

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (PIL) No.66 of 2021

Order reserved on: 28-10-2021

Order delivered on: 13-12-2021

National Forum on Prison Reforms, Through its Convener, Vijay Raghavan, S/o Late Shri P.K. Sundaram, aged about 54 years, Professor at Tata Institute of Social Sciences, U.N. Purav Marg, Deonar, Mumbai (Maharashtra) – Organization office address - Pt-62/26, Kalkaji, New Delhi – 110019

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Department of Home Affairs (Jail), Mahanadi Bhawan, Mantralaya, Atal Nagar, Raipur (C.G.)
2. Director General, Jail, Jail Head Quarter, Raipur, Distt. Raipur (C.G.)
3. Jail Superintendent, Central Jail, Raipur, District Raipur (C.G.)
4. Jail Superintendent, Central Jail, Bilaspur, District Bilaspur (C.G.)
5. Jail Superintendent, Central Jail, Durg, District Durg (C.G.)
6. Jail Superintendent, Central Jail, Jagdalpur, District Bastar (C.G.)
7. Jail Superintendent, Central Jail, Ambikapur, District Surguja (C.G.)

---- Respondents

Writ Petition (PIL) No.73 of 2021

Vikas Kaushik, S/o Dilip Kaushik, Aged about 24 years, R/o Bajrang Chowk, Ward No.15, Parsada, Tifra, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through Secretary, Home Department Ministry, New Raipur, District Raipur (C.G.)
2. The Director General, Jail & Correctional Services, Chhattisgarh, Raipur (C.G.)
3. Jail Superintendent, Central Jail, Raipur, District Raipur (C.G.)
4. Jail Superintendent, Central Jail, Bilaspur, District Bilaspur (C.G.)
5. Jail Superintendent, Central Jail, Durg, District Durg (C.G.)

6. Jail Superintendent, Central Jail, Jagdalpur, District Bastar (C.G.)
7. Jail Superintendent, Central Jail, Ambikapur, District Surguja (C.G.)
---- Respondents

Writ Petition (Cr.) No.329 of 2021

1. Vijay @ Hallo Jaiswal, S/o Late Bajarang Prasad, Aged about 54 years
2. Ajay @ Chhotu @ Jiji Jaiswal, S/o Late Bajarang Prasad, Aged about 51 years
3. Jay @ Gudda Jaiswal, S/o Late Bajarang Prasad, Aged about 41 years

All R/o B 415, 417, 419 Sanjay Heights, Rajasva Colony, Sarkanda, Bilaspur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Home Department Ministry, New Raipur, District Raipur (C.G.)
2. The Director General, Jail & Correctional Services Chhattisgarh, Raipur (C.G.)
3. Jail Superintendent, Central Jail, Bilaspur, District Bilaspur (C.G.)
---- Respondents

Writ Petition (Cr.) No.353 of 2021

1. Samrat @ Laltu Mukherjee, S/o Ashok Mukherjee, Aged about 40 years
2. Rishiraj @ Tutul Mukherjee, S/o Ashok Mukherjee, aged about 40 years

Petitioner No.1 & 2 Through their father (since they are in Jail) Ashok Mukherjee, S/o Late Hemchand Mukherjee, aged about 77 years, R/o B/114 Rama Life City, Sakhri, Bilaspur, District Bilaspur (C.G.)

3. Honey @ Kaustubh Samdariya, S/o Nand Kumar Samdariya, aged about 46 years

Petitioner No.3 Through his wife (since he is Jail) Minakshi Samdariya, W/o Honey @ Kaustubh Samdariya, aged about 42 years, R/o Car Decko, Near Satya Automobiles, Old Bus Stand Road, Bilaspur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Home Department Ministry,

New Raipur, District Raipur (C.G.)

2. The Director General, Jail & Correctional Services Chhattisgarh, Raipur (C.G.)
3. Jail Superintendent, Central Jail, Bilaspur, District Bilaspur (C.G.)
---- Respondents

Writ Petition (Cr.) No.383 of 2021

Manoj Agrawal, S/o Late Shri Shankar Lal Agrawal, Aged about 53 years, R/o Behind Solakholi, Tikrapara, Bilaspur, Police Station City Kotwali, Bilaspur, District Bilaspur (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Home (Jail) Department, Mantralaya, Mahanadi Bhawan, Raipur (C.G.)
2. The Director General, Prisons and Correctional Services Chhattisgarh, Head Quarter – Prisons and Correctional Services Chhattisgarh, Raipur (C.G.)
3. The Jail Superintendent, Central Jail, Bilaspur (C.G.)
---- Respondents

Writ Petition (Cr.) No.351 of 2021

Anil Kumar Singh, S/o Late Shri Niranjan Singh Ratre, 53 yrs, Through Smt. Anita Singh, W/o Shri Anil Kumar Singh, 53 years, R/o Kamla Hospital, Manpur Chowk, Dallirajhara, District Balod (C.G.)

