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DATED: 11/06/2020

COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT JABALPUR

WRIT PETITION NO. OF 2020 (PIL)

PETITIONER :- Madhuri Krishnaswami

// VERSUS //

RESPONDENTS :- State of Madhya Pradesh and Others

CHRONOLOGY OF EVENTS

DATE	EVENTS(s)
11.03.2020	World Health Organization (WHO) declares COVID-19 a pandemic.
15.03.2020	WHO releases its Interim Guidance on 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention'.
22.03.2020	Janta Curfew ordered by PM Narendra Modi.
23.03.2020	Hon'ble Supreme Court In Re: Contagion of Covid19 Virus in Prisons directs that each State/UT constitute a High Powered Committee to temporarily decongest prisons and set up a State-level monitoring team to develop 'Prison Readiness and Response Plans'.
25.03.2020	Nationwide lockdown begins to tackle COVID-19.
27.03.2020	MP High Powered Committee gives directions to release prisoners.

07.04.2020	Hon'ble Supreme Court In Re: Contagion of Covid19 Virus in Prisons directs States to ensure safe transit of released prisoners to their homes.
12.04.2020	Of four detainees arrested under the National Security Act in Indore and later transferred, one tests positive in Jabalpur Central Jail and two others in Satna Central Jail respectively.
13.04.2020	Director General of Prisons (Respondent No. 4) submits its report to the High Powered Committee stating that 6124 prisoners have been released.
28.04.2020	19 persons in Indore Central Jail reportedly test positive for COVID-19.
30.04.2020	Ministry of Health and Family Welfare, Government of India issues a press release according to which, in addition to persons above 65 years of age, persons within the age bracket of 40-65 are also vulnerable.
31.03 30.04.2020	- Prison statistics of Madhya Pradesh Prisons dated 31.03.2020 and 30.04.2020 reveal that the number of undertrial prisoners has actually increased since March 2020.
07.05.2020	Total count of COVID-19 persons in Indore Central Jail rises to 32, including 8 guards and 24 detainees.
17.05.2020	Deputy Inspector General (Prisons) issues a statement to the press that the total numbers of prisoners released

	since the directions of the MP HPC dated 27.03.2020 has risen to 6500.
27.05.2020	Two detainees in Mhow jail test positive for COVID-19.
22.03 - 31.05.2020	MP Police Citizens' Services website reports 32,384 arrests have been made during the lockdown of which 23.06% are related to violation of lockdown orders, 28.24% relate to offences under MP Excise Act and the Public Gambling Act, and less than 10% are for offences punishable with more than seven years of imprisonment.
-.06.2020	Concerned for the health and safety of the prisoners in MP State prisons and the public at large, the present petition is filed before this Hon'ble Court.

PLACE: JABALPUR
DATED: 11/06/2020

(BHAVIL PANDEY)
COUNSEL FOR THE PETITIONER

IN THE HIGH COURT OF MADHYA PRADESH

PRINCIPAL SEAT JABALPUR

WRIT PETITION NO. OF 2020 (PIL)

PETITIONER :- **Madhuri Krishnaswami**

// VERSUS //

RESPONDENTS :-

- (1) State of Madhya Pradesh,**
Through Principal Secretary, Home
and Prison Department, Vallabh
Bhawan, Bhopal (M.P.)
- (2) Principal Secretary,**
Law and Legal Affairs
Department, Vallabh Bhawan,
Bhopal (M.P.)
- (3) Secretary,**
Health Department, Vallabh
Bhawan, Bhopal (M.P.)

- (4) **Director General of Prisons,**
Jail Head Quarters, Bhopal
(M.P.)

- (5) **State Legal Services Authority**
Through its Member Secretary,
Jabalpur (M.P.)

- (6) **Director General of Police,**
Police Headquarters, Bhopal
(M.P.)

WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA

1. Particulars of the cause/order against which the petition is made:

- (1) Date of order: Nil
- (2) Passed in: Nil
- (3) Passed by: Nil
- (4) **Subject – matter in brief:**

That, the petitioner by the way of instant Public Interest Litigation (hereafter PIL) is agitating and bringing to the kind notice of this Hon'ble Court, the issue regarding the threat of infection of COVID-19 in the overpopulated prison system of Madhya Pradesh due to

non-implementation of the order of the Hon'ble Supreme Court **In Re: Contagion of COVID-19 Virus in Prisons.**

That following the order dated 23.03.2020 of the Hon'ble Supreme Court in the aforesaid case, State of Madhya Pradesh constituted a High Powered Committee to determine the class of individuals that can be released on parole/interim bail to temporarily decongest the prisons. Further, in compliance with the order of this Committee, a class of individuals has been identified and a few of these prisoners have been released. However, during the course of the lockdown, several additional arrests have also been made, adding to the cumulative prison population, rendering the decongestion orders fruitless.

That, the petitioner by way of instant petition wishes to highlight that additional steps need to be taken to decongest the prisons urgently as the order of the Committee is not in keeping with the letter and spirit of the order of the Hon'ble Supreme Court **In Re: Contagion of COVID19 Virus in Prisons** and individuals continue to be detained in a congested environment at the grave risk of spread of COVID-19 in these prisons in Madhya Pradesh.

2. Antecedents of the Petitioner and Respondents

The Petitioner has been a social activist in Madhya Pradesh for over 2 decades, working with Jagrit Adivasi Dalit Sangathan for awareness

and realisation of constitutional and legal rights of Adivasis, and other rural poor, and for social reform and Gram Sabha led village development activity. She has been active in several campaigns for social legislation on forest rights, rural employment guarantee, food security etc. She is also a member of Peoples' Union of Civil Liberties (PUCL), an old and well-respected forum of citizens who campaign for upholding constitutional values and civil liberties. She has an MPhil (History) from Delhi University.

