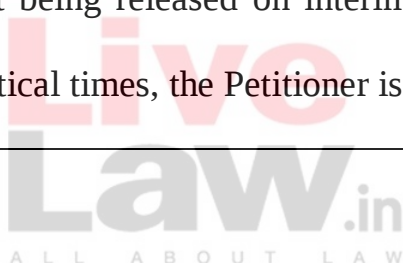


	<i>acid attack and crime against children will also not be released, even if they have remained in custody for over a month, said people with direct knowledge of the matter.”</i>
31.03.2020	As a responsible and concerned citizen, being aggrieved by the arbitrary criteria for grant of bail, whereby, without any basis persons suffering from medical conditions such as diabetes, asthma as well as persons accused of non-heinous crimes / crimes against the body have been clubbed with heinous crimes and not being released on interim-bail, especially in such critical times, the Petitioner is filing the present PIL.



IN THE HON'BLE SUPREME COURT OF INDIA

[EXTRA-ORDINARY CIVIL ORIGINAL JURISDICTION]

WRIT PETITION [CIVIL] NO. _____ OF 2020

A WRIT PETITION IN PUBLIC INTEREST UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA SEEKING RELIEF FOR RELEASE OF UNDER-TRIAL PRISONERS HELD FOR ALL NON-HEINOUS CRIMES INCLUDING FRAUD, CHEATING AND OTHER ECONOMIC OFFENCES

IN THE MATTER OF:

VISHVENDRA TOMAR

An Indian Citizen

...Petitioner

Versus

1. UNION OF INDIA

Through the Ministry of Law and Justice,
4th Floor, A-Wing, Shastri Bhawan,
New Delhi-110 001
And through its Standing Counsel

...Respondent No. 1

2. STATE OF NCT OF NEW DELHI

Through its Chief Secretary
Delhi Secretariat, IP Estate,
New Delhi - 110002
And also through its Standing Counsel

...Respondent No. 2

3. SH SATYA GOPAL

Principal Secretary (Home)/ Additional Chief Secretary
Govt. of NCT of Delhi
Land and Building Department,
B-Block, Vikas Bhawan, I.P. Estate,
New Delhi – 110002.

...Respondent No. 3

4. SH SANDEEP GOYAL

Director General (Prisons), Delhi
Office of The Director General of Prisons,
Prisons Head Quarter, Janak Puri,
New Delhi- 110064

...Respondent No. 4

WRIT PETITION UNDER ARTICLES 32 OF THE
CONSTITUTION OF INDIA, 1950 SEEKING ISSUANCE OF A
WRIT, ORDER OR DIRECTION IN THE NATURE OF A
MANDAMUS OR ANY OTHER APPROPRIATE WRIT FOR
SEEKING FOR IMMEDIATE RELEASE OF THE
PETITIONERS IN LIGHT OF THE THREAT POSED TO THE
LIFE AND PERSONAL LIBERTY OF THE PETITIONERS IN
LIGHT OF THE COVID-19.

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS OTHER
COMPANION JUSTICES OF THE HON'BLE SUPREME COURT
OF INDIA

THE HUMBLE PETITION OF THE PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present Writ Petition is being filed by the Petitioner in Person in Public Interest under Article 32 of The Constitution of India, 1950 seeking relief for release of under-trial prisoners held for all non-heinous crimes including fraud, cheating and other economic offences and those suffering from various medical conditions, including diabetes, asthma among others in light of the COVID-19 global pandemic and also in light of the order[s] passed by the Hon'ble Supreme Court dated 23.03.2020. The High-Powered Committee [**'HPC'**] formed by the State of NCT of Delhi in compliance with the Hon'ble Supreme Court dated 23.03.2020 has formed criteria's for release of prisoners, including under-trial prisoners, which specifically excludes those charged with offences of Fraud and are being investigated by the CBI and/or Enforcement Directorate. Such criteria is baseless and completely bad-in-law. A copy of the minutes of the meeting of the High-Powered Committee dated 28.03.2020 is annexed hereto as **ANNEXURE P-1**. [pages ____ to ____]

2. The Petitioner is a lawyer by profession and has his clients are lodged in various jails in Delhi. The Petitioner has visited his

clients lodged in the Tihar Jail and further is in constant touch with the families of such clients who keep on updating him about the state of affairs of the prisons as informed by the clients.

