



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. OF 2020

DISTRICT: AURANGABAD

In the matter of Articles 12, 14, 21 and
226 of the Constitution of India;

AND

In the matter of Section 482 and 439 of
Criminal Procedure Code;

AND

In the matter of the judgment passed by the Supreme Court in the case of Arnesh Kumar v. State of Bihar and Another reported in (2014) 8 SCC 273;

AND

In the matter of the judgment passed by the Supreme Court in the case of In Re Inhuman Conditions in 1382 Prisons reported in (2016) 3 SCC 700;

AND

In the matter of directions of the Supreme Court in suo-motu writ petition No. 1 of 2020 vide order dated 23.03.2020;

AND

In the matter of minutes of meeting of the High Power Committee constituted by the Supreme Court dated 25.03.2020.

- | | | |
|----------|--------------------------------------|-------------------------|
| 1 | Nitin Ramkrushna Shelke, |) |
| | Age: Major, Occu.: business, |) |
| | R/o Harsul Central Jail, Harsool Rd, |) |
| | Harsul, Aurangabad, Maharashtra |) |
| | 431003. |) |
| 2 | Madhukar Vitthal Suryawanshi, |) |
| | Age: Major, Occu.: business, |) |
| | R/o Harsul Central Jail, Harsool Rd, |) |
| | Harsul, Aurangabad, Maharashtra |) |
| | 431003. |) ...PETITIONERS |

VERSUS

- | | | |
|----------|--------------------------------------|---|
| 1 | The State of Maharashtra, |) |
| | Through its Chief Secretary (Appeals |) |
| | and Security) Home, |) |

- Mantralaya, Mumbai-32.)
- 2 **The Maharashtra Prison**)
 Department,)
 MS, Pune.)
- 3 **The DIG (Prisons),**)
 Central Division,)
 Aurangabad.)
- 4 **The Undertrial Review Committee,**)
 Through its Chairman,)
 Aurangabad District,)
 Aurangabad.) **...RESPONDENTS**

TO,
**THE CHIEF JUSTICE AND OTHER
HON'BLE PUISNE JUDGES OF THE
HIGH COURT OF JUDICATURE AT
BOMBAY, BENCH AT AURANGABAD.**

**THE HUMBLE PETITION OF THE
ABOVENAMED PETITIONERS**

MOST RESPECTFULLY SHEWETH:

1. The petitioners are the citizens of India who are facing imprisonment as undertrial prisoners.
2. The petitioner No. 1 is an accused in Crime No. 347 of 2019 for the offences punishable under Sections 406, 420, 120-B IPC and Section 3 of the Maharashtra Protection of Interest of Depositors Act, 1999 (hereinafter 'MPID Act') whereas the petitioner No. 2 is an accused in Crime No. 311 of 2015 for the offences

punishable under Section 420 IPC and Sections 3 and 4 of MPID Act.

3. The present petition is directed against the decision of the High Power Committee constituted pursuant to the directions of the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 1 of 2020 (In Re: Contagion of COVID 19 Virus in Prisons) dated 25.03.2020, which is contrary to and in every effect watering down the very purpose of the aforesaid directions of the Hon'ble Apex Court.

Background:

4. The world has witnessed a fast paced spread of a communicable respiratory disease called the Novel Corona Virus (COVID-19), caused by severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) causing an unprecedented stand-still position in the world for the fear of loss of life and the unpreparedness to face the situation of millions infected persons in case the spread is not contained.
5. The outbreak was first identified in Wuhan, Hubei, China in December 2019. However, owing to

the globalisation and heavy inter-dependence of all nations on each other and the unprecedented nature of the crisis, the virus has reached even the farthest corners of the earth, with positive cases being identified even in sparsely populated areas such as the faroe islands in the far north region of europe or a more relatable example would be of the Andaman and Nicobar islands which has also identified some positive coronavirus cases.

6. Although there are many ongoing clinical trials evaluating potential treatments, there are no specific vaccines or treatments for COVID-19 as on date, much less one with all necessary human trials to ensure it has no harmful side-effects.
7. The infection is spreading like a wildfire and has proven fatal in nearly 3-4% of the cases, whereas the fatality is more likely in persons with reduced immunity either owing to advanced age or conditions such as blood-pressure, diabetes and heart ailments or any other situation of reduced immunity. The number of persons who are infected by the virus is rising at an exponential rate. As on date nearly 10,00,000 persons are confirmed cases

of coronavirus whereas nearly 50,000 persons have succumbed to death.

8. The World Health Organisation after noting that COVID-19 has increased 13-fold in countries other than China and declared COVID-19 caused by coronavirus as a global pandemic on 11.03.2020.

9. The WHO has advised against mass congregation as one of the only effective measures to prevent the deadly disease.

10. Since there are no specific treatments or vaccines for COVID-19, the WHO on the aid and advice of medical experts has suggested social distancing as the only effective measure to curb and prevent COVID-19.

11. In India, nearly 2000 persons have been tested positive and confirmed as being infected by the COVID-19, out of this nearly a fifth are found in Maharashtra. The statistics show that the cases in India, as in Italy and Iran two weeks prior, are doubling in less than four days time. This is a very dangerous situation and unless the curve flattens the country is likely to be flooded with coronavirus cases with little or no preparedness in the public

healthcare system. Unless prompt measures are taken, the situation would worsen, having nearly 13 lakh infections by mid May, suggests a research model.

- 12.** 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. India is now at the stage of community transmission despite the strong measures of a country wide lock-down, and now with the Nizamuddin Tabiliyat Jamat congregation members having spread across the country, some of whom yet could not be tracked and quarantined, a higher threat looms large of an explosion of cases in the country. The apprehension is higher owing to the minimal testing being presently conducted by the Government.

13. The Government of India and State Governments are taking all possible steps to curb the contagion of the COVID-19 virus. The Government of India and the respective State Governments have also issued several advisories to the citizens, regarding the prevention of the further spread of the COVID-19 virus.

14. One of the best preventive measures as suggested by the World Health Organisation as also by the Government of India is to maintain social distancing, which is considered to be the most effective way of stopping the spread of COVID-19 virus.

15. The State of Maharashtra invoked the provisions of Epidemics Disease Act, 1897 vide Notification dated 13th March, 2020 and framed the Maharashtra COVID-19 Regulations, 2020 vide Notification dated 14.03.2020 issued by the Public Health Department, a copy of which is annexed herewith and marked at **Exhibit "A"**.

16. Looking at the exponential rise in the number of infected persons, the Central Government has directed a nationwide lock-in for a period of 21 days

so as to avoid social gatherings and maintain social distancing.

- 17.** The Hon'ble High Court of Bombay taking note of the lockdown declared by the Central Government till 14.04.2020, directed that all the interim orders already passed by the Court shall stay in operation during the period of lockdown. The Hon'ble High Court has further requested the Government, the municipal authorities and other agencies to refrain from taking any coercive measures during the lockdown period thereby avoiding the drive of the citizens to the courts of law vide order dated 02.04.2020 in Suo Motu Writ Petition (Urgent) 2 of 2020 (to be numbered subsequently), a copy of which is annexed herewith and marked at **Exhibit "B"**.

COVID-19 high risk in prisons:

- 18.** The petitioners submit that like most other viral diseases, the susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. The spread is not only through cough droplets but also by touching infected surfaces, meaning

thereby minimizing the human exposure is the only effective preventive measure.

19. The maintenance of social distancing is an impossible condition in the prisons, which are severely over-crowded. Furthermore, the State is not in a position to provide the medical facilities in case the virus infects the prison inmates. Not only healthcare experts, but minimal critical care requirements such as ventilators are also not available in requisite numbers. If an inmate is infected, likelihood is that he would pass on the infection to most others in the compound and everyone present including the jailors and the other government servants would be left at the mercy of god owing to the severe lack of basic health care amenities to face the critical care patients of coronavirus. The severe shortfall of the amenities indicates that the choice of who to use the amenities in favour of would be based on a play of power, influence and money, neither of which is available to most prison inmates.

20. Despite much better infrastructure of prisons in the United States of America, the detention

facilities in New York have seen a tremendous spread in the coronavirus infected persons, as can be gathered from a news reporting published in 'Independent' news daily, a copy of which is annexed herewith and marked as **Exhibit "C"**.

21. Studies indicate that contagious viruses such as COVID-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. 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. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. For the said reasons, the prisons have become fertile breeding grounds for incubation of COVID-19.

Directions of the Supreme Court:

22. The petitioners submit that the Hon'ble Supreme Court took suo motu cognizance of the aforesaid threat of outbreak of COVID-19 in the prisons and felt it imminent to take steps on urgent basis to prevent the contagion of COVID-19 virus in our prisons in *Suo Motu Writ Petition (C) No. 1 of 2020*. The Hon'ble Supreme Court issued several directions including necessary measures so as to ensure quarantining and medical treatment of prisoners who are tested positive for the COVID-19 virus.

23. Looking into the possible threat of transmission and fatal consequences, the Hon'ble Supreme Court directed the State Governments/UTs to take steps to ensure maximum possible distancing among the prisoners including undertrial prisoners.

24. The Hon'ble Supreme Court further directed that prison specific readiness and response plans must be developed in consultation with medical experts. It has also directed to constitute a monitoring team at the state level to ensure that the

directives issued with regard to prisons and remand homes are being complied with scrupulously.

25. The Hon'ble Supreme Court observed that having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the corona virus within the prisons is controlled and, therefore, further directed 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, (iii) Director General of Prison(s), so as to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate.

26. The Hon'ble Supreme Court although by way of an example stated that the State may consider the release of the prisoners who have been convicted or are undertrial for offences for which prescribed punishment is upto 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

27. The Hon'ble Apex Court made it clear that it shall be open for the **High Powered Committee** to determine the category of prisoners who should be released as aforesaid, depending upon:

(i) the nature of the offence;

(ii) the number of years to which he or she has been sentenced;

(iii) the severity of the offence with which he/she is charged with and is facing trial;
or

(iv) any other relevant factor along with the directions contained in para 11 in Arnesh Kumar v. The State of Bihar reported in **(2014) 8 SCC 273**, which the Committee may consider appropriate.

28. Similarly, the Hon'ble Supreme Court directed the Undertrial Review Committee as contemplated by it in *Re Inhuman Conditions in 1382 Prisons* reported in (2016) 3 SCC 700 shall meet every week and take decision in consultation with the concerned authority as per the said judgment. A copy of the orders dated 16.03.2020 and 23.03.2020 passed in *Suo Motu Writ Petition (C) No.*

1 of 2020 are annexed herewith and marked at **Exhibits “D” and “E” respectively.**

Decision of the High Powered Committee:

29. The petitioners submit that pursuant to the directions of the Hon’ble Apex Court, the Government of Maharashtra constituted High Power Committee vide Government Resolution bearing No. JLM0320/CR58/Prison-2 dated 24.03.2020, copy of which is not available online on the official website of the Maharashtra Government. The petitioners crave leave to rely on the same, and the same be called from the custody of the respondents.

30. It appears that the High Powered Committee conducted a meeting on 25.03.2020 and framed guidelines pursuant to the directions of the Hon’ble Apex Court.

31. The High Powered Committee pursuant to the directions of the Hon’ble Supreme Court decided as under:

- a.** Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for release on interim bail on personal bond of such amount as may be determined, for a

period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

- b.** The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.
- c.** The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under the

Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within jurisdiction they are residing, once every 30 days.

- d. The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.**
- e.** This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.
- f.** Before the temporary release of prisoners, the necessary medical protocol in relation to screening of Corona virus (COVID - 19) shall be followed by the jail authorities and action be taken accordingly.
- g.** The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance

with law. In considering every case for such release, the “nature of the offence” and the “severity of the offence” shall be considered. The possibility of the prisoners committing offence in case of temporary release (such as habitual offenders) or likelihood of his/her absconding should also be considered as an important test to decline such requests for temporary release.

- h.** The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filing of an application in this regard by the prisoner.
- i.** All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the said order of the Hon’ble Supreme Court shall however be foremost kept in mind.

A copy of the minutes of the meeting of the High Powered Committee held on 25.03.2020 is annexed herewith and marked at **Exhibit “F”**.

Impugned Decision contrary to SC parameters:

- 32.** The petitioners submit that the Hon’ble Supreme Court although empowered the High Powered Committee to decide and frame parameters for the release of the inmates, however, issued certain

guidelines for taking its decision. The Hon'ble Supreme Court made it clear that the High Power Committee shall take into considerations various factors such as the nature of offence, severity of offence, number of years to which the convict has been sentenced and any other relevant factor so as to release such persons on parole or interim bail so as to ensure social distancing. The Apex Court had further directed that the High Powered Committee shall take into consideration the guidelines issued by it in the case of **Arnesh Kumar v. the State of Bihar and Another** reported in **(2014) 8 SCC 273**.