Respondents No. 1 through 5 were members of the High-Powered Committee constituted under the order of the Hon'ble Supreme Court in **Re: Contagion of Covid19 Virus in Prisons** dated 23.03.2020. Respondents No. 1 to 3 represent various departments of the Government of Madhya Pradesh who are tasked with COVID-19 related responsibilities particularly with respect to prisons. Respondents No. 4 is the highest ranked Indian Police Services officer within the Prisons department of Madhya Pradesh. Respondent No. 5 is the Member Secretary of the State Legal Services Authority tasked with the monitoring of the situation in prisons. Respondent No. 6 is the head of the Police force in the State of Madhya Pradesh.

3. Facts in brief:

The Petitioner most respectfully begs to submit as under:

- 3.1. That Hon'ble Supreme Court took suo motu cognizance of the threat of infection of COVID-19 in an overpopulated prison system **In Re: Contagion of Covid19 Virus in Prisons** for the purpose of

evaluating the measures taken by state governments to prevent the spread of COVID-19 in prisons and to look into the issues of medical and sanitation facilities in prison. On 23.03.2020, the Apex court passed orders directing state governments and union territories to take necessary measures to decongest the overcrowded prisons and to prevent the spread of COVID-19 in its premises, given that several prisons are heavily overcrowded and that COVID-19 may spread rapidly in enclosed and crowded places such as prisons where norms of physical distancing and hygiene are difficult to maintain.

3.2. That the Hon'ble Supreme Court, vide its order dated 23.03.2020, directed each State/Union Territories to constitute a High-Powered Committee (hereby referred to as "HPC") consisting of a) Chairman of the State Legal Services Committee, b) the Principal Secretary (Home/Prison) c) Director-General of Prison(s). That the Court ordered the HPC to look into the two issues. a). to determine the class of convicts who can be released on parole b). to determine the class of under trial prisoners who can be released on interim bail. **A copy of the order passed by the Hon'ble Supreme Court in In Re: Contagion of Covid19 Virus in Prisons dated 23.03.2020 is annexed herewith and marked as ANNEXURE – A1 (Pages __ to __).**

3.3. That it entrusted discretion to HPC for determining the class of prisoners. It also noted that such a decision should be guided by the following factors:

- Directions contained in para no. 11 in **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273**;
- Nature of the offence;
- Number of years the convict has been sentenced for;
- The severity of the offence the under trial has been charged with and facing the trial for; and,
- Any other factor as the committee may consider relevant.

3.4. That the Hon'ble Supreme Court also ordered to set up a State-level monitoring team to monitor the pandemic in prisons and to develop "Prison Readiness and Response Plans" in consultation with medical experts and taking into account "Interim Guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in Camps and Camp-like Settings" published by Inter-Agency Standing Committee of United Nations on 17 March 2020. Vide order dated 07.04.2020, the Hon'ble Court also directed State governments to ensure safe transit of such prisoners to their home.

3.5. That, following orders of the Hon'ble Apex Court, this Hon'ble Court set up a HPC that made directions to the State government to release the following categories of prisoners. **A copy of the directions of the HPC are annexed herewith and marked as ANNEXURE – A2 (Pages __ to __).**

I. In reference to the convicted prisoners

A. Prisoners who have been given parole in the current year or previous five years and eligible for parole under the Madhya

Pradesh Parole Rule 1989 and other laws for the time being in force for a maximum period of 60 days.

B. Parole on grounds of emergency rule under the MP Prison Rules 1985 considering the pandemic

- a. Male Prisoners above 65 years of age;
- b. Female prisoners of 50 years of age and above and female prisoners having a child of 5 years or less;
- c. Pregnant female prisoners;
- d. Male or Female prisoners suffering from cancer; or,
- e. Male or Female Prisoners with severe heart conditions i.e. those who have undergone bypass or valve replacement surgeries.

II. In reference to the undertrial prisoners

- A. Prisoners whose offence is punishable with 5 years or less; or,
- B. Prisoners who fall under any of the categories out of the total 14 categories as mentioned under NALSA's Standard Operating Procedures 2018.

3.6. That according to the letter containing directions of the Madhya Pradesh (MP) HPC, MP's prisons had an occupancy of 43977 persons against the capacity of 28718 persons, i.e. the prisons occupancy was 153% of its capacity, before the directions issued by you. Thus, the prisons had 15259 more prisoners than its capacity. That of the total prisoners, 23488 prisoners i.e. 53% persons were undertrials and 20,295 prisoners were convicted.

3.7. That according to the most recent available statistics regarding the status of over-occupancy in the jails of MP, almost all jails are over-occupied. The statistics for different categories of jail available on the web address <http://www.pcs.mp.gov.in/en/statistics-of-jail-department> are given below:

Occupancy Status as on 30.04.2020

Sr. No.	Jail Types	No of Jails	Capacity	Confined Prisoners	Over Occupancy	
					Number	Percent
1.	Central Jain	11	14060	20232	6172	144%
2.	District Jail	41	9485	13977	4492	147%
3.	Open Jail	06	94	24	-77	
4.	Sub Jail	73	5086	5863	777	115%

5.	Sum Total	131	28725	40096	11371	140%
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Occupancy Status as on 30.04.2020

Sr. No.	Central Jails	Sanctioned Capacity	Confined Prisoners	Over Occupancy	
				Number	Percent
1.	Central Jail, Indore	1230	2178	948	177%
2.	Central Jail, Gwalior	2559	2926	367	114%
3.	Central Jail, Jabalpur	2420	2331	-	-
4.	Central Jail, Bhopal	2600	2953	353	114%
5.	Central Jail, Rewa	716	1737	1021	242%
6.	Central Jail, Satna	928	1449	521	156%

