

High Powered Committee: Meeting dated 29.09.2020 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, 3rd and 4th meeting on 06.04.2020, 27.04.2020 and 06.07.2020 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 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.

At its fourth meeting on 06.07.2020, the period of parole of convicts was extended for a further period of 2 months provided they were found eligible/fit for parole upon examination by the Secretary, Correctional Administration and ADG & IG of Correctional Services on a case to case basis. Such extension of period of parole/Interim Bail was 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.

By virtue of letter no. 808/CC-57/2020 dated 14.09.2020 of the ADG & IG of Correctional Services, West Bengal addressed to the Member Secretary, State Legal Services Authority, West Bengal, the ADG & IG of Correctional Services, West Bengal informed about the order dated 08.09.2020 of the Hon'ble High Court, Calcutta in connection with the W.P. no. 8573(W) of 2018, wherein the Hon'ble High Court, Calcutta has passed the following order :-

"With consent of learned Counsel appearing for the parties, we reschedule this matter to be taken up on 15th September, 2020 since learned Counsel who

is actively preparing and assisting learned Advocate General on behalf of the State Government, is unwell as of now.

Further learned Amicus Curiae submits that certain prisoners who were granted parole for five months, are due to return back to the Correctional Homes by the 15th of this month. He submits that in view of the current Covid situation, it may be advised that the parole period of these prisoners are further enlarged.

Learned Advocate General will, therefore, appropriately advise the jail and the Government authorities concerned on this issue and also to sympathetically consider extending the parole period which may expire shortly. This may be done on whatever condition as to the attendance at some other place to keep a follow up on the prisoners on parole.”

By virtue of order dated 18.09.2020 passed in WPA 8573 of 2018 the Hon'ble Division Bench, High Court, Calcutta held that,

“Secondly, on the issue regarding the extension of the period of parole, the Supreme Court has constituted a High Powered Committee which is being presided by the senior most puisne Judge of this Court. A written request has been made to the Chairman of that Committee to consider this issue and if required to extend the period of parole. That Committee is looking into the matter.”

By virtue of memo no. 3430-RG dated 14.09.2020, the Registrar General, High Court at Calcutta forwarded the letter of Mr. Raghunath Chakraborty dated 14.09.2020 in connection with WP 8573(W) of 2020. Mr. Chakraborty has pointed out that as many as 174 inmates and 91 prison staffs were reportedly infected with Covid-19 as on 21.08.2020 and at least 2 inmates (one in Suri & another in Hooghly District Correctional Home) had died of Covid-19. He has further submitted that there are 24,000 inmates surpassing the capacity of 21,000 in 60 Correctional Homes is precarious during the pandemic. The period of parole/interim bail may also be extended for further 2-3 months. Mr. Chakraborty has suggested that eligible inmates, having their homes in other states can also be released now. The terminally ill prisoners need to be released on humanitarian grounds and proper arrangement for their treatment is required to be ensured. Mr. Chakraborty has further emphasized on proper functioning of the Under Trial Review Committees in the districts.

In view of letter no. 487/ADG-IG/20 dated 28.09.2020 of ADG & IG, Correctional Services, West Bengal this Authority received the following inputs to be placed before the High Powered Committee on 29.09.2020 for consideration :-

- There are 25,530 prisoners in Correctional Homes throughout the State including 197 Children and 799 released inmates awaiting deportation to their native country.
- A good number of UTPs and Convicts were released on interim bail and parole as per several recommendations of High Powered Committee.
- The preliminary parole period of three months were also extended by two months in respect of certain categories of convicts in view of keeping the Correctional Homes decongested.
- The brief statistics in respect of parolee including those granted as per recommendations of High Powered Committee and by this office as special case :
 - Total convicts granted parole during this period : 1787
 - Convicts returned after availing parole : 652
 - Convicts expired during parole period : 05
 - Convicts jumped parole /escapes : 15
 - Convicts committed further crime on parole and recommitted : 06
 - Convicts who are still on parole : 1099
 - Parole not availed / withdrawn etc. : 10
- Parole in respect of 74 prisoners has been extended considering their present health condition and on apprehension of spreading infection in Correctional Homes. Since a part of Durgapur Open Correctional Home is adjacent to Durgapur Sub CH and both sharing a common entrance there is every possibility of spreading infection due to regular movement of prisoners in Open Correctional Home. Under the circumstances parole in respect of prisoners of Durgapur Open CH has been extended.
- Granting of parole only to a certain categories of prisoners and thereby further extension is generating grievances amongst the other convicts who were so far debarred from getting parole due to various reasons.