33. Although the High Powered Committee made a note of the parameters laid down by the Supreme Court in its minutes of the meeting, however, waterdowned the essence thereof while exercising its discretion.

34. The petitioners submit that the High Power Committee directed the State to release the undertrial prisons on temporary bail who are accused of offences for which the maximum punishment is 7 years or less. Similarly, the High Power Committee allowed the State to consider the application of the convicted prisoners whose maximum punishment is 7 years or less for

emergency parole. However, the High Powered Committee carved out an exception to the aforesaid directions in its application to the undertrial prisoner or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA etc.

35. The petitioners submit that the Hon'ble Supreme Court although had given liberty to the High Powered Committee to determine the category of prisoners to be released on interim bail or parole, it was expected that the High Powered Committee shall determine such class of prisoners in the light of the earlier judgments of the Supreme Court in the case of *Arnesh Kumar v. State of Bihar and Another*, as also the four factors laid down by the Hon'ble Supreme Court. By ousting all cases falling under special Acts which have certain restrictions while granting bail, without testing such cases on the touchstone of nature and severity of offence or number of years of sentence, amounts to an artificial classification and contravention of the guidelines laid down by the Hon'ble Supreme Court of India.

36. The petitioners submit that the Hon'ble Apex Court in the case of **Arnesh Kumar v. State of Bihar** and another reported in **(2014) 8 SCC 273** had issued several directions to ensure that the police officers shall not arrest the accused unnecessarily and the Magistrate shall not authorise the detention casually and mechanically. The Hon'ble Supreme Court had directed that unless it is necessary to arrest and detain an accused, the authorities i.e. the police and the magistrate shall refrain from doing so. Although the said directions were issued primarily for the offences under Section 498-A, however, the Hon'ble Supreme Court had made it clear that the said directions shall apply to all such cases where the offence is punishable with imprisonment for a term which may be less than seven years or which may extend to the seven years, whether with fine or without fine. **The Hon'ble Supreme Court, however, did not make any distinction between the offences punishable under the special Acts and the offences under the IPC while issuing the said directions.**

37. The petitioners submit that when the Hon'ble Apex Court did not make any distinction between the

offences punishable under IPC and the Special Acts, it was not permissible for the High Powered Committee to make such a classification, especially in light of the present critical circumstances, where life of the prisoners as well as the authorities and the fate of the nation is at stake.

38. The petitioners submit that the High Powered Committee justified the classification of the offences under IPC and other special Acts such as MCOC, PMLA, MPID, NDPS, UAPA etc. by stating that such Acts provide for additional restrictions on grant of bail in addition to those under Cr.P.C.

39. The petitioners submit that no doubt, the release of the accused for the offences under the Special Act may at times require additional restrictions to be imposed by the courts, however, the same is not true in each and every case. The conditions to be imposed by the Courts while grant of bail depends upon facts of each and every case, however, there can be no blanket rule for the same. Many a time, harsh restrictions are imposed upon the accused while grant of bail for the offences punishable under the IPC as well.

40. The petitioners submit that most of the special Acts referred to in the impugned direction only restrict grant of bail to after hearing the public prosecutor and nothing else. Most offences under these Acts prescribe a maximum sentence of imprisonment less than 7 years, and are neither very severe nor having a nature that would disentitle persons prosecuted under it from the benefit of the Supreme Court judgment. Furthermore, what is most curious is that the MPID Act, 1999 does not even stipulate any restriction over and above the provision of bail under section 438 of the Code. Thus, the said Act does not even satisfy the reason mentioned in the impugned decision, indicating severe non- application of mind and arbitrariness, and, therefore deserves to be quashed on that count alone. The petitioners submit that although MPID is a special Act, the procedure prescribed under the Criminal Procedure Code is applicable for the purpose of grant of bail. No specific procedure or conditions are prescribed by the Act so far as MPID Act is concerned. The details of the other special Acts where the procedure for grant of bail is separately provided, is annexed herewith and marked at **Exhibit “G”**.

41. The distinction drawn by the High Powered Committee between the accused who are imprisoned for the offences punishable under the provisions of the IPC and the special Acts on the basis of the conditions/restrictions that are to be imposed while releasing them on bail is arbitrary and does not satisfy the test of reasonableness.

42. Moreover, the entire thrust of the directions of the Supreme Court was to ensure that the prisons are decongested thereby maintaining social distancing within the prisons so as to curb/prevent the spread of COVID-19 infection amongst the inmates. However, there is no nexus between the classification made by the High Powered Committee between the offenders who have been convicted or accused of the offences punishable under the IPC or the Special Acts and the said objects sought to be achieved. If at all the offence is of serious nature and having a long sentence, they would not be eligible for benefit in terms of Supreme Court guidelines, however, to disentitle an entire group of persons based on a wholly irrelevant criterion is not only arbitrary but rakes of non-application of mind.

- 43.** The petitioners submit that the maximum punishment under the provisions of the MPID is 6 years with fine of Rs 1 lakhs. Despite the fact, that the maximum punishment prescribed under the said Act is less than 7 years, the petitioners are deprived the guidelines issued by the Hon'ble Supreme Court.
- 44.** The petitioners submit that although the Home Minister had made a bald statement that around 11,000 prisoners shall be released however, in the light of the decision of the High Powered Committee, not even half of the said number of prisoners are going to be released.
- 45.** The petitioners submit that the sanctioned strength of the Harsul Jail is 579 whereas the actual strength of inmates as on date is 1828.
- 46.** The petitioners submit that the in all 74 prisoners were granted temporary bail in view of the decision of the High Powered Committee vide three separate orders dated 27.03.2020, 28.03.2020 and 29.03.2020, however, the names of the petitioners did not appear in the said list merely because they are accused of the offences punishable under the provisions of MPID Act.

- 47.** The petitioners submit that the Harsul Jail is still occupied by 1754 number of prisoners in excess to the sanctioned strength of 579.
- 48.** The petitioners submit that around 50% of the prisoners are accused of or are undergoing imprisonment for the offences punishable under the Special Acts, whereas many of them would fall within all the other criterion prescribed by the Supreme Court. As such, due to the exception carved out by the High Powered Committee, the very purpose that was intended by the Hon'ble Apex Court stands frustrated.
- 49.** The petitioners submit that the discretion given by the Hon'ble Apex Court was to ensure that the Committee shall take into consideration the relevant parameters so as to ensure that the right category or class of prisoners are released rather than making blanket exceptions based on irrelevant criteria.
- 50.** The petitioners submit that the prisoners who are above the age of 55 years and are otherwise most susceptible to the infection. The High Powered Committee ought to have given due weightage to such persons who are more vulnerable to be infected such as

women, aged persons, or persons suffering from other ailments such diabetes etc, having low immunity.

51. The petitioners submit that the High Powered Committee ought to have used its discretion so as to ensure that the outspread of the disease is controlled and curbed within the prisons.

52. The petitioners submit that the High Court of Kerala in the light of the directions given by the Hon'ble Supreme Court, granted interim bail to all the undertrial/remanded prisoners incarcerated in the jails within the State of Kerala, who face accusation of having committed offences punishable upto 7 years or less with or without fine. The High Court of Kerala however, had carved out an exception so as to exclude all such prisoners who have criminal antecedents, previous convictions or in the case of habitual offenders and also with respect to the persons undergoing trial or remanded custody in more than one cases vide order dated 30.03.2020 in Writ Petition (C) No. 9400 of 2020 (Suo Motu), copy of which is annexed herewith and marked at **Exhibit "H"**.

53. The petitioners submit that the Hon'ble Supreme Court had framed the basic parameters so as to ensure

uniformity amongst all the prisoners across the nation. The entire thrust of constituting the High Powered Committee and bestowing it with the discretion to determine the category of the offenders was to deal with the specific issues of overcrowding of prisons faced by each State. However, the same could not have meant to mete out differential and discriminatory treatment to the prisoners who are languishing in jails of different States.



Failure of the Undertrial Review Committee:

54. The petitioners submit that the Hon'ble Apex Court has time and again pondered upon the issues with regard to prison reforms. One of the important aspects of prison reforms has been the decongestion of overcrowded prisons. The Hon'ble Apex Court in the case of **Inhuman Conditions in 1382 Prisons, In Re** reported in **(2016) 3 SCC 700** had directed district level Undertrial Review Committee with the District Judge in the Chair with the District Magistrate and the Superintendent of Police as Members so as to take appropriate steps for the release of the undertrial prisoners and convicts who have undergone their

sentence or are entitled to release because of remission granted to them.

55. The Supreme Court further directed the Undertrial Review Committee to specifically look into the aspects pertaining to effective implementation of Section 436 Cr.PC and Section 436-A CrPC so that undertrial prisoners are released at the earliest and those who cannot furnish the bail bonds due to their poverty are not subjected to incarceration only for that reason. It was further directed that the Undertrial Review Committee shall also look into the issue of the implementation of the Probation of Offenders Act, 1958 particularly, with regard to the first time offenders so that they have a chance of being restored and rehabilitated in society.

56. The petitioners submit that the Hon'ble Supreme Court while issuing direction in Re: Contagion of COVID-19 in the Prisons, specifically directed that the Undertrial Review Committee contemplated in the re Inhuman conditions in 1382 prisons shall meet every week and take such decision in consultation with the concerned Authority as per the said judgment.

57. The petitioners submit that neither any meetings of the Undertrial Committee is held nor any decision is taken pursuant to the directions of the Hon'ble Apex Court.

58. The petitioners submit that it is least expected that in the wake of such an international emergency, the State instrumentalities are acting in the most casual and indifferent manner, atleast in respect of the prison inmates.

59. The petitioners submit that the petitioner No. 1 was arrested on 01.10.2019 whereas the petitioner No. 2 was arrested on 10.01.2018. The bail application of the petitioner No. 1 came to be rejected by the Hon'ble Sessions Court, Aurangabad vide order dated 09.03.2020 whereas that of the petitioner No. 2 came to be rejected vide order dated 12.10.2018. The copies of the order dated 09.03.2020 and 12.10.2018 passed by the Sessions Judge, Aurangabad are annexed herewith and marked at **Exhibits "I" and "J" respectively.**

60. Due to complete lock down, there is no possibility that the trial shall commence or conclude any sooner.

The petitioners shall be made to languish behind the bars, that too by risking their lives.

61. The petitioners are left with no course open but to approach this Hon'ble Court.

62. Being aggrieved by the impugned decision of the High Powered Committee dated 25.03.2020 and the inaction on the part of the respondent No. 4 Undertrial Review Committee to take measures pursuant to the directions of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 1 of 2020, the petitioners challenge the legality, validity and correctness of the same amongst others on the following grounds:

GROUND:

- I.** At the outset, the impugned decision of the High Powered Committee dated 25.03.2020 is in contravention of the parameters laid down by the Hon'ble Supreme Court.
- II.** The impugned decision of the High Powered Committee dated 25.03.2020 is arbitrary and does not meet the touchstone of reasonable classification.
- III.** The impugned decision of the High Powered Committee dated 25.03.2020 in denying the

benefit of the directives of the Supreme Court to all persons prosecuted under the Special Acts, without looking at the nature, severity of offence and duration of sentence is nothing but an artificial classification.

- IV.** The impugned decision of the High Powered Committee dated 25.03.2020 reeks of non-application of mind, since a blanket disqualification for all offences under Special Acts is made applicable without adhering to the parameters laid down by the Supreme Court.
- V.** The impugned decision of the High Powered Committee dated 25.03.2020 heavily waters down the parameters laid down by the Supreme Court, and thereby violates the mandate.
- VI.** The impugned decision of the High Powered Committee dated 25.03.2020 suffers from absence of a justification, more so a reasonable one in disqualifying all persons prosecuted under any offences under Special Acts irrespective of its nature, severity and duration of sentence.
- VII.** The impugned decision of the High Powered Committee dated 25.03.2020 is vitiated by

non-application of mind and therefore unsustainable in law, as one of the Special Acts being MPID Act, 1999 offences under which are disqualified for the benefit of the Supreme Court directives on incorrect ground that the Act lays down restrictions on bail over and above section 438 of the Code of Criminal Procedure.

VIII. The impugned decision of the High Powered Committee dated 25.03.2020 falls short to meet the emergent situation of COVID-19 which is likely to spread like wildfire in prisons owing to overcrowding of prisons.