---- Petitioner

Versus

1. State of Chhattisgarh, Through the Secretary, Home Department, Mantralaya, Mahanadi Bhawan, Atal Nagar, Raipur, Distt. Raipur (C.G.)
2. The Director General, Jail & Correctional Services Chhattisgarh, Raipur
3. The Jail Superintendent, Central Jail, Bilaspur
---- Respondents

AND

Writ Petition (Cr.) No.395 of 2021

1. Sanjay Mali @ Gullu Mali, S/o Late Shri Chhedilal Mali, Aged about 51 years, R/o Milan Chowk, Kududand, Police Station Civil Line, Bilaspur, District Bilaspur (C.G.)
2. Niraj Mali @ Golu, S/o Late Shri Shankar Mali, Aged about 41 years,

R/o Kududand, Milan Chowk, Bilaspur, Police Station Civil Line,
Bilaspur, District Bilaspur (C.G.)

3. Raja Dubey, S/o Shri Narottam Dubey, Aged about 44 years, R/o Milan Chowk, Kududand, Bilaspur, Police Station Civil Line, Bilaspur, District Bilaspur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, Through the Secretary, Home (Jail) Department, Mantralaya, Mahanadi Bhawan, Raipur (C.G.)
2. The Director General, Prisons and Correctional Services Chhattisgarh, Head Quarter – Prisons and Correctional Services Chhattisgarh, Raipur (C.G.)
3. The Jail Superintendent, Central Jail, Bilaspur (C.G.)

---- Respondents

For Petitioner in W.P.(PIL)No.66/2021: -

Mr. Kishore Narayan, Advocate.

For Petitioners in W.P.(PIL)No.73/2021, W.P.(Cr.)No.329/2021 and W.P (Cr.)No.353/2021: -

Mr. Shakti Raj Sinha, Advocate.

For Petitioners in W.P.(Cr.)Nos.383/2021 and 395/2021: -

Mr. Rishi Rahul Soni, Advocate.

For Petitioner in W.P.(Cr.)No.351/2021: -

Mr. Aakash Pandey, Advocate.

For State/Respondents: -

Mr. Vivek Ranjan Tiwari, Additional Advocate General
with Mr. Animesh Tiwari, Deputy Advocate General.

Amicus Curiae: Mr. Prafull N. Bharat, Senior Advocate with Mr. Aakash Pandey, Advocate.

For Intervener in W.P.(PIL)No.66/2021: -

Mr. Devershi Thakur and Mr. J.K. Gupta, Advocates.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.

C.A.V. Order

Sanjay K. Agrawal, J

1. In this batch of writ petitions including the public interest litigation (PIL), legality, validity and correctness of order dated 31-3-2021 passed by the Director General, Prisons and Correctional Services, Chhattisgarh, Raipur has been questioned. In that view of the matter,

these writ petitions have been clubbed together and heard together and are being disposed of by this common order.

2. Order dated 31-3-2021 has principally been challenged by the petitioners on the ground that grant of leave on parole is governed by Rule 31-A of the Act of 1985 and under Rule 31-A, the State Government has framed rules namely, the Chhattisgarh Prisoner's Leave Rules, 1989 (for short, 'the Rules of 1989') to prescribe the entire scheme for grant of leave. In the event of breach of conditions by a prisoner during his leave / parole, Rules 11 and 12 have been framed which take care of overstay and power has been conferred as mentioned therein and as such, the leave / parole is fully occupied by the authorities mentioned in the Rules of 1989 regarding overstay after the leave period. Likewise, Note (3) of Rule 4-C of the Rules of 1989 clearly provides that the duration of leave shall be included while calculating the duration of the prisoner's total sentence. Therefore, the Director General (Prisons) has no power and jurisdiction to pass the impugned order dated 31-3-2021 holding that the period during which the petitioners remained outside the jail by the order of the Supreme Court and pursuant to which the High Power Committee has already extended the period of their parole, will not be counted. It is unconstitutional and beyond the power and jurisdiction of the Director General (Prisons) apart from being arbitrary and having no basis for passing the impugned order, as the order is absolutely occupied by the authorities specified by the rule making authority. It has also been pleaded that Rule 18 of the Rules of 1989 clearly provides that in case if any doubt arises as to the interpretation of any of the provisions of these rules, the matter shall be referred to the Government whose

decision thereon shall be final and as such, the impugned order dated 31-3-2021 is liable to be quashed.

