

OFFICE OF STATE LEGAL SERVICES AUTHORITY, WEST BENGAL

2 & 3, Kiran Sankar Roy Road, Kolkata - 700001

High Powered Committee: Meeting dated 06.04.2020 held at the Chamber of Hon'ble Justice Dipankar Datta, Judge, High Court at Calcutta and Hon'ble 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 Justice Dipankar Datta.

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 Smt.Durga Khaitan is present.

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

In its first meeting dated 27.03.2020, the High Powered Committee, approved the proposed list of 2059 under trial inmates who may 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 is State's prerogative to take administrative decision 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 have furnished information that 252 number of convicts have been so far released on parole 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 have been so far released on interim bail and prayer for interim bail has been rejected in respect of 713 under-trial inmates.

It was found that the list of recommendations as submitted by the Secretary, Department of Correctional Administration and ADG & IG, Correctional Services before the High Powered Committee on 27.03.2020 contained recommendations for release of prisoners of offences relating to rioting and waging war against the State, crimes relating to counterfeit currency, offences punishable under Section 121,121A,123,125,130,489,489A ,489B and 489C IPC, various offences under Unlawful Activities Prevention Act,1967 read with offences under Explosive Substance Act, offences under the Foreigners Act and such other offences and both the high officials were accordingly requested to study each case and take utmost care in submitting further recommendation in today's meeting of the High Powered Committee.

The reports are considered by the committee.

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.

In the first meeting dated 27.03.2020 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 rule will apply in respect of today's recommendation.

The recommendation of the Committee dated 27.3.2020 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.

Following applications were received by the High Powered Committee via email and were sent to the Secretary, Department of Correctional Administration and ADG & IG, Correctional Services for their response but the ADG & IG, Correctional Services has sought for some time to prepare their response to these applications. These applications will be considered by the Committee on receipt of their response which may be submitted latest by 9.4.2020.

| Sl . No. | Date of e-mail | Name of the sender | Nature of Prayer |
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| 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 Life Convicts (of little earlier date, not exhaustive, and may be a section already released but still relevant to a great extent) languishing 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 |

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| | | | present situation. |
| 2. | 28.03.2020 | Ranjit Kumar Ghosh, husband of Debjani Ghosh | Prayer for release of Smt. Debjani Ghosh on parole, who is under custody of Alipore Women's Correctional Home on and from 26.08.2019 vide an order of the President, District Consumer Disputes Redressal Forum, South 24-Parganas, Baruipur, Kolkata-700144 in case No. EA/101/2018. |
| 3. | 29.03.2020 | Raghunath Chakraborty Appearing in WP 8573 (W) of 2018 for the <i>Intervenor</i> , Association for Protection of Democratic Rights (APDR) | Prayer quoted below: <i>"Through the forum of this High Powered Committee we would like to beseech the kind attention of District Under Trial Review Committee(s) towards the Standard Operating Procedure (SOP) formulated by the National Legal Services Authority (NLSA) and recommended by the Hon'ble Apex Court in its Order dated 04-12-2018 in W.P. (C) 406 of 2013 concerning release of Under Trial Prisoners (UTPs). Copy of the SOP is being attached herewith for convenience and ready reference.</i> <i>We would like to further implore the High Powered Committee (HPC) to ensure thorough medical check-up of all the inmates in all Correctional</i> |

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| | | | <i>Homes. Aged and infirm inmates, in particular, require special care and attention as also their release on Parole or Bail may kindly be considered on humanitarian ground by the HPC and UTRCs irrespective of the length/probable length of punishment.”</i> |
| 4. | 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- psray40@yahoo.com | 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 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. The petitioners have prayed |

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| | | | 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. |
| 5. | 31.03.2020 | Akhtar Parwez, 37 Syed Amir Ali Avenue Dutta Park, 1 st Floor, Flat 15 P.S: Karaya Kolkata 700019 | Prayer for release of the petitioner's son Raghiv Parwez who is in judicial custody in connection with Sessions Case no. 65 of 2019 for offences u/s 279/304/308/427 of IPC and Section 3 of PDPP Act along with Section 119/177 of MV act, arising out of Shakespeare Sarani P.S case no.159 of 2019 dated 17.08.2019, who is allegedly a patient of Bipolar Affective Disorder (unsound mind). |

Mr. Peeyush Pandey, Additional Director General and Inspector General of Correctional Services, West Bengal informed the committee that one under-trial prisoner who was released on interim bail on 1.4.2020 following recommendation of this committee is again caught on allegation of committing theft and is put under judicial custody.

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, the following recommendations are being made by the Committee:-

- A) The proposed list of 742 convicts (**Annexure-I**) as submitted by the ADG & IG of Correctional Services for consideration of special parole for a period of 3 months to the life convicts who have completed 14 years of actual 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 45 term convicts (**Annexure II**) who have attained the age of 60 years and above and not involved in sexual offences/POCSO/ NDPS /Kidnapping/ Extortion/ Waging war against the State/fake currency/ foreigners and resident of other States/ UAPA etc., as submitted by the ADG & IG of Correctional Services is hereby approved provided they are found eligible/fit for parole upon examination by the ADG & IG of Correctional Services on a case to case basis.
- C) The list of 13 female under-trial inmates (**Annexure III**) aged 60 years or more and not involved in sexual offences/ POCSO/ NDPS / Kidnapping/ Extortion/ Waging war against the State/fake currency/ foreigners and resident of other States/ UAPA etc. is hereby approved and the concerned Courts may consider the interim bail applications of these inmates and if interim bail is granted, then release them on personal bond as they might have difficulty in furnishing registered or other sureties.
- D) The list of 9 under-trial inmates (**Annexure IV**) found eligible under section 436A CrPC is hereby approved and the 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 list of 17 under-trial inmates (**Annexure IV**) detained under section 110 CrPC is hereby approved and the 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.

- F) The ADG & IG of Correctional Services has stated in his report that the interim bail applications in respect of UTPs under section 399/402 IPC, UTPs under section 498A IPC combined with other sections of IPC, UTPs under section 406/418/419/420 IPC and UTPs under section 25/27 Arms Act may be considered by the concerned Courts as they account for a major portion of the prison population. However no list of such UTPs has been submitted and in the absence of any such list, the Committee is unable to take any decision in this regard.
- G) 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.
- H) 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.
- I) Interim bail may be granted subject to the conditions enumerated in the minutes of the first meeting dated 27.03.2020.
- J) 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.
- K) District Magistrates and Superintendents of Police to make appropriate arrangements as resolved in the first meeting dated 27.03.2020.

- L) 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.
- M) 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.
- N) 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 list annexed latest by five days of this day and report compliance to SLSA by email positively by 11.04.2020.

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 : 6th April, 2020

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