

Home Department/Prison-2

**Minutes of Meeting of High Power Committee dated 25/03/2020**

1. This High-Power Committee has been constituted vide GR No – JLM0320/CR58/Prison-2 dated 24-03-2020 pursuant to the order dated 23-03-2020 passed by the Hon'ble Supreme Court in Suo Moto Writ Petition (C) No. 1/2020 (hereinafter referred to as "the said order"). By said order, the Hon'ble Supreme Court, having regard to Article 21 of the Constitution of India, in the wake of the present crisis arising out of the spread of Corona Virus (COVID19), has issued various directions in relation to the overcrowding of prisons and remand homes.

2. The directions issued by the Hon'ble Supreme Court, so far as it relates to this Committee is concerned, read thus:

"We direct that each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (iii) Director General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate".

(emphasis supplied)

3. Thus, this Committee is "to determine", "which class of prisoners can be released on parole or on interim bail for such period as may be thought appropriate." and "the category of prisoners who should be released".

4. In determining "the class" or "the category" of the prisoners who can be so released, the said order itself provides the various factors that can be taken into consideration. These factors may be summarized as under:

- (a) Nature of offence
- (b) Severity of offence
- (c) Number years to which the convict has been sentenced
- (d) Any other relevant factor

5. It is noticed that the Hon'ble Supreme Court in the said order has already directed the Undertrial Review Committee to meet every week to take decisions in consultation with the concerned authority.

6. A careful consideration of the aforesaid demonstrates that, it is not that the convicted prisoners/the undertrial prisoners, who have been convicted/facing trial for offence punishable with imprisonment up to 7 years or less (as decided by us hereunder) are to be en masse/en bloc released, without considering other relevant factors such as the nature of offence, the severity of the offence, etc. Therefore, the decision that is being taken by this Committee cannot be construed to itself operate as an order of release. It is ultimately for the Competent Authority/learned Judge to pass an appropriate order in that regard in accordance with law. Needless to observe that such order ought to lay down requisite terms and conditions of the temporary release, if any. Undoubtedly, under the present scenario, a relaxed approach needs to be adopted in this regard in view the directions and spirit of the said order of the Hon'ble Supreme Court.

7. The two members of this Committee viz. Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra and Shri S.N. Pandey, Director General Prisons, Maharashtra, have telephonically consulted the learned Advocate-General for the State of Maharashtra in this regard, enabling this Committee to take appropriate decision, as reflected hereinafter.

8. After considering all the relevant factors as also the circumstances presently prevailing in the State of Maharashtra, this Committee has decided as under:

- (i) Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for



release on interim bail on personal bond of such amount as may be determined, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(ii) The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

iii) The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

(iv) The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign nationals and prisoners having their place of residence out of the State of Maharashtra.

(v) This decision shall apply to only such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the

concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.

(vi) Before the temporary release of the prisoners, the necessary medical protocol in relation to screening for Corona Virus (COVID-19) shall be followed by the jail authorities and action be taken accordingly.

(vii) The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law. In considering every case for such release, the "nature of the offence" and the "severity of the offence" shall be considered. The possibility of the prisoner committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered as important test to decline such requests for temporary release.

(viii) The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filling of an application in this regard by the prisoner.

(ix) All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the said order of the Hon'ble Supreme Court shall however be foremost kept in mind.

(x) Inasmuch as the Hon'ble Supreme Court is in seisin of the matter, the aforesaid decision/directions shall be subject to further orders of the Hon'ble Supreme Court.

Sd/

Hon. Justice Shri A.A. Sayed, Judge, Bombay High Court

Sd/-

Shri Shree Kant Singh, Additional Chief Secretary (A&S) Home, Govt. of Maharashtra

Sd/-

Shri S.N. Pandey, Director General Prisons, Maharashtra