3. It is the case of the State / respondents that in accordance with the order dated 23-3-2020 passed by the Supreme Court in the matter of **In Re : Contagion of COVID 19 Virus in prisons**¹ as extended from time to time and the recommendation made by the High Power Committee constituted in the State of Chhattisgarh, eligible prisoners were released on parole in accordance with the Prisoners (Chhattisgarh Amendment) Act, 1985 (for short, 'the Act of 1985') and in accordance with the Chhattisgarh Prisoner's Leave Rules, 1989, by the District Magistrate and subsequently by the Director General (Prisons) in the prescribed form which was extended also from time to time by this Court, but thereafter, the convicted prisoners did not surrender right in time after the expiry of their parole period mentioned in the release warrant. To take stock of that situation, the Director General (Prisons) has issued order dated 31-3-2021 which has been called in question in which the Director General (Prisons) has directed that the prisoners who have been released on parole in accordance with Section 31-A(1) the Act of 1985 for 21 days and by virtue of sub-section (5) of Section 31-A, the period of leave of a prisoner under sub-section (1) shall count towards the total period of his sentence. It has further been held that with effect from 26-3-2020, only the leave period mentioned in Forms क and ख will be counted towards the total period of sentence. It has also been held that if a convicted prisoner has been released on parole under Section 31-A of the Act of 1985 and he has been convicted under the Prisons Act, 1894 preceding 12

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months from the date of his release, the prisoner who had been out of jail beyond the period mentioned in the warrant, will not be entitled to apply for parole after entering into jail, such prisoner will be entitled for parole only after looking into his conduct for one year.

4. Detailed return has also been filed by the State Government supporting the order passed by the Director General of Prisons justifying the order. In the additional affidavit filed, it has been stated that Section 5 of the Prisons Act, 1894 provides that an Inspector General shall be appointed for the territories subject to each State Government, and shall exercise, subject to the orders of the State Government, the general control and superintendence of all prisons situated in the territories under such Government. Since the petitioners did not surrender even after the period extended by this Court and period expired in the warrant issued, in that view of the matter, the order impugned has been passed by the Director General of Prisons taking care of the situation and difficulties that cropped-up before the jail authorities. Thus, the decision taken by the Director General of Prisons is strictly in accordance with law and the writ petitions deserve to be dismissed.
5. In W.P.(PIL)No.66/2021, Mr. Prafull N. Bharat, learned Senior Counsel, has been appointed as *amicus curiae* by this Court. He has filed a written note on 29-7-2021 before this Court. In the written note, learned *amicus curiae* has stated that duration of parole was extended by the order of the Supreme Court in **In Re : Contagion of COVID 19 Virus in prisons** (supra) and High Power Committee was directed to be constituted and the said Committee was accordingly constituted and the petitioners were released on parole and that was further extended

by this Court. In view of the provisions contained in Rule 19 of the Rules of 1989, the conditions of rules regarding surrender of prisoners should be relaxed by the Government. It has further been submitted that the Director General of Prisons does not have any power either under Rule 18 or Rule 19 of the Rules of 1989 and as such, the order dated 31-3-2021 is without jurisdiction and without authority of law. It has also been submitted that Rule 4-A(3) of the Rules of 1989 prescribes that the prisoner who has shown good conduct during the period of the year in which he submits his application for leave would also be considered for grant of leave. Rule 10(f) of the Rules of 1989 provides that the concerned Superintendent of Police is the competent authority during the period when the prisoner is released on parole. Admittedly, the petitioners / prisoners were released in the month of March, 2020 and remained outside till January, 2021. As such, the order of the Director General of Prisons having no basis and contrary to the rules for parole as framed and which are occupied by the authorities made by the rule making authority, deserves to be set aside / quashed.

6. Mr. Prafull N. Bharat, learned amicus curiae appearing in W.P.(PIL) No.66/2021, would submit as under: -

1. The Director General of Prisons does not have any power under the Rules of 1989 to restrict the right of eligible convicted persons from making application for parole governed by Section 31-A of the Act of 1985 read with the Rules of 1989 by order dated 31-3-2021, as the Rules of 1989 are a complete Code in which conditions of leave, eligibility for leave, sanctioning authority for first leave, sanctioning authority for subsequent

leaves, conditions for release on leave, procedure for release on leave, arrest of a prisoner in event of breach of conditions, penalty for overstay, all have been provided. The authority competent to sanction emergency leave has been mentioned therein in which the Director General of Prisons has not been given any power to incorporate the conditions for making application for parole.

2. Note (3) of Rule 4-C of the Rules of 1989 provides that the duration of leave shall be included while calculating the duration of the prisoner's total sentence. In that view of the matter, the duration of leave has to be calculated as per Note (3) of Rule 4-C of the Rules of 1989 and additional condition, if any, cannot be imposed by the Director General of Prisons by order dated 31-3-2021 which is ex facie illegal and without jurisdiction and arbitrary as well.
3. Rule 18 of the Rules of 1989 provides for removal of doubt which prescribes that if any doubt arises as to the interpretation of any of the provision of these rules, the matter shall be referred to the Government whose decision thereon shall be final. In this case, if there is any doubt with regard to calculation of the duration of leave while calculating the duration of the prisoner's total sentence, the matter could have been referred to the State Government under Rule 18 of the Rules of 1989, but that has not been done and the Director General of Prisons himself has substituted himself in place of the State Government and took decision which is totally contrary to the Rules of 1989. No such power has been conferred to the

Director General of Prisons to take decision in case any doubt arises with regard to calculation of the duration of the prisoner's total sentence, particularly qua the duration of leave. As such, the order / circular dated 31-3-2021 is liable to quashed.

