

**High Powered Committee: Meeting dated 17.12.2020 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 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup> and 5<sup>th</sup> meeting on 06.04.2020, 27.04.2020, 06.07.2020 and 29.09.2020 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.

At its fifth meeting dated 29.09.2020, the Committee recommended 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. 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. As the Correctional Services Authority, West Bengal did not recommend release of any more Correctional Home inmates and admittedly that there is paucity of space the Committee strongly felt and recommended that the State ought to create more space to accommodate the convicts.

By virtue of Letter No. 1164/CC-160/2020 dated 15.10.2020 the ADG & IG has informed that as on 14.10.2020 the number of inmates detained in Correctional Homes of West Bengal is 26657 (of which 20276 are Under Trial Inmates) while the registered capacity is 19053. In view of Covid-19 situation additional spaces were created in the Correctional Homes by renovating old/unutilized structures. Such action led to increase the capacity (as per norms) by 2059. In addition 735 cells (accommodating more than one inmate each) have been put into use to accommodate inmates.

By virtue of Letter No. 639/ADG-IG/20 dated 16.12.2020, the ADG & IG of Correctional Services, West Bengal has submitted the following report of the Prison Population in West Bengal:

A. Present Prison population :

Category	Male	Female	Third Gender	Total
Condemned	31	02	0	33
Convict	4603	316	0	4919
Under Trial Prisoner	18979	1221	12	20212
Released Inmates	197	74	0	271
Children	89	99	0	188
<b>Total =</b>	<b>23899</b>	<b>171212</b>		<b>25623</b>

B. Latest Status of Infection of COVID-19 in Correctional Homes :

Correctional Home Inmates :

No. of CHs Affected	Infected Cases							
	Active			Cured	Death	Released from custody	Escape	Total
	Symptomatic	Asymptomatic	Total					
<b>31</b>	<b>06</b>	<b>04</b>	<b>10</b>	<b>439</b>	<b>4</b>	<b>75</b>	<b>01</b>	<b>529</b>

Correctional Home Employees :

No. of CHs Affected	Infected Cases						
	Active			Cured	Death	Total	
	Symptomatic	Asymptomatic	Total				
<b>33</b>	<b>00</b>	<b>05</b>	<b>5</b>	<b>222</b>	<b>2</b>		<b>229</b>

C. Update release status for de-congestion of Correctional Homes :

Particulars	Male	Female	Total

No of prisoners released on interim Bail	2341	115	2456
No of prisoners released on interim Parole	2311	146	2457
No of prisoners Prematurely Released	20	02	22

By virtue of letter no. 616/ADG-IG/20 dated 07.12.2020 ADG & IG, Correctional Service, the order dated 04.12.2020 of the Hon'ble High Court, Calcutta in WPA 9966 of 2020 has been communicated to this Authority. The Hon'ble High court has held as follows:

*"It appears from the application for extension made by the petitioner that there are, apparently, sufficient reasons for extending the parole granted to the petitioner. Although the respondents are correct on principle in submitting that the respondents do not have the authority to extend the period of parole by overriding the decision of the High Powered Committee, such logic cannot be an impediment to a person at risk of suffering curtailment of his personal freedom, particularly in the circumstances in which the petitioner is dwelling, having recourse to remedies before a Court of law.*

*As such, although the respondents do not have the authority, by themselves, to extend the period of parole, as rightly argued on their behalf, since the petitioner was previously granted parole by a direction of the High-Powered Committee formed pursuant to the order of the Supreme Court, it would be apt to grant some protection to the petitioner till the petitioner's case is considered by the said High Powered Committee, directly or after the respondents forward the representation of the petitioner to it.*

*Accordingly, W.P.A. 9966 of 2020 is disposed of by granting the petitioner liberty to make a representation with regard to the extension of his parole before the concerned High Powered Committee formed pursuant to the order dated March 23, 2020 in Suo Motu Writ Petition (C) No. 1 of 2020 passed by the Supreme Court. That apart, the respondents shall also forward the application for extension of parole made by the petitioner, annexed at page 51 of the instant writ petition, to the High-Powered Committee, along with the applications made by other similarly-placed persons under parole, within a week from date.*

*In view of the perilous situation of the petitioner, the respondents are restrained from re-arresting the petitioner on the basis of his conviction, till four weeks from date or*

until the High-Powered Committee takes a decision on the issue of extension, whichever is earlier.