3. The Respondent No 1 is the Union of India through the Ministry of Law and Justice. The Respondent No 1 is the nodal ministry to administer and enforce laws as well as aid in maintaining law and order in the Country as well as responsible for framing policies/laws for the well-being of the citizens. The Respondent No 1 is State within the meaning of Article 12 of the Constitution. Hence, the Respondent No 1 is a necessary party.
4. The Respondent No 2 is the State of NCT of Delhi and is responsible for the prisons of Delhi. The Respondent No 2 is State within the meaning of Article 12 of the Constitution. Hence, the Respondent No 2 is a necessary party.
5. The Respondent No 3 & 4 are members of the High-Powered Committee [**HPC**] constituted by the Respondent No 1 to prescribe criteria's and basis for release of inmates. The Respondent No 3 & 4 have formulated arbitrary criteria's, which violates the fundamental rights under Article 14 and 21 of 1000's of inmates. The Respondent No 3 & 4 are also State within the meaning of Article 12 of the Constitution. Hence, the Respondent No 3 & 4 are necessary parties.

BRIEF FACTS LEADING TO THE FILING OF THE PRESENT PETITION:

6. The World Health Organization [**WHO**] declared Coronavirus as a Public Health Emergency and considered the spread of Coronavirus as a pandemic. Further, especially regarding individuals suffering from the disease of diabetes, the WHO has categorically stated that individuals suffering from diabetes of any kind, are at increased risk of severe illness from Coronavirus and they should be particularly stringent in following social distancing measures, including significantly limiting face-to-face interaction.
7. Vide Circular L No. A 212/MISC/PF/2020/SCA(G), dated 15.03.2020 the Hon'ble Supreme Court has taken cognizance of the threat posed by the spread of Coronavirus. This Hon'ble Supreme Court has urged all non-essential visits to courts and judicial forums should be discouraged. A copy of Hon'ble Supreme Court's Circular dated 15.03.2020 titled Circular No. 212/MISC/PF/2020/SCA(G) is annexed hereto and marked as **ANNEXURE P-2. [pages ____ to ____]**
8. Thereafter, vide its order dated 16.03.2020 in Suo Motu Writ Petition (Civil) No. 1 of 2020, the Hon'ble Supreme Court took suo-motu cognizance of the threat to prisoners in various prisons in India, in light of the Coronavirus. The Hon'ble Supreme Court was 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 the prisons. If prisoners are tested positive for the COVID-19 virus, it would result in pandemonium. A copy of the order dated 16.03.2020 in Suo Motu Writ Petition (Civil) No. 1/2020 is annexed hereto and marked as **ANNEXURE P-3**. [pages ____ to ____]

9. The Hon'ble Supreme Court on 23.03.2020 in Suo Motu Writ Petition (Civil) No. 1 of 2020, directed each State/Union Territory to constitute a High-Powered Committee to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. Further it was left open to 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. A copy of the order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No. 1 of 2020 is annexed hereto and marked as **ANNEXURE P-4**. [pages ____ to ____]

10. Writ Petition [Civil] No 2945 of 2020 titled as '*Shobha Gupta & Ors v Union of India & Ors*' was filed before the Hon'ble Delhi High Court, inter alia, seeking steps for release the of under-trials and convicts, who are accused of offences where the maximum period of imprisonment prescribed under the

I.P.C and other Statutes is upto 5 years and fine, i.e. for non-heinous crimes. It is pertinent to note that the Hon'ble Court in the said Writ Petition observed and directed that:

“4. Since the Hon'ble Supreme Court is already seized of the matter and is examining the issue at a macro level, including the issue raised in the present petition, it may not be appropriate for this Court to entertain this petition.

5. At this stage, Mr. Anuj Aggarwal, learned ASC, GNCTD, who is present in Court on advance notice, states that the Prison authorities are conscious of the emergent situation and submits that the Home Department of the Government of NCT of Delhi is proposing to issue a Notification in exercise of its powers conferred under Section 71 of the Delhi Prisons Act, to add Rules 1219A and 1243A in the Delhi Prison Rules 2018, after Rules 1219 and 1243, respectively and introduce "60 days parole" in one spell instead of two spells of 30 days each in a year and further, introduce a temporary facility of "special furlough" to such category of prisoners and for such number of days as may be specified in the order, in situations like threat of an epidemic or natural disaster or for any such situation or circumstances, which warrants immediate easing of inmate population in the interest of the inmates and the society at large.

