

High Powered Committee: Meeting dated 06.07.2020 held at the Chamber of Hon'ble Justice Sanjib Banerjee, Judge, High Court at Calcutta and 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 whether extension of period of Parole/interim bail already granted is required, if yes, for what period and for determining other appropriate steps as may be thought necessary.

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: 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 being 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 COVID 19 Virus and welfare of inmates per se is concerned, the Committee resolved in its first meeting on 27.03.2020 to comply with both the directions by inculcating all perspectives of the issue of welfare of prison inmates. Further recommendations were made by this committee on its 2nd and 3rd meeting on 06.04.2020 and 27.04.2020 respectively. This day has been fixed for review and also for making fresh recommendations, if any.

Today's meeting is chaired by Hon'ble Executive Chairman, State Legal Services Authority, West Bengal Hon'ble Justice Sanjib Banerjee.

The Secretary, Department of Correctional Administration, Ms. Neelam Meena is present. Mr. Peeyush Pandey, Additional Director General and Inspector General of Correctional Services, West Bengal is present in the meeting.

Member Secretary, State Legal Services Authority Ms. Durga Khaitan is present.

The issue of release of Under Trial inmates and Convicts on interim bail and parole, respectively, is taken up.

At its first meeting dated 27.03.2020, the High Powered Committee, approved the proposed list of 2059 under trial inmates who could be released on interim bail and another list of 1017 convicts who could be released on parole as submitted by the ADG & IG of Correctional Services, West Bengal on the premise that, primarily, it was State's prerogative to take administrative decisions as regards who among the inmates may be released on

interim bail or parole as the case may be. Such prerogative of State is, of course, subject to judicial discretion which ought to be exercised by Courts hearing interim bail petitions.

The Secretary, Department of Correctional Services, Government of West Bengal Ms. Neelam Meena and ADG & IG of Correctional Services, West Bengal had furnished information at the second meeting of the High Powered Committee on 06.04.2020 that 252 number of convicts were released on parole till 05.04.2020 in view of the resolution of the first meeting dated 27.03.2020 as requested. As per reports submitted by ADG & IG of Correctional Services 1226 under-trial inmates were released on interim bail till 05.04.2020 and prayer for interim bail has been rejected in respect of 713 under-trial inmates.

At its second meeting dated 06.04.2020, the High Powered Committee, approved the proposed list of 39 under trial inmates who could be released on interim bail and another list of 787 convicts who could be released on parole as submitted by the ADG & IG of Correctional Services, West Bengal. As per reports submitted by ADG & IG of Correctional Services 1682 under-trial inmates were released on interim bail and 726 convicts have been released on parole till 26.04.2020.

At its third meeting dated 27.04.2020, the High Powered Committee, approved the proposed list of 2616 under trial inmates who could be released on interim bail and another list of 48 convicts who could be released on parole as submitted by the ADG & IG of Correctional Services, West Bengal. As per report submitted by ADG & IG of Correctional Services vide letter no. 336/ADG-IG/20 dated 26.06.2020, there were 2029 under-trial inmates on interim bail for 3 months and 730 convicts on interim parole for 3 months as on 26.06.2020.

Both the Secretary, Department of Correctional Services, Government of West Bengal and ADG & IG of Correctional Services, West Bengal were requested to take into consideration the current Covid-19 situation vis-à-vis prison population in submitting further recommendations for today's meeting of the High Powered Committee.

The Office of the ADG & IG, Correctional Services received a joint petition from UTP V. Venkateswara Reddy and 12 other prisoners of Presidency Correctional Home claiming themselves as political prisoners with following prayer/s :-

- 1) Interim bail and parole for all the old aged and sick inmates including political prisoners.
- 2) Releasing half of the inmates from West Bengal Jails.
- 3) Exclusion of political prisoners from the process of release is discriminatory so the same may be withdrawn and political prisoners should also be released.

In response above letter the ADG & IG, Correctional Services has responded (vide No-289/ADG-IG/20 dated 12.6.2020) that :-

I) It has been clearly mentioned in the resolution of High Powered Committee that only medically fit prisoners shall be released. Hence, the prayer for release of sick inmates may not stand at this stage.

The release of old-aged prisoners has been considered by the High Powered Committee on scrutiny of individual cases and keeping in mind the restrictions.

II) The total prison population has decreased due to continuous process of release by High Powered Committee.

III) The Hon'ble Supreme Court of India in Suo Moto Writ Petition 1 of 2020 has made it clear that determination of the category of inmates who should be released depending upon the nature of offence etc. is to be done by the High Powered Committee taking into account the directions contained in para No.11 in Arnesh Kumar -vs- State of Bihar, (2014)8 SCC 273. The restrictions include the offence relating to 'waging war against the State' and stated political prisoners are charged with 'waging war against the State'.

