

HIGH COURT OF CHHATTISGARH, BILASPUR**WPCR No. 305 of 2021**

- Amandeep Singh Saran S/o. Sh. H.S. Saran, Aged About 38 Years R/o H.No.6, Road No. 73, Club Road, West Punjabi Bagh, Punjabi Bagh, West Delhi, Delhi- 110026. Currently Lodged In Central Jail, Raipur., District : New Delhi, Delhi

---- Petitioner**Versus**

1. State of Chhattisgarh through Principle Secretary (Home), Mantralaya, Naya Raipur, Chhattisgarh- 492002, District : Raipur, Chhattisgarh
2. The High Powered Committee For Release Of Prisoners/ Under Trials Constituted For The State Of Chhattisgarh, Through Secretary, Chhattisgarh Legal Services Authority, Old High Court Building, Bilaspur., District : Bilaspur, Chhattisgarh
3. Chhattisgarh State Legal Services Authority, Through Its Secretary, Old High Court Building, Bilaspur., District : Bilaspur, Chhattisgarh
4. Director General (Prisons), State Of Chhattisgarh, Jail Headquarters, Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. D.S. Sobti, Advocate.
For State/Respondents No. 1, 2 and 4.	:	Mr.Gurudev I Sharan, Govt. Adv,
For respondent No.3	;	Mr. Prasoon Bhaduri, Advocate.

Hon'ble Shri Justice Narendra Kumar Vyas**Order on Board****14-07-2021**

1. The petitioner has filed this writ petition (Cr) under Article 226 of the Constitution of India, praying for a direction to the respondents to amend the Resolution dated 12-5-2021 (Annexure P/1) passed by respondent No.2 and conveyed/uploaded/published by the respondent No.3 to the extent that Under Trial Prisoners (UTPs) who have undergone considerable of custody or 1/3rd of the total maximum sentence that can be awarded, be also released on regular bail. It has also been prayed by the petitioner that direction be issued to the respondents, henceforth, to release the

petitioner in all the cases that he is in custody in the State of Chhattisgarh.

2. The brief facts, as projected by the petitioner, are that on 8-8-2015 the petitioner was taken into custody in connection with Crime No. 22 of 2015 registered at Police Station New Rajendra Nagar, District Raipur, for committing offence under Sections 420, 34 and 120-B of IPC, under Sections 3 & 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 (for short, "the Act, 1978") and Section 138 of the Negotiable Instruments Act, 1881. It is further contended that the petitioner was taken into custody in another cases pending in Chhattisgarh being Crime No. 142 of 2013 registered at Police Station New Rajendra Nagar, Dist. Raipur Cg, Crime No. 450 of 2016 registered at Police Station Durg, CG, Crime No.201 of 2015 registered at Police Station Dhamtari, CG, Crime No. 94/2016 registered at Police Station Rajnandgaon, CG, Crime No. 451 of 2016 registered at Police Station Durg, CG and Crime No.27 of 2016 registered at Police Station Antagarh, Kanker, CG. The details of the cases pending against the petitioner at different Police Stations are given in table format which read as under"

FIR No.	Police Station	Date	Offences
477/2013	PS Basantpur, Rajnandgaon city	30-08-2013	U/S. 420 of IPC.
142/2013	PS, New Rajendranagar, Raipur city	24-12-2013	U/S/ 420, 409, 120-B of IPC.
22/2015	PS, New Rajendranagar, Raipur city	04/03/2015	U/S. 420, 34 of IPC, under Sections 3 & 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978 and Section 138 of the Negotiable Instruments Act, 1881
188 of 2015	PS,. Mahasamund,	18/03/2015	U/S. 420, 34 of IPC.