6. It is further submitted that a proposal has also been mooted to amend Rule 1202 of the Delhi Prison Rules 2018 to introduce the expression "emergency parole", which shall authorise the government to grant parole for upto 8 weeks in one spell, in addition to the regular parole, subject to such conditions as may be prescribed by the government, as provided in the rules in emergency situations like threat of epidemic, natural disaster or any other situations or circumstances, which warrant immediate easing of population of the inmates in the prison and in order to secure the interests of inmates, the prison administration and the society at large.

7. Learned counsel also states that in respect of the under trial prisoners (UTPs), who are booked in only 1 case in which the maximum sentence is 7 years or less and who have completed minimum 3 months in jail, it is proposed that they shall be granted interim bail for 45 days upon a request made by them, preferably on a personal bond.

However, the mechanism in respect of the same has yet to be formalized by the concerned authorities.

8. In view of the submissions made by learned counsel for the respondents No.3 to 6 above, it is directed that the Govt. of NCT of Delhi and the Delhi Police shall take immediate steps, preferably within two days to implement its decisions, as recorded hereinabove.

9. Needless to state that the under trial prisoners shall be at liberty to apply for interim bails on account of the current situation, which shall also be taken into consideration by the appropriate courts and the said petitions shall be decided in accordance with law.”

A copy of the order dated 23.03.2020 passed by the Hon’ble Delhi High Court in Writ Petition [Civil] No 2945 of 2020 titled as ‘Shobha Gupta & Ors v Union of India & Ors’ is annexed hereto and marked as **ANNEXURE P-5**. [pages ____ to ____]

11. The Govt. of NCT of Delhi vide its Order No. F.18/191/2015/HG/1428-1438 dated 27.03.2020 has decided to constitute a committee, to screen and recommend the cases of grant of emergency parole to the convicts for upto eight weeks. The said prisoners are divided into 3 categories as under-

- (1) All convicts who are presently outside the prison either on furlough or on parole
- (2) All convicts who availed parole/furlough in the past and have overall satisfactory conduct
- (3) All convicts not falling under S. No. 1 or 2 above but otherwise eligible - Such cases will also be considered by the Committee for appropriate orders.

For the release of convicts, the notification further states that:

“For the purposes of this order, it is hereby clarified that a ‘satisfactory conduct’ would mean that the convict has not indulged in any major misconduct during his incarceration in the last three years or during parole in the past. Minor incidents of misconduct, if any, on the part of the convict may be ignored. However, in exceptional cases, where the superintendent feels that despite a major misconduct on the part of the convict earlier, he has shown good signs of improvement and reformation in his behaviour and his going out on emergency parole will not be detrimental to the interest of society, he may recommend the names of such convict for grant of emergency parole to the DG (prisons)”.

A copy of Order No. F.18/191/2015/HG/1428-1438 dated 27.03.2020 is annexed hereto and marked as **ANNEXURE P-**

6. [pages ____ to ____]

12. On 28.03.2020, the High-Powered Committee [‘HPC’] formed in terms of the Hon’ble Supreme Court order dated 23.03.2020, held a meeting wherein it was, *inter alia*, decided as follows:

“Item No 3- Determining Fresh Category of Under-Trial Prisoners Who can be released on ‘Interim Bail’:-

Kamal Jeet Arora, Member Secretary informed the Committee, that immediately on receipt of letter from Govt of NCT of Delhi regarding formation of present Committee, he on being directed by Hon’ble Chairperson had requested D.G. (Prisons) through the letter-dated 26.03.2020 to furnish requisite information for the impact analysis on the proposed relaxed criterion of under trial prisoners. The same is accordingly submitted.

The Members of the Committee discussed and deliberated upon the proposed category of prisoners, who may now be considered for grant of interim bail for 45 days in view of the circumstances in which are in, preferably on ‘Personal Bond’-

- (i) Under trial prisoners [UTPs] who are facing trial in a case which prescribes a maximum sentence of 7 years or less; or
- (ii) Even if, the UTP has more than one case and in all other cases, he is “on bail”, except the one for which he is being considered and the same prescribes punishment for 7 years or less; and if
- (iii) UTP is in custody for a period of one month;
- (iv) In case of Women UTP, if she is in custody for a period of 15 days or more;

Besides the UTPs falling in above categories, those inmates who are undergoing Civil Imprisonment can also be considered for ‘interim bail’ of 45 days.