7.	Central Jail, Ujjain	1210	1992	782	165%
8.	Central Jail, Sagar	894	1601	707	180%
9.	Central Jail, Narsinghpur	642	1027	385	160%
10.	Central Jail, Badwani	456	1066	610	234%
11.	Central Jail, Hoshangabad	405	1002	597	247%
	Total	14060	20232	6291	144%

3.8. That, in compliance of the recommendations of the HPC, Respondent No. 4 commenced releasing prisoners on emergency parole and upon remission, and forwarded applications of bail to Magistrates for considering bail of undertrials. According to a report submitted by Respondent No. 4 to the HPC dated 13.04.2020, the prisons had released merely 6124 prisoners which comprises 2557 undertrial prisoners and 3567 convicted prisoners i.e. just 13.92% of all prisoners. Thus, according to the Respondents it brought down the prison occupancy to 137% from 157% on the Prison Department's records. That considering that by its own record, it required release of 15259

prisoners to solve the problem of overcrowding and to bring the prisons to its normal capacity, release of 6124 prisoners by the State Government three weeks after this Hon'ble Court's orders was inadequate. **A copy of the report is annexed herewith and marked as ANNEXURE – A3 (Pages __ to __).**

3.9. That, according to a statement to the press by the Deputy Inspector General (Prisons) Sanjay Pandey on 17.05.2020, 6500 prisoners had been released i.e. the Respondents had only released 400 more prisoners over the previous month. That considering this number, the Respondents had released merely 14.7% of the prisoners in the overcrowded prisons of Madhya Pradesh since the process of release of undertrials. **A copy of the press report is annexed herewith and marked as ANNEXURE – A4 (Pages __ to __).**

3.10. That, the Ministry of Health and Family Welfare, Government of India's 'Advisory on Social Distancing Measure in view of spread of COVID-19 disease' has recommended social distancing as a policy to tackle COVID-19 and proposed maintaining physical distance of at least one metre with others. The advisory states that "Social distancing is a non-pharmaceutical infection prevention and control intervention implemented to avoid/decrease contact between those who are infected with a disease causing pathogen and those who are not, so as to stop or slow down the rate and extent of disease transmission in a community". Further, the United Nations World Health Organization (hereby referred to as "WHO") has also take note

of enhanced risk of COVID-19 infection in people in prisons through its Interim Guidance on 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention' dated 15 March 2020. Among other things, it has recommended observing physical distancing (maintaining a distance of at least one metre from others) as a general precaution against catching and spreading COVID-19 inside prisons. It has also recommended refining procedures to allow prisoners at highest risk from the infection to be separated from others in the most effective and least disruptive manner possible. **Copies of the Ministry of Health and Family Welfare Advisory is annexed herewith and marked as Annexure – A5 (Pages __ to __) and the WHO Interim Guidance on 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention' is annexed herewith and marked as Annexure – A6 (Pages __ to __).**

3.11. That, the Prison Statistics published National Crime Records Bureau (NCRB), in 2018, reveal that the healthcare/medical expenditure on prisoners in India was 4.3% of its total expenditure on prisoners. It also places them at high risk of contracting fatal diseases, that can often lead to untimely death. In 2018, there were 1845 deaths in Indian prisons. With 5 prison deaths per day, India's prison mortality rate was at 3.96 per 1000 prisoners one of the highest in the world.

- 3.12. That, the WHO in its Interim Guidance has also observed that an essential element to be carefully considered in any preparedness plan for respiratory infectious diseases such as COVID-19 is availability and supply of essential supplies, including PPE and products for hand hygiene and environmental sanitation and disinfection. It is therefore pertinent to assess the need for PPE and other essential supplies in order to ensure continuity of provision and immediate availability.
- 3.13. That, there is no information publicly available with regards to the health protocol being adopted in prisons to contain the pandemic.
- 3.14. That, no information is publicly available with regards to the healthcare mechanisms particularly with regard to hand hygiene, availability of essential sanitation products such as soap, handwash etc. in the prison premises owing to the pandemic.
- 3.15. That, there is no information available in the public domain regarding the provision of PPEs and N-95 masks for medical and other prison staff.
- 3.16. That, there is no information available in the public domain regarding the testing facilities made available to screen inmates who are being freshly admitted into the prison.
- 3.17. That, there is no information available regarding the measures taken to quarantine inmates who have tested positive for COVID-19.

3.18. That, as result of the lockdown many prisoners, who were dependent on the financial assistance provided by their families for buying essential items like food, medicines, etc. have been unable to receive any money order.

3.19. That, keeping in mind that hygiene and sanitation facilities in custodial institutions tends to be poor, Vijay Raghavan, Professor at the Centre for Criminology and Justice, School of Social Work, TISS & Project Director, Prayas and Madhurima Dhanuka, Programme Head, Prison Reforms Programme, Commonwealth Human Rights Initiative have suggested various measures to combat the spread of COVID19 within Prisons. These measures have been reported in the Hindustan Times as 'Covid-19: Ensure prisons do not turn into a fertile ground for the virus' on 6 June 2020. They are:

- a. Prisons must ensure weekly visits by doctors;
- b. All wards, barracks and common areas must be cleaned daily with water and disinfectant;
- c. Thermal thermometers should be supplied to monitor visitors and staff, and washbasins and hand wash facilities placed at entry and exit points;
- d. Additional mobile toilets should be set up (if required) as well as drinking and bathing water facilities augmented by water tankers;
- e. Sufficient supply of bathing and washing soaps as well as sanitary pads should be provided to women prisoners;

- f. An improved diet must be provided to pregnant women, lactating mothers and children in prisons;
- g. A supply of cloth masks or gamchas and sanitisers for and prison staff must be ensured; and
- h. New admissions to the prison should be screened and kept in an isolation ward for 14 days.

