

IN THE SUPREME COURT OF INDIA  
SUO MOTU JURISDICTION  
I.A. NO..... OF 2020 IN  
SUO MOTU WRIT PETITION (C) No. 1 OF 2020

**IN THE MATTER OF:**

IN RE: CONTAGION OF COVID 19 VIRUS IN PRISONS

**AND IN THE MATTER OF:**

JUSTICE AND LIBERTY INITIATIVE

Guwahati-781038  
District-Kamrup (M)Assam

...INTERVENER/APPLICANT

**APPLICATION FOR DIRECTIONS**

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

OF THE

THE HUMBLE PETITION

APPLICANT ABOVE NAMED

**MOST RESPECTFULLY SUBMITS:**

1. This this Hon'ble Court took *Suo Motu* cognizance and issued order dated 16-03-2020 for taking steps on an urgent basis to prevent the contagion of COVID - 19 in prisons across the country.
2. As such this Hon'ble Court issued Notice upon all the States and Union Territory across India in the matter. This Hon'ble Court was pleased to pass orders on 16-03-2020 and it is pertinent to reproduce the following observations of this Hon'ble Court:

*“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.*

...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, 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 reasons mentioned above, our prisons can become fertile breeding grounds for incubation 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. ”

A True Copy of order dated 16-03-2020 passed by this Hon'ble Court in Suo Motu Writ Petition (C) No. 1 of 2020 is annexed herewith as **ANNEXURE – A (@Page No. <sup>22</sup> to <sup>26</sup>).**

3. The matter was thereafter listed next on 23-03-2020 when a direction was passed to each State and Union Territory to 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. This Hon'ble Court was pleased to pass following orders:

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

*"The issue of overcrowding of prisoners 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, (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.

A True Copy of order dated 23-03-2020 passed by this Hon'ble Court in *Suo Motu* Writ Petition (C) No. 1 of 2020 is annexed herewith as **ANNEXURE – B (@Page No. 27 to 34)**.

4. The present Application for Directions in the *Suo Motu* matter is being filed by the Applicant namely 'Justice and Liberty Initiative' which is a Assam based Public Charitable Trust, registered in the year 2019. The Applicant organization is working on the ground in State of Assam to provide pro-bono legal aid to Indian Citizens who, for a variety of reasons, including for lack of legal support, poor documentation, lack of proper representation, poor assistance etc. have been accused of being illegal migrants or have been declared as foreigners by the Foreigners Tribunals. The Applicant organization comprises of leading lawyers and academicians who are committed to protecting the rights of these individuals and

safeguard their faith in the Constitution and the Judicial system of India.

5. It is pertinent to point out that the Applicant on 25-03-2020 has submitted a representation before the Hon'ble Chief Justice of India by way of email in the present matter seeking directions to release the "declared foreigners" detained in six detention centers across Assam after compliance of certain conditions specified by this Hon'ble Court in order dated 10-05-2019 passed in W.P. (C) 1045 of 2018 and also direct the Govt. of Assam not to detain any "declared foreigners" in the detention centres or arrest them until the situation affected by COVID – 19 returns to normalcy. A True Copy of representation dated 25.03.2020 submitted by the Applicant is annexed herewith as **ANNEXURE – C (@Page No. 35 to 41 )**.
6. That it is most respectfully submitted that this Hon'ble Court by way of passing the aforesaid directions in the *suo motu* matter has taken at the appropriate time a much-needed decisive step to protect the health, life and liberty of the prisoners and the people of this country. Various states have already started to release incarcerated persons in pursuance of the salutary orders passed by this Hon'ble Court and the extant emergent circumstances.
7. That by means of the present application, the applicant is seeking extension of similar relief to declared foreigner among those 802 persons who are incarcerated in various detention centers in the state of Assam pursuant to Orders passed by Foreigners Tribunals.