7. Mr. Shakti Raj Sinha, learned counsel for the petitioners appearing in W.P.(PIL)No.73/2021, W.P.(Cr.)No.329/2021 and W.P(Cr.) No.353/2021, would submit as under: -

1. Restriction of right to make application for leave imposed by the Director General of Prisons is absolutely illegal, even if the petitioners have overstayed against the period mentioned in warrant granting parole, then it has to be considered in the light of Rules 11 & 12 of the Rules of 1989 and no order contrary to Rules 11 & 12 can be passed in general terms by the Director General of Prisons which is absolutely illegal, without jurisdiction and without authority of law.
2. The duration of leave which has to be included while computing the duration of the prisoner's total sentence has to be governed by Note (3) appended to Rule 4-C of the Rules of 1989 and the Director General of Prisons cannot make any addition or alteration in that Note, even if any dispute arises in respect of the duration of leave, that power and jurisdiction is conferred to the Government under the Rules of 1989.

8. Mr. Rishi Rahul Soni, learned counsel for the petitioners appearing in W.P.(Cr.)Nos.383/2021 and 395/2021, would submit that overstay of the petitioners / convicted prisoners is governed by Rules 11 & 12 of the Rules of 1989 providing penalty for overstay and no such order can be passed contrary to Rules 11 & 12 as the Director General of

Prisons has assumed the role of the Government as provided in Rule 11 of the Rules of 1989. Section 31-A(4) of the Act of 1985 takes the situation and clearly provides that persons convicted of offence under Section 46 of the Prisons Act, 1894 shall not be granted leave and as such there is already a provision for grant of leave that the prisoner must not be convicted for offence under Section 46 of the Prisons Act, 1894 during twelve months preceding the date of commencement of the leave applied for and therefore the direction issued to that extent by the learned Director General of Prisons is liable to be set aside. Mr. Soni, learned counsel, would further submit that the Supreme Court in the matter of Sunil Batra v. Delhi Administration and others² has held that prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed.

9. Mr. Kishore Narayan, learned counsel appearing for the petitioner in W.P.(PIL)No.66/2021, would submit that the impugned order dated 31-3-2021 is contrary to the Rules of 1989, as complete procedure for granting leave viz., conditions of leave, eligibility for leave, sanctioning authority for first leave, sanctioning authority for subsequent leaves, conditions for release on leave, procedure for release on leave, arrest of a prisoner in event of breach of conditions, penalty for overstay, have already been provided for. Power has been conferred to the Government for removal of doubt, on reference being made to it in order to clarify the doubts so referred. As such, there is no immunity under the Rules of 1989 and the order is absolutely occupied by the rule making authority.

10. Mr. Aakash Pandey, learned counsel appearing for the petitioner in

² (1978) 4 SCC 494

W.P.(Cr.)No.351/2021, would submit that the order of the Director General of Prisons restricting the right to apply for parole in accordance with the Rules of 1989 is contrary to the law in this regard and is liable to be quashed.

11. Mr. Animesh Tiwari, learned Deputy Advocate General appearing for the State / respondents, would make following submissions in opposition to the submissions made by learned counsel for the petitioners: -

1. Section 5 of the Prisons Act, 1894 confers power and jurisdiction to the Inspector General which has to be read as Director General of Prisons, who shall exercise the general control and superintendence of all prisons situated in the territories under the State Government and as such, under such supervisory power, the impugned order dated 31-3-2021 has been passed.
2. Most of the petitioners herein were released on parole pursuant to the order of the District Magistrate and the Director General (Prisons) in accordance with the Rules of 1989, but they did not surrender in time mentioned in their release warrants and yet taking illegal advantage of the order passed by the Supreme Court and the High Power Committee, they did not surrender, therefore, to take the stock of that situation, the order dated 31-3-2021 has been passed which is strictly in accordance with law and no interference is called for in exercise of the jurisdiction under Article 226 of the Constitution of India. The order of the Director General of Prisons is in consonance with the scheme of the Prisons Act, 1894 and the Rules of 1989.

3. The petitioners have been released on regular parole.
12. Mr. Devershi Thakur, learned counsel appearing for the intervener in W.P.(PIL)No.66/2021, would support the impugned order and adopt the arguments made by Mr. Prafull N. Bharat, learned Senior Counsel appearing as *amicus curiae*.
13. We have heard learned counsel for the parties and considered the rival submissions made herein-above and also went through the record with utmost circumspection.
14. Upon hearing learned counsel for the parties and after going through the record, following question would emerge for consideration: -

