

IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY WRIT JURISDICTION)
Writ Petition (Civil) No. _____ of 2020

(IN THE MATTER OF A PUBLIC INTEREST LITIGATION)

IN THE MATTER OF:

Shobha Gupta & Anr.

...PETITIONERS

VERSUS

Union of India & Ors.

...RESPONDENTS

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New Delhi

PETITIONERS IN PERSON

Shobha Gupta, Rajash Sachdeva

Dated03.2020

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URGENT APPLICATION

To,

**THE REGISTRAR,
OF THE HIGH COURT OF DELHI,
AT NEW DELHI.**

Sir,



Kindly treat the accompanying petition as an urgent one as per the Delhi High Court Rules.

The ground of urgency is that Covid – 19 virus is spreading at an ever alarming rate and the overcrowding of prisons is a breeding ground of the spread of COVID – 19. India is still in the second stage of spread of COVID – 19 and a strict measure and precaution is necessary to prevent it from entering in third and fourth stage.

It is most humbly prayed that the above matter of public interest be listed for hearing by this Hon'ble court on an urgent basis.

New Delhi ...03.2020

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NOTICE OF MOTION

Please take note that the above noted matter will be listed on __/__/2020 before the Hon'ble High Court of Delhi, at New Delhi . It is therefore, requested to you to please enter your appearance on the said date.

New Delhi

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WRIT PETITION (PIL) UNDER ARTICLE 226 OF CONSTITUTION OF INDIA SEEKING WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT SEEKING DIRECTIONS TO RESPONDENTS TO TEMPORARILY RELEASE THE INMATES OF TIHAR JAIL, MANDAWALI JAIL AND ROHINI JAIL IN THE LIGHT OF THE THREAT CREATED BY THE 'COVID – 19' OR 'CORONA VIRUS'.

To,

The Hon'ble Chief Justice
And His Companion Judges,
Of Delhi High Court,
At New Delhi

The Humble Petition of the petitioners
above named

MOST RESPECTFULLY SHOWETH:

'Ticking Time Bombs': U.S. Jails raise alarm amid coronavirus outbreak.

Jails in India are no exceptions.

1. That the present writ petition is being filed as a public interest litigation in the wake of the dangerous 'pandemic' 'Covid-19' or informally called 'corona virus', seeking writ of mandamus or any other appropriate writ against the respondents herein.
2. That the petitioners herein are law abiding citizens of the country, who are putting their full endeavor to prevent the spread of dangerous 'corona virus', which has caused extremely serious situation across the globe.

3. That the petitioners are specifically concerned about conditions of prisons in Delhi. At present, there are three major jails in Delhi/New Delhi viz are Tihar Jail, Mandawali Prison and Rohini Prison. In the light of the recent outbreak of 'corona virus', it submitted that if the situation is not controlled it may lead to a very dangerous and uncontrollable situation, the spread of 'corona virus' which has already reached on all the three jail premises.

4. That on 18.3.2020, the Tihar Jail has quarantined about 18 inmates, who are suspected of 'corona virus'. There are 8 foreign nationals, who have been isolated in Tihar Jail. A similar situation is seen in the Rohini Jail as well, where three persons from jail number 3, five from jail number 5, three from jail number 8-9 and one from jail number 10 have been put up in isolation. Similar isolations have been done in Mandawali Jail as well. The above data has been obtained from news article and believed to be authentic is **Annexure-P/1.**

5. That the jails in Delhi are overcrowded with a shocking data of capacity of inmates being 175%. Present total number of inmates as on 31.01.2020 are 17,871 against the total capacity of 10,026 (Ten Thousand and Twenty Six). That it is pertinent to note that 1200 prisoner are above 50 years age in jail. The above data has been obtained from official website is **Annexure-P/2.**

6. That considering the grim situation, the present writ petitioners seek release of all the inmates above the age of 50 years and/ or otherwise not medically fit, undergoing imprisonment for petty and minor offences, for their safety so as to protect them from being infected by killer virus.

