

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

I.A. No. _____ of 2020

IN

SUO MOTU WRIT PETITION (CIVIL) NO.1/2020

IN THE MATTER OF: -

IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS

AND IN THE MATTER OF:-

NATIONAL FORUM ON PRISON REFORMS

THROUGH ITS CONVENOR

..APPLICANT/INTERVENOR

PAPER BOOK

I.A. No of 2020: Application for Directions

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ADVOCATE FOR THE APPLICANT/ INTERVENOR: SATYA MITRA

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New Delhi

Date: 28.03.2020

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PT-62/26, Kalkaji

New Delhi – 110019

... Applicant/ Intervenor

APPLICATION FOR DIRECTIONS

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND COMPANION JUSTICES OF THE HON'BLE

SUPREME COURT OF INDIA

**THE APPLICATION OF THE
APPLICANT/ INTERVENOR ABOVENAMED**

MOST RESPECTFULLY SHOWETH THAT:

1. The above Petition is a suo-motu writ petition under Article 32 of the Constitution of India taken up by this Hon'ble Court in view of the Corona Virus Pandemic that has gripped the world and is likely to affect the prison population, as the virus is highly contagious.
2. That this Hon'ble Court has passed certain directions in the present case dated 23.3.2020 to *inter alia* constitute a High Powered Committee at State/UT level comprising of (i) Chairperson of State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, and (iii) Director General of Prison(s), to determine which class of prisoners can be released on parole or interim bail for such period as may be thought appropriate. Further, the Under Trial Review Committees (UTRCs) contemplated by this court in *Re Inhuman Conditions in 1382 Prisons*, WP(C) 406 of 2013, shall meet every week and take such decision in consultation with the concerned authority.
3. That since these directions were passed, there have been further orders issued by the Central and State Governments extending the lockdown period from a week to 21 days in the entire country. That as a result, no public transportation is currently available in any part of the country for people to travel to and from their homes.
4. That in view of the prevailing circumstances, and further keeping

in mind that it is critical to decongest the prisons keeping in view the threat to the lives of the inmates in case the virus spreads, as well as maintaining proper hygiene, sanitation, social distancing, etc., the Applicant herein prays that this Hon'ble Court consider the additional suggestions being put forth by the Applicant.

5. That the Applicant, i.e. the 'National Forum on Prison Reforms' is a non-registered forum of 6 organisations. That the Applicant was also an Intervenor in the case Re-Inhuman Conditions in 1382 Prisons, WP(C) 406 of 2013, and its members have worked closely with the Amicus Curiae in the above case, in order to assist this Hon'ble Court in contemplating the various measures to address various issues including overcrowding, medical negligence, and custodial deaths in prisons. That the Antecedents of the Applicant have been listed in detail in the accompanying Application on Intervention and are not being repeated herein for the sake of brevity. That the said IA be read as part and parcel of the present IA.
6. That in view of the outbreak of the communicable respiratory disease, Novel Corona Virus (COVID-19), and in order to contain the spread of the virus among the prison population, this Hon'ble Court vide its order dated 23.03.2020 has directed as follows:
 - Physical presence of all the under trial prisoners before the Courts must be stopped with immediate effect and recourse to video conferencing may be taken for all purposes;

- Transfer of prisoners from one prison to another for routine reasons must not be resorted to except for decongestion to ensure social distancing and medical assistance to an ill prisoner;
- Sick person be immediately shifted to a Nodal Medical Institution in case of any possibility of infection;
- Preparation of readiness and response plan in consultation with medical experts, taking into account report of Inter agency Standing Committee published by United Nations on 17 March 2020;
- Monitoring team be set up to ensure the scrupulous compliance of directives with regard to prison and remand homes;
- Constitution of High Powered Committee at State/UT level comprising of Chairperson of State Legal Services Authority, Principal Secretary Home/Prison and DG Prisons to determine which class of prisoners can be released on parole/ interim bail for such period as may be thought appropriate. For instance, the State/ Union Territory to consider the release of prisoners who have been convicted or under trial for offences punishable up to seven years or less with or without fines and to those who have been convicted and sentenced for less number of years than the maximum. The committee may decide on its discretion the release of any person depending

upon the nature of offence, sentence awarded and severity of the offence;

- Under Trial Review Committees (UTRCs) contemplated by this court ***In Re Inhuman Conditions in 1382 Prisons, WP(C) 406 of 2013*** shall meet every week and take decisions as per the mechanism provided in view of directions passed by this Hon'ble Supreme Court and may consider the release of the prisoners with or without surety;
- The High Powered Committee shall take into account the directions contained in ***Arnesh Kumar Vs State of Bihar & Anr, 2014 (8) SCC 273;***

That after the above directions passed by this Hon'ble Court, the Central Government as well as the State Governments vide various oral and written orders, have announced a lockdown in the entire country for a period of 21 days w.e.f. midnight of 24.3.2020. That in view of the said orders, the entire inter-State, and inter-city transportation has been stopped, including railways, buses, taxi services, etc.