It has further been resolved that following category of UTPs even if falling in the above-criterion, should not be considered:

- (i) All inmates who are underlying trial for intermediary/large quantity recovery under NDPS Act;
- (ii) Those under trial prisoners who are facing trial under Section 4 & 6 of the POSCO Act;
- (iii) Those under trial prisoners who are facing trial for offences under Section 376, 376A, 376B, 376C, 376D and 376E and Acid Attack;
- (iv) Those UTPs who are foreign nationals;
and
- (v) Those under trial prisoners who are facing trial under Prevention of Corruption Act [PC Act] / PMLA; and

Cases investigated by CBI/ED/NIA/Special Cell Police and Terror related Cases, cases under Anti-National Activities and Unlawful Activities (Prevention) Act etc.”

13. A total of 130 lawyers have written a letter dated 29.03.2020 to the Chief Minister of Maharashtra, State Home Minister and Chief Justice of Bombay High Court expressing grave concern regarding the safety of “thousands of individuals incarcerated in prisons and other settings of detention”. The lawyers have

urged the authorities to also consider releasing those charged under serious offences like MCOCA, PMLA, UAPA and NDPS Act. The letter suggests the following categories of the prisoners and/or detained in other settings for release, priority should be given to the following, irrespective of the offences they are charged with:

“

1. *Prisoners and/or detained in other settings above 50 years of age*
2. *Children in conflict with law detained at different settings*
3. *Prisoners and/or detained in other settings with pre-existing health conditions*
4. *Prisoners and/or detained in other settings with disability and mental illness*
5. *Pregnant women and/or with children in prisons and/or detained in other settings*
6. *Women Prisoners and/or detained in other settings*
7. *Category of undertrial prisoners to be released in accordance to the standing order passed by the Apex Court in In Re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700*
8. *Category of convicts scheduled for early release.”*

A copy of letter dated 29.03.2020 sent by lawyers of Bombay

High Court is marked and annexed hereto as **ANNEXURE P-**

7. [pages ____ to ____]

14. On 30.03.2020, an article was published in the Economic Times titled as ‘No Relief for Undertrials Accused of Fraud, Anti-national activities’, inter alia, reporting as under:

“The government has “resolved” to not grant interim bail to undertrials facing corruption and prevention of money-laundering charges. Those being probed by the CBI, enforcement directorate and the National Investigation Agency for anti-national activities, foreign nationals, and people facing charges of rape, acid attack and crime against children will also not be released, even if they have remained in custody for over a month, said people with direct knowledge of the matter.”

A Copy of the article published on 30.03.2020 in the Economic Times titled as ‘No Relief for Undertrials Accused of Fraud, Anti-national activities’ is annexed hereto as **ANNEXURE P-**

8. [pages ____ to ____]

15. As a responsible and concerned citizen, being aggrieved by the arbitrary criteria for grant of bail, whereby, without any basis persons suffering from medical conditions such as diabetes, asthma as well as persons accused of non-heinous crimes / crimes against the body have been clubbed with heinous crimes and not being released on interim-bail, especially in such critical times, the Petitioner is filing the present PIL.

GROUND

16. That the Petitioner is filing the present petition on the following grounds, each of which is without prejudice to the other:

- A. FOR THAT the Prisoners are persons and they are entitled to fundamental rights while in custody, although there may be a shrinkage in the fundamental rights. In times of a global

pandemic, where in an unprecedented step, the country is in a lock-down, under-trial prisoners ought to be released from custody especially where the Prisons in India are heavily overcrowded. Human life cannot be negated in such a manner. Distinguishing between under-trials on the basis of nature of offence in times of a global pandemic as damaging as COVID-19 is perverse to say the least. However, it is submitted the criteria formulated by the HPC is baseless and without application of mind. Thus, the criteria as laid down by the HPC ought to be reconsidered and as many under-trials as possible ought to be released on interim-bail till the pandemic settles.

