

ITEM NO.15

COURT NO.2

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Suto Moto Writ Petition (CrI.) No. 4/2021

IN RE POLICY STRATEGY FOR GRANT OF BAIL

Petitioner(s)

VERSUS

Respondent(s)

(MR. GAURAV AGRAWAL, ADV. IS AMICUS CURIAE
IA No. 203408/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 203407/2022 - INTERVENTION APPLICATION)

WITH

SLP(CrI) No. 529/2021 (II-C)

(FOR ADMISSION AND I.R AND MR. NEERAJ KUMAR JAIN, SR. ADVOCATE (A.C.), MR. GAURAV AGRAWAL, ADVOCATE FOR NATIONAL LEGAL SERVICES AUTHORITY, MR. DEVANSH A. MOHTA, ADVOCATE (A.C.), MR. ABHIMANYU TEWARI, ADVOCATE FOR STATE OF ARUNACHAL PRADESH, MR. YOGESH KANNA, ADVOCATE FOR STATE OF TAMIL NADU, MR. CHANCHAL K. GANGULI, Advocate for STATE OF WEST BENGAL, MRS. NIRANJANA SINGH Advocate for State of Bihar, MR. MILIND KUMAR, ADVOCATE FOR STATE OF RAJASTHAN, MR. NIKHIL GOEL, ADVOCATE FOR HIGH COURT OF GUJRAT, MAHFOOZ A NAZKI FOR STATE OF ANDHRA PRADESH, MR. SACHIN PATIL FOR STATE OF MAHARASHTRA, MR. SUBHRANSHU PADHI FOR STATE OF KARNATAKA, MR. GARVESH KABRA FOR STATE OF UP, MR. G.S MAKKER FOR ANDAMAN AND NICOBAR ISLANDS, MR. HARSHAD V HAMEED FOR STATE OF KERALA, MR. SHOVAN MISHRA, ADVOCATE FOR STATE OF ODISHA, DR. MONIKA GUSAIN, ADVOCATE FOR STATE OF HARYANA AND MR. ABHINAV MUKERJI, ADVOCATE FOR STATE OF HIMACHAL PRADESH, Mr. Aaditya Aniruddha Pande, Advocate for State of Maharashtra, Mr. Pukhrambam Ramesh Kumar, Advocate for State of Manipur, Ms. Swati Ghildiyal, Advocate for State of Gujarat, Mr. Shuvodeep Roy, Advocate for State of Assam, Mr. Pashupatinath Razdan, Advocate for State of MP. [FOR FURTHER DIRECTIONS])

Date : 28-03-2023 These matters were called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE ARAVIND KUMAR

By Courts Motion, AOR

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Dr. Joseph Aristotle S., AOR

UPON hearing the counsel the Court made the following
O R D E R

SUO MOTO WP (CRL.) 4/2021

EXECUTION OF BAIL ORDERS

A further status report has been filed for the hearing today on this aspect and Statewise data has been furnished of the total undertrials identified who were granted bail but not released, released undertrials after individual follow up, not released due to multiple cases, undertrials whose application for modification of bail order has been dismissed or pending and finally cases where panel lawyers are doing the follow up. The figures which thus emerged in analysis of all the States is that the identified number of affected people was 5362 out of which with the follow up action 2129 have been released while 600 cannot be released due to multiple cases. 582 applications are pending before the Courts and follow up action is required by the panel lawyers for 2051 cases.

Learned Amicus Curiae has also flagged the follow up issue qua the e-software discussed in the last order to submit that there has to be a better ability of the jail authorities to enter the data in respect of the software for which NIC will have to

play a more proactive role to train the jail authorities. Mr. Gaurav Agrawal, learned Amicus curiae submits that he has discussed this matter with Mr. K.M. Nataraj, learned ASG who has assured cooperation in this behalf.

We understand that there is a system used in Gujarat State, namely, Email My case Status (EMCS). We request learned Amicus Curiae to look into this aspect and see if it can be successfully used in other courts.

SUGGESTIONS FOR EFFECTUATING THE PROVISIONS RELATING TO PLEA BARGAINING/COMPOUNDING/PROBATION OF OFFENDERS ACT

Learned Amicus Curiae learned ASG has drawn our attention to order dated 14.09.2022 where certain suggestions for effectuating the provisions relating to Plea Bargaining/Compounding/Probation of Offenders Act were considered and directions issued. In this behalf, the pioneering endeavour made by different High Courts has been placed on record which definitely shows progress being made though the level of progress may be different in different Courts.

What has been pointed out is that the District Courts in UP have identified more than 52000 cases which could be considered of this nature, out of which 9142 cases have been disposed of. We would require the remaining cases also to be considered by the next date and a report be furnished to this

Court.

The other aspect flagged is the steps taken by the UPSLSA which have made a list of 656 prisoners undergoing fixed terms sentence are first term offenders and have undergone half the sentence which can be considered for premature release. Ordered accordingly.

IA No. 203408/2022 - APPROPRIATE ORDERS/DIRECTIONS
IA No. 203407/2022 - INTERVENTION APPLICATION IN
SMWP(CRIMINAL) No. 4/2021

The suggestions have been made by the Project 39A Equal Justice and Equal Opportunity of the National Law University, Delhi and discussions have been held with Mr. Gaurav Agrawal. It is agreed that these suggestions may be examined by NALSA to the extent implementation can start, need not await orders from this Court. If there are some difficulties they may also be flagged. In this behalf a report may be submitted to this Court before the next date by Mr. Gaurav Agrawal.

List on 25.07.2023.

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Mr. K.M. Nataraj, learned ASG has drawn our attention to the order dated 09.02.2022 under heading "A Possible Alternate Route". What was proposed was that whether cases which have specified maximum

sentence, it can be 7 years or 10 years, and the persons have either served out half the sentence or pending trial have already gone through half the sentence or 1/3rd, something in the discretion of the State, an endeavour to be made to take them out of the judicial system to concentrate on the more heinous cases. We have flagged the issue that there would be hesitation on the part of the accused in accepting conviction and that was flagged as an issue which may explain the plea bargaining system not succeeding to the extent it was expected. What we have in mind is that specially keeping in mind the celebration of 75 years of independence, whether such cases can be identified and on simply a bond of good behaviour they be released saving trial and appeals. This is an aspect a little out of the box, but looking to the pendency of the criminal cases, it may be worth experimenting. This may also be confined to single incident cases where the conduct of the person in jail is not adverse. This issue we have flagged even otherwise in separate proceedings.

We expect the learned ASG to arrange for interaction with the States and the Centre and to submit a report to us about the progress made in the feasibility of implementation at least a week before the next date of hearing.

PREMATURE RELEASE

Ms. Learned Amicus Curiae pointed out in reference to the order dated 31.01.2023 that in respect of four States, the project has been carried out, they are Assam, Jharkhand, Telangana and Gujarat.

Two issues are to be flagged- (i) the collection of documents has taken more time than expected and there is some delay that account (ii) the time period thereafter by the Government to process the cases and take decisions is again taking time.

We call upon the States to expedite the process in respect of both the issues. In case of rejection, the information should be sent to the convict and the DLSA with reasons for the same.

Another suggestion is to now extend it to other States, namely, Punjab & Haryana, Delhi, Goa and Himachal Pradesh since this is being implemented in a phased manner. We accept the suggestion.

The Learned Amicus Curiae to take the matter with the Director General of Prisons who will take steps in view of the directions being extended to these State too by the order passed today.

List the matter on 25.07.2023.

SLP(CrI.) No. 529/2021

E-PRISON MODULE

This matter may require some time and in view of directions already passed, list this aspect for consideration as part-heard on 12.04.2023.

**[CHARANJEET KAUR]
ASTT. REGISTRAR-cum-PS**

**[POONAM VAID]
COURT MASTER (NSH)**