“Whether the Director General of Prisons is competent to pass the impugned order restricting the right of parole of the convicted prisoners governed by the Rules of 1989.”
15. The Prisoners Act, 1900 is an act to consolidate the law relating to prisoners confined by order of a Court which came into force with effect from 2nd February, 1900. By the Prisoners (Madhya Pradesh Amendment) Act, 1985, Section 31-A was incorporated in the Prisoners Act, 1900 under Part VI-A which deals with Leave and Emergency Leave to Prisoners. Section 31-A provides grant of leave to prisoners; Section 31-B provides power to grant leave to prisoners as ground of emergency; Section 31-C provides surrender by the prisoner after leave period; Section 31-D provides penalty stating that any prisoner who does not surrender himself as required by sub-section (1) of Section 31-C shall be liable upon conviction to be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both; Section 31-E confers power to the State Government to make rules for carrying out the

purposes of Part VI-A inserted by the Prisoners (Madhya Pradesh) Amendment Act, 1985 which came into force on 26th May, 1985. For the sake of convenience, Sections 31-A, 31-C, 31-D and 31-E of the Prisoners Act, 1900, as amended by the Act of 1985, are extracted herein-below: -

“31-A. Grant of leave to Prisoners – (1) Subject to the provisions to this part and to such conditions as may be prescribed, the State Government or any authority to which the State Government may delegate its powers in this behalf may grant leave to any prisoner who has been sentenced to a term of imprisonment of not less than three years for a period not exceeding twenty-one days in a year, excluding the time required for journeys to the first place of his visit immediate after departure from the prison and from the place of last visit to the person back.

(2) The provisions of sub-section (1) shall not apply to a prisoner who has been classified as a habitual criminal for the purpose of the rules for the time being in force made under the prisons Act, 1894 (IX of 1894) and who has more than three previous convictions.

(3) Leave shall not be admissible to a prisoner during a year under sub-section (1) –

(i) for more than two occasions;

(ii) for a period of less than ten days; and

(iii) unless a period of three months has elapsed since the expiration of leave has availed of during the year and commencement of the leave applied for.

(4) No prisoner shall be granted leave under sub-section (1), unless,–

(a) he has at the of the grant of leave served one-half of his sentence including remission, or a period of not less than two years of his sentence, including remission, whichever is less;

(b) he has not been punished for a prison offence under section 46 of the Prison Act, 1894 (IX of 1894) during twelve months preceding the date of commencement of the leave applied for.

(5) The period of leave of a prisoner under sub-section (1) shall count towards the total period of his sentence.

(6) The authority directing the grant of leave to any prisoner under sub-section (1) may require him to enter into a bond with or without sureties for due observance of conditions specified in the direction.

(7) If any prisoner granted leave under sub-section (1) fails to fulfill any of the conditions imposed upon him under the said sub-section or in the bond entered into by him, the bond shall be declared to be forfeited and any person bound thereby shall be liable to penalty thereof.

(8) If a prisoner has violated the condition of leave or bond, he shall not be entitled to leave under sub-section (1) during the remaining period of his sentence.

31-C. Surrender by the prisoner after leave period.—(1) On the expiry of the period for which a prisoner was released on leave under sub-section (1) of section 31-A or an emergency leave under sub-section (1) of section 31-A he shall surrender himself to the officer-in-charge of the prison from which he was released.

(2) If a prisoner does not surrender himself as required by sub-section (1), he may be arrested by any police officer without a warrant and shall be remained to undergo unexpired portion of his sentence.

31-D. Penalty.— Any prisoner who does not surrender himself as required by sub-section (1) of section 31-C shall be liable upon conviction to be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both.

31-E. Power to make rules.—The State Government may make rules for carrying out the purposes of this part:—

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) procedure to be followed a respect of the proceedings for grant of leave or emergency leave to prisoners;

(b) the conditions for grant of leave or emergency

leave to prisoners under sub-section (1) of section 31-A or under sub-section (1) of section 31-B, respectively, including conditions to the supervision during the period of such leave;

(c) travelling allowance for prisoners during the period of leave;

(d) restrictions on the movement of prisoners during the period of leave; and

(e) cancellation of leave and emergency leave or forfeiture of bond in case of violation of conditions of leave,”

16. Thereafter, in exercise of the powers conferred under Section 31-E(2) of the Prisoners Act, 1900, the Madhya Pradesh (Chhattisgarh) Prisoner's Leave Rules, 1989 have been made which clearly provide conditions of leave, eligibility for leave, duration of general leave, duration of emergency leave, application for grant of leave, sanctioning authority for first leave, sanctioning authority for subsequent leaves, conditions for release on leave, procedure for release on leave, arrest of a prisoner in event of breach of conditions, penalty for overstay, removal of doubt, etc.. Rule 4-C of the Rules of 1989 provides for duration of general leave which states as under: -

“4-C. Duration of general leave.—Eligibility criteria for leave for prisoners as per Rules 4-A and 4-B shall be as follows:—

During the year (agriculture year from month June to May) prisoner shall be eligible for maximum leave of 60 days, which shall be sanctioned in four parts of not more than 15 days in the following duration:—

(1) For sowing the Kharib Crop – from the month of June to month of August – 15 days.

(2) For harvesting the Kharib Crop – from the month of September to month of November – 15 days.