IX. The prison inmates as well as prison guards and jailors are put at high risk owing to overcrowding of prisons, and in light of the directives of the Supreme Court it is essential that the petitioners are not put to unnecessary risk by a blanket disqualification without reasonable basis.

63. The petitioners have not preferred any other petition touching the same subject matter in any other fora including the Hon'ble Apex Court.

64. The petitioners crave leave to add, alter, delete or amend the petition, as and when need be.

- 65.** The petitioners undertake to pay the necessary court fees.
- 66.** The petitioners do not have any other alternative and equally efficacious remedy, but to approach this Hon'ble Court.
- 67.** The petitioners undertake to supply the translated copy of the petition, as and when required.
- 68.** The petitioners are imprisoned at Harsul Jail and, therefore, the present petition is within the territorial jurisdiction of this Hon'ble Court.
- 69.** The petitioners have tried to approach this Hon'ble Court at the earliest. Even if there is any delay, the same be condoned in the interest of justice.

70. PRAYERS:

The petitioners most respectfully prays to Your Lordships under Articles 226 and 227 of the Constitution of India read with Section 482 Criminal Procedure Code, 1908 as under:

- A.** To quash the impugned decision of the High Powered Committee dated 25.03.2020 (Exhibit "F"), by issuing a writ of certiorari or any other

appropriate writ, order or direction as the case may be;

B. To direct the respondent No. 4 Undertrial Review Committee to take a decision with regard to release of the undertrial prisoners in the light of the directions issued by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No. 1 of 2020, by issuing writ of mandamus or any other appropriate writ, order or direction as the case may be;

C. To release the petitioners on temporary bail/interim bail on temporary/interim bail in the light of the directions issued by the Hon'ble Supreme Court;

D. To release the petitioners on temporary bail/interim bail on temporary/interim bail in the light of the directions issued by the Hon'ble Supreme Court, pending hearing and final disposal of the present petition;

E. To dispense with the requirement of filing of an affidavit, as the petitioners are undertrial prisoners;

F. To grant any other reliefs to which the petitioners are entitled to.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS
IN DUTY BOUND SHALL EVER PRAY.**

DATE: 03.04.2020 TALEKAR AND ASSOCIATES

PLACE: AURANGABAD ADVOCATES FOR PETITIONERS



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. OF 2020

DISTRICT: AURANGABAD

Nitin Ramkrushna Shelke
And Anr.

..PETITIONERS

VERSUS

The State of Maharashtra
and Ors.

...RESPONDENTS

LIST OF DOCUMENTS

SR. NO.	PARTICULARS	EXH	PAGE NO.
1.	Copy of notification dated 14.03.2020 issued by the Public Health Department.	A	
2.	Copy of order dated 02.04.2020 in Suo Motu Writ Petition (Urgent) 2 of 2020 (to be numbered subsequently).	B	
3.	Copy of news reporting published in 'Independent' news daily.	C	
4.	Copy of the order dated 16.03.2020 passed in Suo Motu Writ Petition (C) No. 1 of 2020.	D	
5.	Copy of the order 23.03.2020 passed in Suo Motu Writ Petition (C) No. 1 of 2020.	E	
6.	Copy of the minutes of the meeting of the High Powered Committee held on 25.03.2020.	F	
7.	Copy of details of the other special Acts where the procedure for grant of bail is separately provided.	G	
8.	Copy of order dated 30.03.2020 in Writ Petition (C) No. 9400 of 2020 (Suo Motu).	H	
9.	Copy of order dated 09.03.2020 rejecting the bail application of the	I	

	petitioner No. 1 passed below order 31 in Spl MPID case No. 10 of 2019.		
10.	Copy of order dated 12.10.2018 rejecting the bail application of the petitioner No. 2 passed below Exhibit 1 in BP No. 1597 of 2018.	J	
	Last Page	-	

PLACE: AURANGABAD
DATE: 03/04/2020

(TALEKAR AND ASSOCIATES)
ADVOCATE FOR PETITIONERS



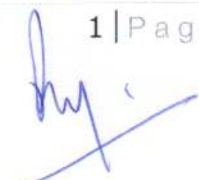
GOVERNMENT OF MAHARASHTRA
PUBLIC HEALTH DEPARTMENT
G.T. Hospital Compound, 10th Floor, New Mantralaya,
Mumbai 400 001 Dated 14th March, 2020

Notification

No.Corona-2020/CR-58/Aarogya-5: Whereas State Government has decided to invoke provisions of Epidemic Disease Act, 1897 vide Notification No. Corona 2020/CR 58/Aarogya-5, dated 13th March, 2020 from the date of issue of the notification,

Therefore in exercise of the powers conferred under section 2, 3 & 4 of the Epidemic Diseases Act, 1897, Government of Maharashtra is pleased to frame following Regulations for prevention and containment of Coronavirus Disease-2019 (COVID-19).

1. These regulations may be called 'The Maharashtra COVID-19 Regulations, 2020'.
2. COVID-19 means the Coronavirus Disease caused by Severe Acute Respiratory Syndrome Coronavirus 2 (SARS CoV 2) as defined by the World Health Organization (WHO) / Government of India.
3. 'Empowered Officer' under Section 2(1) of the Act. shall be Commissioner, Health Services, Director of Health Services (DHS-I & II), Director, Medical Education & Research (DMER), all Divisional Commissioners of Revenue Divisions & all Collectors and Municipal Commissioners & they are empowered to take such measures as are necessary to prevent the outbreak of COVID-19 or the spread thereof within their respective jurisdictions.
4. All hospitals (Government & Private) should have separate corners for screening of suspected cases of COVID-19.
5. All hospitals (Government & Private) during screening of such cases shall record the history of travel of the person to any country or area



where COVID-19 has been reported. In addition, the history of contacts with the suspected or confirmed case of COVID-19 is also required to be recorded. Information of all such cases must be given to State Integrated Disease Surveillance Unit and Collector of the district/ local Municipal Commissioner immediately.

- i. In case the person has any such history of travel to affected areas in last 14 days and he/ she is asymptomatic, he/ she must remain in home quarantine for 14 days from the day of exposure. He/ she must abide by the Home Quarantine Guidelines issued by Ministry of Health & Family Welfare, Government of India meticulously. Persons who do not observe the Home Quarantine Guidelines shall be quarantined in the quarantine facilities set up by Government.
 - ii. Person with travel history and symptoms as per case definition of COVID-19, must be isolated in a hospital as per protocol and he/ she will be tested for COVID-19 as per protocol. These stipulations of duration & symptoms may undergo changes based on advisories issued by Government of India.
6. No person/ Institution/ organization will use any print or electronic or social media for dissemination of any information regarding COVID-19 without ascertaining the facts and prior clearance of the Commissioner, Health Services, Director of Health Services (DHS-I & II), Director, Medical Education & Research (DMER), or Collector as the case may be. This is necessary to avoid spread of any unauthenticated information and/or rumors regarding COVID-19. If any person / Institution / organization is found indulging in such activity, it will be treated as a punishable offence under these Regulations.
7. Only laboratories authorized to take test samples for COVID-19 will collect the samples as per guidelines of Government of India. Such samples shall be sent to designated laboratories as authorized by Government of Maharashtra / Government of India.

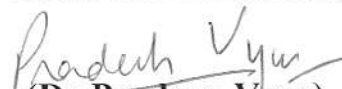
8. Any person with a history of travel in last 14 days to a country or area from where COVID-19 has been reported, must voluntarily report to State Control Room (020- 26127394) or to the State Surveillance Officer, IDSP (020-27290066) / Toll Free number 104 or to such numbers as may be assigned, so that necessary measures may be initiated by Commissioner, Health Services, Director of Health Services (DHS-I&II), Director, Medical Education & Research (DMER), and the Collector/ Municipal Commissioner as the case may be.
9. Officers empowered under the Act are authorized to isolate and / or admit a person who develops symptoms simulating that of the COVID 19 infection as per the case definition criteria published by WHO or Government of India from time to time. The empowered officer may initiate action under the section 188 of Indian Penal Code (48 of 1860) against the person who refuses to comply with such advice of isolation and/or admission.
10. In the event of COVID-19 being reported from a defined geographic area such as village, town, ward, colony, settlement, the Collector of the concerned District / Municipal Commissioner of the concerned Municipal Corporation shall be competent to implement following containment measures, but not limited to these, in order to prevent spread of the disease.
 - i. Sealing of the geographical area.
 - ii. Barring entry and exit of population from the containment area.
 - iii. Restricting Vehicular Movement in the area.
 - iv. Closure of schools, offices, cinema halls, swimming pools, gyms, etc. and banning mass congregations, functions as may be deemed necessary.
 - v. Initiating active and passive surveillance of COVID-19 cases.
 - vi. Hospital isolation of all suspected cases and their contacts.

- vii. Designating any Government or Private Building as a quarantine facility.
- viii. Any other measure as directed by Public Health Department of Government of Maharashtra.

Staff of all Government Departments and Organisations of the concerned area will be at the disposal of Collector/ Municipal Commissioner for discharging the duty of containment measures. If required, Collector / Municipal Commissioner may requisition the services of any other person also.

11. Any person / Institution / organization found violating any provision of these Regulations shall be deemed to have committed an offence punishable under section 188 of Indian Penal Code (45 of 1860). Empowered Officers may penalize any person / institution / organization found violating provisions of these Regulations or any further orders issued by Government under these Regulations.
12. No suit or legal proceedings shall lie against any person for anything done or intended to be done in good faith under this Regulation unless proved otherwise
13. These regulations shall come into force immediately and shall remain valid for a period of one year, or until further orders, whichever is earlier from the date of publication of this Notification.

By order and in the name of Governor of Maharashtra,


(Dr Pradeep Vyas)

Principal Secretary to Government

1. Principal Secretary to Hon'ble Governor, Rajbhavan, Mumbai
2. Principal Secretary to Hon'ble Chief Minister, Mantralaya, Mumbai

3. Principal Secretary to Hon'ble Deputy Chief Minister, Mantralaya, Mumbai
4. Hon'ble Minister (Health & Family Welfare), Mantralaya, Mumbai
5. Hon'ble Minister of State (Health & Family Welfare), Mantralaya, Mumbai
6. Additional Chief Secretary/ Principal Secretary/ Secretary (All), Mantralaya, Mumbai
7. Secretary, Maharashtra Legislature Secretariat, Vidhan Bhavan, Mumbai
8. Commissioner (Health Services) & Mission Director, NHM, Mumbai
9. All Divisional Commissioners
10. All District Collectors
11. All Municipal Commissioners
12. All Chief Executive Officers, Zilla Parishad
13. Director, Health Services- I/II, Mumbai/Pune
14. Additional Director, Health Services (All)
15. Joint Director, Health Services (All)
16. Deputy Directors, Health Services (All)
17. Civil Surgeons (All)
18. District Health Officers (All)
19. District Malaria Officers (All)
20. Deputy Secretary to Chief Secretary, Mantralaya, Mumbai
21. All Joint / Deputy Secretary, Public Health Department
22. PA to Principal Secretary, Public Health Department
23. All Section Officers, Public Health Department
24. Select File: Aarogy-5

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
WRIT PETITION URGENT 2 OF 2020 (TO BE NUMBERED
SUBSEQUENTLY)

COURT ON ITS OWN MOTION

IN RE: Extention of Interim Orders

CORAM:

HON'BLE THE CHIEF JUSTICE
HON'BLE MR.JUSTICE A.A.SAYED,
HON'BLE MR.JUSTICE S.S.SHINDE
HON'BLE MR.JUSTICE K.K.TATED

P.C.

ORDER

26.03.2020

1 The Bench of four Judges of this court is constituted in emergent situation considering the outbreak of COVID-19 and consequential lockdown.

2 Mr.Asif I. Patel, Addl. G.P., Mr.B.V.Samant, A.G.P. And Mr.Shahajirao Shinde, A.P.P., are present. Efforts are on to contact office of the learned Additional Solicitor General.

3 Our attention has been invited to orders passed by the High Court of Delhi on 25.03.2020 in W.P. URGENT2/2020, Order of High Court of Kerala at Ernakulam in W.P. (C) No.9400 of 2020 (Suo Motu) on same date and Order of High Court of Karnataka at Bengaluru dated 24.03.2020 in Writ Petition No.6435 of 2020.

