

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

SUO MOTO WRIT PETITION (CRL) No.4/2021

IN RE: POLICY STRATEGY FOR GRANT OF BAIL

(MR. GAURAV AGRAWAL, ADV. IS AMICUS CURIAE)

WITH

MA 764/2022 in Cr1.A. No. 491/2022 (II)
([FOR DIRECTIONS])

W.P.(Cr1.) No. 170/2022 (X)
(FOR ADMISSION and IA No.65665/2022-GRANT OF BAIL)

Date : 14-09-2022 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE ABHAY S. OKA

By Courts Motion

Mr. Gaurav Agrawal, Adv. (NALSA) (A.C)

For Petitioner(s) Mr. Mohd. Irshad Hanif, AOR
Mr. Aarif Ali, Adv.
Mr. Rizwan Ahmad, Adv.
Mr. Mujahid Ahmad, Adv.
Mr. Pankaj Tiwari, Adv.
Mr. Mohd. Aslam, Adv.
Mr. Shisir Raj, Adv.
Mr. Ahmed Parvez, Adv.

Mr. Rishi Malhotra, AOR
Mr. Jaydip Pat, Adv.

For Respondent(s) Ms. Garima Prasad, AAG
Mr. Ajay Vikram Singh, AOR
Ms. Priyanka Singh, Adv.
Mr. Sharjeel Ahmad, Adv.
Ms. Pranjali Goel, Adv.
Mr. Sarvesh Singh Baghel, AOR
Ms. Vanya Gupta, Adv.

Mr. Nikhil Goel, AOR

Mr. Basavaprabhu S. Patil, Sr. Adv.
Mr. Raghavendra S. Srivatsa, AOR
Mr. Rahat Bansal, Adv.
Mr. Likhi Chand Bonsle, Adv.
Ms. Komal Mundhra, Adv.

Mr. Partha Sil, AOR
Mr. Tavish B. Prasad, Adv.

Mr. V. Balachandran, Adv.
Mr. Siddharth Naidu, Adv.
M/S. KSN & Co., AOR

Ms. Uttara Babbar, AOR

Mr. Manish Kumar, AOR

Mr. Tapesk Kumar Singh, AOR
Mr. Aditya Pratap Singh, Adv.
Mr. Sukant Vikram, Adv.

Mr. Sahil Tagotra, AOR
Mr. Abhishek Pandey, Adv.
Mr. Abhivvakti Banerjee, Adv.

Mr. Divyakant Lahoti, AOR
Mr. Parikshit Ahuja, Adv.
Ms. Praveena Bisht, Adv.
Ms. Vindhya Mehra, Adv.
Ms. Madhur Jhavar, Adv.
Mr. KARTik Lahoti, Adv.

Mr. Sumeer Sodhi, AOR
Mr. Gaurav Arora, Adv.

Mr. P. I. Jose, AOR
Mr. Jenis Francis, Adv.

Mr. Sameer Abhyankar, AOR
Ms. Vani Vandana Chhetri, Adv.
Mr. Abhinav Mishra, Adv.
Ms. Nishi Sangtani, Adv.
Ms. Yeshi Rinchen, Adv.

Mr. Avneesh Arputham, Adv.
Ms. Anuradha Arputham, Adv.
Mr. Praveen Kr. Singh, Adv.
M/S. Arputham Aruna And Co, AOR

Mr. Sharan Thakur, Adv.
Mr. Mahesh Thakur, AOR
Mr. Siddharth Thakur, Adv.
Ms. Vipasha Singh, Adv.

Mr. Ajay Kanojiya, Adv.
Ms. Shivani, Adv.
Mr. Bishwendra Singh, Adv.
Mr. Mustafa Sajad, Adv.

Mr. Jayant Sud, ASG
Mr. Piyush Beriwal, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Aravindh S., AOR
Mr. Aabas B., Adv.