(3) For sowing the Rabi Crop – From the month of December to month of February – 15 days.

(4) For harvesting the Rabi Crop – from the month of March to month of May – 15 days.

Note:– (1) It shall be compulsory to keep an interval of at least 01 month between two general leaves.

(2) The duration of leave shall include the expected time to travel and days of departure from and arrival to the prison.

(3) The duration of leave shall be included while calculating the duration of the prisoner's total sentence."

17. Similarly, Rule 11 of the Rules of 1989 provides for arrest of a prisoner in event of breach of conditions; Rule 12 provides penalty for overstay; and Rule 18 provides for removal of doubt which are also extracted herein-below for the sake of convenience: -

"11. Arrest of a prisoner in event of breach of conditions.–

(1) If any prisoner does not present himself on the evening of fixed date of his return, he shall be treated as prisoner at large and an FIR shall be registered against him at the Police Station in whose jurisdiction concerning jail (where prisoner was expected to surrender) is situated, and concerned Station House Officer shall put up challan against escaped prisoner. Station House Officer shall initiate necessary actions as per provisions contained in Sections 82 and 83 of Criminal Procedure Code and information regarding such actions shall be sent to Jail Superintendent by him.

(2) If negligence regarding registering the FIR in case of such offence has been shown by police in spite of having received information from Superintendent of Jail under Rule 11 of the Madhya Pradesh Prisoner's Leave Rules, 1989, Police Superintendent shall inform Inspector General of Prisons after registration of such crime of the concerned Police Officer under Section 221 of Criminal Procedure Code.

(3) In the event of escape of prisoner during the period of leave, case shall be registered against the guarantor at concerned Police Station for abetment.

(4) In the event of escape of prisoner during leave Jail Superintendent shall submit application before the

Court of Tahsildar for initiating actions regarding forfeiture of his security as well as attachment of guarantor's assets. On this application, Tahsil Court shall take necessary actions for attachment of assets.

12. Penalty for overstay.—If the prisoner returns to the jail of his own accord after the date fixed for his return he shall be admitted to the jail and the prisoner's return and the reason for the delay shall be reported immediately to the District Magistrate of the district in which the jail is situated, for his orders where the prisoner should be prosecuted. If it is not considered to prosecute, the Superintendent should hold an enquiry and may for good and sufficient reasons, award one of the following punishments:—

(a) Formal Warning.

(b) Forfeiture for a period not exceeding 3 months privileges of interview, receiving and sending letters.

(c) Degradation from higher to lower grade.

(d) Forfeiture of 5 days remission for each day's overstayal on leave which shall not exceed total period of his sentence inclusive of unexpired period of sentence.

18. Removal of doubt.—If any doubt arises as to the interpretation of any of the provision of these rules, the matter shall be referred to the Government whose decision thereon shall be final.”

18. Section 31-D of the Prisoners Act, 1900, as amended by the Act of 1985, clearly provides that any prisoner who does not surrender himself as required by sub-section (1) of Section 31-C shall be liable upon conviction to be punished with imprisonment of either description for a term which may extend to two years, or with fine or with both. Similarly, Rule 11 of the Rules of 1989 clearly provides for arrest of a prisoner in event of breach of conditions and detailed procedure has been prescribed therein. It has been provided in sub-rule (1) of Rule 11 of the Rules of 1989 that if any prisoner does not present himself on the evening of fixed date of his return, he shall be treated as

prisoner at large and an FIR shall be registered against him at the Police Station in whose jurisdiction concerning jail (where prisoner was expected to surrender) is situated, and even sufficient safeguards have been provided in sub-rules (2), (3) and (4) of Rule 11 against the prisoner who does not present himself on the evening of fixed date of his return. Likewise, Rule 12 of the Rules of 1989 provides penalty for overstay which states that if the prisoner returns to the jail of his own accord after the date fixed for his return, he shall be admitted to the jail and the prisoner's return and the reason for the delay shall be reported immediately to the District Magistrate of the district in which the jail is situated, for his orders where the prisoner should be prosecuted, and if it is not considered to prosecute, the Superintendent should hold an enquiry and may for good and sufficient reasons, award one of the punishments provided under clauses (a) to (d) therein. Similarly, Section 31-D of the Prisoners Act, 1900 as amended by the Act of 1985, provides for penalty of not surrendering of a prisoner as required by sub-section (1) of Section 31-C.

19. As such, the Act of 1985 provides sufficient safeguard in shape of Section 31-D of the Act of 1985 and the Rules framed under Section 31-E of the Act of 1985 i.e. Rules 11 and 12 of the Rules of 1989, for taking action against the prisoner who does not present himself on the evening of fixed date of his return or on his overstay and did not return on the completion of the period mentioned in the release warrant. The legislature has consciously made sufficient provisions in the Act of 1985 itself in shape of prosecution under Section 31-A of the Act of 1985 and in the Rules of 1989 also by virtue of Rules 11 & 12,

sufficient safeguard for punishment to the prisoner who does not surrender after completion of his leave period under the Rules of 1989 has been provided and if there is any difficulty in interpretation of any of the provisions of the Act of 1989, Rule 18 provides for removal of doubt which states that if any doubt arises as to the interpretation of any of the provisions of the Rules of 1989, the matter shall be referred to the Government whose decision thereon shall be final.