4 This court has today received a letter sent by five Senior Advocates namely Mr.Janak Dwarkadas, Ms.Rajani Iyer, Mr.Anil Anturkar, Mr.Mihir Desai and Ms.Gayatri Singh requesting as under:

1. *That the modalities of affirming Petitions are modified to dispense with the personal presence of the Petitioner to sign and affirm the Petition particularly in Public Interest Litigation on appropriate undertakings.*

2. *That the modalities of Filing Petitions are modified to allow for e-filings.*

3. *The hearing of the Petitions be undertaken regularly, through video conferencing for the safety and protection of all associated with the exercise.*

4. *That the grievances of poor and marginalised are given priority and with sensitivity for effective redressal.*

5 The Registry informs us that matters are being entertained even if presented directly in court without affidavit or court fee. No procedural issues / objections are being raised. Facility of e-filing is already available and hearing through video conferencing can also be availed, as that arrangement has already been made since last about

one week.

6 The urgent matters on request are being attended to and parties can make request for urgent hearing through emails or other modes. Two courts are already notified for hearing of such matters, the dates of sitting are also notified. Registry also inform us that in extreme urgent matters, even at eleventh hour, parties can move court for appropriate interim order.

7 As the lock down is now declared till 14.04.2020, normal working of this court at least till then is not possible. As the staff is not available, files cannot be made over to court. As local transport is shut down, lawyers and litigants are finding it difficult to approach the court.

8 In this situation, we find it appropriate to continue all interim orders which are operating till today and are not already continued by some other courts / authority including this court and the same shall remain in force till 30.04.2020, subject to liberty to parties to move for vacation of interim orders only in extreme urgent cases. Thus, all interim orders passed by this High Court at Mumbai, Aurangabad, Nagpur and Panaji as also all courts/ Tribunal and authorities subordinate over which it has power of superintendence expiring before 30.04.2020, shall continue to operate till then. It is clarified that such interim orders which are not granted for limited duration and therefore, are to operate till further orders, shall remain unaffected by this order.

9 Orders or decree for eviction, dispossession, demolition already passed by any court/Tribunal/Authority shall also remain in abeyance till then.

10 Considering the prevalent shut down and other issues, we hope that Government as also municipal authorities and other agencies or instrumentalities shall also be slow in taking any coercive steps so as to drive the citizen to court of law in the meantime.

11 This order be published on the official website of this court and its copy shall also be forwarded to all concerned.


HON'BLE THE CHIEF JUSTICE

HON'BLE MR.JUSTICE A.A.SAYED,

HON'BLE MR.JUSTICE S.S.SHINDE

HON'BLE MR.JUSTICE K.K.TATED

SUBSCRIBE NOW

LOGIN 48



News > World > Americas



Coronavirus: New York prison infections surging as mayor moves to release more inmates

Most recent figures show prisons' infection rate is many times that of New York City

Andrew Naughtie | @andrewnaughtie | Thursday 26 March 2020 12:49 |

The Legal Aid Society, which has long campaigned for the rights of prisoners in the New York City area, has released figures indicating that coronavirus is spreading rapidly among the prison population.



The society counts some 75 cases, most in the city's main detention facility, Rikers Island. According to the society's figures, Rikers has seven times the infection rate of New York City, which is already the worst-hit metropolitan area in the US by far.

Writing on Twitter as the latest data emerged, the society's Molly Griffin called the numbers "gut-wrenchingly awful".

from my cozy Brooklyn apartment. Must be so much scarier to watch them skyrocket from inside Rikers,” she wrote.

Read more



How to help the elderly and vulnerable during the coronavirus



How to feel less anxious about the coronavirus



How to be productive when working from home during coronavirus



Which countries around the world has coronavirus spread to?



The dirty truth about washing your hands

Speaking to the *New York Daily News*, Ms Griffin's colleague Tina Luongo **bluntly laid out** what needs to happen next: “Based on this analysis, NYC jails have become the epicentre of Covid-19. It is imperative that Albany, City Hall, our local District Attorneys and the NYPD take swift and bold action to mitigate the spread of this deadly virus.”

The Legal Aid Society has filed multiple lawsuits seeking the release of detained clients whose incarceration it says put them at risk of infection. Most recently, it has **sued the city** on behalf of several teenagers being held as juvenile delinquents.

Pressure on New York's authorities to release prisoners before the epidemic took hold was already mounting weeks before the latest figures came out. The chief physician at Rikers Island has **called** on judges and prosecutors to release prisoners

SUBSCRIBE NOW

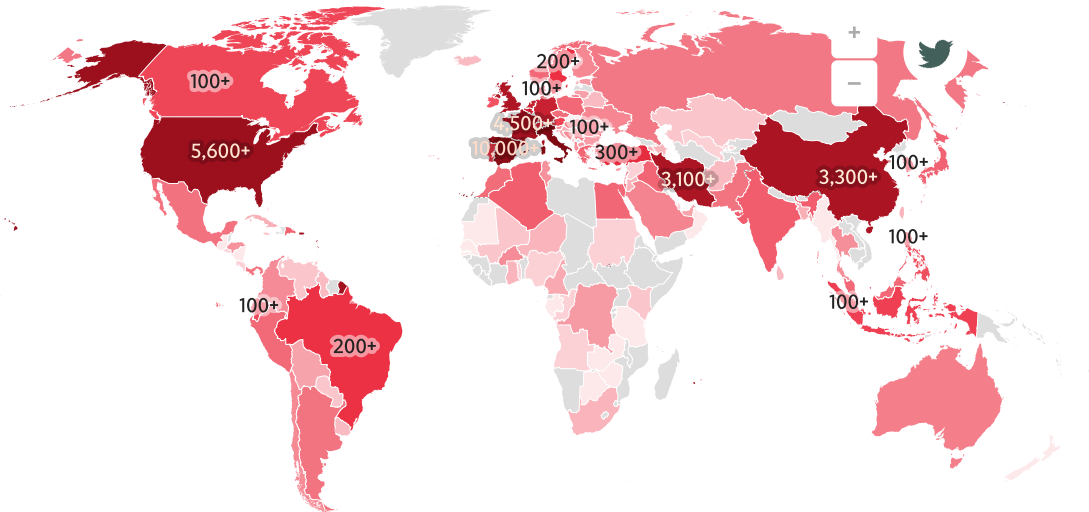
LOGIN 51


INDEPENDENT
 UK'S LARGEST QUALITY DIGITAL NEWS BRAND


CORONAVIRUS DEATHS AROUND THE WORLD

Tap or hover over each country for daily death tolls and statistics

in



Active cases refers to patients currently infected (confirmed cases minus recoveries and deaths). Day resets after midnight GMT+0. Map excludes *Diamond Princess* and *MS Zaandam* cruise ships

Source: [Worldometers](#)



INDEPENDENT

Mayor **Bill de Blasio** has already released dozens of inmates from the city's prisons, and has now promised to release 300 more **nonviolent inmates** who are serving less than a year's sentence. Inmates charged with sexual assault or domestic violence will not be released.

His move echoes a similar initiative in Los Angeles county, where the Sheriff's Department has released **more than 600** prisoners and ordered police officers to avoid arresting people wherever possible.

MORE ABOUT: [NEW YORK](#) | [NEW YORK CITY](#) | [CORONAVIRUS](#) | [US PRISONS](#) | [BILL DE BLASIO](#) | [CRIMINAL JUSTICE](#)

Show comments

Promoted stories

Born Between 1965-1985? Get Term Life Insurance Worth ₹1 Cr at Rs.1884/month*.

[POLICYBAZAAR.COM](#) | Sponsored

How To Get Unrestricted Internet Access Worldwide With One Simple Tool

[EXPRESSVPN](#) | Sponsored

SUBSCRIBE NOW

LOGIN 52



INVESTOR VISA USA

US INVESTOR VISA | SEARCH ADS | Sponsored

Online Jobs Might Pay More Than You Think

ONLINE JOBS | SEARCH ADS | Sponsored

Getting a Job in the UK Might be Easier Than You Think

JOBS IN UK | SEARCH ADS | Sponsored

Win Real Money With Rummy Circle, Play Now.

RUMMY CIRCLE | Sponsored

INDEPENDENT PREMIUM

Jenny Eclair: The new 'perineum sunning' fad sounds ridiculous – but don't knock it just yet

CRIME



Two adults and two children found dead at home

FOOD & DRINK

Which supermarkets **Have Delivery Slots Available?**

Is electrification the key to our planet's future?

PROMOTED BY THE INDEPENDENT | Sponsored

Flight Price From India to USA Might Surprise You

CHEAP FLIGHTS | SPONSORED LINKS | Sponsored

[SUBSCRIBE NOW](#)LOGIN⁵³

The cost of shared office in Mumbai might surprise you

COWORKING SPACE | SEARCH ADS | Sponsored



Daily coronavirus briefing

Enter your email address

Continue

Register with your social account or [click here](#) to log in



Comments

Share your thoughts and debate the big issues

[Learn more](#)

[Join the discussion](#)

[SUBSCRIBE NOW](#)[LOGIN](#) 54**CRIME**[Husband accused of killing wife in UK's 'first self-isolation murder'](#)**US POLITICS**[Trump threatens Iran, rails at Fox reporter as virus deaths top 5,000](#)

This is What Happens to Your Body if You Eat Ginger Every Day

[FOOD PREVENT](#) | Sponsored**US POLITICS**[Trump admin claims it found out alarming coronavirus figures Saturday](#)**GET IN TOUCH**[Contact us](#)[Jobs](#)**LEGAL**[Code of conduct and complaints](#)[Contributors](#)[Cookie policy](#)**OUR PRODUCTS**[Subscriptions](#)[Donations](#)[Install our apps](#)[Archive](#)**OTHER PUBLICATIONS**[Evening Standard](#)[Novaya Gazeta](#)**EXTRAS**[All topics](#)[Voucher codes](#)[Advertising guide](#)

SUBSCRIBE NOW

LOGIN⁵⁵



ITEM NO.1

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

Petitioner(s)

VERSUS

Respondent(s)

(FOR ADMISSION)

Date : 16-03-2020 This petition was taken up today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Petitioner(s) Mr. K.K. Venugopal, Ld. Attorney General
Mr. Tushar Mehta, Ld. SG
Ms. Swati Ghildiyal, Adv.
Mr. Ankur, Adv.

Mr. Dushyant Dave, Sr. Adv. (A.C.)

By Courts Motion, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

In the last few weeks, 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). 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. Some State Governments has also declared COVID-19 an epidemic, in order to invoke the emergency provisions of the Epidemic Diseases Act, 1897. Currently, over 110 countries have detected persons suffering from COVID-19 in their territories, and approximately 1,67,291 cases of COVID-19 have been

identified across the world, as of now.

In India, 107 persons have contracted COVID-19. According to some studies, the number of COVID-19 cases in India has doubled within a week, and if prompt measures are not taken, the situation might worsen. 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. It has been stated by medical professionals that whereas many nations have reached the epidemic level (which is the fourth and final stage), India is still at the second stage where the spread is at the local level. Therefore, if prompt measures are taken, it is believed that COVID-19 can be prevented from reaching the third and fourth stages or in any event, minimise the damage. The Government of India and State Governments are taking all possible steps to curb the contagion of the COVID-19 virus.

The Government of India and the respective State Government have also issued several advisories to the citizens, regarding the prevention of the further spread of the COVID-19 virus. One of the suggestions made by the Government of India is to maintain social distancing, which is considered to be the most effective way of stopping the contagion of COVID-19 virus.

While the Government of India advises that social distancing must be maintained to prevent the spread of COVID-19 virus, the bitter truth is that our

prisons are overcrowded, making it difficult for the prisoners to maintain social distancing. There are 1339 prisons in this country, and approximately 4,66,084 inmates inhabit such prisons. According to the National Crime Records Bureau, the occupancy rate of Indian prisons is at 117.6%, and in states such as Uttar Pradesh and Sikkim, the occupancy rate is as high as 176.5% and 157.3% respectively. Like most other viral diseases, the susceptibility of COVID-19 is greater in over-crowded places, mass gatherings, etc. Studies indicate that contagious viruses such as COVID-19 virus proliferate in closed spaces such as prisons. Studies also establish that prison inmates are highly prone to contagious viruses. The rate of ingress and egress in prisons is very high, especially since persons (accused, convicts, detainees etc.) are brought to the prisons on a daily basis. Apart from them, several correctional officers and other prison staff enter the prisons regularly, and so do visitors (kith and kin of prisoners) and lawyers. Therefore, there is a high risk of transmission of COVID-19 virus to the prison inmates. For the reasons mentioned above, our prisons can become fertile breeding grounds for incubation of COVID-19.