7. That as per the present situation, there have been 155 positive cases of 'corona virus' in India whereby a total of 4 cases have proved fatal. The above data has been obtained from <https://www.mohfw.gov.in> is **Annexure-P/3.**

8. That the 'corona virus' is spreading at a very fast rate and if a proper precaution is not taken, then many more fatalities may occur. That the prisons in Delhi are already overcrowded and a single case of 'corona virus' can affect the entire population of the prison – inmates and the staff - both. That the Government and Courts, both within and outside the country, have taken measures to prevent crowding to avoid the spread of 'corona'. It is a well-known fact that uptill now there is cure no from 'corona' and the only way to protect the public at large is to prevent crowding. That in the light of the present outbreak and crisis, it is a matter of utter necessity to release inmates and lessen the crowd inside the all the jails

in Delhi. It is pertinent to mentioned herein that petitioner are not seeking unconditional reliefs of inmates, however it be made conditional i.e. upon furnishing bail bonds and other undertakings and sureties as may be imposed by the Court. For this purpose the Magistrates can be posted in concerned Jails so that inmates do not have to travel to Courts and create crowd there.

9. That the petitioners in the present petition by way of public interest litigation represent all the residents in the country, who are taking every possible steps to prevent and stop the spread of 'corona virus'. The present petition is being moved in the larger interest of the public and the society at large.

10. That the petitioners herein are advocates enrolled with the Bar Council of Delhi, who are practicing advocates in Courts at Delhi/New Delhi including this Hon'ble Court and Hon'ble Supreme Court and are competent to espouse the cause in the present PIL.

11. That the Hon'ble Supreme Court has taken Suo-moto cognizance of the spread of 'corona virus' in jails, whereby it has issued notice to submit reply stating the steps been taken for prevention of 'corona virus' in jails. That the order dated 16.03.2020 by the Hon'ble Supreme Court of India is attached as **Annexure-P/4**. It is pertinent to mention that the Hon'ble Supreme Court has called for reports from the State Governments about the status in jails in the respective States and at that time there was no information about 'corona viruses in jails in public domain. However, as per reports annexed herewith the deadly and dreaded 'corona' has already made its entry in Delhi jails putting the lives of thousands of inmates in high risk.

12. That the petitioners herein have not filed any other PIL or Letter Petition on this subject, either similar to the present petition or otherwise.

13. That in the last 4 months the world has witnessed the spread of a communicable respiratory disease called the Novel Corona Virus (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2).

14. That the outbreak was first identified in Wuhan, Hubei, China in December 2019. On 11th March 2020, the World Health Organization declared COVID-19 as a pandemic after noting that COVID-19 has increased 13-fold in countries other than China. That some State Governments has also declared COVID-19 an epidemic, in order to invoke the emergency provisions of the Epidemic Diseases Act, 1897.

15. That in India the cases of 'corona virus' have doubled within a week and if proper measures and precautions are not taken then the situation might get worsened.

16. That medical experts have noted that there are four stages of the contagion of the COVID-19 virus, which are firstly, entry of persons carrying the COVID-19 virus into Indian territory, thereby, importing the COVID-19 into India, secondly, local spread i.e. spread of the COVID-19 virus from the carrier to his/her kith and kin, thirdly, community spread i.e. spread of the COVID-19 virus to the communities in which a carrier of the COVID-19 virus is resident and finally, the epidemic level. That it has also been stated by the experts that India is still in the second stage where the spread is in the local level while in some other parts of the world it has reached the fourth stage.

17. That it is a matter of time that full precaution and measures shall be taken to prevent the reaching of the 'corona virus' to the third and fourth stage. That among various advisories issued by the government, one of the main advisory is to maintain social distancing.

18. That taking into account the overcrowding of the jails in Delhi, the aspect of social distancing is totally negated as the jails in Delhi are 75 %more occupied than the actual capacity. That the rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detenues etc.) are brought to the prisons on a daily basis.

