

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

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

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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