We are of the opinion that there is an imminent need to take steps on an urgent basis to prevent the contagion of COVID-19 virus in our prisons. If prisoners are tested positive for the COVID-19 virus, immediate measures have to be taken for their quarantining and medical treatment. We are pleased to note that some State Governments and their Departments of Prisons have already taken preventive measures. For instance, the Director General of Prisons, Kerala has set up isolation cells within prisons across-Kerala. Those suffering with COVID-19 symptoms such as cold and

fever are being moved to these isolation cells. All the new inmates who will be admitted to the prisons in Kerala will be isolated in the isolation cells in the admissions block for six days before permitting their entry into the regular prison cells. Similarly, an isolation ward has been set up in the Tihar Jail, Delhi and all the 17,500 inmates of the said Jail were checked for COVID-19, and it was found that none displayed any symptoms relating to COVID-19. The authorities of the Tihar Jail have also decided that new inmates will be screened and put in different wards for three days. However, we do not have information about the measures taken by the other State Governments in their prisons to prevent the contagion of COVID-19.

For all the above reasons, we consider it appropriate to direct that notices be issued to the Chief Secretaries/Administrators, Home Secretaries, Directors General of all the Prisons and Department of Social Welfare of all the States and the Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID 19) in the country, and further to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes and for protection of their health and welfare.

The respondents shall submit a reply in writing before 20th March, 2020. The reply shall contain the particulars of the steps being taken and the relevant data necessary for implementing the measures to prevent the possible spread of the Corona virus among the prisoners/juveniles.

The respondents shall further ensure that a responsible officer of their choice duly authorised to take decision in the matter shall be made available to

this Court on the next date of hearing i.e. 23rd March, 2020.

The respondents may first submit their respective written reply and shall appear in Court as and when called upon to do so. They shall submit their respective responses to this Court, learned Attorney General for India, learned Solicitor General of India, and the learned Amicus Curiae.

It is made clear that we may direct such number of parties to appear in the Court as may be found appropriate on all dates of hearing of the matter.

This order shall be communicated through the Advocates-on-Record of each State/Union Territory forthwith.

We appoint Mr. Dushyant Dave, learned Senior Counsel who is present today in the Court, as Amicus Curiae to assist the Court in the present matter.

The Registry is directed to serve the respondents by their emails.

List the matter on 23.03.2020.w

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

ITEM NO.8

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

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

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

(WITH IA No. 46086/2020 - FOR INTERVENTION/IMPLEADMENT AND IA No. 46091/2020 - FOR PERMISSION TO APPEAR AND ARGUE IN PERSON)

WITH W.P.(C) No. 450/2020 (PIL-W)
(FOR ADMISSION)

W.P.(C) No. 445/2020 (PIL-W)
(FOR ADMISSION and IA No.46113/2020-PERMISSION TO FILE LENGTHY LIST OF DATES)

W.P.(C) No. 466/2020 (PIL-W)
(FOR ADMISSION and IA No.48124/2020-EX-PARTE AD-INTERIM RELIEF)

Date : 23-03-2020 These matters were called on for hearing today.
CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SURYA KANT

COUNSEL FOR THE PARTIES

Mr. Tushar Mehta, SG
Ms. Swati Ghildiyal, Adv.
Mr. Ankur Talwar, Adv.
Mr. G.S. Makkar, Adv.
Mr. Raj Bahadur, Adv.
Mr. B.V. Balaram Das, AOR

Mr. Dushyant Dave, Sr. Adv. (Amicus Curiae)

Dr. Monika Gusain, Adv.
Mr. Nikhil Goel, AOR

Mr. Suhaan Mukerji, Adv.
Mr. Vishal Prasad, Adv.
For M/s PLR Chambers & Co.

Ms. Astha Sharma, Adv.
With Mr. Ajay Chaudhuri,
Resident Commissioner, Mizoram

Mr. Raghvendra Kumar, Adv.
Mr Narendra Kumar, AOR

Mr. Milind Kumar, AOR

Mr. Vishal Meghwal, Adv.

Mr. Jayanth Muthraj, Sr. Adv./AAG

Mr. M. Yogesh Kanna, AOR

Mr. S. Raja Rajeshwaran, Adv.

Mr. Arun R. Pednekar, Adv.

Mr. Hitesh Kumar Sharma, Adv.

Ms. Mukti Chowdhary, AOR

Ms. Ashima Mandla, Adv.

Mr. Fuzail Ahmad Ayyubi, AOR

Mr. Ibad Mushtaq, Adv.

Mr. Vishal Tiwari, PIP

Mr. Avijit Mani Tripathi, AOR

Mr. V.G. Pragasam, AOR

Mr. S. Prabu Ramasubramanian, Adv.

Mr. K.V. Jagdishvaran, Adv.

Ms. G. Indira, AOR

Mr. Sachin Patil, Adv.

Mr. Geo Joseph, Adv.

Ms. Bansuri, AAG

Dr. Monika Gusain, AOR

With

Mr. Jagjit Singh, IG Prisons (Haryana)

Mr. P. Venkat Reddy, Adv.

Mr. Prashant Tyagi, Adv.

Mr. P. Srinivas Reddy, Adv.

For M/s. Venkat Palwai Law Associates, AOR

Mr. Tapesk Kumar Singh, AOR

Mr. Aditya Pratap Singh, Adv.

Mr. Ahinav Sekhri, Adv.

Mr. Senthil Jagadeesan, AOR

Mr. Ashok Kumar Singh, Adv.

Mr. Hussain Mueen Farooq, Adv.

Ms. Manju Jetley, AOR

Mohd. Kamran Khan, Adv.

Ms. Sudha, Adv.

Mr. Ajeet Kumar Sharma, Adv.

Mr. Vikas Mahjan, AAG

Mr. Vinod Sharma, AOR

Mr. G. N. Reddy, AOR

Mr. T. Vijaya Bhaskar Reddy, Adv.

Mr. M. Shoeb Alam, AOR

Mr. Keshav Mohan, Adv.

Mr. Santosh Kumar - I, AOR

Mr. A.P. Mayee, AOR

Ms. K. Enatoli Sema, AOR

Mr. G. Prakash, AOR

Ms. Garima Prashad, AOR

Mr. Avijit Mani Tripathi, AOR

Mr. V.N. Raghupathy, AOR

Mr. Pukhrambam Ramesh Kumar, AOR

Mr. Fuzail Ahmad Ayyubi, AOR

Mr. Shuvodeep Roy, AOR

Mr. Sumeer Sodhi, AOR

Ms. Uttara Babbar, AOR

Mr. Vinay Arora, AOR

Mr. Abhimanyu Tewari, AOR

UPON hearing the counsel the Court made the following
O R D E R

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

By an order dated 16.03.2020, this Court had issued notice to all the States and Union Territories, to show cause why directions should not be issued for dealing with the present health crisis arising out of Corona virus (COVID-19) with regard to Prisons and Remand Homes. Several States and UTs have filed their responses detailing measures and initiatives taken while dealing with Corona virus (COVID-19) in respect of persons detained in Prisons and

Remand Homes.

States of Gujarat, Manipur, Meghalaya, Odisha and UTs of Dadar & Nagar Haveli, Daman & Diu, National Capital Territory of Delhi and Puducherry have not filed their responses. The State of Andhra Pradesh, Punjab, Tamil Nadu, Madhya Pradesh, Kerala, Himachal Pradesh and UT of Jammu & Kashmir, though have filed their responses with regard to the measures taken for prisons but have not submitted their response in relation to measures taken for juveniles in Remand Homes.

An overview of the responses reflects that considerable measures for protection of health and welfare of the prisoners to restrict the transmission of COVID-19 have been taken by the State Governments. These measures generally include creation of isolation wards, quarantine of new prisoners including prisoners of foreign nationality for a specific period, preliminary examination of prisoners for COVID-19, ensuring availability of medical assistance, entry points scanning of staff and other service providers, sanitisation and cleanliness exercise of prison campus and wards, supply of masks, barring or limiting of personal visit of visitors to prisoners, suspension of cultural and other group activities, awareness and training with regard to stoppage of transmission of COVID-19 and court hearings through video conferencing among others. Many states have also initiated the process of installing digital thermometers for the purpose of examination of the prisoners, staff and visitors. Some of the States have taken similar measures for Remand Homes as well.

In other significant measures the States of Bihar, Karnataka, Maharashtra, Uttar Pradesh, Tripura, Jharkhand, Goa, Kerala, Telangana and UTs of Jammu & Kashmir and Chandigarh have advised the prison authorities that visitors may be allowed to interact with prisoners only through video calling or telephonic call. States of Goa, Kerala, Telangana, Karnataka and Haryana have adopted screening of prisoners returning from parole to prevent possible transmission.

State of Uttar Pradesh has constituted 'COVID-19 Special Task Force' in all 71 prisons comprising of the Superintendent, the Jailor, Circle Officer/Deputy Jailor, Medical Officer and One member of para-medical staff to monitor the prevention of transmission of infection.

Importantly, Rajasthan and Jharkhand have taken measures to decongest the prison by transferring prisoners from congested prisons to other prisons where the number of prisoners is low. The State of Punjab has directed to identify places in and around the prison, which can be used as a temporary prison in case if there is an outbreak of the virus.

The State of Haryana has directed prisons to prepare block-wise time table relating to food and other services for prevention of overcrowding. Andhra Pradesh, Uttarakhand, Punjab and Maharashtra and UT of Ladakh have identified special groups of prisoners, which are more vulnerable such as old age prisoners with respiratory diseases etc. to infections for special focus and scrutiny.

Looking into the possible threat of transmission and fatal consequences, it is necessary that prisons must ensure maximum possible distancing among the prisoners including undertrials.

Taking into consideration the possibility of outside transmission, we direct that the physical presence of all the undertrial prisoners before the Courts must be stopped forthwith and recourse to video conferencing must be taken for all purposes. Also, the transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any possibility of infection is seen.

We also direct that prison specific readiness and response plans must be developed in consultation with medical experts. *"Interim guidance on Scaling-up COVID-19 Outbreak in Readiness and Response Operations in camps and camp like settings"* jointly developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by Inter-Agency Standing Committee of United Nations on 17 March, 2020 may be taken into consideration for similar circumstances. A monitoring team must be set up at the state level to ensure that the directives issued with regard to prison and remand homes are being complied with scrupulously.

The issue of overcrowding of prisons is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID - 19).

Having regard to the provisions of Article 21 of the Constitution of India, it has become imperative to ensure that the spread of the Corona Virus within the prisons is controlled.

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, (iii) 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 of 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.

The Undertrial Review Committee contemplated by this Court *In re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week and take such decision in consultation with the

concerned authority as per the said judgment.

The High Powered Committee shall take into account the directions contained in para no.11 in *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

Some States/Union Territories who have not filed responses may file the same within three weeks from today.

List the matter after three weeks.

WRIT PETITION (CIVIL) NOS.450/2020, 445/2020 AND 466/2020

Learned counsel appearing for the petitioners prays for withdrawal of the instant writ petitions with liberty to approach the concerned Ministries, Union of India, New Delhi.

Prayer is allowed.

Copies of these writ petitions shall be served upon Mr. Tushar Mehta, learned Solicitor General appearing for the Union of India and they shall be treated as representations. The concerned Ministries shall dispose of the representations in accordance with law.

It is made clear that if the concerned Ministries deem it appropriate, they may hear the petitioners.

The Writ Petitions are dismissed as withdrawn with the aforesaid liberty.

(SANJAY KUMAR-II)
ASTT. REGISTRAR-cum-PS

(MUKESH NASA)
COURT MASTER

(INDU KUMARI POKHRIYAL)
ASSISTANT REGISTRAR

Home Department/Prison-2

Minutes of Meeting of High Power Committee dated 25/03/2020

1. This High-Power Committee has been constituted vide GR No – JLM0320/CR58/Prison-2 dated 24-03-2020 pursuant to the order dated 23-03-2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 1/2020 (hereinafter referred to as "the said order"). By said order, the Hon'ble Supreme Court, having regard to Article 21 of the Constitution of India, in the wake of the present crisis arising out of the spread of Corona Virus (COVID19), has issued various directions in relation to the overcrowding of prisons and remand homes.

2. The directions issued by the Hon'ble Supreme Court, so far as it relates to this Committee is concerned, read thus:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (iii) 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 of 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)

3. Thus, this Committee is "to determine", "which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate," and "the category of prisoners who should be released".

SW

release on interim bail on personal bond of such amount as may be determined, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(ii) The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

(v) This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the

SH

concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.

(vi) Before the temporary release of the prisoners, the necessary medical protocol in relation to screening for Corona virus (COVID-19) shall be followed by the jail authorities and action be taken accordingly.