- B. FOR THAT** effectively, a person accused of a non-heinous crime has been clubbed with an accused who has committed a heinous crime. Further, the criteria fails to in any manner let alone intelligently distinguish between those who suffer from serious medical conditions such as diabetes and asthma as well. It appears the criteria assumes that a person accused of an economic offence is less suspectable to COVID-19 than those who have not committed an offence of fraud and/or under the Prevention of Corruption Act and/or the Prevention of Money Laundering Act. Hence, the criteria as determined by the HPC is baseless, arbitrary and patently violative of Article 14.
- C. FOR THAT** the HPC has laid an arbitrary criterion in granting bail to the under-trials. It is pertinent to note that vide the

aforesaid decision of the HPC taken on 28.03.2020, the undertrials charged for non-heinous crimes including fraud, cheating and other economic offences will not be granted bail while convicts for heinous offences are eligible for parole/furlough. Such a basis is arbitrary and contrary to Article 14 and 21 of the Constitution. It violates the basis fundamental rights of the undertrial prisoners. It is a settled legal position that a person is innocent till proven guilty. An under-trial cannot be equated to a convicted person and/or be worse than a convicted person in any manner- as in the present case.

- D. FOR THAT the criteria laid down by the HPC begs the question should not the accused of an economic/white color crime being a non-heinous crime be treated at parity with other persons accused of non-heinous crimes or is an accused of an economic/white color crime by default become someone who has committed an offence graver than a heinous crime as persons convicted of heinous crimes are being considered for parole and furlough.
- E. FOR THAT the Indian Criminal Justice System envisages the innocence of a person until proven guilty. By such exclusion, the Right to Life envisaged under Article 21 of the Indian Constitution of undertrials charged with all non-heinous crimes including fraud, cheating and other economic offences is under threat. To have such a criterion also violates the principles laid

under Article 14. Such an exclusion would mean that the rights are not equally guaranteed by the Constitution to all and those in the excluded categories are “unequal citizens” in the eye of law.

- F. FOR THAT even if the categories excluded by the High-Powered Committee are considered, it is imperative that vulnerable people amongst those are considered for release. These are acknowledged to be high-risk categories and excluding them only on account of the nature of crime charged with, is like giving the death sentence to them. The need of the hour is not only to decrease the overcrowding but also to ensure that people get proper access to health care. The process of law will continue after this devastating crisis is over but the immediate need right now is to ensure that most minimal number of prisoners are kept in prisons and the others are able to access healthcare outside.
- G. FOR THAT under-trial prisoners who have spent more than half their term and ought to be released in terms of S 436A CRPC have also not been considered by the HPC. It is settled law that half of the term is determined on the basis of the offence which carries the lesser sentence.
- H. FOR THAT the object of bail in the first place is to secure attendance of the accused in the trial. Only cases where there is proven misconduct in avoiding investigation or trial bail should

be denied. More so in a situation like the present one, all that the authorities should be concerned with is the well-being of inmates and ensure that each one of them is treated fairly. As regards grant of interim-bail, the authorities need to be concerned with is whether the person will turn up to surrender when the situation improves and for that the antecedents have to be examined. To fix it on the basis of a possible sentence (such as 7 years which has been fixed by the Govt. of NCT of Delhi) is flawed to say the least. For economic offences where evidence is documentary in nature and where investigation is over and charge sheet has been filed there are hundreds of cases where bails have been granted. It is unfortunate that instead of adopting a humane approach and be guided by principles of bail, in these offences the HPC has laid down wholly arbitrary and manifestly illegal resulting in the breach of fundamental rights of the excluded inmates.

- I. FOR THAT the Hon'ble Supreme Court in the case of Sanjay Chandra vs CBI [2012] 1 SCC 40 has held that *even* in cases where huge loss of money is involved [where charges under Section 409 and Prevention of Corruption Act are levied], the same should not deter from enlarging the accused persons on, after the completion of the investigation and filing of the charge-sheet. Thus, there is no purpose and basis for over-crowding of prisons with undertrials being tried for economic offences. In

Sanjay Chandra's case, the Hon'ble Supreme Court held as under:

“42. When the under-trial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is: whether the same is possible in the present case.

43. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet.”