A copy of the news article is annexed hereto and marked as ANNEXURE – A7 (Pages __ to __).

3.20. That, no information is available in public domain regarding the communication mechanisms i.e. phone calls, video conferencing put in place for inmates to communicate with their family members and legal representatives in the absence of in-person meetings.

3.21. That, according to the figures released by the Ministry of Health and Family Welfare, Government of India in a press release dated 30.04.2020, besides persons above 65 years of age, persons within the age bracket of 40-65 are also vulnerable. 34.8% of all COVID19 related deaths in the country are within the age bracket of 45 to 60 years and 51.2% in age bracket of 60+. That the direction to grant emergency parole under Section 31-B of the Prisoners Act in Madhya Pradesh was restricted to convicts within this age group and others with cancer and history of specific heart surgeries, however, persons with other heart conditions, other immunocompromising conditions, respiratory illnesses, kidney and liver conditions, and diabetes and therefore highly susceptible to COVID-19 were excluded from the consideration.

That restricting the benefit to male prisoners within the bracket of 65+ as well to those with specific heart diseases and cancer, is an arbitrary classification and has no nexus to the objective of the decision as well as the order of the Hon'ble Apex Court which was towards protection of vulnerable prisoners. The rational nexus between the classification and the objective sought to be achieved is part of the reasonable classification, which is the bedrock of the country's equality jurisprudence. This has been reiterated several times by the Hon'ble Apex Court. That the Hon'ble Apex Court in **Budhan Chaudhary v. State of Bihar, AIR 1955 SC 191**, an early case dealing with the reasonable classification test, said, "The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration." **A copy of the aforementioned press release is annexed hereto and marked as ANNEXURE – A8 (Pages __ to __).**

3.22. That, the decision of HPC to release under trial prisoners undergoing trials for 5 years or less does not provide any reasoning for leaving out those in pre-trial detention for offences punishable by more than five years and not more than seven years. Under sections 41 and 41-A of CRPC, the law makes a distinction between offences punishable by imprisonment of seven years or less and those punishable by imprisonment of over seven years. That despite available distinction in law whereby in the case of the former, giving

a notice of appearance is the exception and arresting is the exception and in the case of the latter, vice versa, the High Powered Committee has restricted the benefit of applying for bail for under trial prisoners undergoing trial for offences punishable by five years or less. That the classification adopted both lacks any discernible reasoning or determining principle, and does not form a rational nexus with the objective of the exercise, which was to release undertrials incarcerated for offences for which arrest is an exception, towards decongesting prisons. That the test of reasonable classification has been outlined in the previous paragraph. **A copy of the judgement of the Hon'ble Apex Court in Arnesh Kumar v. State of Bihar is annexed herewith and marked as ANNEXURE – A9 (Pages __ to __).**

3.23. That, when the data on number of prisoners released in compliance with the order of the Hon'ble Supreme Court dated 23.03.2020 is taken into account, that of Government of Madhya Pradesh in comparison to other States, falls short in its attempt to decongest the prisons. The data for other states is given below:

State/UT	Prison Population	Occupancy Rate	Number of Prisoners Released	Percentage of Total Prisoners Released
Madhya Pradesh	43977	153%	6500	14.7%

Maharashtra	35884	148.9%	8127	22.64%
Delhi	15468	154.3%	3573	23.1%
Kerala	7638	112.2%	1831	23.9%
Haryana	19270	104.3%	4940	25.6%
Rajasthan	20134	92.0%	5763	28.6 %
Punjab	22486	95.7%	7177	31.9%
Tamil Nadu	13674	60.0%	4573	33.4%

3.24. That, besides the number of prisoners released, HPCs in other states took additional steps that contribute to both decongesting their respective prisons and protecting the prison population that is vulnerable.

Punjab:

- Release on parole for a period of six weeks of convicts sentenced up to 7 years with maximum 2 under-trial cases (both on bail); and further should have availed last parole peacefully.

- Prisoners already out on parole shall be given 6 week extension in parole. As a one-time measure, the Superintendents of concerned jails have been empowered to process the cases of parole so as to expedite the process of release.

- Undertrials shall be considered for a 6-week interim bail, if he/she is facing one or two cases, in which maximum punishment is seven years or less. Special cases under certain heads of crime such as Section 498-A, 420, 406, 324, 325, 379 IPC, Excise act, those with intermediate quantity violation under the NDPS Act and those under section 107/151 CRPC shall also be considered for the bail.

- Camp courts shall be held on jail premises for grant of interim bail.

- The committee has relaxed the conditions further for release of prisoners suffering from chronic diseases like diabetes, HIV, pregnant women and those above 65 years of age.

A copy of the news reports related to the order and decisions of the review meeting of the HPC of Punjab dated 02.05.2020 is produced as ANNEXURE – A10 (Pages __ to __).

Maharashtra:

- Interim Bail on personal bond to be favourably considered for undertrials who have been charged with offences that have a maximum sentence of more than 7 years and who satisfy the conditions in the orders.

- However, if charged with the following offences, bail will not be granted: 1. IPC: S. 121-130, 303, 364 (A), 366, 366 (A), 366 (B), 367-374, 376 (A) - (E), 396, 489(A) - (E), Bank Frauds and Major Financial Scams. 2. Special Acts: MCOC, TADA, POTA, UAPA, PMLA, Explosives and Substances Act, Anti Hijacking Act, NDPS (Other than personal consumption), MPID, POCSO, Foreigners in Prison. Additionally, once the lockdown period ends and when public transportation is available, prisoners with residence outside of Maharashtra will be granted bail.

