

AD. 29.
December 17, 2020.
MNS.

W. P. A. 10258 of 2020
(**Via video conference**)

Haydar Ali Khan @ Haider Ali Khan @
Bapan
Vs.
The State of West Bengal and others

Mr. Purnasish Gupta,
Mr. Jayanta Kumar Mulhopadhyay,
Ms. Mary Dutta

... for the petitioner.

Mr. Saibal Bapuli,
Mr. Sabir Ahmed

...for the State-respondent.

Affidavit-of-service filed in Court today be
taken on record.

The petitioner has canvassed a grievance that despite the petitioner having been granted parole, pursuant to the direction of a High-Powered Committee formed pursuant to an order of the Supreme Court, dated March 23, 2020, passed in *suo motu* Writ Petition (C) No. 1 of 2020 (In Re :- Contagion of Covid-19 Virus in Prisons), the said period of parole is due to expire on December 18, 2020. In spite of the petitioner having made representation before the respondent authorities, the period of parole has not been extended.

Learned counsel appearing for the petitioner submits that this Court, under Article 226 of the Constitution of India, has ample power to grant relief to the petitioner in the meantime, at least till the respondent-authorities consider the representation of the petitioner.

It is further argued that the petitioner's parents are suffering from ailments, in support of which medical reports have been annexed to the present writ petition. That apart, the petitioner apprehends that, due to the impossibility of maintaining Covid-19 restrictions strictly within the confines of the prison, the petitioner might be exposed to a severe pandemic risk if parole is not extended.

Learned counsel for the respondent argues that the paroles were granted under the aegis of the High-Powered Committee and the respondent-authorities do not have the power to extend the same. It is argued that by virtue of the order of the Supreme Court as referred above, as well as several orders passed by this Court, the High-Powered Committee is the appropriate authority to look into the matter. As such, the writ petition is not maintainable.

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 might be correct in 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, which was the ultimate source of the decision to grant parole, 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 upon the respondents forward the representation of the petitioner to it.

Accordingly, W. P. A. 10258 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 to 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.

There will be no order as to costs.

The parties are directed to act on the server copies of this order as and when uploaded to the official website of this Court. In any event, the petitioner is granted liberty to communicate the gist of this order to the respondents even without waiting for such server copy to be uploaded and the respondents are directed to act upon the same.

(Sabyasachi Bhattacharyya, J.)