8. It is pertinent to mention that detention of “declared foreigners” is not subsequent to any conviction or sentence. The Government based on the opinion rendered by Foreigners Tribunal has the power to detain persons who are not able to prove that they are Indian Citizens under Section 3(2)(g) of the Foreigners Act, 1946. It is trite law that the protection of Article 21 is available not only to Indian citizens but to all persons.
9. The Applicant organization prays that similar benefit of release be also extended to persons “declared to be foreigners” facing perpetual detention in the State of Assam. Being “human beings” they have a minimum basic right to live and to not die of COVID-19 in the precincts of a prison merely by virtue of being confined in close human contact i.e. a negation of social distancing. The maxim *Actus curiae neminem gravabit* has full application in the peculiar facts of the present case to the basic right of life of these hapless incarcerated individuals who await urgent orders of this Hon’ble Court to survive each day under the looming threat of the contagious and deadly COVID-19.
10. It is pertinent to point out that every authority or body of the state is duty bound to safeguard the rights of an individual under Article 14 and 21. This Hon’ble Court has reiterated that the rights guaranteed in Articles 14 and 21 are not limited to citizens (*Chairman Railway Board v. Chandirama Das*, (2000) 2 SCC 465, *Louis De Raedt v. Union of India*, AIR 1991 Supreme Court 1896). Therefore it is prayed that the persons declared as foreigners who are in detention in Assam are also entitled to relief extended to other prisoners all across India.

**Detentions Centers and their condition**

11. It is humbly submitted that there are six detention centers in Assam, which are inside six different prisons. That since the detenus are not convicts, the prison rules are not applicable to them and there exist no corresponding guidelines or statute to protect them. Thus the entire arena of protections and safeguards against violation of their rights available under Part III of the Constitution, more particularly those under Article 14, 21 etc. remains wholly unoccupied. There is no parole that is available to the detenus.
12. That on 11.03.2020 the Minister of State in the Ministry of Home Affairs informed the Rajya Sabha that as on 06.03.2020 there are 802 persons kept in detention centres of Assam. A copy of the reply of the Minister of State in the Ministry of Home Affairs dated 11.03.2020 is annexed with the accompanying application to intervene as **ANNEXURE –D** (@Page No. <sup>42</sup> \_\_\_\_\_ to <sup>43</sup> \_\_\_\_\_).
13. That it is humbly submitted that many of the detenus detained in the detention centers across State of Assam are old and ailing. A total of 10 detenus have died in detention in the last one year, (between 1<sup>st</sup> March 2019 to 29<sup>th</sup> February 2020, as informed by the Minister of State, Ministry of Home Affairs in the Lok Sabha. The data in connection with death of the detenu was even reported by the press. A total of 29 detenus have died from 2016 till January 2020 across detention centres in Assam. A True copy Newspaper report dated 05-01-2020 published in the online edition (link at <https://www.ndtv.com/india-news/man-lodged-in-assam-detention->

centre-dies-29th-death-in-3-years-2158934) is annexed herewith as **ANNEXURE – E (@Page No. 44 to -).**

14. That it is reported that living conditions in the detention centre is deplorable. Each person has only about 2-3 square feet space,with some people sleeping near wash basins. In fact, the condition is so bad that Assam Government has constituted a committee to review the conditions in October, 2019. The Report of the Committee is still awaited to the knowledge of the Applicant. The detention centres even have children, most of them minors born in India, staying there. As such, just as any other prison, those incarcerated in these detention centres are equally entitled to be set at liberty subject to imposition of safeguards and conditions to ensure that they do not disappear and remain traceable. In fact, with widespread lock-down, any sort of movement across large distances is not possible, whereas social distancing and their consequent release is a matter of protecting the life of these incarcerated individuals.

**Orders of release of detenus in detention centres passed by this Hon'ble Court**

15. That it is pertinent to point out that this Hon'ble Court has in the past released detenus of such detention centers who had been incarcerated pursuant to Orders of the Foreigners Tribunals. In fact, by issuance of the below mentioned Order, this Hon'ble Court has itself laid down guidelines on the basis of which such detenus should be released. By order dated 10-05-2019 in WP (C) 1045/2018 in the matter of *Supreme Court Legal Services Committee Vs. Union*



*Of India* was pleased to pass an order to release the detainees who have completed more than three years in detention, subject to certain conditions. This Hon'ble Court was pleased to pass following order:

"Insofar as the release of detainees who have served long periods of detention in the detention centres awaiting their deportation is concerned, we are of the view that detainees 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."