*It is made clear that it will be open to the petitioner to apply for further extension before the High-Powered Committee directly or through the respondent authorities (which, if made, shall also be forwarded immediately to the High-Powered Committee by the respondents). In the event no decision is taken by the Committee on such further extension of the parole order of the petitioner during the said interim period of four weeks, the petitioner will be at liberty to approach this court afresh for a similar relief as prayed in the instant writ petition.*

*It is made clear that the petitioner shall comply with all conditions, which might have been imposed by the High-Powered Committee while granting parole initially to the petitioner, in the interregnum.”*

Convict petitioner Sarfaraj Khan @ Babu has accordingly filed an application before the Superintendent, Baruipur Central Correctional Home for extension of parole in view of the order of the Hon'ble High Court at Calcutta.

In response to prayer for extension of parole of Convict petitioner Sarfaraj Khan @ Babu the ADG & IG of Correctional Services, West Bengal has responded as follows:-

The correctional Home Authority has objection to prayer for extension of parole of Convict petitioner Sarfaraj Khan @ Babu on the following grounds:-

1. Sarfaraj Khan @ Babu is in custody as life convict in connection with Bhangar PS Case No.291/2016 u/s- 302/201/411 IPC and has undergone only 4 years 7 months and 4 days of actual imprisonment;
2. According to Section 62(1) of West Bengal Correctional Services Act, 1992, a prisoner sentenced to imprisonment for a period of two or more years may be released on parole for such period, not exceeding one month. However, paroles are being granted to prisoners considering present pandemic condition;
3. Any further extension of parole to a particular convict may raise disgruntlement among other prisoners who are returning within schedule after availing parole;

4. The criminal appeal in respect of this convict Sarfaraj Khan @ Babu is pending before Hon'ble High Court vide CRA No.6/2020. It is not possible to extend parole pending disposal of appeal by Hon'ble Court.

All the reports and submissions are considered by the committee.

The recommendation of the Committee dated 27.03.2020, 06.04.2020, 27.04.2020, 06.07.2020 & 29.09.2020 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 of Convict petitioner Sarfaraj Khan @ Babu is concerned, ADG & IG, Correctional Services, West Bengal expressed that the Government has opposed his prayer for parole extension on the ground as stated above. Prayer for extension of parole of Sarfaraj Khan @ Babu is declined by this committee considering the reasons given by the Correctional Home Authorities.
- 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 the problem of paucity of space has been primarily dealt with by creation of extra/added space to accommodate the convicts as detailed in Letter No. 1164/CC-160/2020 dated 15.10.2020 the ADG & IG Correctional Services, West Bengal no further recommendation for release is made.
- D) On query by Hon'ble Justice Sanjib Banerjee, Judge, High Court at Calcutta and Executive Chairman, State Legal Services Authority, West Bengal the ADG & IG Correctional Services, West Bengal informed that prison population is still above 100%. It is recommended that the authority creates more space and adopts a generally liberal view on prayers for short term parole for convicts who are not convicted for very heinous crimes.
- E) 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.
- F) 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.
- G) 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.



- H) 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.
- I) The Correctional Service Authority is requested to ensure service of proper quality and quantity of food to all inmates. The general hygiene and cleanliness inside Correctional homes ought to improve.
- J) As reflected in the resolution of the last meeting of the High Powered Committee the Hon'ble Justice Sanjib Banerjee, Judge, High Court, Calcutta and Executive Chairman, State Legal Services Authority, West Bengal has inspected various Correctional Homes for personally checking on the facilities and wellbeing of the inmates.

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 : 17<sup>th</sup> December, 2020

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