- Prisoners who are 60 years and older and prisoners with co-morbidities who do not meet the above criteria and the criteria set out in the earlier orders can still apply for interim bail. They may be released after considering the facts of their case.

- Decongestion of prisons with about 50% of prisoners of the prison population i.e. 35,239 are now expected to be released.

A copy of the news report related to the order and decisions of the HPC of Maharashtra dated 11.05.2020 is produced as ANNEXURE – A11 (Pages __ to __).

Kerala:

- Release of prisoners who have been convicted or are under-trial for offences punishable up to 7 years or less on bail to reduce the numbers of prisoners in jails.

A copy of the order of the Kerala High Court with regard to release of prisoners is produced as ANNEXURE – A12 (Pages __ to __)

Delhi:

- Prisoners/ Undertrial Prisoners who are suffering from HIV, Cancer, Chronic Kidney Dysfunction (UTPs requiring Dialysis), Hepatitis B or C, Asthma, and TB are considered for grant of interim bail for 45 days.

A copy of the order of the HPC of Delhi is produced as ANNEXURE – A13 (Pages __ to __)

3.25. That during the lockdown the Police has continued to pursue arrests inailable and non-ailable sections for trivial offences and non-compliance of directions/orders issued by the state government for the purpose of lockdown. The arrest shall be made only when police

have reason to believe and satisfied that there exists the circumstances enshrined under section 41(1). The action of police is in complete contravention of Sections 41 of the Code of Criminal Procedure and the judgement of the Hon'ble Supreme Court in **Arnesh Kumar** wherein the Court had stated that no arrest shall be made unnecessarily by the police and magistrate shall not authorize detention casually and mechanically and in particular, in relation offences punishable by an imprisonment of seven years or less. That while the Respondents report that 2557 undertrial prisoners have been, prison statistics up until 30.04.2020 report that the number of undertrial prisoners has actually increased since the previous month. **Copies of the report on prison statistics up until 31.03.2020 and 30.04.2020 is produced collectively as ANNEXURE – A14 Colly. (Pages __ to __)** That the statistics also shows a mere 3% decreases in overall prison population and also that the overcrowding has in fact increased in District Jails of Madhya Pradesh. This is reflected in the Tables below:

Prisoners' (Convicts, Undertrials and Others) Population in All Jails of Madhya Pradesh in March and April 2020

Date	Capacity	Convicts	Undertrials	Others	Total	Over-crowding
31.03.2020	28718	18701	22111	143	40955	143%
30.04.2020	28725	16686	23303	107	40096	140%

Prisoners' (Convicts, Undertrials and Others) Population in March in District Jails of Madhya Pradesh and April 2020

Date	Capacity	Convicts	Undertrials	Others	Total	Over-crowding
31.03.2020	9425	3484	10055	75	13614	144%
30.04.2020	9485	3270	10651	56	13977	147%

3.26. That, the Police has been arresting people under Section 188 of Indian Penal Code for violating the lockdown but given that the said provision is non-bailable in Madhya Pradesh unlike most other states in the country, the accused persons are being detained in the Police Stations before being produced before the Magistrates where conditions are enclosed and unsanitary and there remains the threat of infection to both the accused persons and the police personnel on duty. That the prison statistics reflected above also suggest that persons have also been denied bail for such offences and sent to judicial custody thus increasing the numbers. The Hon'ble Supreme Court in **Sanjay Chandra v. CBI, (2012) 1 SCC 40** held "This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution". It is in keeping with this principle and the Constitutional obligation under Article 20(2) that the Hon'ble Kerala High Court in **W.P.(C) No. 9400 of 2020 (Suo Motu)** vide order dated

25 March 2020 has directed Id. Magistrates/Judges, under its superintendence, to weigh the necessity of judicial/police custody of arrested persons in light of overcrowding of prisons and giving due regard to the nature of offences involved. **The order of the Hon'ble Kerala High Court in W.P.(C) No. 9400 of 2020 (Suo Motu) dated 25.03.2020 is annexed herewith and marked as ANNEXURE – A15 (Pages __ to __).**

3.27. That, the Police has also pursued minor offences under MP Excise Act, 1915 and Public Gambling Act, 1867, as well as making arrests in these cases which is counterproductive to the public health crisis the country faces at present. That majority of cases under these sections are punishable by less than 7 years and thus arrests should not be carried out in such cases particularly keeping in mind the threat to the safety of the prisoners and the police personnel. That an analysis of the data of arrests made by the Madhya Pradesh Police between the dates 22.03.2020 and 31.05.2020 i.e. the day of Junta Curfew to the end of the fourth phase of lockdown and made public on the MP Police Citizens' Services web-page https://citizen.mppolice.gov.in/Custom_Arrested_Person.aspx indicates that of the 32,384 arrests reported on the portal, only around 3000 were for offences punishable by more than seven years i.e. less than 10%. Furthermore, a large number of arrests made were for mere enforcement of the lockdown, which is counterproductive to the effort to contain Covid-19, for petty excise law violations and petty gambling

law violations, all of which by themselves are punishable by less than 3 years. That this is indicated in the table below:

Sr. No.	Offence Arrested For	No. of Arrests Reported	Percentage of the Total Arrests
1	Lockdown related (Sections 188, 269, 270, Disaster Management Act when not combined with serious offences)	7490	23.06%
2	MP Excise Act, 1915 (when not combined with serious offences)	5217	16.06%
3	Public Gambling Act, 1867 (when not combined with serious offences)	3955	12.18%
	Total Arrests	32384	

3.28. That, this inclination to arrest has led to a situation that is hardly better than the situation the Hon'ble Supreme Court took suo motu cognizance of and if the influx of prisoners to the jails is not quelled, the orders of the Hon'ble Supreme Court will become infructuous. That in light of the current situation, the Hon'ble Kerala High Court in

W.P.(C) No. 9400 of 2020 (Suo Motu) order dated 25 March 2020, has taken a firm view against unnecessary arrests in the State of Kerala, directing that arrests be made only where ‘inevitable’ and with respect to ‘heinous/serious offences’. It has said 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.”

