offenses under the MPID Act cannot be treated as belonging to the same class of prisoners who are to be released on interim bail/parole under the decision of this Committee dated 25-03-2020. It is true that so far as MPID Act is concerned there are no restrictive provisions for grant of bail, however, it would be necessary to look at the facts on case to case basis by a judicial mind before releasing such prisoners, who are generally known to be more resourceful, after considering the likelihood of them absconding and/or tampering with evidence or witnesses and/or blocking the recoveries to be made from the properties and in a given case it would be necessary to secure the amounts of which fraudulent defaults in repayments have been committed. The judgment relied upon by Mr. Talekar is distinguishable on facts. Thus, considering the nature and sweep of the offences under the MPID Act, we do not find that the decision of this Committee dated 25-03-2020 needs to be reconsidered. We however clarify that it would always be open to such prisoners to apply for regular bail which would be decided in accordance with law.

9. It may be noted that by a separate decision of this Committee taken today, more prisoners than what was decided in the earlier decision of the HPC dated 25-03-2020 are to be released, which would substantially

decongest the prisons and about 50% of prisoners out of the prison population of 35,239 are now expected to be released.

10. In the circumstances, the representation of Mr. Talekar does not merit acceptance and is accordingly rejected.

Justice Shri A. A. Sayed, Judge, Bombay High Court

**Shri Sanjay Chahande, Additional Chief Secretary
(A&S) Home, Govt. of Maharashtra**

Shri S.N. Pandey, Director General Prisons, Maharashtra