(vii) The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law. In considering every case for such release, the "nature of the offence" and the "severity of the offence" shall be considered. The possibility of the prisoner committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered as important tests to decline such requests for temporary release.

(viii) The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filing of an application in this regard by the prisoner.

(ix) All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the said order of the Hon'ble Supreme Court shall however be foremost kept in mind.

(x) Inasmuch as the Hon'ble Supreme Court is in seisin of the matter, the aforesaid decision/directions shall be subject to further orders of the Hon'ble Supreme Court.

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

Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra

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

4. In determining "the class" or "the category" of the prisoners who can be so released, the said order itself provides the various factors that can be taken into consideration. These factors may be summarized as under:

- (a) Nature of offence
- (b) Severity of offence
- (c) Number years to which the convict has been sentenced
- (d) Any other relevant factor

5. It is noticed that the Hon'ble Supreme Court in the said order has already directed the Undertrial Review Committee to meet every week to take decisions in consultation with the concerned authority.

6. A careful consideration of the aforesaid demonstrates that, it is not that the convicted prisoners/the undertrial prisoners, who have been convicted/facing trial for offence punishable with imprisonment up to 7 years or less (as decided by us hereunder) are to be en masse/en bloc released, without considering other relevant factors such as the nature of offence, the severity of the offence, etc. Therefore, the decision that is being taken by this Committee cannot be construed to itself operate as an order of release. It is ultimately for the Competent Authority/learned Judge to pass an appropriate order in that regard in accordance with law. Needless to observe that such order ought to lay down requisite terms and conditions of the temporary release, if any. Undoubtedly, under the present scenario, a relaxed approach needs to be adopted in this regard in view the directions and spirit of the said order of the Hon'ble Supreme Court.

7. The two members of this Committee viz. Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra and Shri S.N. Pandey, Director General Prisons, Maharashtra, have telephonically consulted the learned Advocate-General for the State of Maharashtra in this regard, enabling this Committee to take appropriate decision, as reflected hereinafter.

8. After considering all the relevant factors as also the circumstances presently prevailing in the State of Maharashtra, this Committee has decided as under:

- (i) Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for

SH

Typed copy of Exhibit F

Home Department/Prison-2

Minutes of Meeting of High Power Committee dated 25/03/2020

1. This High-Power Committee has been constituted vide GR No-JLM0320/CR58/Prison-2 dated 24-03-2020 pursuant to the order dated 23-03-2020 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 1/2020 (hereinafter referred to as "the said order"). By said order, the Hon'ble Supreme Court, having regard to Article 21 of the Constitution of India, in the wake of the present crisis arising out of the spread of Coronavirus (COVID 19), has issued various directions in relation to the overcrowding of prisoners and remand homes.

2. The directions issued by the Hon'ble Supreme Court, so far as it relates to this Committee is concerned, read thus:

"We direct that each State/Union Territory shall constitute of 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, (iii) 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 of the High Powered Committee to determine the category of 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”.

ALL ABOUT LAW

(emphasis supplied)

3. Thus, this Committee is “to determine”, which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate.” and “the category of prisoners who should be released”.

4. In determining “the class” or “ the category” of the prisoners who can be so released, the said order itself provides the

various factors that can be taken into consideration. These factors may be summarised as under:

- (a) Nature of offence
- (b) Severity of offence
- (c) Number years to which the convict has been sentenced
- (d) Any other relevant factor

5. It is noticed that the Hon'ble Supreme Court in the said order has already directed the Undertrial Review Committee to meet every week to take decision in consultation with the concerned authority.

6. A careful consideration of the aforesaid demonstrates that, it is not that the convicted prisoners/the undertrial prisoners, who have been convicted/facing trial for offence punishable with imprisonment up to 7 years or less (as decided by us hereunder) are to be en masse/en bloc released, without considering other relevant factors such as the nature of offence, the severity of the offence, etc. Therefore, the decision that is being taken by this Committee cannot be construed to operate as an order of release. It is ultimately for the Competent Authority/learned Judge to pass an appropriate order in that regard in accordance with law. Needless to observe that such order ought to lay down requisite terms and conditions of the temporary release, if any.

Undoubtedly under the present scenario, a relaxed approach needs to be adopted in this regard in the view of the directions and the spirit and the said order of the Hon'ble Supreme Court.

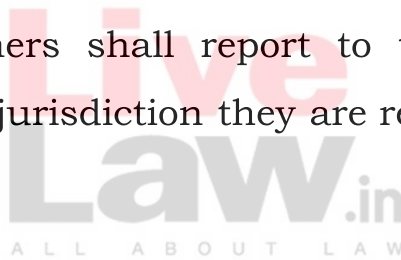
7. The two members of this Committee viz. Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra and Shri S.N. Pandey, Director General Prisons, Maharashtra, have telephonically consulted the learned Advocate-General for the State of Maharashtra in this regard, enabling this Committee to take appropriate decision as reflected hereinafter.

8. After considering all the relevant factors and also the circumstances presently prevailing in the State of Maharashtra, this Committee has decided as under:

(i) Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for release on interim bail on personal bond of such amount as may be determined, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the

first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(ii) The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.



(iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under the Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within jurisdiction they are residing, once every 30 days.

(iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

(v) This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.

(vi) Before the temporary release of prisoners, the necessary medical protocol in relation to screening of Corona virus (COVID - 19) shall be followed by the jail authorities and action be taken accordingly.

(vii) The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law. In considering every case for such release, the "nature of the offence" and the "severity of the offence" shall be considered. The

possibility of the prisoners committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered an important tests to decline such requests for temporary release.

(viii) The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filing of an application in this regard by the prisoner.

(ix) All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the said order of the Hon'ble Supreme Court shall however be foremost kept in mind.

(x) Inasmuch as the Hon'ble Supreme Court is in seisin of the matter, the aforesaid decision/directions shall be subject to further orders of the Hon'ble Supreme Court.

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

Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home,
Govt. of Maharashtra

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



MAHARASHTRA CONTROL OF ORGANISED CRIME ACT, 1999

21. Modified application of certain provisions of the code.

(1) Notwithstanding anything contained in the Code or in any other law, every offence punishable under this Act, shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code and "cognizable case" as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in sub-section(2),--

(a) the reference to "fifteen days", and "sixty days" wherever they occur, shall be construed as references to "thirty days" and "ninety days" respectively;

(b) after the proviso, the following proviso shall be inserted, namely :-

"Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period upto one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days"

(3) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence punishable under this Act.

(4) Notwithstanding anything contained in the Code, no person accused of an offence punishable under this Act shall, if in custody, be released on bail or on his own bond, unless-

(a) the Public Prosecutor has been given an opportunity to oppose the application of such release; and

(b) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(5) Notwithstanding anything contained in the Code, the accused shall not be granted bail if it is noticed by the Court that he was on bail in an offence under this Act, or under any other Act, on the date of the offence in question.

(6) The limitations on granting of bail specified in sub-section (4) are in addition to the limitations under the Code or any other law for the time being in force on the granting of bail.

(7) The police officer seeking the custody of any person for pre- indictment or pre-trial interrogation from the judicial custody shall file a written statement explaining the reason for seeking such, custody and also for the delay, if any, in seeking the police custody.

THE PREVENTION OF MONEY-LAUNDERING ACT, 2002

45. Offences to be cognizable and non-bailable.—

(1) 1[Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless—]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

²⁸ [(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.]

(2) The limitation on granting of bail specified in ²⁹ [***] sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES, ACT, 1985

37. Offences to be cognizable and non-bailable.—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) every offence punishable under this Act shall be cognizable;

(b) no person accused of an offence punishable for 3 [offences under section 19 or section 24 or section 27A and also for offences involving commercial quantity] shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and 1. Subs. by Act 9 of 2001, s. 16, for section 36D (w.e.f. 2-10-2001). 2. Subs. by Act 2 of 1989, s. 12, for section 37 (w.e.f. 29-5-1989). 3. Subs. by Act 9 of 2001, s. 17, for “a term of imprisonment of five years or more under this Act” (w.e.f. 2-10-2001). 25

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail.

(2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

THE UNLAWFUL ACTIVITIES (PREVENTION) ACT, 1967

43D Modified application of certain provisions of the Code –

(1) Notwithstanding anything contained in the Code or any other law, every offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of clause (c) of section 2 of the Code, and “cognizable case” as defined in that clause shall be construed accordingly.

(2) Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that in sub-section (2),—

(a) the references to “fifteen days”, “ninety days” and “sixty days”, wherever they occur, shall be construed as references to “thirty days”, “ninety days” and “ninety days” respectively; and

(b) after the proviso, the following provisos shall be inserted, namely:—

“Provided further that if it is not possible to complete the investigation within the said period of ninety days, the Court may if it is satisfied with the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of ninety days, extend the said period up to one hundred and eighty days: Provided also that if the police officer making the investigation under this Act, requests, for the purposes of investigation, for police custody from judicial custody of any person in judicial custody, he shall file an affidavit stating the reasons for doing so and shall also explain the delay, if any, for requesting such police custody.”.

(3) Section 268 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modification that—

(a) the reference in sub-section (1) thereof—

(i) to “the State Government” shall be construed as a reference to “the Central Government or the State Government”,

(ii) to “order of the State Government” shall be construed as a reference to “order of the Central Government or the State Government, as the case may be”; and

(b) the reference in sub-section (2) thereof, to “the State Government” shall be construed as a reference to “the Central Government or the State Government, as the case may be”.

(4) Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person accused of having committed an offence punishable under this Act.

(5) Notwithstanding anything contained in the Code, no person accused of an offence punishable under Chapters IV and VI of this Act shall, if in custody, be released on bail or on his own bond unless the Public Prosecutor has been given an opportunity of being heard on the application for such release: Provided that such accused person shall not be released on bail or on his own bond if the Court, on a perusal of the case diary or the report made under section 173 of the Code is of the opinion that there are reasonable grounds for believing that the accusation against such person is prima facie true.

(6) The restrictions on granting of bail specified in sub-section (5) is in addition to the restrictions under the Code or any other law for the time being in force on granting of bail.

(7) Notwithstanding anything contained in sub-sections (5) and (6), no bail shall be granted to a person accused of an offence punishable under this Act, if he is not an Indian citizen and has entered the country unauthorisedly or illegally except in very exceptional circumstances and for reasons to be recorded in writing.]

**C.K. ABDUL REHIM, J.
C.T. RAVIKUMAR, J.
&
RAJA VIJAYARAGHAVAN V., J.**

W.P (C) No. 9400 OF 2020 (Suo Motu)

DATED THIS THE 30th DAY OF MARCH, 2020

ORDER

Abdul Rehim, J:

In the wake of outbreak of the pandemic Corona Virus, COVID-19, the country has gone into complete lock down. The Ministry of Home Affairs, Government of India had issued Notification No.40-3/2020 dated 24-03-2020 prescribing guidelines on the measures to be taken by the Ministries / Departments of the Union Government, State Governments and Governments of Union Territories, for containment of COVID-19 epidemic in the country. By virtue of the said guidelines, offices of the Government of India, its autonomous / subordinate offices and public corporations, as well as the offices of the State / Union Territory Governments, their autonomous bodies, Corporations etc., were ordered to be closed, enabling only essential services specifically mentioned therein to function. Having regard to the fact that the lock down had

resulted in immobilisation of public at large and total stoppage of public transport, it was brought to the notice of this court that the litigants are finding it difficult to approach the courts to vindicate their grievances. Therefore the above suo motu writ petition was registered and a Full Bench of this court issued a detailed order on 25-03-2020.

2. By virtue of the above said order this court directed extension of all interim orders passed by all the courts including this court and Tribunals within the State, which are due to expire within the lock down period of 21 days, by a period of one month from the date of the said order. With respect to the coercive steps of recovery, assurance made on behalf of the state that no recovery would be initiated or pending recovery proceedings would not be proceeded further until 30-04-2020, was recorded. With respect to recoveries under the Central Government and its offices, this court expressed the hope that until the Government of India evolve a mechanism, as submitted before the Hon'ble Suprem Court in SLP (C) Diary

No.10669/2020, no coercive action would be taken. The Full Bench expressed the view that it is sincerely expected that due to the out break of COVID-19, the State Government, Local Self Government Institutions, the Govt. of India and the Pubic Sector Undertakings owned and controlled by the State and Central Governments, shall not take any coercive action since no opportunity to the persons to approach the court are available at present.