A True Copy of order dated order dated 10-05-2019 passed by this Hon'ble Court in in WP (C) 1045/2018 is annexed herewith as **ANNEXURE – F (@Page No. <sup>45</sup> \_\_\_\_\_ to <sup>47</sup> \_\_\_\_\_).**

16. This order passed by this Hon'ble Court evidence that subject to certain conditions, "foreigners" in detention centers in Assam can also be released, as they are neither criminals nor a threat to society. In ordinary time, when this Hon'ble Court passed the order for detention, it imposed conditions of surety and financial bond. It is stated that most of these detenues are very poor to even afford legal services and have no property or means to stand as surety.
17. In the circumstances, it would only be fair and just that this Hon'ble Court in its magnanimity directs the release of such detenues by dispensing with the condition of financial surety, minimum period of detention etc., as may be expedient and necessary in the peculiar facts of the case due to the spread of the contagious and deadly COVID 19.
18. It is pertinent to mention that many detunes were detained for almost a decade, but could not be deported. Many of them were released only after order dated 10.05.2019 of this Hon'ble Court in WP(C) 1045/2018. Therefore if deportation is not foreseeable, it is expedient and just that those detainees who have not completed three years detention may also be released.
19. It has already been observed by this Hon'ble Court, in the Order dated 16-03-2020 (Supra) that "*The issue of overcrowding of*

*prisoners is a matter of serious concern particularly in the present context of the pandemic of Corona Virus (COVID-19) and 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."* In Order to avoid overcrowding and looking into the possible threat of transmission and fatal consequences, it is necessary that these detenues must be released forthwith albeit with imposition of whatever reasonable and compliable conditions as may be just and expedient.

20. That failure to prove one's citizenship has only civil consequence. The provisions of detaining a declared foreigners in detention centres is akin to civil imprisonment which is engrafted in section 55 of Code of Civil Procedure, 1908. It is in fact an interim measure to detain them till the time of their deportation to the respective countries of origin. It is pertinent to mention here that many of them are languishing due to the ex parte order passed against them. Moreover, many of those detenues have challenged the Foreigners Tribunals Orders which are either pending before the Hon'ble High Court or before this Hon'ble Court. Since their detention is comparable with Civil Imprisonment, these detenues should be given the benefit available under Section 59 (3) (a) CPC which stipulates that-

*"S. 59 (3). Where a judgment-debtor has been committed to the civil prison, he may be released therefrom,-*

*(a) by the State Government, on the ground of the existence of any infectious or contagious disease."*

21. That subsequent to the order dated 10-05-2019 in WP (C) No. 1045/2018 large numbers of detenues (about 350) who have completed 3 years in detention and could manage sureties have been released. It is further stated that length of detention has no bearing regarding the traceability of the detenues. If conditions like specification of verifiable address, Biometric details etc, as stipulated in Order 10-05-2019 in WP (C) 1045/2018 are scrupulously followed, then all the detenues may be granted the benefit of conditional release on bail.

22. That it is humbly submitted that India is about to enter Phase III of the corona virus outbreak. As countries like China failed to appreciate the issue of rapid spread of this virus, the number of affected people multiplied very swiftly. As per Business Insider report dated 22.02.2020, "*More than 500 cases of COVID 19 erupted five penitentiaries across three provinces, according to Ministry of Justice. This led to the spike in the national tally of corona virus, triggered fears of virus spreading in clusters, and prompted several local officials to be sacked.*" To avoid a China like situation, extra ordinary steps like conditional release of the detenues , who are not languishing due to any heinous criminal offence, is an appropriate solution.