20. Similarly, clause (b) of sub-section (4) of Section 31-A of the Prisoners Act, 1900, as amended by the Act of 1985, clearly provides that no prisoner shall be granted leave under sub-section (1), unless he has not been punished for a prison offence under Section 46 of the Prison Act, 1894 during twelve months preceding the date of commencement of the leave applied for. Similarly, sub-section (5) of Section 31-A of the Prisoners Act, 1900 and Note (3) of Rule 4-C of the Rules of 1989 take care of the duration of leave which shall be included while calculating the duration of the prisoner's total sentence. As such, grant of leave and its non-compliance on release have fully been taken care of by the Act of 1985 by virtue of Sections 31-A, 31-C & 31-D of the Prisoners Act, 1900, as amended by the Act of 1985 and even under the Rules framed under 31-E i.e. clauses (a) to (e) of sub-section (2), no such jurisdiction has been conferred to the Director General of Prisons neither in the Prisoners Act, 1900 nor in the Rules of 1989, as such, the order passed by the Director General of Prisons to that regard restricting the convicted prisoner's right to apply for parole adding certain additional conditions is without jurisdiction and without authority of law.

21. The Supreme Court in Sunil Batra (supra) has clearly held that

prisoners are entitled to all constitutional rights unless their liberty has been constitutionally curtailed. Similarly, in the matter of D. Bhuwan Mohan Patnaik v. State of Andhra Pradesh³, the Supreme Court has held that even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution of India that he shall not be deprived of his life or personal liberty except according to procedure established by law, and observed as under: -

“Convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to “practise” a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law.”

22. Similarly, the Supreme Court in the matter of Sunil Batra v. Delhi Administration⁴ has laid down the rights of a prisoner and the duties of a court, and observed in paragraph 30 as under: -

“30. We, therefore, affirm that where the rights of a prisoner either under the Constitution or under other law, are violated the writ power of the court can and should run to his rescue. There is a warrant for this vigil. The court process casts the convict into the prison system and the deprivation of his freedom is not a blind penitentiary affliction but a belighted institutionalisation geared to a social good. The court has a continuing responsibility to ensure that the constitutional purpose of the deprivation is not defeated by the prison administration. In a few cases,

3 (1975) 3 SCC 185

4 AIR 1980 SC 1579

this validation of judicial invigilation of prisoners' condition has been voiced by this court and finally reinforced by the Constitution Bench in *Batra* (1978) 4 SCC 494 at p. 496 : (AIR 1978 SC 1675) (*supra*).

The Court need not adopt a "hands off" attitude in regard to the problem of prison administration. It is all the more so because a convict is in prison under the order and direction of the court."

Under the caption "Retention of Authority over Prisoner by Sentencing Judge" Krantz notes: Shaldon Krantz, *Corrections and Prisoners' Rights* at 274-75:

As noted by Judge Law in a Judicial Mandate, *Trial Magazine* (Nov-Dec. 1971) at p. 15:

It should be the responsibility of the court in imposing the sentence to set forth as it would in any equitable decree, the end to be achieved and the specifics necessary to achieve that purpose. If then, we are to have accountability in the execution of the sentence, courts must make clear what is intended in the imposition of the sentence. Every sentence should be couched in terms similar to a mandatory injunction. In this manner, the penology system is to be held to account if the government does not faithfully execute the order.

In other words, the sentencing court should be required to retain jurisdiction to ensure that the prison system responds to the purposes of the sentence. If it does not, the sentencing court could arguably have the authority to demand compliance with the sentence or even order the prisoner released for non-compliance.

Whether inside prison or outside, a person shall not be deprived of his guaranteed freedom save by methods 'right, just and fair'. Bhagwati J. in *Maneka Gandhi* (1978) 1 SCC 248 at p. 284: (AIR 1978 SC 597) observed.

The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Art. 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Art. 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of Article 21

would not be satisfied."

23. The object of granting parole is to make necessary efforts to rehabilitate a convict prisoner in the main stream of society based on "Karuna" (compassion) as well as on human consideration.

24. His Lordship A.P. Sen, J, speaking for the Supreme Court, while highlighting the object of parole in the matter of Poonam Lata v M.L. Wadhawan and others⁵, observed in no uncertain terms that "release on parole is a wing of the reformatory process and is expected to provide opportunity to the prisoner to transform himself into a useful citizen. Parole is thus a grant of partial liberty or lessening of restrictions to a convict prisoner".

25. The concept of "Karuna" with reference to right of a prisoner who stand convicted for a criminal offence has been highlighted by His Lordship V.R. Krishna Iyer, J, speaking for the Supreme Court, in the matter of Inder Singh and another v. State (Delhi Administration)⁶ as under: -

"... parole will be allowed to them so that their family ties may be maintained and inner tensions may not further build up. ..."