	City Mahasamund		
35/2015	PS Kanker, City Kanker	18/04/2015	U/S. 420, 120-B of IPC
450/2016	PS Durg.	12/06/2016	U/S. 420, 120-B of IPC and Section 4 of Prize Chits and Money Circulation Act, 1978.
850/2014	P Chanderpur	3/2/2014	U/S. 420, 34 of IPC and Sections 3 & 8 of Prize Chits and Money Circulation Act, 1978.
201/2015	PS Dhamtari	11/10/2015	U/S. 420, 34 of IPC.
094/2016	PS Rajnandgaon	3/2/2016	U/S. 420, 34 of IPC.
451/2016	PS Durg	12/06/2016	U/S. 420, 120-B of IPC and Section 4 of Prize Chits and Money Circulation Act, 1978.
27/2016	PS Antagarh, Kanker	11/08/2016	U/S. 420, 34 of IPC.
33303001 170043/2017	PS Bnemetara	18-1-2017	U/S. 420 of IPC, under Sections 3 & 4 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978

3. It is further contended that the petitioner has been acquitted in connection with FIR registered at Police Station, Durg, vide order dated 15-12-2017 passed by the Chief Judicial Magistrate, North Bastar, Kanker, CG. The petitioner was also taken into custody in two such cases in Madhya Pradesh in which he was released on regular bail by the High Court of Madhya Pradesh owing to the long period of custody vide order dated 26-9-2017 passed in M.Cr.C.No. 14349 of 2017 and dated 11-12-2017 in M.Cr.C.No.24976 of 2017. The petitioner filed a regular bail application ie., M.Cr.C.No. 6932 of 2017 before this Court in connection with Crime No. 22 of 2015, registered at Police Station, New Rajendra Nagar, District Raipur for committing offence under Sections 420, 34 and 120-B of IPC read

with Section 3 and 4 of the Act, 1978 and Section 138 of the Negotiable Instruments Act, 1881 which was rejected by this court vide its order dated 25-1-2018. The petitioner had earlier applied for regular bail before this court which was dismissed as withdrawn on 4-7-2016. Thereafter, he applied for regular bail (MCRC No. 1730 of 2019) before this court which was also dismissed on 18-4-2019. Thereafter, the petitioner moved to Hon'ble Supreme Court for grant of regular bail vide Special Leave to Appeal (Cri) No. 4380 of 019 which is still pending and it is likely to be listed on 27-7-2021.

4. Learned counsel for the petitioner would further submit that due to ongoing pandemic Covid-19, Hon'ble the Supreme Court in suo-moto writ petition (c) No.1 of 2020 by order dated 7-5-02021 has given directions regarding de-congesting overcrowded prisons and in pursuance thereof, High Court of Chhattisgarh had constituted High Powered Committee for releasing all prisoners. In pursuance of the directions of this Court, High Powered Committee issued guidelines on 12-5-2021. He would further submit that the petitioner is facing trial under Section 409 of IPC but there is no such provision with regard to this type of offence that has been made out whereas the High Powered Committee has taken care about the offence punishable under Section 304 and 307 of IPC, the petitioner has already undergone over a period of six years, as such he is entitled to be released on temporary bail in view of the guidelines issued by the High Powered Committee. Since no such provision has been made out for releasing the accused who are facing trial under Section 409 of IPC which is punishable with imprisonment either of either description for a term which may be extended to ten years and shall also be liable to fine as well as Section 420 of IPC which is punishable with imprisonment either of either description for a term which may be extended to seven years and shall also be liable to fine, but there is no such provision with regard to offence under Section 420 & 409 IPC made out, therefore, on factual matrix of the case, it is prayed

that the guidelines issued by the High Powered Committee on 12-5-2021 be modified.

5. On the other hand, learned counsel for the respondents would submit that this court has already taken a view that High Powered Committee guidelines are not binding in nature, therefore, no such direction can be given for amending guidelines as well as the petitioner cannot be given benefit of interim bail and prayed for dismissal of this writ petition. They would rely upon the order dated 7-7-2021 passed by this Court in WPCR No.355 of 2021 in case of Vijay Baid vs. Assistant Director, Directorate of Revenue Intelligence, Govt. of India, Raipur. He would further submit that the record of this case as reflected in the writ petition itself would demonstrate that the petitioner is a habitual offender and there is possibility of the petitioner to abscond or otherwise defeat or delay the course of justice, therefore, the petitioner is not entitled to get benefit of the order of Hon'ble the Supreme Court and recommendation of the High Powered Committee. The operative portion of the order passed in Vijay Baid (supra) is extracted as below:

