

IN THE HIGH COURT OF DELHI AT NEW DELHI

EXTRA ORDINARY CRIMINAL JURISDICTION

WRIT PETITION (CRIMINAL) NO. _____ OF 2020

IN THE MATTER OF:

INDIA UNDERTRIAL PRISONER SUPPORT FORUM

...PETITIONER

VERSUS

STATE (N.C.T) OF DELHI

...RESPONDENT

WRIT PETITION UNDER ARTICLE 226 & 227 OF THE CONSTITUTION OF INDIA READ WITH S.482 OF CRIMINAL PROCEDURE CODE 1973 FOR IMPLEMENTATION OF DIRECTIONS OF WP(CRL) 1352/2015 ALONG WITH SUPREME COURT DIRECTIVES FOR UNDER TRIAL REVIEW COMMITTEE FOR THE BENEFITS OF S.436 A CR.P.C TO RELEASE THE PRISONERS ON BAIL SPECIFICALLY WHO HAVE ALREADY UNDERGONE HALF THE SENTENCE IN LESSER OFFENCES

MOST RESPECTFULLY SHOWETH:

1. The Petitioner *vide* the present petition under Article 227 of the Constitution of India Read with S.482 of Criminal procedure code 1973 seeks issuance of a writ/direction/order in the nature of 'mandamus' to the Undertrial Review Committee to expedite review of bail u/S. 436 A for the Undertrial Prisoners (UTPs) facing trial. The petitioner craves to bring attention of this Hon'ble Court about large number of undertrial prisoner who have completed half of the lessor sentence in multiple offence are endlessly languishing in jail and awaiting justice.

2. The source of knowledge of the facts alleged in the writ petition are in public domain. The statistics of various meetings of the Undertrial Prisoner Review Committee (UPRC) are available on the site of Delhi State Legal Service Authority. The various orders passed by the court and annexed along with the Petition are available on the websites of district courts of Delhi.
3. The present Writ Petition has been filed concerning those undertrial prisoners who are facing trial for various offences and have already undergone incarceration beyond half the maximum sentence in lesser offences and are still in custody. The UTPs facing trial are incapable of raising the present issue as they are in judicial custody and do not have sufficient means to reach this Hon'ble Court.
4. It is submitted that to the best of the understanding and knowledge of the Petitioner, the present Writ Petition only concerns the undertrial prisoners who have undergone half the period of maximum incarceration in lesser offences and as such the present Writ Petition to the best of the Petitioner's understanding shall not in any manner affect any other institution/organization.
5. The Petitioner herein is a trust registered at New Delhi. Which functions for welfare of the prisons and prisoners all over India. Further to its aim and objective the Trust ensures safeguard of the rights of undertrial prisoners in India. The Petitioner herein is represented by its trustee Mr. Ankit Pandey.

A copy of authority letter in favour of Ankit Pandey is attached herein as **ANNEXURE P-1**

6. It submitted that Direction of the Hon'ble Supreme Court and Hon'ble Delhi High Court are not followed in its letter and spirit for the benefit of UTPs therefore, being aggrieved by non-action on the part of the UTRC, the Petitioner has approached this Hon'ble Court under Article 227 of the Constitution of India for safeguarding the interest and core democratic values of our Constitution, which are embraced in the form of fundamental rights guaranteed under Part III of the Constitution of India.
7. The Respondent is State (NCT) of Delhi, which falls within Article 12 of the Constitution of India and thus amenable to the Writ jurisdiction of this Hon'ble Court.

BRIEF HISTORY OF FACTS OF THE CASE:

8. That on 24.04.2015 the Hon'ble Supreme Court by its own motion in Re-InhumanConditions in 1382 Prisons, issued the following directions in respect of undertrial prisoners incarcerated in multiple offences Under Trial Review Committee should be set up in every district. Further Under Trial Review Committee should consider the cases of all under trial prisoners who are entitled to the benefit of Section 436A of the Code. In a case of multiple offences, a review is to be conducted after half the sentence of the lesser offence is completed by the undertrial prisoner. It is not necessary or compulsory that an undertrial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.

