

High Powered Committee: Meeting dated 23.12.2020 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.

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.

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 on the ground of surgery (Hysterectomy) of his wife 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.

In its meeting dated 17.12.2020 the High Powered Committee decided that 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 was declined by the committee on 17.12.2020 considering the reasons given by the Correctional Home Authorities.

On 21.12.2020 the convict Sarfaraj Khan @ Babu submitted a representation for extending parole for a further period of 12 weeks on the same ground that his wife will undergo surgery (Hysterectomy) and that there is nobody in his family to look after his ailing wife namely Amron Khatun and his minor son.

In response to stated prayer the Principal Secretary (Home/Prison) & ADG & IG, Correctional Services, West Bengal expressed that the convict petitioner is aged about 26 years (DOB 4th January, 1994) and that both his parents are alive. The State has strong objection to the prayer for extension and that petitioner Sarfaraj