19. That while Tihar Jail administration has suspended the meeting of relatives inside the jail seeing the situation which is prevalent. That also, an isolation ward has been set up in the Tihar Jail. However, vide letter dated 13.03.2020 of the Office of Director General of Prisons the entry of Psychological Counselors from Mental Health foundation (MHF) and advocates from DSLSA shall be continued. That the said letter dated 13.03.2020 is annexed as **Annexure-P/5**.

20. That it is a matter of utmost seriousness as the 'corona virus' has killed over 5000 and sickened more than 1,38,000 persons across the globe.

21. That the present petition has been preferred on the following grounds, which are being taken without prejudice to one another:

GROUND

- (A) Because it is the need of the hour to take precautionary measures to prevent the spread of 'corona virus' inside the prisons. That various other State Governments have taken and proposed measures for release of several prisoners apprehending outbreak of 'corona virus' inside the jails. Punjab Jails Department has proposed to release around 3,000 drug peddlers and 2,800 petty criminals lodged in various jails to prevent overcrowding and 'corona virus' outbreak. That the report to that effect is attached as **Annexure-P/6**.
- (B) Because unless the measures, as suggested herein, are taken the novel corona virus will spread rapidly in our jails endangering the life of inmates (convicts + under trials) not only prisoners and correction workers but the general public as well be at high risk. As the country prepares to arrest spread of the pandemic, authorities are round the clock working to limit the risk posed by mass confinement, including releasing those detained on bail, along with elderly prisoners who hardly pose any threat to the public on their release. Iran, the most infected country after China, has about 17,000 positive cases with over 1000 deaths due to 'corona', has released 85000 prisoners to prevent further fatalities and spread of the disease. That same steps have been taken by several other countries around the world. The news reports of preventive measures taken for release of prisoners across the globe are **Annexure-P/7 (colly)**.
- (C) Because the spread of 'corona virus' as seen from the past has been more imminent and dangerous within the closed spaces. That with other closed spaces such as cruise ships and nursing homes, the covid-19 coronavirus spread rapidly in Chinese correctional facilities. That closed spaces such as schools, restaurants, malls, cinema hall etc., have been closed by various State Governments in the country. However, in jails the inmates are at higher risk than in other settings, such as schools and restaurants, that have been closed to check the spread, more so when our jails are overcrowded. Although correction facilities cannot be closed, they must be included in any plan aimed at slowing the surge in infections and protecting public safety.
- (D) Because despite being physically secure, jails and prisons are not isolated from the community. People continuously enter and leave, including

multiple shifts of corrections staff; newly arrested, charged and sentenced individuals; attorneys; and visitors. Even if this flow is limited to the extent possible, correctional facilities remain densely populated and poorly designed to prevent the rapid and widespread dissemination of this deadly virus.

- (E) Because there must be proper screening of individuals to prevent infected individuals from entering facilities. That there must be rapid identification of cases and isolate exposed groups to limit the spread, as well as quickly transfer seriously ill patients to appropriate facilities. That this viruses would not be enough unless there is release of inmates who do not pose an immediate threat and danger to public safety. That abrupt onset of severe covid-19 infections among incarcerated individuals will require mass transfers to local hospitals for intensive medical and ventilator care — highly expensive procedures/ interventions that may soon be in acute short supply. That severely ill patient coming from corrections, who occupies an ICU bed will mean others may die for inability to obtain care.
- (F) That there will be no good in conducting a trial of an accused person who is not alive. That the circumstances created by this deadly disease have created a havoc all across the globe and in these circumstances the balance of convenience lies in temporarily release of inmates.
- (G) Because it is a matter of Right to life and liberty enshrined in the Article 21 of the Indian Constitution. That it has been stated by the Hon'ble Apex Court in the case of **State of Andhra Pradesh Vs. Challa Ramkrishna Reddy & ors** reported in **AIR 2000 SC 2083** that, *"Right to life is one of the basic human rights. It is guaranteed to every person by Article 21 of the Constitution and not even the state has the authority to violate that right. A prisoner be he convict or under trial or a detenue does not cease to be a human being. Even when lodged in jail, he continues to enjoy all his fundamental rights including the right to life guaranteed by the constitution."*
- (H) That it has been long recognized that there is no greater necessity than keeping a defendant/accuse alive, no matter what is the charge against him. . That few of the prisoners are serving the prison because they do not have money to afford for the bail.