7. That further most of the prison inmates come from very poor and destitute backgrounds. That under the circumstances if they are released, the families may not be able to support the extra member.
8. That this is further in view of the fact that pursuant to this Hon'ble Court's orders, various State Governments have declared that they would be releasing large number of prisoners. The State

Government of Maharashtra and U.P. have declared that they would be releasing 11,000 prisoners, while the State Government of Punjab & Haryana has declared that they would be releasing 5000 prisoners. The press notes of the State Govts. of Maharashtra and U.P. declaring the release of prisoners are attached herewith as **Annexure A-1**.

9. That in view of the present conditions, the members of the National Forum of Prison Reforms felt that there is a need for additional guidelines for the prison authorities as well as the High-Powered Committees. That the additional suggestions as deliberated by the members of the National Forum are therefore put forth as follows for the consideration of this Hon'ble Court:

I. The High-Powered Committee or UTRC or Competent Authority may consider that:

- The officer-in-charge of prison or sub-jail should prepare a list of all eligible convicted or under trial prisoners for the offence punishable up to seven years or less with or without fines, people of vulnerable categories, persons who already been granted bail/parole/ furlough in the past and persons eligible for premature release.
- This list should be shared with the District & Sessions Judge, DLSA Secretary and the High Powered Committee.
- The District & Sessions Judge may forthwith issue directions to the concerned court or constitute a special

court to adjudicate all the matters expeditiously, with the assistance of the public prosecutor and defense lawyers/legal aid lawyers. This special court may function via videoconferencing or if possible, be held inside the prison premises, wherein eligible prisoners can also be given the opportunity to be heard. These hearings should be completed within **a week** of the receipt of the list from the high powered committee/ UTRC. Unless there are specific objections to release on bail by the public prosecutor with reasons which must be put in record by the Court, the Court may pass orders of release on 'interim bail' on the same day and ensure that the release warrants are sent to the prison on the same day.

- II. Once the release/ bail orders are issued by the competent authority, the prison authorities should ensure as follows:
 - The released prisoners should be given **safe transit** to his/her residence, which may include deploying home guards or police to escort the prisoners to their homes. Alternatively, police vehicles may transit prisoners to the district headquarters, and from there to their respective police stations with the help of the local policemen, can escort them to their homes.

- Alternatively, the released prisoners may be given certificates/e-passes from prison or competent authority to enable them to travel during lockdown.
- Prisoners may be given a subsistence allowance, travel allowance, issuing of passes as well as a medical / ration / essential supply kit (like soap, toothpaste, brush, at least one set of fresh clothes, towels, etc.); and also be given an option of staying in temporary shelters for the period of lockdown.
- Women may be escorted to the nearest One Stop Centre / shelter home if they cannot go home.
- Address and phone no. of at least one shelter home in the district should be provided at the time of release of the prisoner, especially for women, elderly, sick, destitute released inmates.
- In case there is a problem with regard to transportation or lack of facilities, alternate temporary shelter arrangements may be made in the city till the lockdown is over for prisoners released on bail or parole. The open prisons, semi-open prisons, and half way homes may also be used as temporary shelters for such inmates.
- Wages earned by them during their period in custody be handed over to them at the time of release.

- Health screening of prisoners prior to release: Strict screening of prisoners for the symptoms of COVID-19, i.e. fever (high temperature), cough and problem in breathing be conducted before release. No prisoner with these symptoms should be released without a proper diagnosis of the ailment. Such prisoners should be confined in the quarantine. Those who are not found with any such symptoms should be issued a 'fit certificate' by the medical officer so that they are not refused admission to a shelter home or face harassment by the community when they reach their homes.
 - Consent of prisoner: No prisoner should be released without their consent.
10. That in addition to the directions issued by this Hon'ble Court, priority may also be given to the following categories of prisoners as they would be at higher risk of contracting the disease:-
- a. UTPs/ Convicts who are medically fragile and older may be released with or without surety. Release of these persons will reduce the need to provide complex medical care or transfer to hospitals. Persons who are sick or infirm or require specialized medical treatment or are vulnerable to the virus on account of age, pre-existing health conditions such as:
 - People above 60 years