3. By virtue of the above said order of the Full Bench dated 25-03-2020, all interim orders of bails granted by the High Court / Sessions Court, both anticipatory and regular, were also extended for a period of one month from 25-03-2020. The Magistrates / Judges within the State, before whom the accused are produced in the event of their arrest, were directed to consider as to whether ordering of judicial / police custody is required or not, depending upon the nature of the offences. This court cautioned that, "bail is the rule and jail is an exemption". However, while issuing such directions, this court made it clear that, subjects

relating to public order/ law and order and also with respect to actions taken by the State Government to combat the outbreak of the epidemic, shall stand excluded from the purview of those directions

4. In the order passed on 25-03-2020, this court noticed the directions contained in the order of the Hon'ble Supreme Court mentioned above, dated 23-03-2020, to constitute a 'High Powered Committee' to determine the class of prisoners who can be released on parole and on interim-bail. Consequently the Government of Kerala has already issued G.O (Rt) No.970/2020/Home, dated 25-03-2020. Hence this court observed that, the bail applications which are pending consideration before this court need not be taken up for hearing, and it will be left to the 'High Powered Committee' to decide on those matters. Such an order was issued especially on the basis of the letter received by the Registry from the office of the Advocate General pointing out the concerns of the staff and law officers to attend the office and the courts. This court

had also taken note of the submissions made by the President of the High Court Advocates' Association as well as the lawyer representing the Bar Council of India and the Bar Council of Kerala, with respect to similar difficulties experienced by the litigants, lawyers, staff attached to the lawyers' office etc. It is also noticed that the courts in the subordinate judiciary are not functioning due to the lock down imposed.

5. It is brought to notice of this court that, in compliance with the direction of the Hon'ble Supreme Court the State Government through its Director General of Prisons and Correctional services has already taken steps and released about 450 convicted prisoners on special parole, in order to de-congest the jails. Since the matter of granting bail is solely within the jurisdiction of the court and taking note of the spirit of the directions of the Hon'ble Supreme Court, in order to avoid delay in the matter, we felt that a modification of the order passed on 25-03-2020 is essential. This court is of the view that the personal liberty

of persons incarcerated in jail on the accusation of various offences, as well as persons entitled for statutory bail under Section 167 (2) of the Code of Criminal Procedure, cannot in any manner be curtailed. Therefore it is felt appropriate and necessary to make provisions for the jurisdictional courts to function on a limited basis for considering bail applications. We also heard Shri. Renjith Thampan, Additional Advocate General, Shri. P. Vijayakumar, Assistant Solicitor General of India, Shri. Suman Chackravathy, Senior Public Prosecutor of the State Government and Shri. R. Lekshmy Narayanan, President of the Kerala High Court Advocates' Association, in this regard. Based on the deliberations and submissions made across the Bar, it is decided to issue specific orders in this regard as follows;

- (i) This court hereby grant interim bail to all under-trial / remanded prisoners incarcerated in the jails within the State, who face accusation of having committed offences punishable upto 7

years or less, with or without fine. The above order will not apply to prisoners 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.

(ii) The Superintendent of the jails concerned shall release the category of prisoners with respect to whom the interim bail is granted as mentioned above, on their furnishing a declaration showing their intended place of residence, with their telephone number and the telephone number of any of their family member or other relatives, and on executing a self bond, without sureties, ensuring that they will appear either before the court concerned or before the Superintendent of jail as and when required.

(iii) The prisoners released on interim bail as above shall report to the local police station

within their place of residence, immediately on reaching its jurisdiction. The jail authorities shall also give due intimation to such police stations with respect to release of the prisoners. The declaration executed by the prisoners shall also contain an undertaking to the effect that they will strictly abide by the guidelines issued with respect to keeping of social distancing, in the wake of the declared lock down. They shall also undertake that they will remain in their declared place of residence, totally avoiding any type of travel or exposure to public.

(iv) The interim bail granted as above shall be limited upto 30-04-2020 or till the end of the lock down period by the Government, whichever is earlier. In case the lock down period is extended beyond 30-04-2020, the interim bail granted will continue till such extended period. On expiry of the period of interim bail as mentioned above,

person released prisoner shall appear before the jurisdictional court within 3 days thereof. On such appearance, the court concerned shall consider his application for bail and shall pass appropriate order, taking note of all circumstances and attendant factors.

(v) We also make it clear that, the person released on interim bail as above shall be liable to be arrested and produced before the jurisdictional court, in case of violation of any of the conditions stipulated as above or in case they are found indulging in any activity endangering law and order or breach of public order and tranquility, or in any manner intimidating or influencing the witnesses.

6. We take note of the fact that for the consideration of extremely urgent cases already filed or to be filed before this court, including bail applications, the Hon'ble Chief Justice had constituted a Division Bench comprising of two

Hon'ble Judges of this court. Necessary instructions have been issued by the Registry for dealing with such cases through e-filing and through Video-conferencing. The sitting of the Division Bench in this court for considering such matters will continue during the period of lock down on the basis of those instructions.

7. We further make it clear that for the purpose of considering bail applications of under-trial / remanded prisoners, who will not fall within the category for which interim bail is granted through this order, as well as for moving for statutory bail under Section 167 (2) Cr.P.C, the Sessions Judges in the State are hereby authorised to consider such bail applications submitted through e-mail and to dispose of such applications through Video-conferencing, after hearing the Advocate concerned as well as the public prosecutor. The modalities with respect to consideration of such bail application and its disposal will be prescribed by the Registry of this court and will be circulated through Office Memorandum to all the courts.

Instructions in this regard will also be uploaded in the website of this court. The Principal Sessions Judge or any Additional Sessions Judge authorised in this behalf or to whom such bail applications are made over, shall deal with such bail applications in accordance with the above said directions and on the basis of the modalities which will be prescribed. those instructions.

8. Before parting with, it is made clear that the extension granted to the interim orders, through order of this court dated 25-03-2020 will stand further extended upto 18-05-2020, the date of re-opening of the courts after mid-summer vacation. However the aggrieved party will be at liberty to move for vacating such orders, before the appropriate court. All other directions contained in the order of this court dated 25-03-2020, will continue to be in force.

The Registry of this court shall forward a copy of this order to the Director General of Prisons and Correctional Services for issuing necessary directions for immediate

W.P (C) No. 9400/ 2020

-12-

compliance. The copy of this order shall also be uploaded in the official website of the High Court and shall be sent to all the subordinate courts through e-mail. The order be communicated to the media, both print and visual for intimation of the public.

(Sd/-)

C.K. ABDUL REHIM, JUDGE.

(Sd/-)

C.T. RAVIKUMAR, JUDGE.

(Sd/-)

RAJA VIJAYARAGHAVAN V., JUDGE

AMG



MHAU010092432019

**IN THE COURT OF SESSIONS, AT AURANGABAD.**

Order on Exh.31

in

Spl. MPID Case no. 10 of 2019

State of Maharashtra

Through P.I. E.O.W.Aurangabad.

...Prosecution.

Versus

1)Nitin Ramkrushna Shelke.

...Accused.

2)Satyakumar Ramkrishna Shelke.

Coram : Dr. M.S.Deshpande,
Additional Sessions Judge-10
Aurangabad.

Date : 9th March, 2020.

Shri.A.S.Deshpande, D.G.P. for the State.

Shri.N.S.Ghanekar, advocate for the accused no.1.

Shri.S.C.Arora, advocate for investors.

ORDER

1. The accused no. 1, against whom Crime No. 347 of 2019 (E.O.W.Aurangabad) under section 406, 420, 120-B, of the I.P.Code and Section 3 of M.P.I.D. Act is registered, has applied for regular bail under section 439 of the Cr.P.C. The learned D.G.P. has filed reply Exh.38.

2. The learned advocate for the accused no.1 submitted that the accused is innocent and falsely implicated in the crime, only on the basis of false information given by the informant with allegation that he had given huge amount in cash and negligible amount by way of bank transfer and that the accused did not repay the same etc. According to

him, the witnesses also had given false statement in respect of such investment. There is no evidence about the financial position of the informant and witnesses. The allegations does not attract the provisions of M.P.I.D. Act as there is no evidence of any investment or financial institution involved in the matter. According to him, some financial transactions are given a colour of investments or deposits.

3. The learned advocate for the accused submitted that the investigation is completed and the charge-sheet has also been filed. The accused being permanent resident of Aurangabad, there is no possibility of his absconding. According to him, the case is based on documents and therefore, detention of the accused no.1 for indefinite period is not required. There is no possibility of tampering with the evidence. He further submitted that the documents submitted by the informant are not found in the office of the accused. They may be fabricated one. He further submitted that the accused and his family members are ready to give undertaking about certain properties owned by them that they will not transfer the same. The properties shown in the charge-sheet are his ancestral properties and there is no nexus between the said properties and the alleged amounts. Thus, lastly he submitted that the accused will deposit an additional amount Rs.10,00,000/- in the Court by way of security.

4. On the other hand, the learned D.G.P. submitted that the charge-sheet has been filed after investigation with remark that certain investigation in respect of the properties hold by both the accused and their family members and the sources from which they are acquired is not yet completed. It is in progress and therefore, the accused should not be released on bail. Otherwise, there is possibility of transferring the said properties or creating third party interests therein and also of tampering

with the evidence. Therefore, he should not be released till conclusion of the trial. He further submitted that the amount involved in the crime is more than Rs. 4.3 crores.

5. On the other hand, the learned advocate for informant / investors submitted that the application for further investigation is pending and if the accused is released, there is every possibility of tampering with the evidence. The accused by giving such security or undertaking wants a blanket protection. He does not wish to repay the amounts collected from the investors. He placed reliance on the ratio in the case of **Y.S.Jag Mohan Reddy vs. Union of India** and submitted that an application for bail in economic offences should be considered by adopting different approach.

6. In reply, the learned advocate for the accused submitted that in the aforesaid authority the C.B.I. was investigating a scam of Rs.3000 crores. Here, the alleged investors are not laymen.

7. The accused produced revenue records of certain properties located at village Ladsawangi, Aurangpur and valuation certificate showing that the market value thereof is about 1.59 crores.

8. The investigating officer has filed reply (Exh.38) to the effect that the investigation in respect of the immovable properties of the accused is in progress. Similarly, the investigation pertaining to the investment of the amounts so collected from the informant and the witnesses is also in progress. Certain informations are called for from the government authorities whether the properties hold by the accused are under any mortgage or charge etc. The letters dated 30-11-2019, 18-02-2020, 29-11-2019 etc. issued to the concerned revenue officers, Bombay

Stock Exchange, National Stock Exchange etc. after filing of the charge-sheet prima facie show that the investigation in respect of the properties of the accused is not yet completed.

9. It was held by the Hon'ble Supreme Court in the case of **Serious Fraud Investigation Office vs. Nitin Johari, reported in (2019) 9 SCC 165** to the effect that economic offence constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Reliance was placed on the ratio in the case of **Y.S.Jag Mohan Reddy vs. C.B.I.** in that authority.

10. Similarly, the Hon'ble High Court of Bombay in the case of **Priyanka Patil vs. State of Maharashtra (Cri.B.A. No. 2447 of 2016 decided on 15-12-2016)** has laid down that economic offence is a well planned act only for gaining personal profits at the cost of vulnerable factions of the society. White colour crime cannot be viewed with permissive, lenient and sympathetic vision. Bail is a matter of procedural privilege and not right which accrues upon an individual. Moreover, in the case of **Sunil Dahiya vs. State (B.A.No. 1212 of 2016 decided on 18-10-2016 by the Delhi High Court)**. It was held that the grant of bail in case involving cheating, criminal breach of trust of a large magnitude of money, affecting large number of people would also have an adverse impact. In case the accused is granted regular bail it is also likely that he may tamper with evidence / witnesses or even threaten them considering the high stake in the matter.

11. In case of **Y.S.Jag Mohan Reddy vs. C.B.I. reported in A.I.R.**

2013 Supreme Court 1933, the Hon'ble supreme Court has laid down while granting bail in economic offences, the Court must keep in the mind the nature of accusation, the nature of evidence in support thereof, the severity of punishment which conviction entail, the character of the accused, the circumstances which are peculiar to the accused, the reasonable possibility of securing his presence during trial, reasonable apprehension of the witnesses being tampered with, the larger interests of public / State and other similar considerations.

12. Considering the rival submissions, it appears that on 22-08-2019, the informant Mr. Harshal Zarekar lodged a report with EOW Aurangabad that both the accused Nitin and Satyakumar induced him and other witnesses to invest in his business to get double the amount so invested in a short period of nine months. Relying on the initial returns given by the accused, the informant and various other persons invested huge amounts with the accused. The accused did neither pay the profits nor refund the amounts so invested etc. Accordingly, the C.R.No. 347 of 2019 was came to be registered against the accused.