3.29. That, in the same matter in an order passed on 30.03.2020, the Kerala High Court, annexed earlier as **ANNEXURE A12**, took an urgent cognizance of the need to decongest prisons and modifying its previous orders, directed the release of undertrial and remanded prisoners who were incarcerated under allegations of offences punishable by seven years or less except those “having any criminal antecedents, previous convictions or in the case of habitual offenders; and also with respect to persons undergoing trial or remanded custody in more than one cases.”

3.30. That, as a result of the inadequate release of prisoners and increasing arrests in an overcrowded prisons system, there are several dozens of COVID-19 positive cases in Madhya Pradesh’s prisons. It has reported in the press on 30.04.2020 that 19 persons in Indore Central Jail were found to be infected with COVID-19 which included 17 prisoners and 2 prison guards. A week later, it was reported that

the number has gone up to 32 in total. That it is important to note that the Indore Central Jail is presently at 177% of its capacity. In addition to this, two more detainees under the National Security Act, 1980 were found to be COVID-19 positive when they were sent to Satna Central Jail from Indore and one more detainee was found to be COVID-19 positive when he was brought to Jabalpur Central Jail. The three detainees have reportedly recovered. That there have not been news reports to this end but it is very probable that number of COVID-19 positive cases has increased since then given that the prisons are confined spaces with high likelihood of mass contagion. That news reports state that the Arthur Road Prison in Mumbai, Maharashtra has seen an outbreak of COVID-19 cases. **A copy of the news reports related to the aforementioned incidents is annexed herewith and marked collectively as ANNEXURE – A16 Colly (Pages __ to __).**

3.31. That, according to the most recent news report, three prisoners have reported positive in Mhow Sub-Jail and is likely the result of new undertrials coming to the prison with the infection, in such a circumstance it is even more important to quell the arresting and follow proper protocols of safety while sending prisoners to judicial custody when it absolutely necessary. **A copy of the news report is annexed herewith and marked as ANNEXURE – A17 (Pages __ to __).**

3.32. That, the Hon'ble Apex Court, in its order dated 23.03.2020, also ordered to develop prison specific readiness and response plans in consultation with medical experts and considering the "Interim Guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in Camps and Camp-like Settings" published by Inter-Agency Standing Committee of United Nations on 17 March 2020. That a monitoring team is set up at the state level to ensure the compliance with the directives and orders issued by WHO, MHA and various health agencies. That the increase in the number of positive cases of COVID-19 suggests that the monitoring committee set up has not been up to its mandate.

3.33. That, there is no information publicly available as to the status of the compliance of the Hon'ble Apex Court's order for developing 'Prison Specific Response Plan' and furthermore measures taken to comply with directions/orders issued by various health agencies and government bodies coordinating the pandemic. Information as to the spread of COVID-19 in prisons in MP since 07.05.2020 is also not available in public domain. Since a further spread is imminent, families of the inmates are rightly worried about their health and safety.

3.34. That, given the present crisis, with people's livelihoods affected and mobility restricted, they may find it harder to fulfil the monetary bail conditions imposed on them. Considering this, a mere direction to the Magistrates to consider applications of a class of accused persons is

inadequate while the requirement of monetary sureties is insisted upon by Magistrates. Insistence of monetary sureties has forced poor prisoners to stay in jails for a longer period in jail. That may have been the reason for the relatively small number of undertrial prisoners being released until now. That taking into account the circumstances owed to COVID-19 pandemic, the Hon'ble High Court of Delhi in **W.P. (Crl.) No. 779/2020** in an order passed on 09.04.2020 modified the conditions of the bail of all prisoners previously unable to furnish monetary sureties and directed releasing them on personal bond without sureties. **A copy of the order passed by the Hon'ble High Court of Delhi in W.P. (Crl.) No. 779/2020 dated 09.04.2020 is annexed herewith and marked as ANNEXURE – A18 (Pages __ to __).**

3.35. That the Hon'ble Supreme Court has reiterated in **Moti Ram v. State of Madhya Pradesh, (1978) 4 SCC 47** and **R.D. Upadhyay v. State of Andhra Pradesh, (1996) 3SCC 422** among others that lack of financial means should not be a reason for denial of personal liberty. Given no relaxation in bail conditions, it may be difficult for accused persons to be able to secure their release considering the present circumstances.

4. Source of information:

All documents as annexed above.

That, the Petitioner craves leave to refer to any additional documents at the time of hearing with the permission of this Hon'ble Court.

That, the Petitioner craves leave to add/amend/alter/modify/add or delete any of the foregoing paragraphs or ground with the permission of this Hon'ble Court.

5. Nature and extent of injury caused/apprehended:

That, the petitioner says and submit that the combined and cumulative effect of the above has resulted in violation of the Fundamental Rights of the prisoners guaranteed to them under Article 14 and 21 of the Constitution of India. Therefore, the petitioner has approached this Hon'ble Court to assess the conditions, preparation and additional measures required to be undertaken in prisons to deal with the present crisis

6. Issue raised was neither dealt with nor decided:

That, the relief prayed in the instant petition has not been prayed in any other petition, although, the issue raised in the instant petition, is subject matter of certain other petitions filed before the Hon'ble Supreme Court and the Hon'ble Bombay High Court.

7. Any representations etc. made:

That, owing to the time bound nature of the cause to be adjudicated, and escalating nature of the present crises, the necessity judicial intervention is required.