As per report submitted by ADG & IG of Correctional Services vide letter no. 336/ADG-IG/20 dated 26.06.2020 the Complete Safety Restriction' has been extended upto 31st July, 2020. It has been further submitted that the prisoners shifting from one

Correctional Home to another has been undertaken and additional capacity has been built up by using underutilized building, other facilities and new annexes to manage the overcrowding. As the new admission of prisoners to Correctional Homes increases risks for infection to certain extent, the ADG & IG has submitted that further entry of prisoners by withdrawal of interim bail orders and on completion of parole period will increase the prison population that was decreased due to the initiative of the High Powered Committee.

On query by the Hon'ble Executive Chairman, State Legal Services Authority, West Bengal about the current position of Correctional Homes as regard COVID-19 virus positive patients the ADG & IG, Correctional Services, Govt. of West Bengal produced the following statement.

Statistical inputs on COVID-19 infections towards staff and inmates of Correctional Homes of West Bengal						
As on 06 July, 2020						
Prisoners :						
Correctional Home	Infected					
	Total	Active			Cured	Released from Custody
		Symptomatic	Asymptomatic	Total		
Siliguri Spl. CH	1				1	
Baruipur C CH	18	2	13	15	1	2
Alipore W CH	4		3	3		1
Total cases	23	2	16	18	2	3

Officers and Staff :					
Correctional Home	Infected				
	Total	Active			Cured
		Symptomatic	Asymptomatic	Total	
Basirhat S CH	5	3		3	2
Ranaghat S CH	1	1		1	

Dum Dum C CH	1				1
Baruipur C CH	7		1	1	6
Presidency CH	1				1
Ulubera S CH	1				1
Alipore W CH	1		1	1	
Total cases	17	4	2	6	11

Note -

All Symptomatic cases (4) in Hospital
03 Staff are OK. 01 Staff is at the ICCU.

On consideration of above statement, the Principal Secretary, Correctional Services and the ADG & IG, Correctional Services, Govt. of West Bengal are requested to take adequate safety measure to prevent spread of COVID-19 virus in these Correctional Homes as per the guideline and to ensure proper treatment for infected inmates and officials.

The ADG & IG, Correctional Services, Govt. of West Bengal submits a 21 pages detail report (with photographs) (Annexure – I) on initiatives by the Correctional Homes, West Bengal in the wake of COVID-19.

All the reports are considered by the committee.

At the first and second meetings dated 27.03.2020 and 06.04.2020, respectively, it was decided that the 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 inmate and as the first recommendation was on 27.3.2020 a period of 3 months from date of release on parole/interim bail is about to expire soon. The ADG & IG of Correctional Services, West Bengal has informed that the prison population is still much above 100% capacity which is, of course, unsafe in view of spread of Corona Virus.

For this reason the ADG & IG of Correctional Services has proposed that the period of parole/interim bail may be extended for at least another two months/60 days as the case may be.

The recommendation of the Committee dated 27.03.2020, 06.04.2020 & 27.04.2020 regarding release of inmates suffering from cold, cough, fever, HIV etc remains unaltered.

It is made abundantly clear that the recommendations of this committee shall be seen by the relevant authority as a 'recommendation' and not as a 'command' and each case may be decided on its own merit but in the light of the recommendation as made hereunder.

In the light of the above discussions and the reports submitted by the ADG & IG of Correctional Services, the following recommendations are being made by the Committee:-

- A) The period of parole of convicts be extended for a further period of 2 months provided they are found eligible/fit for parole upon examination by the Secretary, Correctional Administration and ADG & IG of Correctional Services on a case to case basis.
- B) Such extension of period of parole/Interim Bail may be applicable to prisoners released as per recommendation of this Committee dated 27.03.2020 and 06.04.2020 and not to those released on the basis of recommendation dated 27.04.2020.
- C) So far as the joint petition of 13 Correctional Home inmates is concerned the response/proposal of ADG & IG of Correctional Services, West Bengal is found to be in harmony with directions of Hon'ble Supreme Court of India in Suo Moto Writ Petition 1 of 2020 and the decisions of the High Powered Committee, therefore the response of ADG & IG of Correctional Services, West Bengal(vide No-289/ADG-IG/20 dated 12.6.2020) is approved by this Committee.
- D) For the under-trial inmates who have been released on interim bail in pursuance of the recommendation of this Committee the interim bail may be extended by the concerned Court for a further period of 2 months if the concerned under-trial inmate

has not violated any condition and his continuance on interim bail is not prejudicial to the interest of investigation. Concerned Courts may consider the extension of interim bail applications of these inmates and if interim bail is extended, to permit them to continue on the same bond.

- E) The application for extension of interim bail, 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.
- F) Interim bail be extended subject to the conditions enumerated in the minutes of the first meeting dated 27.03.2020.
- G) The Secretary, Department of Correctional Administration, Government of West Bengal may be directed to issue directions to the concerned authorities to extend the interim parole of those convicts as may be determined by the ADG & IG of Correctional Services on case to case basis.
- H) The Under Trial Review Committee at the District Level shall continue to 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.
- I) 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 extended 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.

The Ld. District Judges are requested to ensure special sitting of remand Magistrates to dispose of all applications for extension of interim bail as regards the UTPs mentioned in the recommendations.

Review meet to be scheduled as per requirement.

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

Dated : 6th July, 2020

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