Mr. Kedar Nath Tripathy, AOR

Ms. Vanshaja Shukla, AOR
Ms. Rachna Gandhi, Adv.
Mr. Sajal Singhai, Adv.

Mr. Abhimanyu Tewari, AOR
Ms. Eliza Bar, Adv.

Mr. Shekhar Raj Sharma, Dy. AG
Mr. Paras Dutta, Adv.
Dr. Monika Gusain, AOR

Mr. Prashant Shrikant Kenjale, AOR

Mr. Sanjai Kumar Pathak, AOR
Mrs. Shashi Pathak, Adv.

Mr. Kanhaiya Singhal, AOR

Mr. Hariprasad, Sr. Adv.
Mr. V. K. Biju, AOR
Ms. Swathi H. Prasad, Adv.
Ms. Ria Sachthey, Adv.
Mr. Chetanya Singh, Adv.
Mr. Amlendu Kumar Akhilesh Kumar Jha, Adv.
Dr. Ranjeet Bharti, Adv.
Ms. Rubina Jawed, Adv.

Mr. Mukesh K. Giri, AOR

Mr. Gopal Jha, AOR
Mr. Baijnath Patel, Adv.

Mr. Arjun Garg, AOR
Mr. Shobhit Jain, Adv.
Mr. Aakash Nandolia, Adv.
Ms. Sagun Srivastava, Adv.

Mr. Sibho Sankar Mishra, AOR
Mr. Debabrata Dash, Adv.

Mr. Niranjan Sahu, Adv.
Mr. Rajesh Kumar Nayak, Adv.
Mr. Umakant Mishra, Adv.

Mr. Kanhaiya Singhal, Adv.
Ms. Vani Singhal, Adv.
Ms. Priyanka, Adv.
Mr. Chetan Bhardwaj, Adv.

Mrs. K. Enatoli Sema, Adv.
Mr. Amit Kumar Singh, Adv.
Ms. Limayinla Jamir, Adv.
Ms. Chubalemla Chang, Adv.

Mr. Ajay Pal, AOR
Mr. Mayank Dahiya, Adv.

Mr. Siddharath Dharmadhikari, Adv.
Mr. Aaditya A. Pande, AOR
Mr. Bharat Bagla, Adv.

Mr. Avijit Mani Tripathi, AOR
Mr. T. K. Nayak, Adv.
Ms. Shaurya Sahay, Adv.

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

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

On perusing the detailed and comprehensive suggestions submitted to us by the three Amici Curiae viz. Gaurav Agrawal, Liz Mathew and Mr. Devansh A. Mohta, Advocate, after discussion with Mr. K. M. Nataraj, ASG in respect of the aspect of disposal of criminal cases by resorting to the triple method of plea bargaining, compounding of offences and under the Probation of Offenders Act, 1958, we would like to make a beginning in terms of the suggestions made which are as under:-

"3.1 As a pilot case, one Court each of Ld. Judicial Magistrate 1st Class, Ld. ACJM or CJM, and Court of Sessions in each district may be selected.

3.2 The said courts may identify cases pending at pre-trial stage, or evidence stage and where the accused is charge sheeted / charged with offence(s) with a maximum sentence of 7 years' imprisonment. The Ld. Court would exclude cases mentioned in Section 265A Cr.P.C., namely offences notified by the Central Government vide notification dated 11.07.2006 or offences committed against women or child/ children less than 14 years.'

3.3 The identified cases can thereafter be posted on a working Saturday or any other day which is suitable to the court with notice to the Public Prosecutor, complainant and the accused. The said notice would indicate that the court proposes to consider disposing of those cases under Chapter XXIA of Cr.P.C. plea bargaining, Probation of Offenders Act, 1958 or compounding i.e. Section 320 Cr.P.C. The notice will also indicate that the accused/complainant would be entitled to avail legal aid and details of the District Legal Services Authority would be made available in the said notice. It would also be made clear that the accused has to remain present with his/ her advocate and the complainant may also remain present with his/her advocate.

