

**High Powered Committee: Meeting dated 27.04.2020 held at the Chamber of Hon'ble Justice Sanjib Banerjee, Judge, High Court at Calcutta and Officiating 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 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 and this day has been fixed for review and also for making fresh recommendations.

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 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 (Annexure-B) and another list of 1017 convicts who could be released on parole (Annexure-A) 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 (Annexure- III, IV & V) and another list of 787 convicts who could be released on parole (Annexure- I & II) 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.

Both the Secretary, Department of Correctional Services, Government of West Bengal and ADG & IG of Correctional Services, West Bengal were requested to study each case and take utmost care in submitting further recommendations for today's meeting of the High Powered Committee.

The reports are considered by the committee.

Primarily, the categories of convicts and under-trial inmates who cannot be considered for parole/ interim bail will remain the same as enumerated in the minutes of the first meeting dated 27.03.2020 subject to following modifications:-

1. The ADG & IG of Correctional Services, West Bengal has informed vide letter no 119/ADG & IG dated 20.04.2020 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 accused charged with offences punishable for a period upto 10 years may be considered for release on interim bail. According to the ADG & IG of Correctional Services these cases have been proposed because, the number of inmates released so far from Correctional Home custody in view of outbreak of Novel Corona Virus has resulted only in a marginal improvement of the Correctional Home population from 133% capacity (as on 23.03.2020) to 127% capacity (as on 17.04.2020). In view of such high prison population such proposal of the ADG & IG of Correctional Services, West Bengal is accepted.

2. On the same premise of over population of prisons, the ADG & IG of Correctional Services, West Bengal has proposed vide communication dated 21.4.2020 that accused having multiple cases pending alleging offences punishable for a period upto 7 years may be considered for release on interim bail. However, on a careful consideration of the proposal and the fact that the list submitted by the ADG & IG of Correctional Services does not specify the number of cases pending against each of the accused named in the list, the committee recommends that accused having not more than two cases pending alleging offences punishable for a period upto 7 years may be considered for release on interim bail.

3. The list of 222 under-trial inmates submitted by the ADG & IG of Correctional Services, West Bengal vide letter no 87/ADG & IG dated 13.04.2020 detained i.c.w. offences u/s 498A and other sections is approved only in respect of 12 inmates only. For rest accused the other offences alleged are punishable with higher punishment like section 304B or section 306 IPC those are kept out of the purview of the recommendation.

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 inmates and the same will apply in respect of today's recommendations.

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

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 following applications were received by the High Powered Committee via email and were sent to the Secretary, Department of Correctional and the ADG & IG, Correctional Services for their response and the ADG & IG, Correctional Services has submitted the following responses:

	<b>Date of e-mail and Name of the sender</b>	<b>Nature of Prayer</b>	<b>Response</b>
1.	27.03.2020 Raghunath Chakraborty Appearing in WP 8573 (W) of 2018 for the <i>Intervenor</i> , Association for Protection of Democratic Rights (APDR)	Submitted a List of 459 <b>Life Convicts</b> lodged in West Bengal Jails for far more than fourteen years with an appeal to consider their premature release or at least granting them parole for 45 days-two months or more considering their age and infirmity and the severity of the present situation.	By virtue of Letter no. 067/ADG-IG/20 dated 09.04.2020 the response to the prayer of Shri Raghunath Chakraborty has been submitted wherein it has been stated that prayer for their premature release have been considered by the State Sentence Review Board (SSRB) for at least one occasion. An updated

			list of 742 convicts was placed before the High Powered Committee in its meeting dated 06.04.2020 and parole prayer in respect of life convicts would be considered case to case basis keeping in view all parameters.
2.	30.03.2020 Dr. Partho Sarothi Ray Prodip Chatterjee (On behalf of Persecuted Prisoners Solidarity Committee- PPSC) 120 Raja S. C. Mullick Road, Kolkata-700047 Mobile No- 9874703899 Email- <a href="mailto:psray40@yahoo.com">psray40@yahoo.com</a>	Prayer for considering the release of political prisoners suffering long term imprisonment in the different Correctional Homes either as Under trial prisoners (UTPs) or as convicts. Some of them have been incarcerated for more than ten years and have become old and critically sick, probable high risk candidates for the virus attack.  The petitioners named a few of them like Mr. Akhil Chandra Ghosh, Mr. Sukumar Mondal, Mr. Sambhu Charan Paul, Mr. Asim Bhattacharya, Mr. Anup	By virtue of Letter no. 053/ADG-IG/20 dated 06.04.2020 the response to the prayer of Dr. Partho Sarothi Ray. According to the ADG & IG <b>they cannot be released</b> as 9 prisoners are alleged with the offences in the restricted category and 4 prisoners are residents of Jharkhand.