A copy of the order dated 24.04.2015 is annexed herein as **ANNEXURE P-2.**

9. That on 14.07.2015 the Delhi High Court through its own motion in W.P.(CRL) 1352/2015 while taking compliance of direction issued on 24.04.2015 in Re-Inhuman Conditions in 1382 Prisons observe that despite direction and order of the Hon'ble Supreme Court and High Court a large number of undertrial prisoners are continued in jail for more than six months. Further it was directed that the UTRC shall review every case to ascertain as to whether half of the sentence of the lesser offence is completed by the undertrial prisoners and take the necessary steps for their release in terms of the order of the Hon'ble Supreme Court.

A copy of the order dated 14.07.2015 is annexed herein as **ANNEXURE P-3.**

10. That on 05.02.2016 the Hon'ble Supreme Court in Re-Inhuman conditions further issued directives that The Under Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the Cr.P.C. and Section 436A of the Cr.P.C. so that undertrial prisoners are released at the earliest and those who cannot furnish bail bonds due to their poverty should not be subjected to incarceration only for that reason.

A copy of the order dated 05.02.2016 is annexed herein as **ANNEXURE P-4.**

11. That the Hon'ble Supreme Court vide order date 06.05.2016 further increase the mandate of UTRC with following guidelines wherein Hon'ble Court directed the UTRC to consider eligible release of prisoner under Section 437(6) of the Code and in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.

A copy of the order dated 06.05.2016 is annexed herein as **ANNEXURE P-5.**

12. That Hon'ble Delhi High Court vide order date 12.12.2017 in W.P. (Crl.) 1352 /2015 issued following guidelines for implementation and working of S. 436 A of the Code of Criminal Procedure

(i) Updation of custody warrants by trial courts:

(e) On the date cognizance is taken, the Court shall indicate the date on which the right under Section 436A Cr.P.C. will accrue for the UTP. [While mentioning this date, in case of multiple offences, the Court should also separately write the date on which half of the maximum sentence of graver offence will expire and the date on which half of maximum sentence of lesser offence will expire].

(ii) Role of jail authorities:

(b) The Jail Authorities should also inform the UTP and the concerned Court when the UTP becomes entitled to receive benefit of Section 436A Cr.P.C.

(iii) Role of District State Legal Services Authority:

(b) The remand advocates/ Legal Aid Counsels appointed in the Criminal Courts by the concerned DLSA may be asked to give a monthly report in respect of the UTPs for whom an application under Section 436A Cr.P.C. may be moved. The remand advocate/ appointed legal aid counsel may be directed to move these applications promptly in the concerned court.

(c) The legal aid counsels may be instructed that in those cases which are dealt with by them, they should themselves remain alert as to when a person becomes eligible for the benefit under Section 436A Cr.P.C. and take appropriate steps.

A copy of the Order dated 12.12.2017 is annexed herein as

ANNEXURE P-6.

13. That by order dated 04.12.18 the Hon'ble Supreme Court adopted the Guidelines framed by NALSA which is called "The Standard Operating Procedure for Under-Trial Review Committees" and it was directed that Under Trial Review Committees will adhere to these Guidelines. As per the SOP of NALSA in para 2.2 the following mandate of the UTPs is listed as follows:

“2.2 Cases of UTPs / Convicts falling under following categories shall be considered by the Secretary, DLSA for placing them before the UTRC: -

2.2.1 UTPs / Convicts falling under covered under Section 436A Cr.P.C. [As per order of Hon’ble Supreme Court dated 24th April, 2015]

2.2.14 UTPs eligible for release under Section 437(6) of Cr.P.C, wherein in a case triable by a Magistrate, the trial of a person accused of any nonbailable offence has not been concluded within a period of 60 days from the first date fixed for taking evidence in the case. [As per order of Hon’ble Supreme Court dated 06th May, 2016]”

A copy of the Standard Operating Procedure for Under-Trial Review Committees is annexed herein as **ANNEXURE P-7**.