- (I) Because this Hon'ble Court vide order dated 18.06.2007 had directed the release of 600 inmates in the Tihar Jail after deaths of several inmates in the overcrowded jail. That the deaths occurred due to the heat stroke. The news article stating such direction by the Hon'ble Court is **Annexure-P/8**.
- (J) Because it has been stated in the case of **TY Vatheeswaran vs. State of Tamil Nadu** reported in **1983 AIR 361** that, *"Prison walls do not keep out fundamental rights."* That it must be stated that on the touchstones of equality, justice and public policy the state can take strict actions in light of the circumstances. That it has been specifically been stated in the case of **Delhi Transport Corporation vs. DTC Mazdoor Congress** reported in **1990 SCR Supl. (1) 142** that, *"...The phrases "public policy", opposed to public policy, or "contrary to public policy" are incapable of precise definition. It is valued to meet the public good or the public interest. **What is public good or in the public interest or what would be injurious or harmful to the public good or the public interest vary from time to time with the change of the circumstances.** Therefore, in the absence of specific head of public policy which covers a case, then the court must in consonance with public conscience and in keeping with public good and public interest invent new public policy and declare such practice or rules that are derogatory to the constitution to be opposed to public policy. **The rules which stem from the public policy must of necessity be laid to further the progress of the society, in particular when social change is to bring about an egalitarian social order through rule of law.** In deciding a case which may not be covered by authority, courts have before them the beacon light of the trinity of the Constitution viz., the preamble, Part III and Part IV and the play of legal light and shade must lead on the path of justice social, economic and political. Lacking precedent, the court can always be guided by that light and the guidance thus shed by the trinity of our Constitution..."*

22. That the petitioners craves leave of this Hon'ble Court to add, alter or amend any of the above grounds and to file additional affidavit(s) at a later stage if so required.

23. That no other petition seeking the same relief has been filed or pending before this Hon'ble Court or any other Court including Supreme Court of India. The present Writ Petition is bona-fide and made in the interest of justice.

P R A Y E R

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to issue writ of *mandamus* or any other appropriate writ(s), order(s) or direction(s) and thereby

- A. direct respondents No. 1 to 6 to immediately temporarily release all the under trials and convicts with maximum imprisonment upto 5 years and fine (i.e. non – heinous crimes) in Tihar, Mandawali and Rohini Jails in Delhi/New Delhi;
- B. direct the respondents 1 to 6 to immediately segregate the ailing inmates and provide proper facilities and arrangement for examination and treatment of prisoners convicted of heinous crime(s) with more than five years of imprisonment; and may also.
- C. pass any other order(s) which this court may deem fit and proper in the interest of justice and the general public of the NCT of Delhi.

New Delhi

PETITIONERS IN PERSON
Shobha Gupta, Rajesh Sachdeva

Dated 21.03.2020

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AFFIDAVIT IN SUPPORT OF THE PETITION



1. That I am the petitioner above named. T L A W
2. I have filed the present petition as a Public Interest Litigation.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the present Public Interest Litigation is in conformity thereof.
4. I the petitioner have no personal interest in the litigation and neither myself nor anybody in whom I am is interested would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. This petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of public interest in filing this petition.
5. I have done whatsoever inquiry/investigation which was in my power to do, to collect all data/material which was available and which was relevant for this court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material /information which may have enabled this court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.

D E P O N E N T

VERIFICATION

Verified at New Delhi, on this the ____ day of _____ 2020 that the contents of this affidavit are true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

D E P O N E N T