J. FOR THAT the Hon'ble Supreme Court in the case of Arnesh Kumar vs State of Bihar & Anr. (2014) 8 SCC 273 laid down various directions and guidelines so as to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years; whether with or without fine. Therefore, in order to overcome the ambit of directions laid down in Arnesh Kumar vs State of Bihar & Anr. [Supra], the Police arrest's the accused on false and trumped up charges under various sections of the IPC such as

409, 467, etc. as the maximum punishment under these sections is more than 7 years.

K. FOR THAT even otherwise in economic offences the number of multiplied cases is an outcome of the multifarious agency probe into the same offence and the same shall not be treated as a ground to deny interim bail / release in the present peculiar circumstances.

L. FOR THAT in cases of non-heinous crimes such as fraud and other economic offences the punishment is beyond 7 years in most cases. However, a lot of these persons are educated persons who can aid in such critical times in providing support to communities. There are some who can help the country and the community on account of their experiences in setting up large organizations & business in a time of national crisis. The lives of such people are at risk and there is no logical reason for not considering them as persons who deserved to be released on interim bail.

M. FOR THAT another category of inmates is of - under investigation inmates - though not strictly recognized by jail manuals but are a category as per CrPC- where no charge-sheet is filed. They also ought to be considered for release and no such criteria for release has been provided for by the HPC.

N. FOR THAT it is further clear from the minutes of meeting dated 28.03.2020 held by the HPC that approx. 2000 prisoners will be released by the Jail Authorities, which will still leave the jails overcrowded. Hence, for this reason itself the criteria as laid-down by the HPC needs to be revaluated and needs to be made more transparent and inclusive and the criteria as it stands today is in teeth of Article 14 and 21 of the Constitution as well as the Hon'ble Supreme Court order-dated 23.03.2020.

O. FOR THAT the number of inmates released as per the criteria laid-down by the HPC does not provide any relief and/or result in over-crowding of jails. The example / data from Tihar Jail No 1 below highlights this position:

	No of inmates as on 16.03.2020	No of inmates as on 23.03.2020	No of inmates as on 30.03.2020
Undertrials	1926	1942	1898
Convicts	237	235	234
Total	2163	2177	2132

P. FOR THAT the state of affairs in the Jails is concerning. Because the jails are so overcrowded, it is difficult to practice social distancing. The Petitioner through its clients has come to know that the public utilities are not properly sanitized and disinfected inside in the Jails. There is a complete lack of hygiene, and no inmate has been checked as is being claimed by the authorities. The barracks are still overcrowded and it cannot be ignored that the patrolling staff has to mandatorily come in and out of prisons but no precaution is being taken by them.

Hence, each inmate especially those with medical conditions are highly susceptible to COVID-19.

Q. FOR THAT The Petitioner and his colleagues visited various to Jail No[s] 1, 4, 7 and 8 in Tihar Jail and has learnt that:

- i. The Hon'ble Delhi High Court vide its order dated 23.03.2020 passed by in Writ Petition [Civil] No 2945 of 2020 titled as 'Shobha Gupta & Ors v Union of India & Ors' had directed that the under-trial prisoners shall be at liberty to apply for interim bails on account of the current situation, which shall also be taken into consideration by the appropriate courts and the said petitions shall be decided in accordance with law. The Jail authorities are not facilitating the inmates to apply for interim bails on account of the current situation.
- ii. There is no testing facility for COVID-19 in the jails.
- iii. The fundamental rights to avail legal remedies is infringed upon as access to lawyers is also limited due to peculiar circumstances and therefore, the right of the prisoners to avail legal remedies is prejudiced. No access to lawyers and/or legal remedies is being provided to the prisoners.
- iv. The Family visits to the jails have been rightfully cancelled by the jail authorities but no additional time has been granted to the inmates to talk on phone to family members may mentally disturb and result in depression.
- v. Further, the new inmates who are put in isolation wards are already overcrowded.

vi. The arbitrary and discriminatory conduct of the HPC is further evident from the fact that only the inmates belonging to Delhi are being released and inmates belonging to neighbouring areas such as Noida, Gurgaon, Ghaziabad, etc. are not being released.

