

**MINUTES OF THE HIGH POWER COMMITTEE MEETINGS DATED 07<sup>TH</sup> MAY (Physical) AND 11<sup>TH</sup> MAY 2021 (VC) HELD PURSUANT TO THE ORDER DATED 29<sup>TH</sup> APRIL 2010 IN SUO MOTU PIL NO. 1 OF 2021 (CRI) OF THE HON'BLE BOMBAY HIGH COURT AND THE ORDER DATED 7<sup>TH</sup> MAY 2021 IN SUO MOTU WRIT PETITION (C) No. 1 of 2020 OF THE HON'BLE SUPREME COURT**

1. Pursuant to the order dated 23<sup>rd</sup> March, 2020, passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 1 of 2020, a High Power Committee was constituted by the State of Maharashtra vide Government Resolution dated 24<sup>th</sup> March, 2020. The Hon'ble Supreme Court by its aforesaid order, in the wake of spread of Corona virus (COVID 19), issued various directions in relation to overcrowding of prisons and remand homes. One of the directions to the High Power Committee was to determine which class of prisoners can be released on parole and/or interim bail, for such a period, as may be thought appropriate by the High Power Committee. The Hon'ble Supreme Court left it open for the High Power Committee to determine the category of prisoners, who should be released 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 or she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

2. The High Power Committee accordingly determined the category of prisoners, who should be so released on emergency parole or on interim bail vide its decisions dated 25<sup>th</sup> March, 2020 and 11<sup>th</sup> May, 2020 read with Corrigendum dated 18<sup>th</sup> May, 2020. The High Power Committee made it clear that the directions and spirit of the order dated 23-03-2020 of the Hon'ble Supreme Court shall however be kept foremost in mind before taking decision on the temporary

release of the prisoners. The said decisions of the High Power Committee, have been confirmed, not only by the Hon'ble Bombay High Court but also by the Hon'ble Supreme Court vide the Judgements and Orders dated 05-08-2020 and 22-09-2020 respectively.

3. In accordance with the aforesaid decisions of the High Power Committee, eligible prisoners were temporarily released from time to time and the prison population which stood at 36,061 on 31<sup>st</sup> March 2020 as against official capacity of 23,262, was reduced to 26,379 by 31<sup>st</sup> July 2020.

4. Presently, the entire country is engulfed in what is now described as the "second wave" of the Corona virus (COVID 19) which is found to be more virulent and lethal by experts. The prisoners in Maharashtra, who have been released during the "first wave" have not been called back and continue to remain on interim bail/emergency parole. In the meanwhile, however, new prisoners/inmates have been admitted to various prisons in the State, as a result of which the prison population in the State of Maharashtra has gone up substantially again, thereby overcrowding the prisons.

5. The Hon'ble Bombay High Court vide its Order dated 29<sup>th</sup> April, 2021, passed in Suo Motu PIL No. 1 of 2021 (Cri) and other connected matter, has requested the High Power Committee to meet at least once before ensuing summer vacation i.e. before 8<sup>th</sup> May 2021, for issuing fresh guidelines on such categories of inmates, who could be released on interim bail or parole to further decongest the prisons. The Hon'ble High Court by the said order, has further requested the High

Power Committee to direct the correctional Home authorities to identify those inmates *prima facie* eligible for release so that appropriate Application could be laid before the relevant Magistrate or Administrative authority for consideration. The High Power Committee, which was constituted in terms of the Government Resolution dated 24<sup>th</sup> March, 2020, has since been reconstituted vide Government Resolution dated 4<sup>th</sup> May, 2021.

6. The Hon'ble Supreme Court vide its order dated 7<sup>th</sup> May 2021 in *Suo Motu WP (C) No. 1 of 2020* has also directed the High Power Committees of various States to consider fresh release of prisoners at the earliest due to the immediate concern of raging pandemic, which order was available only after the meeting held on 7<sup>th</sup> May 2021 and which has necessitated a further meeting of the High Power Committee which is held on 11<sup>th</sup> May 2021.

7. This High Power Committee has considered the earlier decisions as recorded in the Minutes of the Meetings dated 25<sup>th</sup> March, 2020 and 11<sup>th</sup> May, 2020 read with Corrigendum dated 18<sup>th</sup> May, 2020 and the categorization of the prisoners who have been permitted to be released on interim bail or emergency parole in all the prisons situate within the State of Maharashtra. This Committee has also considered all relevant factors including the present "second wave" of the Covid 19 pandemic, as also the circumstances presently prevailing in the State of Maharashtra.

8. After considering all the relevant factors as aforesaid, this Committee reiterates that all the prisoners, who fall in the category or class of prisoners held eligible for being released in terms of the

Minutes of the Meeting of the High Power Committee dated 25<sup>th</sup> March, 2020 and 11<sup>th</sup> May, 2020, read with Corrigendum dated 18<sup>th</sup> May, 2020, shall continue be entitled to be considered favourably for temporary release. The Committee is of the view that further categorization of prisoners to be considered for release on interim bail or emergency parole is not necessary at this stage as the aforesaid decisions of the Committee dated 25<sup>th</sup> March, 2020 and 11<sup>th</sup> May, 2020 read with Corrigendum dated 18<sup>th</sup> May, 2020 are wide enough and fairly extensive. It is required to be noted that by the decision of the High Power Committee dated 11<sup>th</sup> May 2020, the category of undertrial prisoners charged for offences for “7 years or more” are also included in the category of prisoners entitled to be considered for availing the benefit of temporary release (except the exempted category of offences).

