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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: July 22, 2016

+ W.P.(CRL). 283/2015

COURT ON ITS OWN MOTION

.... Petitioner

versus

STATE (GOVT. OF NCT OF DELHI)

..... Respondents

Present: Mr.Manoj Ohri, (Sr.Adv.) Amicus Curiae with Mr. Madhav Khurana, Adv.; Mr.Rahul Mehra, Sr.Standing Counsel with Mr.Sanyog Bahadur and Mr.Shekhar Budakoti, Advs. for GNCTD; Mr.Sayed Ahram Masud, Adv. for R-3; Ms.Anuj Mangla, Superintendent (Women Prison), Tihar Jail; Mr.Sunil Gupta, Law Officer, Tihar Jail.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

Ms. G. ROHINI, CHIEF JUSTICE (ORAL):

1. The present writ petition has been registered in pursuance of the directions of the Supreme Court dated 13.11.2014 in W.P.(C) No. 559/1994 titled ***R.D. Upadhyay vs. State of Andhra Pradesh*** which was filed under Article 32 of the Constitution of India in public interest highlighting the plight of under trial prisoners languishing in jails.

2. The Supreme Court passed orders from time to time directing release of under-trials in some of the cases where the under-trials were charged with kidnapping, theft, cheating and etc. and who had spent more than one year in

jail. Certain other directions with regard to creation of sufficient number of subordinate courts, providing adequate infrastructure, providing facilities to women under-trial prisoners / women convicts and mentally and unsound people who are either under-trial or have been convicted, were also issued. After monitoring compliance of the directions for quite some time, finally the Supreme Court by order dated 13.11.2014 requested the concerned High Courts to continue the process of monitoring with regard to the cases in their respective jurisdictions and to issue further directions as and when necessary. The operative portion of the order dated 13.11.2014 reads as under:

"1) Copies of the reports received from the State Legal Services Authorities and Union Territories concerned shall be forwarded to the Jurisdictional High Courts along with a copy of this order with a request to the High Court to register a PIL and to continue the proceedings and issue such directions in accordance with law as may be considered necessary in the facts and circumstances of the case.

2) while examining the issue touching the rights of the under-trial prisoners especially the females and the children with them, the High Courts may also examine the question relating to the rights of mentally challenged under-trials and convicts and issue appropriate directions. The High Court may while examining the rights of such unfortunate members of the society as suffer from any mental disability also examine whether any directions are required to be issue in relation to people who suffer from such illness but are not involved in any crime and yet suffer harassment, neglect or deprivation at the hands of their family or are seen roaming about in public places without any one taking responsibility for their care, protection or maintenance."

3. Thus, the present petition has been registered on the file of this court and after directing notice to the Union of India as well as Government of NCT of Delhi, we issued the following directions on 11.02.2015:

"5. We further direct that:-

(i) the Registry of this Court to forthwith obtain from the Registrar General of the Supreme Court copies of all the orders of the Supreme Court in the proceedings aforesaid vide which any directions to any of the governments / authorities / bodies have been issued;

(ii) the Secretary DLSA to place on record whatever material it had placed on record before the Supreme Court;

(iii) GNCTD and the UOI to also file affidavits detailing the steps already taken from time to time in accordance with the directions of the Supreme Court in the proceedings aforesaid and the standards if any formulated for the optimum number of courts and infrastructures to be made available to enable them to function efficiently or otherwise in the context of the issue subject matter of consideration;

(iv) GNCTD to in its affidavit also disclose / state:-

(a) decision taken in pursuance to order dated 19th March, 1996 supra of the Supreme Court qua release of under-trials charged with murder, rape, kidnapping, robbery, NDPS Act etc.;

(b) the present status of the under-trials i.e. their number, the offence they are charged with, the maximum punishment they can be awarded and the period of detention already undergone;

(c) the number of mentally unsound under-trials / convicts and the period of detention already undergone the maximum / remaining punishment and the rules / schemes / practices applicable to them; and,

(d) the survey if any undertaken of persons suffering from mental disability and the schemes / facilities / made available for them.

(v) Registrar General of this Court to file affidavit disclosing the total number of courts dealing with criminal cases with pendency in each court and the assessment if any done of the ideal time for disposal of different types of cases and the causes if any identified for delays.

6. We appoint Mr. Manoj Ohri, Sr. Advocate and Mr. Madhav Khurana, Advocate as Amicus Curiae to assist us in the matter. They have graciously agreed. Two copies of this order along with two sets of complete paper book of the matter be handed over by the Court Master to Mr. Madhav Khurana, Advocate.

7. Advance copy in duplicate of all documents filed by any party / person in this proceeding be delivered to Mr. Madhav Khurana, Advocate.

8. We may record that this Court in W.P.(C) No.4425/2012 is already seized with the issue of rights of under-trials. It is deemed expedient to take up this petition along with W.P.(C) No.4425/2012 listed next on 5th March, 2015."

4. The reports filed by Delhi State Legal Services Authority, Jail Superintendents and the Registrar General of this Court in compliance with the above directions were taken on record. The written submissions filed by

Sh.Manoj Ohri, the learned senior counsel who assisted this court as Amicus Curiae making various suggestions for providing infrastructure for mentally unsound under-trials and convicts and also certain recommendations regarding the treatment and care of mentally ill persons wandering on the streets, were also taken on record.

5. We have taken note of the fact that the Under Trial Review Committee has been meeting periodically and has been taking steps to ensure release of the under-trial who are entitled to be released on bail. We issued directions from time to time to the Delhi State Legal Services Authority, Government of NCT of Delhi and the Superintendent of Tihar Jail to work in tandem and to ensure compliance with the directions in ***R.D. Upadhyaya v. State of Andhra Pradesh*** (supra).

6. In the light of the facts and circumstances noticed above, we consider it appropriate to dispose of the writ petition with a direction that the existing Reviewing Committee shall continue to monitor the issues relating to the conditions of under-trial prisoners, particularly women under-trial prisoners and those who are suffering with mental disability.

7. In addition to the same, we hereby constitute a High Powered Review Committee comprising of Shri Manoj Ohri, Senior Advocate, Member Secretary, Delhi State Legal Services Authority and Shri Sunil Gupta, retired Law Officer of Tihar Jail. The said Committee shall meet periodically and examine the conditions of the under-trial prisoners. The Committee shall also review the basic amenities and medical care available to the under-trial prisoners with particular reference to the women under-trial prisoners and those who are suffering from mental illness. The compliance of the directions issued by the Supreme Court from time to time in ***R.D. Upadhyay***

v. State of Andhra Pradesh (supra) shall also be monitored by the Committee and the status report shall be filed before this Court every quarter starting from 30th September, 2016 onwards. The Committee shall also suggest measures to address the problems, if any faced by the under-trial prisoners or for improving the conditions in the jails. The Committee is also at liberty to move an appropriate application if the judicial intervention is called for.

8. The writ petition is accordingly disposed of.

JULY 22, 2016
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CHIEF JUSTICE

SANGITA DHINGRA SEHGAL, J