R. FOR THAT few videos that have surfaced online, inmates at Rohini and Mandoli jails can be seen complaining of “poor” conditions prevailing in the prisons since the COVID-19 outbreak. They have demanded to either be released on parole or be taken care of. The same has been reported by various news channels and newspapers. In a video purportedly shared by inmates of Rohini jail, a person can be heard saying: “There is no space to sleep. Toilets are dirty. Food is inadequate. Once COVID-19 enters the jail, it will spread. One person has been tested positive in OPD. It is being hidden from us.” He added that they are on a hunger strike. In another video from cell number 15 in Mandoli jail, an inmate said there is no medical facility and the food being served “*is worse than what is fed to animals*”. He alleged that they are not provided with masks and sanitizers. “*If someone suffers from cold and we inform the authorities, we are asked to keep mum and threatened that action will be taken against us,*” he said. A Copy of the newspaper article published in The Hindu related to the conditions of inmates in Delhi prisons is marked and annexed hereto as **ANNEXURE P-9**. [pages ____ to ____]

S. FOR THAT majority of inmates in Delhi Jails are Under-Trial prisoners i.e. out of 17,440 inmates approx. 14,355 are under-trials. The question is are we waiting for a calamity to occur in prisons and then take action. Today's times especially in light of the global Pandemic call for urgent and steadfast action. The basis of determination for release of inmates especially UTP inmates lacks logic and basis. Unequals have been compared and clubbed together. The basis of not granting interim-relief to an inmate who is in custody for an economic offence of fraud etc has not been mentioned or provided, which itself makes the decision of the HPC arbitrary and violative of Article 14 and 21 of the Constitution.

T. FOR THAT the a reason for over-crowding in jails is due to frivolous and/or over-zealous prosecutions where alleged offences are purportedly made out without any basis and/or substance and thus, unsubstantiated charges under Section[s] such as 406 IPC, 409 IPC, 467 IPC which mandate punishments for longer than 7 years are levelled. However, such offences are triable by a Magistrate and a Magistrate under the CrPC is not permitted to pronounce a sentence beyond 7 years. It is only upon conclusion of trial that such charges will be proved and then a conviction will be pronounced. Thus, merely the duration of sentencing cannot be the basis for determining the release of an UTP.

U. FOR THAT the threat imposed by coronavirus in prisons to the lives of inmates is evident from the fact that prisoners like Harvey Weinstein the famous American Film Producer has tested positive for the coronavirus at a state prison in New York after two inmates tested positive for COVID-19. The Iran Government has released more than 85,000 prisoners as the coronavirus crisis escalated in the country. Further, there are reports of unrest and even riots in prisons across Latin America to Europe to the Middle East of contamination amid the coronavirus outbreak. China alone has reportedly had 806 cases in five prisons. Copies of news articles published in various newspapers related to the threat imposed by coronavirus in prisons are annexed hereto as **ANNEXURE P-10.** [pages ____ to ____]

V. FOR THAT Article 21 of the Constitution of India also encompasses 'right to health' within its ambit and as the prisons are known to be overcrowded and are not equipped with the necessary equipment and specialized medical staff who may be available to cater to the under-trial prisoners in case of any kind of medical problem. It is for this reason that the HPC ought to have considered the release of under-trial prisoners who are held in prisoners for offences all non-heinous crimes including fraud and cheating.

W. FOR THAT the Hon’ble Supreme Court has since 2016 passing directions for avoiding over-crowding of jails and for ensuring the best medical health facilities is provided to prisoners. The Hon’ble Supreme Court in the case of Inhuman Conditions In 1382 Prisons, In Re reported in 2016 [3] SCC 700, inter alia, observed as follows:

“6. In this background, a letter on 13-6-2013 addressed by Justice R.C. Lahoti, a former Chief Justice of India to the Hon'ble the Chief Justice of India relating to conditions in prisons is rather disturbing. Justice R.C. Lahoti invited attention to the inhuman conditions prevailing in 1382 prisons in India as reflected in a graphic story appearing in Dainik Bhaskar (National Edn.) on 24-3-2013. A photocopy of the graphic story was attached to the letter. Justice R.C. Lahoti pointed out that the story highlights:

- (i) Overcrowding of prisons;*
- (ii) Unnatural death of prisoners;^w*
- (iii) Gross inadequacy of staff; and*
- (iv) Available staff being untrained or inadequately trained.*

...

