

ITEM NO.17

Virtual 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
R E C O R D O F P R O C E E D I N G S

SUO MOTU WRIT PETITION (CIVIL) No.1 OF 2020

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

(IA No.48215/2020 - FOR APPLICATION FOR PERMISSION; IA No.48216/2020 - FOR CLARIFICATION/DIRECTION; IA No.48261/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48260/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48234/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48232/2020 - FOR APPROPRIATE ORDERS/DIRECTIONS; IA No.48233/2020 - FOR INTERVENTION APPLICATION; IA No.48231/2020 - FOR INTERVENTION APPLICATION; IA No.48263/2020 - FOR INTERVENTION/IMPLEADMENT; IA No.48270/2020 - FOR MODIFICATION; and, IA No.48217/2020 - FOR MODIFICATION OF COURT ORDER)

Date : 13-04-2020 This matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR

Counsel for the Parties

Mr. K.K. Venugopal, AG
Mr. Tushar Mehta, S.G.
Mr. B.V. Balaram Das, AOR

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

Mr. Salman Khurshid, Sr. Adv.
Ms. Srishti Agnihotri, AOR

Mr. Colin Gonsalves, Sr. Adv.
Mr. Harmeet Singh Ruprah, AOR

Mr. Sanjay Jain, AOR (Not Present)

Mr. Shuvodeep Roy, AOR

Mr. Milind Kumar, AOR

Ms. Uttara Babbar, AOR

Mr. Vinay Arora, AOR

Mr. M. Shoeb Alam, AOR

Mr. Talha Abdul Rahman, AOR

Mr. Sachin Patil, AOR
Mr. Abhimanyu Tewari, AOR
Mr. Keshav Mohan, Adv.
Mr. Santosh Kumar - I, AOR
Mr. Shibashish Misra, AOR
Mr. Tapesk Kumar Singh, AOR
Ms. Garima Prashad, AOR
Ms. G. Indira, AOR
Mr. Raj Bahadur Yadav, AOR
Dr. Monika Gusain, AOR
M/s. PLR Chambers & Co., AOR
Mr. G. Prakash, AOR
Ms. Astha Sharma, AOR
Mr. Nikhil Goel, AOR
Ms. Mukti Chowdhary, AOR
Mr. Narendra Kumar, AOR
M/s. Venkat Palwai Law Associates, AOR
Mr. V. N. Raghupathy, AOR
Mr. M. Yogesh Kanna, AOR
Mr. G. N. Reddy, AOR
Mr. Vinod Sharma, AOR
Mr. Sumeer Sodhi, AOR
Ms. K. Enatoli Sema, AOR

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

We have heard Mr. Dushyant Dave, learned Amicus Curiae, Mr. K.K. Venugopal, learned Attorney General for India, Mr. Tushar Mehta,

learned Solicitor General and learned counsel for other parties.

I.A. No.48260 of 2020

By order dated 23.03.2020, we directed the States/Union Territories to constitute High Powered Committees which could decide which prisoners may be released on interim bail or parole during the pandemic (COVID 19). The purpose was to prevent the overcrowding of prisons so that in case of an outbreak of coronavirus in the prisons, the spread of the disease is manageable. The operative part of our order reads as follows:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary(Home/Prison) by whatever designation is known as, (ii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category 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."

We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was "accused" of suffering from

coronavirus has been reported.

We make it clear that we have not directed the States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.

We make it clear that the aforesaid order is intended to be implemented fully in letter and spirits.

The instant application stands disposed of.

I.A. No. 48231/2020, I.A. 48232 of 2020, I.A. No. 48233/2020, I.A. NO.48234 OF 2020, I.A. No. 48270/2020 AND I.A. No. 48217/2020

Applications for intervention are allowed.

As matter stands today, this Court has permitted the release of the prisoners after due recommendations from the High Powered Committee constituted by each State/Union Territory. Secondly, there is a direction to permit transportation of prisoners who have been released to make the release effective.

Learned Attorney General submits that pursuant to this Court's orders dated 23.03.2020 and 07.04.2020, certain prisoners have been released on the recommendation of the High Powered Committees except in the States of Delhi and Goa. Insofar as State of Bihar is concerned, no prisoner has been released as the State Government is of the opinion that their jails are not overcrowded and no prisoner is

suffering from coronavirus (COVID- 19).