That, the Petitioner has approached this Hon'ble High Court directly given these circumstances.

8. Grounds urged

Overcrowded Prison and Release of prisoners

8.1 Because the Hon'ble Supreme Court in **Re: Contagion of COVID19 Virus in Prisons** directed decongestion of overcrowded prisons by releasing certain categories of prisoners on the basis of the recommendations of HPC. Measures taken by the respondents, in response to the orders of this court, are not satisfactory since the release of prisoners is not adequate to bring down the overcrowded prison to its normal capacity

8.2 Because the objective of the said order was to prevent the spread of Covid-19 in prisons. The Unsatisfactory response of the respondent failed to uphold the objective of the order.

8.3 Because in **Rama Murthy v. State of Karnataka (1997) 2 SCC 642** (para 14) the Hon'ble Supreme Court identified overcrowding as a major issue that needs immediate attention. While considering the issue of overcrowding in Prison, the Hon'ble Supreme Court further observed in **Re: Inhuman Conditions in**

1382 Prisons, (2016) 3 SCC 700 that prisoners like all human beings, deserve to be treated with dignity.

8.4 Because in **T.K. Gopal v. State of Karnataka, (2000) 6 SCC 168** the Hon'ble Supreme Court advocated prisoners should be treated as human beings entitled to all the basic human rights, human dignity and human sympathy, the vital fact that the prisoner, after being lodged in jail, does not lose his fundamental rights or basic human rights and that he must be treated with compassion and sympathy.

Prisoners Right to health

8.5 Because the **Article 21 of Constitution of India** guarantees Right to Healthcare to everyone irrespective of their status. The Hon'ble Supreme Court in **Parmanand Katara v. Union of India, AIR 1989 SC 2039** ruled Article 21 casts a positive obligation upon state to preserve life, irrespective of the status of the person, whether he is an innocent person or a criminal liable to punishment under the law.

8.6 Because **Section 7 of the Prisoners Act, 1894** mandates the state government to make provision of shelter and safe custody of prisoners in circumstances when there is an outbreak of epidemic diseases or the number of prisoners in prison is greater than the normal occupancy.

8.7 Because in **Re: Inhuman Conditions in 1382 Prisons, (2017) 10 SCC 658 at page 687**, the Hon'ble Supreme Court has reiterated its earlier stand and held that providing medical assistance and facilities to inmates in prisons needs no reaffirmation. The right to health is undoubtedly a human right and all State Governments should concentrate on making this a reality for all, including prisoners.

8.8 Because India is duty-bound to fulfil its obligation under articles 6, 9, 10 of the International Covenant on Civil & Political Rights. UN Human Rights Commission, in its concluding observation on Moldova in 2002, has stated that it is the obligation of State Party to ensure the conditions of detention within its facilities comply with the standards set out in articles 6, 7 and 10 of the Covenant, including the prevention of the spread of disease and the provision of appropriate medical treatment to persons who have contracted diseases. Danger to the health and lives of detainees as a result of the spread of contagious diseases and inadequate care amounts to a violation of article 10 of the Covenant and may also include a violation of articles 9 and 6.

8.9 Because the International standards, such as the revised Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the UN Bangkok Rules, require the provision of adequate healthcare, which includes mental healthcare and transfer to specialized institutions or to civil hospitals where

specialist treatment is required. The importance of the principle of equivalence – that prisoners are entitled to the same standard of healthcare as the general public without discrimination – is widely recognized including in the revised Standard Minimum Rules.

8.10 Because of the HPC recommendations excluding prisoners with severe heart diseases (not included under recommendations), immunocompromising conditions, respiratory illnesses, kidney and liver conditions, and diabetes though under 65 years, from the categories of prisoners set to be released, threatened life of such prisoners and not consistence with the settled laws and jurisprudence as stated aforesaid under para 8.6 to 8.9 relating to the right to healthcare of prisoners and decongestion of overcrowded prisons.

8.11 Because there is no information available in the public domain regarding adherence to standards laid down by the WHO for prevention and control of the spread of COVID-19 in prisons.

Bail on Personal Bond:

8.12 Because one's financial status should not be the sole determinant to grant bail. In **Moti Ram v State of Madhya Pradesh, (1978) 4 SCC 47** the Hon'ble Supreme Court held that statute dealing with social justice or liberty should be interpreted

liberally. Liberal interpretation of bail provision covers both-release on one's own bond, with or without sureties.

8.13 Because the Hon'ble Supreme Court in its landmark judgement of **Hussainara Khatoun v State of Bihar, AIR 1979 SC 1360** held, it is travesty of justice if poor are forced to be confined in jail merely because bail procedure is beyond their meagre means. The Hon'ble Court further stated that other relevant considerations such as family ties, roots in the community, job security, membership of stable organizations etc., should be the determinative factors in grant of bail and the accused should in appropriate cases be released on his personal bond without monetary obligation.

8.14 Furthermore, the Hon'ble Supreme Court held in **Hussainara Khatoun** that while releasing on person bond, the amount which it fixes for bond should not be merely based on the nature of the charge, rather it should depend on the individual financial circumstances of the accused and the probability of his absconding.

HPC order reflects manifest arbitrariness

8.15 Because by excluding prisoners who are immunocompromised, suffer from, respiratory illnesses, kidney and

liver conditions, diabetes or suffer from other conditions that make them vulnerable to COVID-19 and by excluding prisoners in the age range of 45-65 years who are also similarly identified as vulnerable, the order of the HPC makes an arbitrary classification that does not meet the objective of process of releasing prisoner as laid down by the Hon'ble Supreme Court in its 23.03.2020 order and violates their right to equal treatment guaranteed under Article 14 of the Constitution.