13. In the case of **C.B.I. vs. Vijay Sai Reddy reported in AIR 2013 Supreme Court 2216**, the Hon'ble Supreme Court has laid down to keep in mind that for the purpose of granting bail the legislature has used the words, "reasonable grounds for believing" instead of "the evidence". It means the Court dealing with the grant of bail can only satisfy it whether there is a genuine case against the accused that the prosecution will be able to produce *prima facie* evidence in support of charge. It is not expected at this stage to have evidence establishing the guilt of the accused beyond reasonable doubt.

14. In the circumstances, when certain part of investigation

relating to the properties of the accused is yet to be completed though the charge-sheet has been filed. There are reasonable grounds for believing that he has committed the alleged offence and further possibility of tampering with evidence. Accused Nitin can not claim parity on the ground that accused Satyakumar has been released on bail by the Hon'ble High Court. The role attributed to both the accused are different in alleged crime. Therefore, the accused no.1 is not entitled for releasing on bail. Therefore, the following order is passed.

ORDER

- (i) The bail application Exh.31 is dismissed.
- (ii) Certified copy is expedited.

Date: 09-03-2020.

(Dr.M.S.Deshpande)
Addl.Sessions Judge-10,Aurangabad.

Digitally signed by Makarand
Suresh Deshpande
Date: 2020.03.11 14:50:38
+0530

Directly dictated & typed on dias computer : 09-03-2020.
Checked by Judge on : 09-03-2020.
Finally printed and signed by Judge on : 11-03-2020.

CERTIFICATE

I affirm that, the contents of this P.D.F file Judgment/order are same, word to word, as per the original Judgment/order.

Name of Stenographer: : Vijay P.Kongle.
Name of the Court : Dist.&Addl.Sessions
Judge-10, Aurangabad.
Date : 09.03.2020.
Judgment/order signed by the
Presiding Officer on : 09.03.2020.
Judgment/order uploaded on : 11.03.2020.

Bail Petition No. 1597 of 2018
Madhukar
Versus
The State

ORDER BELOW EXH.1.

01. Applicant has presented application U/sec. 439 of Code of Criminal Procedure (hereinafter referred to as "Cr.P.C., for the sake of brevity) to enlarge him on bail in Crime No. 311 of 2015, registered with CIDCO Police Station U/sec. 420 of Indian Penal Code (hereinafter referred to as "I.P.C., for the sake of brevity) and U/sec. 3 and 4 of The Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999, (hereinafter referred to as "M.P.I.D. for the sake of brevity).

02. It is stated by the applicant that one retired Police Naik viz., Udawant, resident of Shivaji Nagar, CIDCO, Aurangabad, lodged report on 22.06.2015, and on its basis Crime No. 311 of 2015, came to be registered.

03. It is stated in the report that the present applicant would provide 1 BHK flat in the society named and styled as "Sammek Niwas Hak Sang" Proyojak "Bhim Foundation", Mumbai". In response to the assurance given by the accused/applicant, the informant deposited Rs.50,000/- in State Bank of Hyderabad, CIDCO Branch, towards 10% cost of the flat. As per assurance by the present applicant, he could not provide the flat. Therefore, the

informant lodged report, stating that he is cheated and applicant committed breach of trust. So, on its basis FIR came to be registered.

04. According to the applicant, he fallen ill. He has undergone heart operation. There were financial problems, therefore, the construction of the flat could not be completed, as promised by him. Supplementary statement of the informant was recorded and wherein the informant stated that one Pramod Pal, resident of Mumbai, came forward and undertook to complete the construction of the flats. Therefore, on 15.11.2015, at about 11.00 a.m., a meeting was conducted at Aurangabad, wherein, the present applicant assured the members that the work of construction of the project would be carried out by Pramod Pal.

05. CIDCO Police Station investigated the crime, forwarded charge-sheet on 30.06.2016, mentioning the name of present applicant, Pramod Pal and other two accused. Wherein, all accused were shown absconding. Subsequently, present applicant came to be arrested on 10.01.2018. Thereafter, supplementary charge-sheet came to be forwarded.

06. Similar type of FIR was filed against the applicant by one Mahendra Bhagwan Pandit on 04.03.2016. On its basis, Crime No. 96 of 2016, U/sec. 420, 406 of I.P.C. was registered with

Cantonment Police Station. After due investigation, charge-sheet was forwarded, showing the applicant absconding. Subsequently, applicant was arrested and in that case, present applicant is granted bail.

07. In this case, the learned Judicial Magistrate, First Class, Aurangabad, (hereinafter referred to as "J.M.F.C." for the sake of brevity) rejected the bail application. So, he preferred this application on the following grounds :-

08. According to the applicant, on perusal of the charge-sheet, commission of offence U/sec. 420, 406 R/w. 34 of I.P.C. was not disclosed. Pramod Pal undertook the responsibility of the construction of the flat at Bhavsinghpura. 90% of the construction work is completed. On 15.11.2018, flats would be allotted by conducting lottery. The applicant is in jail since January-2018. Now, he is shifted to J.J. Hospital, Mumbai. The investigation is completed. Therefore, pre-trial detention is unwarranted. The applicant would abide conditions, if any, imposed. So, prayed to release on bail.

09. Investigation Officer resisted application by say (Exh.04). According to the prosecution, this project was prepared only with intent to cheat to the members of the project. The present applicant, Pramod Pal, Milind Kasare instigated more than 125

members to invest the amount in the scheme. Thereafter, all these three persons took the amount deposited by the members and flee away. The present applicant and others have collected more than Rs.18,00,000/- from the complainant and others and cheated them. On 10.01.2018, present applicant was arrested at Diu and Daman. So, he was not residing in the State of Maharashtra. So, this itself shown about his intention. The present applicant and others have shown Rozi picture to the members of giving flat for low consideration amount and induced them to invest 10% of the price and thereafter, without construction of the flats, they were absconding. The entire amount received by them is expended. In such situation, if the applicant would be released on bail, he may tamper with the evidence by giving false promises to the witnesses and/or by threatening the witnesses. The present applicant is not resident of Aurangabad. He will not attend the proceeding. So, prayed to reject the application.

10. I have heard learned advocate Mr. Santosh Gaikwad. He submits that FIR came to be lodged on 22.06.2015. Wherein, it is alleged that the present applicant on 19.11.2011, assured and promised to construct the flats and assured to hand it over within 18 months to two years and the informant was asked to pay 10% of the consideration amount. Accordingly, informant paid Rs.50,000/-. The present applicant after accepting the amount of Rs.50,000/- from him and like amount from others did not start the

work of construction. On the basis of report, the investigation was done, but, the accused persons did not find.

11. So, though, the complaint was against the present applicant, the investigation officer found that including present applicant, four persons are involved. So, he forwarded charge-sheet against four persons, showing them absconding. In the meantime, supplementary statement of the informant was recorded on 15.01.2015, wherein, he has stated that on 15.01.2015, meeting of members was conducted and project is handed over to Pramod Pal and Pramod Pal assured that he would complete the project. Subsequently, applicant was arrested on 10.01.2018. Supplementary charge-sheet was forwarded and provisions of M.P.I.D. came to be applied. Now, the present applicant is hospitalized at Mumbai. Investigation is over. So, in such situation considering the nature offence, applicant is entitled to get bail. Rejection of the bail will amount to pre-trial conviction.

12. Learned A.P.P. Mr. Sirsath vehemently submits that the investigation officer rightly applied the provisions of M.P.I.D. Act, in view of Section 2 (c) (v) sand Section 2 (d) of M.P.I.D. Act. Further it is submitted that the modus operandi of the present applicant requires to be seen. The present applicant floated the scheme, called upon the persons to deposit 10% of the price amount of the flat, collected it, did not start the project work,

subsequently handed over the work of project to Pramod Pal. Thereafter, Pramod Pal assured the members to complete the project work and again asked them to pay 10% of the price amount.

13. So, this goes to show that initially present applicant assured to start project, project was handed over Pramod Pal and Pramod Pal also by giving assurance demanded 10% of the price amount of the flat, by giving assurance to complete the flat. So, the act of the present applicant speak in volumes about the intention and modus operandi. The present applicant was arrested at Diu and Daman. He floated such scheme in various states and cheated the persons. The offence committed by applicant is economic offence with cold blood mind. So, in such situation, if the applicant would be released on bail, he will flee away and will not be available for trial. So, prayed to reject the application.

14. At first, I will deal with the question posed by the advocate Mr. Gaikwad, in regard to misapplication of Section 3 and 4 of the M.P.I.D. Act. In this regard, I would like to mention here that in Section 2 (c) of M.P.I.D. Act, "deposit" is defined. In Section 2 (d) "financial establishment" is defined. Deposit includes amount received in ordinary course of business by way of earnest money also and "financial establishment" means any person accepting deposit under any scheme or arrangement or in any other manner,

but, does not include a corporation or a co-operative society owned or controlled by any State Government or the Central Government or a banking company.

15. Here in this case, the present applicant floated the scheme of construction of flats under guises of "Sammek Niwas Hakh Sang, Prayojak Bhim Foundation Mumbai" and accepted amount of 10% of the price of the flat as an advance/earnest money. So, the action/act of the present applicant would certainly fall under "deposit" in view of Section 2 (c) (v) of M.P.I.D. Act, and 2 (d) "financial establishment". So, I found no force in the submission of Mr. Gaikwad about the misapplication of provisions of M.P.I.D. Act.

16. Now, in regard to other factors, it is not in dispute that the above referred scheme is floated by the present applicant in the year 2011. It is also not in dispute that the members deposited 10% of the price amount of the flat. It is also not in dispute that at the time of deposits, the depositors were assured that the construction of the flats would be completed within 18 months or within 2 years. So, the present applicant was required to complete the work of construction and was required to hand over flats by the end of the year 2013. But, it appears that he did not complete the work and did not hand over the flats by taking remaining amount of consideration price.

17. It appears that the present applicant was not traced to the depositors. Suddenly, on 15.01.2015, the present applicant arranged meeting of all members at Aurangabad, and in that meeting, he projected Pramod Pal, a person showing as he is care taker of the project. He handed over that project to Pramod Pal and Pramod Pal assured that he would complete the work of project and will hand over flats to the members. It appears that he also asked members to pay 10% of the price amount for completing the work of the project.

18. Now, advocate Mr. Gaikwad submitted that whatever breach is committed is by Mr. Pramod Pal and not by the present applicant. The project was handed over to him. I do not accept these submissions for the reason that initially agreement is in between members and present applicant. The present applicant projected Pramod Pal without knowledge of the members. So, Pramod Pal is not answerable to the members. Present applicant is answerable to the members. The present applicant committed breach initially. He did not complete project, as assured by him till the end of year 2013. In the year 2015, he projected Pramod Pal and now trying to get relieve himself by shouldering the liability on Pramod Pal, which is not permissible.

19. It appears that entire act, commission at the hands of

applicant will certainly come under the purview of "economic offence". So, many poor persons have invested the amount, part of their bread with expectation that they will get roof and that amount is siphoned by the present applicant. The act of the present applicant will fall under white collared crime. White collared crime is more dangerous than the other crimes, which are against the body. The applicant involved in white collared crime, commits the crime only with intent to grab money of the others, calculating the steps.

20. It appears that in the present case also, the act of present applicant is of same nature i.e. in the year 2011 induced members to deposit amount. Thereafter, in the year 2015, handing over project to Pramod Pal and pointing the liability towards him. Furthermore, it appears that the present applicant was absconding for a long i.e. for the period for more than three years and he was arrested in this year in the month of January from Diu and Daman i.e. out of Maharashtra State. Furthermore, it appears that the offices of the present applicant, which are at various places in Maharashtra are found closed to the investigation officer. The health reason submitted by advocate Mr. Gaikwad for non compliance of the project work appears to be untrue and furthermore on the ground of illness also and on the ground of parity also, present applicant is not entitled to get bail. Hence, I am not at all convinced with the submissions of advocate Mr. Gaikwad

10

B.P. No.1597/2018

to release the applicant on bail. So, I pass the following order :-

ORDER

Bail Application No. 1597 of 2018 stands
dismissed.

Dated : 12.10.2018

(K.R. Choudhari)
Special Judge (MCOCA)
Aurangabad.

CERTIFICATE

I affirm that the contents of this P.D.F. file Judgment are
same, word to word, as per the original order.

Name of the Stenographer : D.D.Bhalerao

Court : Additional Sessions Judge-7, Aurangabad.

Date of Judgment : 12.10.2018

Judgment signed by the Presiding officer : 15.10.2018

Judgment uploaded on : 15.10.2018