- Considering this aspect, this Directorate has granted parole to few other convicts as special case in phased manner apart from the parole granted on recommendations of High Powered Committee.

During the meeting dated 29.09.2020 the ADG & IG of Correctional Services, West Bengal submitted report on current Covid situation of Correctional Homes and informed that total Covid positive cases inside the Correctional Homes till date were 430 of which 328 are cured, 64 were released on different recommendations, 35 are still positive. Out of 35 Covid positive inmates 32 are asymptomatic and 3 are symptomatic. The ADG & IG of Correctional Services informed that three persons have died with Covid infection, one each at Jalpaiguri Central Correctional Home, Suri District Correctional Home and Hooghly District Correctional Home and that each of the deceased had comorbidity. The ADG & IG of Correctional Services informed that they are providing proper treatment and care to the infected inmates.

All the reports and submissions 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 was about to expire, therefore on 06.7.2020 it was extended for a further period of 2 months.

The recommendation of the Committee dated 27.03.2020, 06.04.2020, 27.04.2020 & 06.07.2020 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) So far as question of extension of period of parole is concerned ADG & IG, Correctional Services, West Bengal in his letter no. 487/ADG-IG/20 dated 28.09.2020 expressed that out of the convicts released on parole, on recommendation of High Powered Committee, 15 convicts have jumped parole, 6 have been re-committed to prison on charge of committing further offences. It is stated that extension of period of parole is generating grievances amongst the convicts lodged in correctional home who were debarred from getting parole due to various reasons. The Committee recommends that the State authority must take care that there is no such situation which may lead to a simmering discontent in the inmates as it is necessary for the authority to create congenial circumstances for maintaining order inside Correctional Homes.
- B) ADG & IG, Correctional Services, West Bengal submits that they are not proposing any general extension of period of parole. Therefore, no such general recommendation for extension is made by the committee. However, the period of parole of convicts may be extended by the authority sympathetically on a case to case basis provided they are found eligible/fit for such extension upon examination by the Secretary, Correctional Administration and ADG & IG of Correctional Services.
- C) As the Authority, Correctional Services, West Bengal has not recommended release of any more Correctional Home inmates and admittedly there is paucity of space the committee strongly feels and recommends that the State ought to create more space to accommodate the convicts.
- D) For the under trial prisoners a list of all UTPs, with all particulars, may be submitted by ADG & IG, Correctional Services, West Bengal in the next meeting of the committee for deliberation on steps to be taken for reducing the UTP population inside Correctional Homes.
- E) Mr. Raghunath Chakraborty in his letter dated 14.09.2020 emphasized on proper functioning of the Under Trial Review Committees in the districts. It has already been resolved by this committee in it's last meeting that 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.

- F) So far as suggestion of Mr. Chakraborty for release of eligible inmates, having their homes in other states is concerned, the committee has already dealt with this issue in it's first meeting vide recommendation dated 27.03.2020.
- G) 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 on a case to case basis 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 or trial. If interim bail is extended, concerned Courts may permit them to continue on the same bond.
- H) The application for extension of interim bail, as the case may be, may be moved with the help of District Legal Services Authorities before the Courts concerned.
- 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.
- J) As some inmates are found to be infected with Covid 19 the Correctional Service Authority is requested to ensure proper segregation, treatment and regular health check-ups of such inmates/under-trials. Correctional Service Authority must arrange for frequent random Covid testing of inmates.
- K) The Ld. District Judges are requested to ensure special sitting of remand Magistrates to dispose of applications for bail expeditiously.
- L) Hon'ble Justice Sanjib Banerjee, Judge, High Court at Calcutta and Executive Chairman, State Legal Services Authority, West Bengal inspected various Correctional Homes including Dum-Dum Central Correctional Home , Alipur

Women's Correctional Home, Bishnupur Sub-Divisional Correctional Home and virtually inspected Bankura District Correctional Home for personally checking on the well-being of inmates and observations arising out of these visits of Lordship have been sent to the Authority for taking necessary steps.

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 : 29th September, 2020

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