26. Not only this, His Lordship further emphasized the object of parole and quoted a passage from Lewis Moore with approval. The said passage reads as under: -

"You cannot rehabilitate a man through brutality and disrespect. Regardless of the crime a man may commit, he still is a human being and has feelings. And the main reason most inmates in prison today disrespect their keepers, is because they themselves (the inmates) are disrespected and are not treated like human beings. Does this type of treatment bring about respect and

⁵ (1987) 3 SCC 347

⁶ AIR 1978 SC 1091

rehabilitation? No! It only instills hostility and causes alienation toward the prison officials from the inmate or inmates involved.

If you treat a man like an animal, then you must expect him to act like one. For every action, there is a reaction. This is only human nature. And in order for an inmate to act like a human being, you must treat him as such. Treating him like an animal will only get negative results from him. Lewis Moore (71 pg. 72)"

27. Thus, parole has been considered as a part of human dignity which is included in Article 21 of the Constitution of India and right to apply for leave / parole is a vested legal right of a convicted prisoner in accordance with the Rules of 1989 and cannot be curtailed by executive fiat.

28. Reverting to the facts of the present case in the light of the aforesaid object of granting parole and taking into account that parole has been considered as a part of human dignity which is included in Article 21 of the Constitution of India, it is quite apparent that grant of parole to the convicted prisoner is governed by the Act of 1985 and further, in order to give effect to the Act of 1985, the Rules of 1989 have been framed which clearly regulate the procedure for grant of leave and even it provides how the leave period has to be counted and also provides penalty if any prisoner commits breach of the conditions of the release, and if any prisoner does not present himself on the evening of fixed date of his return, he will be treated as prisoner at large and the penalty of registration of FIR against him has been provided. In case of overstay, serious penalty has been provided against the concerned prisoner in shape of Rule 12 of the Rules of 1989. In case of removal of doubt, the matter has to be referred to the State Government under Rule 18. As such, the area is fully occupied and

there is no room for any jail administration to pass any order contrary to the Act of 1985 read with the Rules of 1989.

29. At this stage, the plea of the State / respondents based on Section 5 of the Prisons Act, 1894 deserves to be taken note of. Section 5 of the Prisons Act, 1894 provides as under: -

“5. Inspector General.—An Inspector General shall be appointed for the territories subject to each State Government, and shall exercise, subject to the orders of the State Government, the general control and superintendence of all prisons situated in the territories under such Government.”

30. By the aforesaid provision, the Inspector General shall exercise general control and superintendence of all prisons situated in territories under the State Government subject to the order of the State Government. As such, the Inspector General has been given the general control and superintendence of all prisons situated in the territories under such Government, but the said provision cannot be construed or read as empowering the Director General of Prisons to issue directions that too in direct conflict with the Act of 1985 read with the Rules of 1989 providing and regulating the grant of parole to the convicted prisoners. Therefore, the argument based on Section 5 of the Prisons Act, 1894 deserves to be rejected and the order dated 31-3-2021 deserves to be quashed.

31. In the batch of writ petitions, the petitioners have also claimed relief to direct the respondent authorities to count and add the period of parole and extended parole / leave by order of the court of law, in their sentence and remission earned by them to which the State has opposed by filing return.

32. The question as to whether the COVID leave period will be counted

while calculating the prisoners total period of sentence came-up for consideration before the Supreme Court in the matter of **Mubinkhan v. The State of Maharashtra**⁷ in which their Lordships of the Supreme Court while framing the question granted liberty to the State to take a policy decision in this regard and held as under: -

“Now, the question before us is that the appellant was granted Emergency Covid Parole Leave on 15.05.2020 and he is on parole leave till date and this period has not been counted while calculating his total period of actual sentence.

During the course of hearing, learned counsel for the respondent – State submits that there are about 20,000 prisoners, whose cases are similar to the appellant.

In view of the above, we grant liberty to the State to take a policy decision as to whether the Covid Leave period of parole of a convict can be considered for calculating his period of actual sentence or not and whether such a decision is to be applied to all the prisoners or some exceptions are required to be made.”

33. In that view of the matter, the State Government is at liberty to take a decision in this regard as to whether the Covid Leave period of the petitioners can be considered for calculating their period of actual sentence or not. The decision will be taken in accordance with law expeditiously.

34. As a fallout and consequence of the aforesaid discussion, the writ petitions are partly allowed and the order dated 31-3-2021 passed by the Director General of Prisons is quashed. However, this will not preclude the State Government to proceed in accordance with law including under Rule 18 of the Rules of 1989 and secondly, the State Government is also directed to take decision as to whether the Covid Leave period of the petitioners can be considered for calculating their

⁷ Criminal Appeal No.1434/2012, decided on 28-10-2021

period of actual sentence or not, in accordance with law, for which this Court has not expressed any opinion, expeditiously. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

Soma