



DELHI STATE LEGAL SERVICES AUTHORITY

(Constituted Under the 'Legal Services Authorities Act, 1987', an Act of Parliament)

Under the Administrative Control of High Court of Delhi

Central Office, Patiala House Courts Complex, New Delhi - 110001

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Dated: 31.08.2020

To

Dr. Uma Chakravarti & Ors.

Ref.: Email dated 17.08.2020

Sub.: REPRESENTATION DATED 17.08.2020 OF DR. UMA CHAKRAVARTI, & ORS. FOR TREATING ALL WOMEN, CHILDREN AND TRANSPERSONS AS A CLASS FOR BEING RELEASED ON INTERIM BAIL IRRESPECTIVE OF THE OFFENCE FOR WHICH THEY ARE ACCUSED OF

Sir,

With reference to the above referred Representations on the above captioned subject, it is to inform your goodself that the same had been placed before the **High Powered Committee** in its **meeting dated 30.08.2020**.

This is to inform that the Members of the Committee perused your representation and the relevant extract of Minutes of Meeting concerning your representations are as under:

"Item No.6(A): REPRESENTATION DATED 17.08.2020 OF DR.UMA CHAKRAVARTI, & ORS. FOR TREATING ALL WOMEN, CHILDREN AND TRANSPERSONS AS A CLASS FOR BEING RELEASED ON INTERIM BAIL IRRESPECTIVE OF THE OFFENCE FOR WHICH THEY ARE ACCUSED OF

Member Secretary, DSLSA brought to the notice of the Committee, a representation dated 17.08.2020 of Dr. Uma Chakravarti & Ors.

Members of the Committee perused the **representation** and have gone through the same as well as the prayer made to this Committee. It is suggested by the applicants that all women and transperson owing to their social status, resources and access should be considered as a class for being released on **interim bail**. Besides this, prayers were made to the effect that fresh admission of women and transperson in prison be not allowed during the pandemic.

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For effective disposal of this representation, Members of the Committee have perused order dated **23.03.2020** passed by Hon'ble Supreme Court in **Suo Motu Petition (Civil) No. 1/2020 – In Re: Contagion of COVID- 19**, vide which the High Powered Committee was constituted. The same reads as under:

*“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)

On bare perusal of the observations/directions given by the Hon'ble Supreme Court vide its order dated **23.03.2020**, it is apparent that the High Powered Committee so constituted was given **an absolute discretion 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**. It is further apparent on perusal of the subsequent order dated **13.04.2020** of Hon'ble Supreme Court whereby it was clarified that it has not directed the States/Union Territories to **compulsorily release** the prisoners from their respective prisons.

Thus, no prisoner in whatsoever **category/class** he/she falls and for whatever nature of offence he/she is facing trial, can seek or claim to be released from prison, as a matter of **right** and/or **inclusion of** his/her/their category in the recommendations so made.

This Committee while arriving at its decision in earlier meetings as well as in laying down the criteria today for release of the categories of prisoners on interim bail hereinabove, had taken into account the overall holding capacity of Delhi Prisons, existing strength on the dates of the Meetings and also the nature of offences for which the prisoners were lodged in jails. The Committee deliberated upon the **categories/class** of prisoners depending upon the nature of offence for which they were in jail for considering them for grant of interim bail/parole as the case may be. The committee had also considered to **exclude** certain nature of cases under the Special Acts like POCSO, MCOCA, PC Act, NDPS, PMLA, UAPA, Terror related Cases, Riot Cases, Rape Cases under Section 376 IPC besides those which have been investigated by CBI/ED/NIA/Special Cell of Delhi Police, Crime Branch, SFIO, **to be excluded** from consideration zone for being released on "**interim bail**". The Committee further on the basis of deliberations made had excluded the category of '**foreign Nationals**' from the consideration zone. The said decision was taken only after considering the **relevant factors** and on the basis of **objective satisfaction** arrived at by the Committee. The criteria was adopted taking into consideration **class/category** of offences in mind and not having *prisoner-centric approach*.

Further, this Committee while adopting various criterias in its earlier meetings had taken into consideration women as separate class and accordingly relaxed some of the condition with respect to them vis a vis the male prisoners.

The object was only to release some of the prisoners and not all the prisoners on a reasonable classification arrived at on the basis of orders passed by Hon'ble Supreme Court, intending to implement the same **in letter and spirit**.

In view thereof, this Committee is of the opinion that the representation is **unmerited** and the same is accordingly **rejected**.

It is, however, made clear that this Committee for release of prisoners on "**interim Bail**" vide criterion adopted in the meetings dated 28.03.2020, 07.04.2020, 18.04.2020, 05.05.2020, 18.05.2020, 20.06.2020 and 31.07.2020, shall in **no way** affect the rights of other UTPs, **who do not** stand covered under these categories, from invoking the jurisdiction of concerned courts for grant of regular/interim bail. The concerned Courts on filing of applications by such UTPs may consider the same on merits, in accordance with law.

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The applicants are at liberty to file bail application for such UTP before the concerned Courts, which as and when filed, may be considered on merits, in accordance with law.”

This is issued as per directions of Hon'ble Chairperson, High Powered Committee.

Yours sincerely,

Sd/-

(Kanwal Jeet Arora)
Member Secretary, DSLSA