“Hon'ble the Supreme Court in recent judgment passed on 19th March, 2021 in case of **The State of Kerala Vs. Mahesh**¹, while examining the order passed by the Supreme Court in Suo Moto Writ Petition (C) No. 01/2020 in para 38 held the orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before investigation is completed and the charge-sheet is filed. Para 37 & 38 of the judgment are reproduced as under:-

“37. There can be no doubt that the outbreak of the novel COVID-19 pandemic and its spread

¹Criminal Appeal No. 343 of 2021

has been a matter of serious public concern. The virus being highly infectious, precautions to prevent spread of infection to the extent possible are imperative. In *Suo Motu Writ Petition (Civil) No.1 of 2020 In Re : Contagion of Covid 19 Virus In Prisons*, this Court expressed concern over the possibility of spread of COVID-19 amongst prisoners lodged in overcrowded correctional homes and accordingly issued directions from time to time, directing the authorities concerned to inter alia take steps as directed by this Court, to minimize the risk of spread of COVID amongst the inmates of correctional homes. This Court also directed that a High Powered Committee be constituted by the States and Union Territories to consider release of some prisoners on interim bail or parole during the Pandemic, to prevent overcrowding of prisons.

38. It appears that the High Court has completely mis- appreciated the object, scope and ambit of the directions issued by this Court from time to time in *In Re : Contagion of Covid 19 Virus In Prisons*. This Court did not direct release of all under-trial prisoners, irrespective of the severity of the offence. After hearing the learned Attorney General of India, Mr. Venugopal, the Amicus Curiae appointed by this Court, Mr. Dushyant Dave and other Learned Counsel, the States and Union Territories were directed to constitute a High Powered Committee to determine which class of prisoners could be released on parole or interim bail for such period as might be thought appropriate. By way of example, this Court directed the States/Union Territories to consider release of prisoners convicted of minor offences with prescribed punishment of seven years or less. The orders of this Court are not to be construed as any direction, or even observation, requiring release of under-trial prisoners charged with murder, and that too, even before investigation is completed and the charge-sheet is filed. The Respondent Accused, it is reiterated, is charged with murder in the presence of an eye witness, and the impugned order granting bail was filed even before the charge-sheet was filed. The Charge-sheet appears to have been filed on

01.01.2021. Moreover the Respondent Accused had been absconding after the incident.

The possibility of the accused /petitioners absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered, therefore, the petitioners are not entitled to get benefit from order of the Supreme Court and the recommendation of the High Powered Committee”.

6. I have heard learned counsel for the parties and perused the records annexed with the petition.
7. From perusal of the record and the averments made in the petition, it is crystal clear that the petitioner is a habitual offender and if he is released on temporary bail, his absconding or defeating or delaying the course of justice, cannot be ruled out, therefore, the petitioner is not entitled to get benefit of the guidelines issued by the Supreme Court and the recommendation of the High Powered Committee.
8. The petitioner has prayed for amendment of the resolution dated 12-5-2021 passed by respondent No.2/High Powered Committee for which no writ can be issued to the authorities to amend the rule. It is the prerogative of the authority to frame guidelines.
9. Hon'ble the Supreme Court in **Dr.Ashwani Kumar vs. Union of India and another**, reported in (2020) 13 SCC 585 has observed as under.

“We have no hesitation in observing that notwithstanding the aforesaid directions in D.K. Basu (supra) and the principles of law laid down in Prithipal Singh and Others v. State of Punjab and Another reported in (2012) 1 SCC 10 and S. Nambi Narayanan (supra), this Court can, in an appropriate matter and on the basis of pleadings and factual matrix before it, issue appropriate guidelines/directions to elucidate, add and improve upon the directions issued in D.K.

Basu (supra) and other cases when conditions stated in paragraph 29 supra are satisfied. However, this is not what is urged and prayed by the applicant. The contention of the applicant is that this Court must direct the legislature, that is, Parliament, to enact a suitable standalone comprehensive legislation based on the UN Convention and this direction, if issued, would be in consonance with the Constitution of India. This prayer must be rejected in light of the aforesaid discussion”.

10. The observation made by this Court is only with regard to consideration of grant of interim bail. The learned trial Court shall not be influenced by any of the observations made by this Court while deciding the regular bail application, if any, is filed or conducting the trial.
11. In view of the above, the present writ petition *sans* merit, is liable to be and is hereby dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju