

OFFICE OF STATE LEGAL SERVICES AUTHORITY,
WEST BENGAL

High Powered Committee: Meeting dated 27.3.2020 held at the Chamber of Hon'ble Justice Dipankar Datta, Judge, High Court at Calcutta and Hon'ble Executive Chairman, State Legal Services Authority, West Bengal.

Hon'ble Supreme Court vide order dated 23.03.2020 in **Suo Moto Writ Petition (C) No. 1/2020, In Re: Contagion of COVID 19 Virus in Prisons**, has constituted a High Powered Committee comprising of (i) Chairman of State Legal Services Authority; (ii) The Principal Secretary (Home/Prison); and (iii) Director General of Prison, to determine which class of inmates can be released on parole or on interim bail for such period as may be thought appropriate.

Hon'ble Supreme Court has directed that States/Union Territories could consider the release of the inmates: regarding under-trials the offences for which prescribed punishment is up to 7 years and regarding convicts where the convict has been convicted up to 7 years of imprisonment, though prescribed maximum punishment may be more. Hon'ble Supreme Court has also directed that while deciding the issue relating to release of the under-trials and convicts, the Committee would honour the parameters given in para no. 11 of the judgment in Criminal Appeal No. 1277 of 2014 (Arnesh Kumar vs. State of Bihar).

Keeping in mind the above direction of the Hon'ble Supreme Court, an Hon'ble Division Bench of the High Court at Calcutta cor: Hon'ble the Chief Justice T. B. Radhakrishnan and Justice Arijit Banerjee in W.P. 8573 (W) of 2018 with W.P. 7252 (W) of 2018 with W.P. 4510 (W) of 2018 has directed that the release of eligible inmates be decided on case to case basis by the Committee. Hon'ble High Court directed the constitution of a Committee by the State Government, with due involvement of the Legal Services Authority. Hon'ble High Court has been pleased to order that the Executive Chairman of WBSLSA, who is a member of the Committee, may nominate the Member Secretary or any other officer of the State Legal Services Authority to represent the Chairman in any meeting of the Committee.

The order mandates that the committee will consider all precautionary measures within the correctional homes apart from taking adequate steps to enable release of eligible convicts and under trial inmates.

The above referred twin directions are in close harmony in so far as over crowding of prisons causing potential danger and exposing the inmates to the risk of infection with the deadly CONVID 19 Virus and welfare of inmates per se is concerned. Thus, this committee shall strive to comply both directions by inculcating all perspectives of the issue of welfare of prison inmates.

Meeting is chaired by Hon'ble Executive Chairman, State Legal Services Authority, West Bengal Justice Dipankar Datta.

The Secretary, Department of Correctional Administration has sought exemption from attending the meeting. The Joint Secretary Mr. Adip Kumar Roy represents the Department. Mr. Peeyush Pandey, Additional Director General and Inspector General of Correctional Services, West Bengal is present in the meeting.

Registrar General of the High Court at Calcutta Smt. Rai Chattopadhyay is present in the meeting. Member Secretary, State Legal Services Authority Smt. Durga Khaitan is present.

(1) First, the issue of release of Under Trial inmates and Convicts on interim bail and parole, respectively, is taken up.

The Joint Secretary, Department of Correctional Services, Government of West Bengal Mr. Adip Kumar Roy and ADG & IG of Correctional Services, West Bengal have furnished information regarding number of under-trials and convicts as requested.

Their reports are considered by the committee.

As per the above directions of the Hon'ble Supreme Court and Hon'ble High Court at Calcutta and guidelines laid down by the Hon'ble Apex Court, vide judgment dated 02.07.2014, in Arnesh Kumar (supra), it is appropriate that the proposed parameters are adopted and the benefit of the above judgment may be offered to the convicts/under-trials in other offences except the following :-

- i. Cases relating to Protection of Children from Sexual Offences Act;
- ii. Crimes relating to sexual offences committed against the women;
- iii. Offences relating to rioting and waiging war against the State;
- iv. Crimes relating to counterfeit currency;
- v. Crimes against children relating to kidnapping;
- vi. Crimes relating to anti corruption matters;
- vii. Crimes relating to commercial and economic offences;

- viii. Crimes relating to Gangsters Act;
- ix. Crimes under NDPS Act relating to the recovery of commercial quantity and less than commercial quantity but more than small quantity.

In addition to the above list the Committee proposes that- (a) convicts and UTPs under Foreigners Act may not be considered for release at this stage and (b) convicts and UTPs having residence out side the State of West Bengal may not be considered for release at this stage.

Considering the object for which the order has been passed by the Hon'ble Supreme Court and existing social health conditions relating to Corona Virus (COVID-19) in West Bengal, it is proposed that term of interim bail/parole may be for three months for the present unless any contrary order is made/passed by the appropriate authority in any particular case of a convict/under trial inmates.

The Joint Secretary, Department of Correctional Administration, Government of West Bengal and ADG & IG of Correctional Services, West Bengal have agreed to the above proposal.

In compliance with the directions issued by the Hon'ble Supreme Court, the information regarding number of under-trials and convicts had been sought from the Secretary, Department of Correctional Services and ADG & IG of Correctional Services, West Bengal.

They have provided the list to the State Legal Services Authority, West Bengal

After due deliberation and on consideration of all parameters, the Committee has prepared a proposed list of under trial inmates who may be released on interim bail (**Annexure-B**) and another list of convicts who can be released on parole (**Annexure-A**)

The Committee recommends that considering the present health hazards it will not be appropriate to recommend release of those home inmates suffering from cold, cough, fever, HIV etc as of now.

However, they may be considered for interim bail/parole as per order of Hon'ble Apex Court in future when their health conditions improve.

At the time of release, the medical condition of each and every inmate shall be checked by the Correctional Home Administration and such of those who are medically fit shall be released.

The State Legal Services Authority, West Bengal will work out the modalities for implementation of the Hon'ble Supreme Court's judgment and proceed with the same after due approval of the Executive Chairman..

In view of the Government Order dated 24.03.2020 relating to complete lockdown, some states enquired with National Legal Services Authority as to whether the implementation of the order dated 23.03.2020 may be made after the lockdown period of 21 days. The authorities of National Legal Services Authority informed that directions given in the order dated 23.03.2020 have to be complied with without any compromise with the direction of Government of India given in the order dated 24.03.2020. It was also informed by the National Legal Services Authority that implementation of directions given in the order of the Hon'ble Supreme Court dated 23.03.2020 cannot be deferred.

However, the guidelines and advisories of the Government regarding complete lockdown shall also have to be complied with in letter and spirit.

Advisory given by National Legal Services Authority dated 24.03.2020 regarding the order dated 23.03.2020 passed by the Hon'ble Supreme Court says that:-

“Keeping in view the overarching idea of social distancing, the members of the Committees may have to devise ways to perform the weekly meetings without visiting prisons frequently, at least for the 21 days. It may be noted here that order by the Supreme Court was passed on 23rd March, and the Home Ministry’s order, which seems to have been passed under Disaster Managements Act, was passed on 24th March. I think that the order dated 24th also has to be followed in letter and spirit. So the things are to be worked out keeping in view both the orders which predominantly intend to apply the principle of social distancing, the only way to contain spread of virus. Thus, visits to the prisons in person may be avoided and instead video conferencing, wherever required, or data through emails, telephone etc. may be transmitted and used for achieving the intended results.”

In the light of the above discussions, the following recommendations are being made by the Committee:-

- A) The 1017 convicts and 2059 undertrial inmates, as mentioned in Annexure-A and Annexure-B are proposed to be released on parole or interim bail, as the case may be, for a period of three months unless any contrary order is made/passing by the appropriate authority in any particular case of a convict/under trial inmate.

- B) The parole and interim bail applications, as the case may be, may be moved through correctional home authorities with the help of District Legal Services Authorities before the Courts concerned. The applications may be filed by any Para Legal Volunteer or panel advocate as assigned by DLSA.
- C) At the time of release, the medical condition of each and every inmate shall be checked by the Correctional Home Administration and such of those who are medically fit shall be released.
- D) Interim bail may be granted on the following conditions:-
- (i) that the under-trial shall furnish his complete current address in the Personal bond and to the Correctional Home authority;
 - (ii) that the under-trial shall not leave the address so provided during the period of interim bail;
 - (iii) that the under-trial shall surrender before the Court on expiry of the period of interim bail;
 - (iv) that the under-trial shall, on surrender, will have the liberty to move appropriate application before the Court on expiry of the period of interim bail;
 - (v) that the under-trial shall be accessible to the Officer in Charge of the local police station at all times during this period;
- E) The concerned Courts may be directed to release such undertrial inmates on personal bond as they may have difficulty in furnishing sureties.
- F) The Secretary, Department of Correctional Administration, Government of West Bengal may be directed to issue directions to the concerned authorities to release the convicts on parole for three months. All the applications received by the competent authority may be decided within

seven days and order shall be conveyed to the Correctional Home Authorities.

- G) District Magistrates and Superintendents of Police may make the arrangements for transmission of such inmates on their release from correctional home to their home. The District Magistrates and Superintendents of Police may also be directed to ensure that policies and guidelines of the Government regarding complete lock down shall not be violated during the process of transmission and the policy of social distancing is complied with in true spirit.
- H) The Chief Medical Officer of the concerned district may be asked to ensure proper health check-ups of such inmates/under-trials before their release on parole or interim bail.
- I) The Under Trial Review Committee at the District Level shall meet every week and take such decision in consultation with the concerned Authority as per the judgment in Re: Inhuman Conditions in 1382 Prisons (2016) 3 SCC 700.
- J) The Officer in Charge of local Police Station or any officer assigned by him, shall pay periodical surprise visit to the convicts and under-trial during the period of interim bail on parole, as the case may be. If any such under trial or convict on interim bail or parole as the case may be is found absent appropriate action in accordance with law shall be taken.
- (2) **So far as direction of Hon'ble High Court as regards, "the committee will consider all precautionary measures within the correctional homes apart from taking adequate steps to enable release of eligible convicts and under trial inmates"** is concerned, the committee directs the ADG & IG of Correctional Services to ensure proper health and hygiene conditions inside prisons as per standard

protocol as laid down by WHO and also in the relevant guidelines set by the Health Ministry of the Government of India as well as the Government of West Bengal and submit fortnightly compliance report to the SLSA.

- (3) The Member Secretary, SLSA/ Secretary, DLSA shall draft the interim bail application and standard personal bond proforma and send the same to the Panel Advocates /PLVs for necessary action.
- (4) State may issue necessary instructions to the prosecutors in this regard.
- (5) The District Judges may ensure special sitting of remand Magistrates to dispose of all applications for interim bail as regards the UTPs mentioned in the list annexed latest by seven days of this day and report compliance to SLSA by email positively by 03.04.2020.

Review on 06.04.2020

Prepared under direction of the Hon'ble Executive Chairman, State Legal Services Authority, West Bengal.

Dated: 27th March, 2020

Sd./-
(Durga Khaitan)
Member Secretary
State Legal Services Authority
West Bengal