Mr. K.K. Venugopal, learned Attorney General for India vehemently submits that the release and transportation of the prisoners would itself result in transmission of coronavirus from prisons or detention centres to locations where the released prisoners have to reach.

We have considered the rival submissions and we are of the view that in the circumstances, it would be appropriate to issue the following directions:

(a) No prisoner shall be released if he/she has suffered from coronavirus disease in communicable form hereafter. For this purpose, appropriate tests will be carried out.

(b) If it is found that a prisoner who has been released is suffering from coronavirus after the release, necessary steps will be taken by the concerned authority by placing him/her in appropriate quarantine facility.

(c) Transportation shall be done in full compliance of the Rules and Norms of social distancing. For instance, no transportation shall be allowed in excess of half or one fourth capacity of the bus as may be found appropriate to ensure that the passengers who have been found to be free of coronavirus disease are at a distance from each other.

(d) The order dated 23.03.2020 shall be applicable to correctional homes, detention centres and protection homes.

The instant applications stand disposed of.

I.A. No.48215/2020 AND I.A. No.48216/2020

Application for intervention is allowed.

It is submitted that about 802 prisoners have been declared as foreigners under the provisions of the Foreigners Act, 1946.

Learned counsel for the applicants rely on the order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 titled as "Supreme Court Legal Services Committee v. Union of India & Others", this Court directed as follows:

"Insofar as the release of detenuess who have served long period of detention in the detention centres awaiting their deportation is concerned, we are of the view that detenuess who have completed more than three years may be released, subject to the following conditions:-

(a) Execution of bond with two sureties of Rs.1,00,000/- (Rupees one lakh only) each of Indian citizens;

(b) He or she specifies verifiable address of stay after release;

(c) Biometric of his/her iris (if possible) and all ten fingerprints and photos shall be captured and stored in a secured database before release from the detention centres. He or she shall report once every week to the Police Station specified by the Foreigners Tribunal;

(d) He or she shall notify any change of his or her address to the specified Police Station on the same day, and

(e) A quarterly report to be submitted by the Superintendent of Police (Border) to the Foreigners Tribunal regarding appearance of such released declared foreigner to concerned Police Station and in case of violation of condition, the DFN will be apprehended and produced before Foreigners Tribunal."

The only prayer made by the learned counsel is that the period of three years be reduced to one year so that detenuess who have completed

more than two years may be released, subject to the same conditions laid down by this Court vide order dated 10.05.2019 in Writ Petition (Civil) No.1045 of 2018 except the requirement to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only).

Mr. Tushar Mehta, learned Solicitor General submitted that it would be hazardous to release such people since they would again mix with rest of the population and it would be difficult to trace them, in case the Government resorts to certain steps under the law.

We find that after the order dated 10.05.2019, no application has been made by any party for modification of the aforesaid order on any ground whatsoever.

It is important to be cognizant of the fact that the said order dated 10.05.2019 was passed when there was no danger of any pandemic like the present one.

Having regard to the present circumstances prevailing in the country and having regard to the fact that we have already permitted the release of prisoners and people under detention in general, and such detenués who have completed three years upon their declaration as foreigners, we see no reason why the period should not be reduced from three years to two years, that is to say, the prisoners or detenués who have been under detention for two years shall be entitled to be released on the same terms and conditions as those laid down in the aforesaid order dated 10.05.2019, except that they shall not be required to furnish a bond in the sum of Rs.1,00,000/- (Rupees one lakh only). Instead they shall be required to furnish a bond in the sum of Rs.5,000/- (Rupees five thousand only) with two sureties of the

like sum of Indian citizens. Rest of the conditions in the said order dated 10.05.2019 reproduced above shall apply.

Ordered accordingly.

The instant application for directions stands disposed of.

I.A. No.48261 OF 2020

None appears on behalf of the applicant.

We have perused the instant application for direction.

No orders need be passed.

The instant interlocutory application stand disposed of accordingly.

(SANJAY KUMAR-II)
Asst. Registrar-cum-PS

(MUKESH NASA)
Court Master

(VIRENDER SINGH)
Branch Officer