3.4 The Public Prosecutor would be required to ascertain the criminal antecedents of the accused. Only cases of first time offenders would be taken up.

3.5 On the date fixed, the court can inform the accused of the provisions of plea bargaining. The Court can also persuade the parties to compound the offence (if the offences are compoundable). The Court can also inform the accused of the benefits of Probation of Offenders Act, 1958. The services of panel lawyers from District Legal Services Authority would also be made available to the accused/ Complainant.

3.6 The Court may give time to the accused/complainant to think over the matter and give another date.

3.7 In cases where the under trial is in judicial custody, the trial court may explain to the accused and the learned counsel appearing for the accused to explore the possibility of plea bargaining or

compounding or benefit of Probation of Offenders Act. The accused can be given time to consider the matter. The services of panel lawyers of District Legal Services Authority can also be made available. For this purpose, a list of such accused can be furnished to the Secretary, DLSA to depute the panel lawyers of sufficient seniority to explain the provisions to the accused, who are in custody.

3.8 It is suggested that a brief training session may also be organised for the Ld. Judicial Officers in the Judicial Academies.

3.9 A timeline of 4 months may be fixed to carry out this exercise namely:-

- i) Training of Judicial Officers &
Identification of cases - 1 month
- ii) Notice to the parties - 1 month
- iii) Consideration of the matter - 2 months"

We accordingly issue directions in the aforesaid terms to the Registrars of each High Court who may depute a Nodal Officer of the rank of the Registrar in each of the Courts to carry out the monitoring of the same.

We, however, consider it appropriate at this stage to put two caveats:-

(a) Instead of prescribing only one Court in each District, as specified in clause 3.1 above, we leave it to the administrative side of the High Court to prescribe such number of Courts as may be considered practical by each of the High Court.

(b) In matters where time bound schedule has been laid down by the High Courts or Supreme Court of India, that schedule should not be disturbed so as to avoid delay in those cases.

We may also add that Directors of the different Judicial Academies to carry out training to effectuate the aforesaid either through virtual mode or physical as may be feasible.

UNDER TRIAL REVIEW COMMITTEES

Mr. Gaurav Agrawal points out that a consolidated data has been prepared of the under trials who were covered by the Judgment of this Court dated 24.4.2015 and 31.10.2017 in the case of *In re-inhuman conditions in 1382 Prisons*. A timeline was laid down for the meeting of under Trial Review Committees (UTRCs) and implementation of recommendations of the said Committee. A campaign for the release of prisoners by the Under Trial Review Committee to commemorate the 75th Independence Day in India by NALSA was also carried out.

The total number of persons identified as such under trials recommended by UTRCs is 47618 out of total of 74107 under trials and in pursuance to the campaign, 24789 has been released. The suggestions thus states that urgent steps should be taken so that at least 47618 cases are dealt with.

To facilitate the aforesaid, it has been prayed that all District Legal Services Authorities (DLSAs) may be directed to ensure that the bail applications in remaining cases are filed expeditiously in any event within 15 days and the learned Trial Courts may be directed to dispose of the bail applications within 15 days.

In order to give some more time before the action to be taken, we grant 30 days instead of 15 days for the bail

applications to be filed by the DLSAs and specify that the Trial Courts would also make an endeavor to dispose of the bail applications within 3 weeks. NALSA will thereafter give a report to this Court in 10 weeks.

Learned ASG submits that he has discussed this matter with Government in terms of the paragraph 27 of our Order dated 05th August, 2022 and an endeavor can be worked out with the cooperation of all the State Governments as law and order is a State subject.

We expect all the State Governments to fully cooperate as the crowding of the jails is a problem permeating the country as a whole, more or less.

SUGGESTIONS WHERE THE CONVICTS ARE UNDERGOING FIXED TERMS SENTENCES AND ARE IN JAIL

In this behalf the following suggestions have been made:-

“6.1 The following mechanism can be adopted as one-time measure to convicts who have been convicted for sentence of imprisonment for 10 years' or less and have no other criminal antecedent.

6.2 The High Court along with the High Court Legal Services Authority can make a list of cases with the following details:

- i) Offences for which a convict has been sentenced and sentence imposed;
- ii) Sentence undergone by the convict;

6.3 If the convict is in jail and has undergone 40% of the sentence, his case can be taken up by the District Legal Services Authority. The District Legal Services Authority, through a lawyer of sufficient seniority, can counsel the accused that if he is willing to accept his guilt, request can be made to the High Court to reduce the sentence or for releasing the convict on probation of good conduct for the remainder of the

sentence. It should be clearly disclosed that the said acceptance of guilt is only for the purposes of closing the matter and in case the High Court is not inclined to accept the plea, then the matter would be considered by the High Court on its own merits and his plea would not come in the way of hearing of the appeal on merits.

- 6.4 The District Legal Services Authority would also facilitate the interaction of the convict with his lawyer so that an informed decision is taken by the convict.
- 6.5 If the accused is willing to accept the plea and make an application to the High Court, then the list of such accused should be forwarded to the Director General of Police to ascertain the criminal antecedent of the convict.
- 6.6 Such plea bargaining at post-conviction level not be available to such offences which are notified by the Central Government/ State Government. The said plea bargaining will not be available where the law provides for a minimum sentence to be undergone by the accused, for example under the NDPS Act or UAPA Act similar such Acts (State Law/ Central Law)]”

Learned counsel having taken us through the suggestions, we give our imprimatur to the same and direct the State Governments and Legal Services Authorities to act *in tandem* to implement these suggestions and give a report to this Court a week before the next date to the Amicus Curiae who would thereafter submit the summarised version of the report.

REMISSION OF SENTENCE FOR CONVICTS UNDERGOING FIXED TERMS SENTENCES

The suggestions made are as under:-

- “7.1 There are convicts in jails who are undergoing fixed term sentences. In such cases where the convict has been sentenced upto 10 years' imprisonment and is a first time offender and has undergone half the sentence, the State Government can consider whether the

remaining sentence can be commuted under Section 432 Cr.P.C. as a one time measure. The State Government can obviously provide certain exceptions where this benefit would not be available to the convicts (especially heinous crimes rape, dowry death, kidnapping, PC Act, POCSO, NDPS, etc.). The State Government can impose conditions of good conduct upon the convict. In this regard, the provisions of Model Prison Manual, 2016, especially the Chapter XX dealing with 'premature release' can be considered by the State Government, which lays down broad parameters for dealing with such cases. The Model Prison Manual was drafted by a very high Committee, including the officers of the Central Government, State Government, NALSA, NHRC and also the Civil Society and is a fairly progressive document, aimed at standardising prison administration throughout the country. Chapter XX of Model Prison Manual is enclosed as Annexure A2.

7.2 Infact, the Government of India had issued a letter dated 10.06.2022 for grant of special remission to prisoners as part of celebrations of Azadi Ka Amrit Mahotsav. Copy of the letter issued by Government of India dated 10.06.2022 is annexed as Annexure A3.

7.3 It was pointed out during meeting with Home Ministry officials that each State Governments can take a decision regarding further benefits which can be conferred on the convicts which may go beyond the above policy so that on the next date i.e. 26.01.2023, larger number of convicts can be benefitted."

It is pointed to us that in the letter dated 10.6.2022 referred to aforesaid, the benchmark has been fixed as two third of the completed sentence but then we are of the view that 50% completed sentence would sub-serve the purpose and

individual States will be taking their own call even qua the category of prisoners to whom the benefit can be given and not necessarily confined to the guidelines annexed to the letter dated 10.6.2022.

The cases of life convicts in jail whose appeals are pending before the High Court will be considered tomorrow.

List tomorrow i.e. 15th September, 2022.

(RASHMI DHYANI PANT)
COURT MASTER

(POONAM VAID)
COURT MASTER