- Have terminal medical conditions
- Have more than 40% physical disability
- HIV Positive or TB patients
- Have a debilitated medical condition
- Suffer from chronic medical condition
- Blood disorder
- Chronic kidney Disease
- Chronic liver disease
- Immuno-suppression
- Endocrine disorder
- Metabolic disorder
- Heart disease
- Lung disease
- Neurological and neurologic and neurodevelopment conditions
- Hypertension
- Pregnant or lactating women
- Women with children inside the prison or have young children living outside

11. Release of Under Trial Prisoners

That the High Powered Committee/ Under Trial Review Committees (UTRCs) may on priority consider the release of under trials on Bail/Interim Bail on Personal Bond of the 14 categories, as already enumerated vide orders dated 24.4.2015, 5.2.2016 and

6.5.2016, passed by this Hon'ble Court in ***Re-Inhuman Conditions in 1382 Prisons, WP(C) 406 of 2013***, and mentioned under NALSA's Standard Operating Procedures on the functioning of Under Trial Review Committees. That these categories include:

- a. UTPs falling under Section 436 A Cr.P.C.
- b. UTPs released on bail by the court, but have not been able to furnish sureties;
- c. UTPs accused of compoundable offences;
- d. UTPs eligible under Section 436 of Crpc;
- e. UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Section 379, 380, 381,404,420 IPC or alleged to be an offence not more than 2 years imprisonment;
- f. UTPs become eligible to be released on bail u/s 167 (2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (Where persons accused of Section 19 or Section 24 or Section 27 A or for Offences involving commercial quantity) and where investigation is not completed in 60/90/180 day;
- g. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years;
- h. UTPs who are detained under Chapter Cr.P.C .i.e. u/s 107,108,109 and 151of Cr.P.C.;

- i. UTPs who are sick or infirm or require specialized medical treatment or are vulnerable to the virus on account of age, pre-existing health conditions such as diabetes, hypertension, respiratory problems etc.
- j. UTPs women offenders, particularly those who are pregnant, or with children or have young children living outside;
- k. UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with than 7 years of imprisonment and have suffered at least 1/4 of the maximum sentence possible;
- l. UTPs eligible for release under Section 437(6) of Cr.P.C. Where in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within within a period of 60 days from the first date fixed for taking evidence in the case.

12. Release of convicts

That further to the above directions the High-Powered Committees / respective State Governments may release the convicts on 'temporary release' by exercising the powers conferred under S.432 of the Code of Criminal Procedure, 1973 (CrP.C.).

- Convicts who have completed their sentence however due to non-payment of fine are still in prison.

- Convicts who are serving a sentence of not more than seven years and have served at least one third of their sentence.
 - Convicts who do not fall in the above categories, but their sentence would get over within next two months may be considered for commutation/permanent release.
 - Convicts who are in semi open or open prisons and may soon be released.
 - Old, sick, infirm, women with children, etc.
 - Convicts who have been shortlisted or whose files are currently being processed for premature release across all states.
13. That in view of the serious outbreak of the COVID-19 in some prisons in UK and US, which is posing a grave problem for the prison administration in these countries to contain the outbreak, and to prevent such a situation in the prisons across the country, a Nodal Medical Committee be constituted in each prison, to advise the prison staff and the para-medical staff on the precautions and sanitisation procedures to be put in place inside the prisons, as well as on preparedness in case of an outbreak in the prison or sub-jail.
14. Further adequate medical facilities, doctors and medical staff, hospitals equipped with proper facilities, maintain proper hygienic conditions, as well as follow proper health screening tests as developed by WHO entitled '**Preparedness, Prevention And**

Control of Covid-19 In Prisons and other places of detention' dated 15th March 2020 be followed. The following measures may be taken to protect the prison population.

II. Health, Sanitation, Drinking Water and Hygiene

- I. Weekly Visits by Doctors from Civil Hospitals to Prisons
- II. Setting up additional Mobile Toilets (if required) and Improve Drinking and Bathing Water Facilities
- III. Sufficient Supply of Sanitary Pads to Women Prisoners
- IV. Improving Diet for Pregnant Women and Children in Prisons
- V. Improving Supply of Bathing Soap and soaps/hand wash in toilets inside the barracks to encourage inmates to wash their hands frequently, especially before eating anything
- VI. Cloth masks/ *gamchas* to all prisoners to encourage prisoners to cover their mouth as far as possible
- VII. Sanitisers for prisoners and prison staff, where access to water is not easily available and work involves close interaction with prisoners/staff/office files etc - like in factory areas, administrative areas, hospitals, legal aid clinics etc
- VIII. Newcomers in the prison to be thoroughly screened and kept in isolation ward for 14 days;