THE CURRENT SITUATION

14. That since March 2020 due to COVID-19 pandemic High Powered Committee was formed to decongest jails at Delhi by setting criteria for Interim Bail, Parole and Remission. As per minutes of meeting of the High-Powered Committee on 28.03.2020 it issued guidelines for Interim Bail and parole taking into account that 16 Jails which are located at Tihar, Mandoli and Rohini have a holding capacity of 10,026 prisoners. Further as on 27.03.2020, there were 17,440 inmates which consisted of

14355 UTPs. Such statistics show that more 80% of the Delhi jail prison population is of undertrial prisoners.

A copy of the minutes of meeting of HPC as on 28.03.2020 is annexed herein as **Annexure P-8**

15. Further as per the minutes of meeting of High-Powered Committee conducted on 28.11.2020 shows that out of a total of 16000 UTPS interim release was only given to 3609 prisoners. It is submitted that the D.G. (Prisons) also stated in the minutes of meeting that when 3499 UTPs and 1183 convicts who have been granted 'interim bail/emergency parole' under different criteria laid down by HPC Committee then the total population of Delhi Prison is likely to reach 20500. That despite the efforts made by HPC the Delhi Jail Prison population already touched to 18,000 this year. Which clearly shows interim relief is not a permanent solution for prison overcrowding. The Petitioner herein wants to draw the attention of this Hon'ble Court that due to COVID - 19 majority of the undertrials have suffered long incarceration which could have been permanently resolved and jails would be decongested, if the mandate of S. 436 A and S.436 (7) is taken into consideration. Further the number of undertrial inmates who would be back once interim relief is suspended the jail would be overcrowded beyond its double occupancy.

A copy of the minutes of meeting of HPC as on 28.11.2020 is annexed herein as **Annexure P-9**.

16. Further the UTRC in Delhi has till September 2020 reviewed only 1024 cases for considering them under the mandate and guidelines of

Hon'ble Supreme Court and Delhi High Court out which only 416 people have been released. Wherein the number of people who are eligible and have completed half of their maximum sentence is around 1205. In year 2019, the UTRC reviewed 3510 cases, out of which only 361 people were released. As the Jail authorities have still not fully adopted to prison management system or detailed custody warrant as mandated by NALSA a large number of undertrial prison information is not available with the jail authorities making a large number of UTPs population unaccounted in these statistics who have already undergone half of their minimum sentence in lesser offences.

17. That it is submitted that currently the total population of inmates inside jails is approximately 16,000 till November and once inmates on interim bail return, the population would increase to the extent of double the actual occupancy of the jails. The interim bail and Parole given to the undertrial prisoners are not long-term solution moreover an incarceration of the undertrial prisoner without a speedy prospect is denial to right to life with dignity. Further a large number of undertrial prisoner who are enlarged on interim bail would be covered under the ambit of S.436A Cr.P.C.

18. That petitioner herein wants the attention of the court that actual number of undertrial prisoner who fall under the ambit of s.436 A is much higher moreover such information is not correctly provided to the review committee by the prison authorities as they are still not adhering to the NALSA SOP which ensure detailed undertrial information in

custody warrants. Also, the undertrial prisoners are not made aware for reasons of their rejection by the UTRC. Further since March 2020 only interim bail and the category which falls under the criteria of the HPC are taken in priority by the DLSA remand advocates and jail authorities which further leave UTPS without any recourse to a remedy.

19. That petitioner herein craves the attention of this Hon'ble court to the following cases as example which are facing incarceration at various jails at Delhi who have already undergone half sentence in lessor offence. The details of mentioned cases are in the public domain whose bail application was neither considered despite undergoing half the sentence in lessor offence.