(Reference - [https:// www.businessinsider.in/science/news/ chinese-jails-have-become-hotbeds-of-coronavirus-as-more-than-500-cases-have-erupted-prompting-the-ouster-of-several-officials/articleshow/74250647.cms](https://www.businessinsider.in/science/news/chinese-jails-have-become-hotbeds-of-coronavirus-as-more-than-500-cases-have-erupted-prompting-the-ouster-of-several-officials/articleshow/74250647.cms))

23. That in various countries the process of release of jail inmates has already started to effectively counters the menace of COVID 19. As per the Financial Times report dated 24.03.2020 *"At least three positive cases have been confirmed in UK prisons and several dozen in US federal, state and local prisons and other European countries. Emergency coronavirus containment measures introduced in Italy sparked prison riots that left more than a dozen dead. .... Medical experts say the only way to stymie an outbreak is to implement social distancing now by releasing prisoners to decrease their density in jails. In Iran, authorities have released some 70,000 prisoners. Local authorities across the US, including in New York, California, and Ohio, have begun releasing inmates, focusing on pre-trial detainees, inmates nearing the end of their sentences, and the elderly and infirm. But Dr Rich said that unless these measures are taken promptly, outbreaks of the corona virus in prisons would spread rapidly, straining prison and hospital infrastructure."*

( Reference- <https://www.ft.com/content/23611814-6ac1-11ea-800d-da70cff6e4d3>)

24. That there is a high possibility of outbreak of Corona virus in detention camps due to continuous interactions of inmates with the Jail staffs/officials. In fact, many of detenues filed Writ Petitions pending before the High Court and this Hon'ble Court, challenging the opinion rendered by the Foreigners Tribunals. Pending disposal of those petitions and inability of the Government of India to deport the detenues immediately to their 'country of origin' may result in eventually imposing death sentence to them, in the event of

outbreak of Corona virus. Since their detentions have bearing of civil consequences only, the risk of death due to such detention is not warranted.

25. That Detention camp is an ideal breeding ground for the virus. Stepped- up cleanings and a temporary halt to visitations at detention camps in the midst of the crisis cannot make up for the fact that ventilation behind bars is often poor, inmates sleep in close quarters and share a small number of bathrooms. It creates the ideal environment for the transmission of contagious disease. Social distancing is clearly not possible in such environment. These camps are like ticking 'time bombs' ready to explode any time. In absence of any quarantine facility inside those camps, detenués are at great risk in the event of its outbreak. As per the Washington Post dated 23.03.2020, *"Internal rebellions may intensify as corona virus spreads inside correctional facilities: in Italy and Colombia, prison riots broke out amid fears of outbreaks."* Conditions of confinement do not afford detenués the opportunity to take proactive steps to protect themselves, and Detention Camps often create the ideal environment for the transmission of contagious disease.

( Reference - [https:// www. washingtonpost. com/ nation/ 2020/03/23/ coronavirus-rikers-island-releases/](https://www.washingtonpost.com/nation/2020/03/23/coronavirus-rikers-island-releases/))

26. That in the wake of Corona virus outbreak, the detenués will be more vulnerable in the already crowded detention centres, which house frail and old persons as well as children.

27. The present application is being in good faith and in the interest of justice. The Applicant has no personal interest in the outcome of the case.

**PRAYERS**

It is therefore most respectfully prayed that this Hon'ble Court may be graciously pleased to:

- a. allow the present application and direct immediate release of "declared foreigners" detained in six detention centers in the State of Assam (pursuant to Orders of the Foreigners Tribunals) after imposing conditions similar to those laid down by this Hon'ble Court in its order dated 10.05.2019 passed in W.P. (C) 1045/2018, in exception of and dispensing with, the conditions of financial surety and minimum period of detention laid down therein by this Hon'ble Court; AND
- b. pass such other and further Orders as this Hon'ble Court may deem fit and proper

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

FILED BY:

TALHA ABDUL RAHMAN  
ADVOCATE FOR THE APPLICANT

Filed on: 27-03-2020