8.16 Because according to the Hon'ble Supreme Court, the High Powered Committees were asked to consider the judgement of **Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273** and consider release of undertrials who have been remanded to judicial custody for offences punishable by imprisonment of seven years or less. The decision of the High Powered Committee in Madhya Pradesh creating a classification of under trials in prison for offences punishable by imprisonment of 5 years and less and those in prison for offences punishable by imprisonment of over 5 years does not fall in line with classification already available in law and the Hon'ble Supreme Court's decision in **Arnesh Kumar**, and does not form a rational nexus with the object of the exercise of release. Consequently, undertrial prisoners undergoing pre-trial detention for offences such as theft who would benefit from Section 41 of CRPC and **Arnesh Kumar** judgement stand excluded from High Powered Committee's arbitrary criterion.

8.17 Because the MP HPC has narrowly interpreted the guidelines issued by the Hon'ble Apex Court in its order dated 23.03.2020, as opposed to the wider meaning given to these guidelines by HPCs in other States.

9. Details of remedies exhausted:

That the petitioners most humbly submit to this Hon'ble Court that they do not have any other alternative equally efficacious remedy available to them, only just to approach this Hon'ble Court.

10. Delay, if any, in filing the petition and explanation thereof

There is no delay in filing the petition before this Hon'ble Court.

11. RELIEF PRAYED FOR:

- i. It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to: -
 - a. allow the present writ petition and the applicant petitioner may be permitted to intervene and assist this Hon'ble Court and in the interest of social justice for public at large; and,
 - b. in view of the facts and circumstances mentioned above the petitioner prays for the following reliefs: -

- i. That, this Hon'ble Court may kindly be pleased to issue the writ of mandamus to direct the Respondents No. 1 to 5 to make suitable directions to release all convicted prisoners at or over the age of 45 years on emergency parole as well as all prisoners with immunocompromising conditions beyond the currently specified narrow set of severe specific heart conditions, including but not limited to those diagnosed with diabetes, HIV, respiratory, kidney, liver conditions and mental illness health conditions;
- ii. That, this Hon'ble Court may kindly be pleased to issue the writ of mandamus to direct Respondents No. 1 to 5 to release of all undertrial/ remanded prisoners on interim bail incarcerated for offences punishable with 7 or less years;
- iii. That, this Hon'ble Court may kindly be pleased to issue the writ of mandamus to direct Respondents No. 1 to 5 to release of all undertrial prisoners on interim bail at or over the age of 45 years, all prisoners with immunocompromising conditions beyond the currently specified narrow set of severe specific heart conditions, including but not limited to those diagnosed with diabetes, HIV, respiratory, kidney, liver conditions and

mental illness health conditions, including those undertrial prisoners that have been arrested under those for offences punishable by with more than 7 years of imprisonment and under special legislations;

- iv. That, this Hon'ble Court may kindly be pleased to issue the writ of mandamus to direct Respondents No. 1 to 5, to take all other necessary steps to bring the prison population to a level that allows for the implementation of social distancing norms in line with the guidelines issued by the various health agencies but in any case, to below 100% occupancy;
- v. That, this Hon'ble Court may be pleased to modify bail terms of all undertrial prisoners modifying the bail orders passed either by this Court or by any court subordinate to it until this day doing away with the condition of furnishing sureties and allowing release on the furnishing of personal bond without sureties;
- vi. That, this Hon'ble Court may be pleased to issue the writ of mandamus to direct the Learned Magistrates to hereon strictly implement directions of the Hon'ble Apex Court in **Arnesh Kumar** to avoid police or judicial custody in cases punishable with 7 years or less;

- vii. That, this Hon'ble Court may be pleased to issue the writ of mandamus to direct Respondent No. 6 to ensure compliance with the direction of the Hon'ble Apex Court in **Arnesh Kumar** as well as Section 41 of CRPC and direct their subordinate officers to refrain from arresting any person for minor offences and make arrests only when most pertinent.

- viii. That, this Hon'ble Court may be pleased to issue the writ of mandamus to direct the Respondents to allow money order services, and allowing families of the prisoners to send clothes, footwear, medicines and other items of personal use to the prisoners that remain incarcerated.

- ix. That, this Hon'ble Court may be pleased to issue the writ of mandamus to direct the Respondents to allow telephone and/or video conferencing services on a weekly basis for at least ten minutes to enable inmates to communicate with their families and legal representatives.

- x. That, this Hon'ble Court may kindly be pleased to call for the records of the case for kind perusal of Hon'ble Court.

- xi. Any other relief/reliefs, order/orders, direction/directions which this Hon'ble Court may deem fit and proper may kindly be granted to the petitioner.

12. Interim Order, if prayed for:

It is therefore, prayed that in the interim, this Hon'ble Court in the interests of justice, may kindly be pleased to: -

- i. Direct the release of all prisoners that are eligible for release as per the current directions of the HPC;
- ii. Direct the Respondents to produce records of the number of prisoners released until this day, the number of COVID-19 positive cases in prisons across the State and status report on quarantining, health and sanitation precautions being taken in prisons, safe transit of prisoners, telephone meeting and money order services facilitated during this period.
- iii. Pass an order directing the HPC to produce records showing the steps taken to develop the "Prison Readiness and Response Plans" in compliance to the order of the Hon'ble Apex Court **In Re: Contagion of COVID-19 Virus in Prisons** dated 23.03.2020, and their compliance with the directions issued by different health agencies to prevent spread of COVID-19 in prisons.

13. Caveat:

That, no notice of lodging a caveat by the opposite party is received.

PLACE: JABALPUR

DATED: 11/06/2020

BHAVIL PANDEY

COUNSEL FOR THE PETITIONER