S. NO.	PARTICULARS	UNDERGONE SENTENCE
1.	State vs. Mathi FIR No. 469/2018 U/s. 498A, 304 B IPC	In custody for over 2 years
2.	State vs. Manish U/s 498 A /304 B IPC FIR No. 97/2016 Chanakya Puri	In custody for over 4 years
3.	State vs Pankaj Kumar Fir No. 90/2017 PS Dabri U/s 498 A /304 B	In custody for over 3 ½ years
4.	State vs Manoj Kumar FIR No. 797 /2017 PS Ranhola U/s 498A /304b /306 /34 IPC	In custody for over 3 years
5.	Rajesh Khanna FIR No. 481/2016 PS: Vikas Puri U/s 420, 468, 467,120	In custody for over 4 1/2 years
6.	Lakhan Pratap Singh	In custody for 2

	FIR No. 12/2019 PS Sultanpuri, U/s 498A ,304B ,34 IPC	years
7.	Atul Gupta FIR No. 111/16,112/116 113/16 U/s 420,406 ,409	In custody since August 2017
8.	Sunil FIR No. 66/2010 PS EOW U/s 409 ,420, 120 B IPC	In custody since 2014
9.	Daariyo Singh No. 66/2010 PS EOW U/s 409 ,420, 120 B IPC	In Custody since 2014. Trial abated due to death in the year 2019

20. Moreover, in some of the cases the UTP has already undergone maximum sentence in lessor offence. The petitioner herein also wants to crave the attention of the court as in FIR No. 66/2010, the co-accused Daariyo Singh died as an undertrial in 2019.

A copy of the Court orders in few of the above-mentioned matters is attached herein as **ANNEXURE P-10**.

21. Further the Undertrials are also not aware of the reason of their rejection for not considering their release within the mandate of S.436 A Cr.P.C and Court directives so as to further move their application of bail before the Court.

22. The Petitioner herein wants bring to notice of the Court that a large number of Undertrial prisoner can be released and such exercise is not being held properly because of COVID -19 situation. Which is more a permanent solution to decongest jail.

23. The Petitioner herein wants attention of this Hon'ble court for implementing the guidelines as directed by the Hon'ble Supreme court of India for the mandate of s. 436 A in its letter and spirit.
24. It is submitted that the Petitioner has filed the present petition on the following grounds *inter-alia* amongst others:

GROUND

- A. Because as per the mandate of the Direction by Hon'ble Supreme Court of India by order dated 24.04.2015, 05.02.2016 and 06.05.2016 non recommendation by UTRC for undertrial prisoner who have already undergone half the sentence in lessor offence is bad in law and arbitrary.
- B. Because non effective implementation of the directives provided by this Hon'ble Court has led to large population of undertrial prisoner without any remedy/recourse.
- C. Because non implementation of directives by the jail authorities in its letter and spirit infringes upon the rights of undertrial prisoner under S. 436 A.
- D. Because prisons in Delhi are overcrowded to twice its capacity and situation would further worsen if immediate implementation of the directives is not undertaken.
- E. Because more than 50% of the undertrial prisoners have already undergone incarceration from a period between 03 months to beyond 60 month still September 2020.
- F. Because non recommendation by UTRC does not mean that the undertrial cannot approach court for enforcing his right under S.

436 A when undertrial prisoner has already undergone half of the lesser sentence.

- G. Because pandemic due to COVID -19 is still continuing and implementing directives in terms of S. 436A and S.437(6) Cr.P.C would permanently solve problem of overcrowding of the jail.
- H. Because information provided to UTRC by the jail authorities is not correct and ambit of prisoners which falls under S. 436 A and S.437 (6) are in large numbers and as they are still languishing in jail they cannot be represented properly.
- I. Further the UTRC should consider offences triable by magistrate within the ambit of S. 29 Cr.P.C in terms of lower sentence undergone in maximum offences as incarceration by the undertrial.
- J. That Hon'ble Supreme Court have found in R.D. Upadhyay vs. State of AP and Ors. (1996) 3 SCC 422

*"So far as the cases regarding attempt to murder are concerned, we direct that the cases which are pending **for more than 2 years, the undertrials shall be released on bail forthwith to the satisfaction of the respective trial courts.** Persons facing trial for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting. Customs, under Section 326 IPC. under Section 324 IPC, **one year, shall be released on bail forthwith to the satisfaction of the trial courts concerned.** There may be cases where the undertrial persons may no be in a position to furnish sureties etc. In those cases, the trial courts may consider - keeping in view the facts of each case especially the period*

spent in jail - releasing them on bail by-furnishing personal bonds"