- IX. All wards, barracks and all common areas to be cleaned with water and disinfectants once every day.
 - X. Supply of Thermal Thermometers to Prisons
 - XI. Wash Basins and Hand Wash Facilities at Entry Points
 - XII. Ensuring regular supply of water especially in prisons where water scarcity is a problem
- III. Recording of travel history and possible contact with COVID infected person at the time of admission.
- IV. **Awareness of Prisoners & Prison Staff** - Awareness of Prisoners and prison staff may be conducted through Posters, Awareness sessions and Use of informative audio or videos.
- V. **Contact with Family** - Communication through Phone Calls/ Video Skype/ E-mulakaat with Family Members
- VI. **Contact with Lawyers** - Communication through Phone Calls/ Video Skype/ E-mulaqat with lawyers be permitted.
- VII. **Recreation and education activities** - Vocational training, factory work and yoga or any other activity that may de-stress the prison inmates may continue subject to social distancing.

True copy of the guidelines and measures as enumerated by the World Health Organisation entitled 'Preparedness, prevention and control of COVID-19 in prisons and other places of detention' dated 15th March 2020 is annexed as **Annexure A-2**. The link of the WHO guideline is available at:

http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf?ua=1

15. That all the above guidelines, directions be also extended to juvenile homes, child care institutions, beggar homes, detention centers, homes for women, and institutions housing mentally ill and destitute women.
16. The applicant further wishes to bring to the notice of this Hon'ble court that due to the lockdown many High Courts and Lower courts have suspended their work and the prisoners not falling in the categories as decided by HPC or UTRC in view of the order dated 23.3.2020, are unable to get the hearings on emergent/ Medical grounds. This issue also requires consideration by this Hon'ble Court so that appropriate orders may be passed to constitute Special Courts for hearing through video conferencing or any other mode as deemed fit on the basis of urgency in the interest of justice.
17. In view of the abovementioned facts and circumstances, the hearing of this application is sought on an urgent basis during the lockdown, and the applicant is unable to file a signed affidavit, court fee and vakalatnama besides the attestation of affidavit. However, the same has been forwarded by the authorized person from his email, the applicant undertakes to file the same immediately after the lockdown is over.

PRAYER

18. It is therefore, prayed that this Hon'ble Court may be pleased to:
- I. Pass an order directing all States and Union Territories to adhere to the guidelines as enumerated by this Hon'ble Court vide its orders dated 24.4.2015, 5.2.2016 and 6.5.2016, passed in ***Re- Inhuman Conditions in 1382 Prisons, WP(C) 406 of 2013***, for decongesting prisons;
 - II. Pass an order directing all states and UTs to release convicts who have completed their sentence, or nearing completion, or are housed in open prisons/semi open prisons, or are sick, elderly and infirm;
 - III. Pass an order directing all States and Union Territories to provide safe transit facilities to released prisoners, including a subsistence allowance, travel allowance, issuing of passes as well as a medical / ration / essential supply kit; and also be given an option of staying in temporary shelters for the period of lockdown or an address and phone no. of at least one shelter home in the district, especially for women, elderly, sick, destitute, etc..
 - IV. Pass an order directing all States and Union Territories to ensure adequate medical facilities, doctors and medical staff, hospitals equipped with proper facilities, maintain proper hygienic conditions, as well as follow proper health screening tests as enumerated by the World Health Organisation entitled Preparedness, prevention and control of COVID-19

in prisons and other places of detention dated 15th March 2020;

- V. Pass an order directing all States and Union Territories to constitute a Nodal Medical Committee to advise the prison staff and the para-medical staff on the precautions and sanitisation procedures to be put in place inside the prisons, as well as on preparedness in case of an outbreak in the prison;
- VI. Pass an order directing all States and Union Territories to implement the above directions in all places of detention, including sub-jails, child care institutions, juvenile homes, beggars' homes, detention centres, homes for destitute women, and homes for mentally ill;
- VII. Pass an order directing all the high court and its subordinate court to consider hearing of cases on emergent/ Medical grounds which are not falling in the categories as decided by HPC/UTRC of UT and States as advised in order dated 23.3.2020 passed by this Hon'ble court through video conferencing or any other mode in view of the lockdown in the interest of justice;
- VIII. Pass an order to constitute Special Courts for hearing cases through video conferencing or any other mode as deemed fit on the basis of urgency in the interest of justice.
- IX. Pass any other or further directions as this court may deem fit or proper in the circumstances of the case.

Filed by:

Satya Mitra

Advocate for the Applicant/ Intervenor

Drawn by:

Ritu Kumar

Advocate for the Applicant

Dated: 28.3.2020

Place: New Delhi