52. Has anything changed on the ground? The prison statistics available as on 31-12-2014 from the website of NCRB [<<http://ncrb.nic.in>>.] indicate that as far as overcrowding is concerned, there is no perceptible change and in fact the problem of overcrowding has perhaps been accentuated with the passage of time. The figures in this regard are as follows:

	<i>Central Jails</i>	<i>District Jails</i>
<i>Capacity</i>	<i>1,52,312</i>	<i>1,35,439</i>
<i>Actual</i>	<i>1,84,386</i>	<i>1,79,695</i>
<i>%</i>	<i>121.1%</i>	<i>132.7%</i>
<i>Undertrials</i>	<i>95,519 (51.8%)</i>	<i>1,43,138 (79.7%)</i>

The maximum overcrowding is in the jail in the Union Territory of Dadra & Nagar Haveli (331.7%) followed by Chhattisgarh (258.9%) and then Delhi (221.6%).

53. It is clear that in spite of several orders passed by this Court from time to time in various petitions, for one reason or another, the issue of overcrowding in jails continues to persist and apart from anything else, appears to have persuaded Justice R.C. Lahoti to address a letter of the Chief Justice of India on this specific issue of overcrowding in prisons.

54. We cannot forget that the International Covenant on Civil and Political Rights, to which India is a signatory, provides in Article 10 that: “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Similarly, Article 5 of the Universal Declaration of Human Rights (UDHR) provides: “No one shall be subjected to torture or cruel, inhuman or degrading treatment or punishment.” With reference to UDHR and the necessity of treating prisoners with dignity and as human beings, Vivien Stern (now Baroness Stern) says in *A Sin Against the Future: Imprisonment in the World* as follows:

“Detained people are included because human rights extend to all human beings. It is a basic tenet of international human rights law that nothing can put a human being beyond the reach of certain human rights protections. Some people may be less deserving than others. Some may lose many of their rights through having been imprisoned through proper and legal procedures. But the basic rights to life, health, fairness and justice, humane treatment, dignity and protection from ill treatment or torture remain. There is a minimum standard for the way a State treats people, whoever they are. No one should fall below it.” [Vivien Stern, *A Sin Against the Future: Imprisonment in the World*, (Penguin Books, 1998) 192.]

...

56. The sum and substance of the aforesaid discussion is that prisoners, like all human beings, deserve to be treated with dignity.”

X. FOR THAT it is respectfully submitted that the directions issued by the Hon’ble Supreme Court in the case of *Inhuman Conditions In 1382 Prisons*, In Re reported in 2016 [3] SCC 700 as well as vide order[s]-dated 16.03.2020 and 23.03.2020 passed

in Suo Motu Writ Petition (Civil) No. 1 of 2020 for taking steps to reduce the over-crowding of prisons have not been followed. Furthermore, the over-crowding of prisons continues as of date as well, which is evident from the fact that Delhi Prisons have a capacity of approx. 10000 inmates and there are almost 17,000 inmates in all the 16 jails in Delhi. The issue of over-crowding of jails in India has routinely been addressed by various courts, more particularly, the Hon'ble Supreme Court. Yet, till date over-crowding of jails including lack of humane infrastructure persists in prisons.

Y. The Petitioner reserves liberty to add and/or amend grounds to the petition, at the time of arguments or at any later stage if the need so arises.

17. The Petitioner has not filed any other Petition/Application seeking same or similar relief before this Hon'ble Court or any other Court.

18. This Hon'ble Court has the requisite jurisdiction to entertain the present Writ Petition.

19. That the present Petition is being filed bonafide and in the interest of justice.

PRAYER

In light of the facts and circumstances as aforementioned, it is humbly prayed that this Hon'ble Court may be pleased to:

- A. Pass a Writ, Order or Direction in the nature of a mandamus or any other appropriate Writ directing the Respondents to consider the release of under-trial prisoners who are held in prisons for non-heinous crimes including fraud, cheating, breach of trust and other economic offences, including those relating to the Prevention of Corruption Act, Prevention of Money Laundering Act; and
- B. Pass a Writ, Order or Direction in the nature of a mandamus or any other appropriate Writ directing the Respondents to consider release of under trial inmates on criterias of medical condition, time already spent in custody, educational and professional qualifications; and/or
- C. Pass any such other writ or order(s) as it may deem fit and proper in the interest of justice.

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

**VISHVENDRA TOMAR
[PETITIONER IN PERSON]**

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