- K. Because the directives under *Moti Ram vs. State of M.P. (1978)* 4 SCC 47 and the directions dated 05.09.2014 issued in *Bhim Sing vs. Union of India and Others, [W.P.(Crl.) No.310 of 2005]* held that liberty is essence to article 21 and liberty should be interpreted liberally.
- L. Because even a single day delay in release of undertrial prisoners, who are entitled to that release as per Section 436A, will amount to serious violation of their right to life under Article 21 of the Constitution.
- M. Because non implementation of the mandate of S.436 A Cr.P.C is breach of Article 21 of the Undertrial and can only be cured by its implementation to its letter and sprits.
- N. Because the Supreme Court has opined that in a case of multiple offences, a review is conducted after half the sentence of the lesser offence is completed by the under-trial prisoner.
- O. Because it is not necessary or compulsory that an undertrial prisoner must remain in custody for at least half the period of his maximum sentence only because the trial has not been completed in time.
- P. Because majority prisoners who fall under the ambit of S. 436A and can be released on bail are those who are not covered under HPC COVID-19 interim guidelines as they are not represented before the UTRC and court.

- Q. Because the Review Committee does not take into consideration the offence which are triable by magistrate but constitute sentence of more than 7 years should be taken into consideration for their lesser alternative charges.
- R. Because the HPC has not taken into consideration that all undertrial on interim bail have to surrender before applying for the regular bail which with its all intent and purpose defeats the aim of decongestion of jails.
- S. Because as enshrined by plethora of Judgments encompassing the ethos enshrine by Justice Krishna Iyer in *State of Rajasthan, Jaipur vs Balchand*(1977) 4 SCC 308 that the basic rule of our criminal justice system is bail, not jail.
- T. Because as Hon'ble Supreme Courts in Criminal Appeal No. 742 of 2020(Arising out of SLP (Crl) No. 5598 of 2020)*Arnab Manoranjan Goswami Versus The State of Maharashtra & Ors*observed “*The remedy of bail is the solemn expression of the humaneness of the justice system*”
25. That the Petitioner craves the leave of this Hon'ble Court to add, alter, amend, delete and modify the above grounds at the time of hearing.
26. That the Petitioner has not moved any other application, petition before this Hon'ble Court or before any other court of law or before the Hon'ble Supreme Court of India for the relief as prayed in the present petition.

PRAYER

In view of the aforesaid facts and circumstances it is most respectfully prayed that this Hon'ble Court may be pleased to:

- a) Issue an appropriate writ, order and/or direction in the nature of 'Mandamus' thereby directing the release of those under trial prisoners who are facing trial under and have spent half of their maximum sentence in lower offences;
- b) Issue an appropriate writ, order and/or direction in the nature of 'Mandamus' thereby directing the Undertrial Review Committee and Jail Superintendent to verify the undertrial prisoners facing trial under multiple charges but have undergone sentence in lesser charge to be put in the category of prisoners to be released on bail;
- c) Issue an appropriate writ, order and/or direction in the nature of 'Mandamus' thereby directing the Undertrial Review Committee, Jail authorities to provide fresh status of under trial prisoners on weekly basis who have undergone sentence in lesser charge to be put in the category of prisoners who can be considered to be released on bail within a week from time they are eligible in this category;
- d) Issue an appropriate writ, order and/or direction in the nature of 'Mandamus' thereby directing the DLSA to provide statistical information of under trial prisoners in lesser charge on their website and where bail is applied through DLSA and its disposal rate.

- e) Issue an appropriate writ, order and/or direction in the nature of 'Mandamus' thereby directing the release of Undertrial who have undergone custody of 3 years or more where trial is conducted by a magistrate.
- f) Allow undertrial prisoner who have completed half of lessor sentence in multiple offence to avail the benefits of S.436 A and approach concerned courts for bail directly.
- g) Pass such other or further order/orders as this Hon'ble Court may deem fit in the larger interest of justice.

FILED BY

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