

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

% **Date of decision: 9th April, 2020**

+ **W.P. (CRL.) 779/2020**

COURT OF ITS OWN MOTION

..... PETITIONER

Through:

Versus

STATE

... RESPONDENT

Through: Mr. Rahul Mehra with Mr. Chaitanya
Gosain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

(VIA VIDEO CONFERENCING)

1. This petition has been registered on receipt by the Registrar General of this Court of communication dated 7th April, 2020 from Member Secretary, Delhi State Legal Services Authority (DSLSA) and which communication in turn is in terms of the Resolution dated 7th April, 2020 of the High Powered Committee (HPC) constituted for Delhi pursuant to directions contained in the order dated 23rd March, 2020 of the Supreme Court in *Suo Motu Writ Petition (C) No.1/2020* titled ***In Re: Contagion of Covid 19 Virus in Prisons*** concerning *inter alia* decongestion of prisons. The HPC vide Resolution passed in the meeting held on 7th April, 2020 has recommended as under:

“D.G. (Prisons) has further apprised the Chair that there are large number of UTPs who have been granted bail by different Sessions Courts and Courts of Magistrates, but they are still in jail, for want of sureties.

Members of the Committee deliberated and resolved that UTPs in whose favour, the bail orders were passed by different courts may have been incapacitated to furnish bail bonds and surety bonds, owing to the outbreak of Covid-19 and scant working of the courts, thus, the bail orders qua such UTPs are required to be modified, to the extent that they may be released on furnishing “Personal Bond”, with rest of the conditions if any, imposed remaining unaltered.

Keeping in mind the outbreak of pandemic, the functioning of courts was restricted to very urgent matters only, notification in this regard was issued by Delhi High Court bearing notification no.155/RG/DHC/2020 dated 20.03.2020. On 24.03.2020, Order No.40-3/2020-DM-1(A) was issued by Govt. of India taking strong measures to prevent the spread of Covid-19 and a nationwide lockdown for a period of 21 days was declared with effect from 25.03.2020.

Owing to this restricted movement such UTPs despite being granted bail are languishing in jail for not being able to produce and furnish “Surety Bond”. Committee is of the opinion that bail orders qua such UTPs are required to be modified through a Judicial Order. Ordinarily, for

modification of bail orders/ conditions, applications are required to be filed before concerned court. However, keeping in mind the extraordinary conditions, Committee feels that approaching the Court by each UTP seeking modification of bail order, would result into wastage of time and might go against the measures which are being taken to prevent the spread of Corona virus.

Thus, Committee is of the opinion that a Judicial order would be required from Hon'ble High Court of Delhi, for modification of such bail orders passed either by High Court of Delhi or any court subordinate to it, on or before today's date i.e. 07.04.2020, thereby modifying/doing away with the condition of furnishing surety bond and instead allowing such UTPs to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail.

It may however be clarified that the Committee does not recommend change of any other condition (if any) imposed in the bail orders passed by the concerned court.

Member Secretary, DLSA is directed to place these recommendations of the Committee by forwarding a copy of these minutes to Ld. Registrar General, High Court of Delhi, for necessary action in this regard."

2. Notice of the petition was given telephonically to Mr. Rahul Mehra, Senior Standing Counsel, Government of NCT of Delhi (GNCTD) who has joined in the hearing.

3. One of us (Justice Manoj Kumar Ohri) was aware of a Public Interest Litigation before the Division Bench-I of this Court in this context and Mr. Rahul Mehra, Advocate confirms the same and has apprised us of the orders dated 15th December, 2017 and 8th March, 2018 in W.P.(C) No.10689/2017 titled *Ajay Verma Vs. Government of NCT of Delhi* and which in turn refer to dicta of the Supreme Court in *Moti Ram Vs. State of Madhya Pradesh* (1978) 4 SCC 47 and *R.D. Upadyay Vs. State of Andhra Pradesh* (1996) 3 SCC 422. Mr. Rahul Mehra, Advocate has thus submitted that the judicial direction as recommended by the HPC would be in consonance with *Moti Ram* and *R.D. Upadyay* supra, which permit the grant of bail on furnishing of personal bond only.

4 We have considered the recommendation of the HPC in the context of the submission of Mr. Rahul Mehra, Advocate and are of the view that in view of the unprecedented prevailing circumstances and the matter of decongesting the prisons with which the Supreme Court was concerned in the writ petition aforesaid, and without creating any precedent, a case for modifying the bail orders passed either by this Court or by any court subordinate to it, on or before 7th April, 2020, thereby doing away with the condition of furnishing surety bond and instead, allowing the under-trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail, is made out. We order accordingly.

5. In consonance with the recommendation of the HPC, we further clarify that this order should not be construed as changing any other condition if any imposed in the bail orders aforesaid passed by this Court or by any Court subordinate to it.

6. Thus all bail orders, passed by this Court or by the Courts subordinate to it, on or before 7th April, 2020, in pursuance whereof the under-trial prisoners have not been released on bail owing to failure to satisfy the condition of furnishing surety bond, are modified and be read as granting bail without the condition of furnishing surety bond and instead allowing such under-trial prisoners to be released on their furnishing personal bond to the satisfaction of Superintendent of Jail.

7. Mr. Rahul Mehra, Advocate has also pointed out that there is no list of cases in which inspite of bail order, the under-trial prisoners continue to languish in prison because of failure to furnish surety bond.

8. We are confident that the D.G. (Prisons) would be in a position to collate all the said orders and cases with the assistance of Member Secretary DSLSA and Principal Secretary (Home), GNCTD who are also requested to do the needful for compliance of this order.

9. We also grant liberty to all concerned to approach this Court for further clarification if any required or in case of difficulty if any countenanced in implementation of this order.

10. No further orders are required.
11. The petition is disposed of.
12. A copy of this order be forwarded to Member Secretary, DSLSA for placing before the HPC aforesaid as well as be furnished to Mr. Rahul Mehra, Advocate for communicating to all the concerned authorities.

RAJIV SAHAI ENDLAW, J.

MANOJ KUMAR OHRI, J.

APRIL 09, 2020

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