		<p>Roy, Mr. Sadula Ramakrishna, Mr. Mohan Viswakarma, Mrs. Paro Patel, Mrs. Kalpana Maity and many others who are all senior citizens and/or suffering from chronic diseases.</p> <p>The petitioners have prayed for release of 4 adivasi prisoners, namely Rajaram Besra, Narayan Mahato, Ananda Singh and Bhaktu Singh, presently lodged at Dumdum Central Correctional Home are serving life sentence for 16 years, and residents of a Jharkhand part village of Purulia- Jharkhand border.</p>	
--	--	--	--

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.

Hon'ble Officiating Executive Chairman enquired with the ADG & IG of Correctional Services about how far sanitization and hygiene is maintained in the Correctional Homes.

The ADG & IG of Correctional Services informed that:-

- (a) Quarantine wards are created in every Correctional Home. Every new inmate is housed in such ward for 14 days before being shifted to the Correctional Home.
- (b) Markers are put on floor to ensure social distancing during distribution of food inside Correctional Homes.
- (c) Norms of social distancing are followed for visitors.
- (d) No case of any corona virus infection has been reported in the State till date.
- (e) Correctional Home inmates are making masks and have already given 40,000 masks to police and 25,000 masks to prison officers, staffs and inmates.

Hon'ble Officiating Executive Chairman Hon'ble Justice Sanjib Banerjee informed the Secretary, Department of Correctional Administration and the ADG & IG of Correctional Services that he will visit at least two Correctional Homes on 29.04.2020 to personally oversee the arrangements made by Correctional Services to prevent spread of the pandemic.

The Member Secretary, State Legal Services Authority, West Bengal shall accompany.

**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 proposed list of 48 convicts (**Annexure-I**) as submitted by the ADG & IG of Correctional Services by letter no. 124/ADG & IG dated 20.04.2020 for consideration for parole for a period of 3 months to the convicts who have been sentenced upto 7 (seven) years of imprisonment is hereby approved 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) The list of 269 under-trial inmates (**Annexure II**) in connection with single/multiple cases where the most grievous offence carries a punishment of not more than 7 years imprisonment is approved subject to the pendency of a maximum of two cases (as explained in Para-2 Supra) and the concerned Courts may consider the interim bail applications of such inmates and if interim bail is granted, to release them on personal bond as they might have difficulty in furnishing registered or other sureties.
- C) The list of 222 under-trial inmates submitted vide letter no 87/ADG & IG dated 13.04.2020 detained i.c.w. offences u/s 498A and other sections (**Annexure III**) is hereby approved in respect of the following serial nos. only (As explained in Para-3 Supra):
- Sl. No. 43 = 498A IPC
  - Sl. No. 73 = 498A/325/506 IPC
  - Sl. No. 167=498A/308 IPC
  - Sl. No. 168=498A/308 IPC
  - Sl. No. 169=498A/308 IPC
  - Sl. No. 170=498A/308/506 IPC
  - Sl. No. 171=498A/325/308 IPC
  - Sl. No. 175=498A/325/308/506
  - Sl. No. 177=498A/308 IPC
  - Sl. No. 178=498A/308 IPC
  - Sl. No. 194=468/420/120B IPC
  - Sl. No. 195=468/420/120B IPC ;

Concerned Courts may consider the interim bail applications of these inmates and if interim bail is granted, to release them on personal bond as they might have difficulty in furnishing registered or other sureties.

D) The ADG & IG of Correctional Services has submitted a list of 2125 UTPs (**Annexure IV**) vide letter no 119/ADG & IG dated 20.04.2020 who are in custody for a single offence (but punishment may be more than 7 years) and has stated that UTPs so recommended has a single case pending against them. Ld. Courts may consider interim bail applications on merits.

The proposal is approved only so far as it relates to offences punishable with imprisonment for not more than 10 years(As explained in Para-1 Supra). Concerned Courts may consider the interim bail applications of these inmates and if interim bail is granted, to release them on personal bond as they might have difficulty in furnishing registered or other sureties.

- E) The 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.
- F) At the time of release, the medical condition of each and every inmate shall be checked by the Correctional Home Administration and only those who are medically fit shall be released.
- G) Interim bail may be granted subject to the conditions enumerated in the minutes of the first meeting dated 27.03.2020.
- H) The Secretary, Department of Correctional Administration, Government of West Bengal may be directed to issue directions to the concerned authorities to release those convicts on parole as may be determined by the ADG & IG of Correctional Services on case to case basis.
- I) District Magistrates and Superintendents of Police to make appropriate arrangements as resolved in the first meeting dated 27.03.2020.
- J) 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.

- K) 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.
- L) 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.

The Legal Remembrancer, Government of West Bengal had been intimated for issuance of necessary instructions to the prosecutors in this regard and a copy of this resolution be communicated to his Office accordingly.

The Ld. District Judges are requested to ensure special sitting of remand Magistrates to dispose of all applications for interim bail as regards the UTPs mentioned in the recommendations latest by five days of this day and report compliance to SLSA by email positively by 04<sup>th</sup> May, 2020.

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 : 27<sup>th</sup> April, 2020

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