9. From the data placed before us it is seen that the prison population was reduced from 36,061 as on 31.03.2020 to 26,379 as on 31.07.2020, due to temporary release of eligible prisoners pursuant to the decisions of the High Power Committee. After 31.07.2020, however this figure of 26,379 steadily increased each month and as on 30.04.2021 the prison population has reached 34,224. The data also shows that as on 11.05.2021 the total prison population is 34,733 out of which 29,186 are under trial-prisoners and 5,547 are convicted prisoners.

10. So far as under-trial prisoners are concerned, from the data placed before us it is seen that there were 16,147 Applications for interim bail filed before various Courts pursuant to the decisions of the High Power Committee, out of which 3,182 Applications were rejected,

214 Applications were allowed and balance 12,751 Applications are still pending before various Courts.

11. So far as convicted prisoners are concerned, 26 are not willing to apply for emergency parole and are not interested in being temporarily released. The case of 94 convicted prisoners are in process of consideration for emergency parole. 1182 convicted prisoners are entitled for release in terms of the directions of the Hon'ble Bombay High Court in various decisions, if they comply with requisite conditions.

12. From the data it is apparent that till 31<sup>st</sup> July, 2020 about 10,811 prisoners were released on interim bail/emergency parole and the prison population was substantially reduced. Moreover, the impact of the "first wave" of the pandemic was thereafter diluted and the situation in the prisons started to improve in the context of spread of corona virus (Covid 19). Resultantly, the aforementioned 12,751 Applications for interim bail remained to be decided and were kept pending as the situation then was not alarming.

13. Furthermore, it appears that the Police Authorities have made arrests of several accused persons after 31-07-2020, without strictly complying with the guidelines laid down in **Arnesh Kumar vs. State of Bihar**, (2014) 8 SCC 273. The above factors eventually led to the increase in the prison population as indicated earlier. The Hon'ble Supreme Court in its order dated 7<sup>th</sup> May 2021 in Suo Motu Writ Petition (C) No 1 of 2020, while directing the High Power Committee to consider fresh releases, has emphasized the need to strictly control and limit the authorities from arresting accused in contravention of

guidelines laid down in the said case of **Arnesh Kumar**. The Hon'ble Supreme Court in its order dated 7<sup>th</sup> May 2021 has quoted certain paragraphs of the judgment in **Arnesh Kumar**. We may extract some of those paragraphs:

*11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following directions:*

*11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

*11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.*

*11.8. Authorising detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.*

*12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.*

14. There is however, now, a change in circumstances, in that, the entire country including the State of Maharashtra is now engulfed in the "second wave" of the corona virus (Covid-19) which is far more virulent and lethal. It is noted that due to the present "second wave", 6 prisoners and 1 prison staff have lost their lives in a matter of hardly

few days. In view of this alarming situation, in the interest of justice and considering the safety and welfare of the prisoners, the pending Applications for interim bail of the 12,751 under-trial prisoners are required to be considered liberally and on priority and urgent basis. Such directions to consider the Applications liberally have also been given by the High Power Committee of UT, Chandigarh. In view of the change in circumstances, the under-trial prisoners whose Application for interim bail were rejected (about 3182), are also permitted to make a fresh Application for interim bail, notwithstanding the rejection of their earlier Application, which shall be decided expeditiously by the Court without being influenced by earlier orders of the Courts. Similarly, the case of 94 convicted prisoners also needs to be decided by the Authorities liberally on priority and urgent basis. The Applications by prisoners who fall in the category as determined by the High Power Committee and who are 65 years of age and above and having co-morbidities [as spelt out by Indian Council for Medical Research (ICMR)], shall be considered more sympathetically notwithstanding the rejection of their earlier Application, if any. We however make it clear that the order passed by the Court on the Application for interim bail shall be considered on case to case basis and shall be on the basis of facts of each case, but keeping in mind the spirit of the orders dated 23-03-2020 and 07-05-2020 of the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No. 1 of 2020 and the order dated 29-04-2021 in Suo Motu PIL 1 of 2021 (Cri), for decongestion of prisons.

15. We are told that the prison Authorities have interalia undertaken the following steps with a view to contain the Covid 19 contagion -

- i) Prison staff has been declared by the Maharashtra Government as front line workers. So far 3,252

staffers out of 3,818 have been vaccinated and the process of vaccination of the balance staffers is in progress.

- ii) So far 41 temporary prisons have been established in the State. Of these, 10 double as Covid Care Centres where asymptomatic and mildly symptomatic positively tested inmates are isolated. Freshly arriving inmates are accepted only after RT-PCR tests and kept in the temporary prisons until their test results are obtained. Those who test negative are then admitted to a regular prison. The process of acquiring buildings for creation of additional temporary prisons is on.
- iii) Prisoners/inmates above the age of 60 are kept in separate barracks or hospital ward where there are special facilities available e.g special toilets, special equipment and even someone to assist them.
- iv) The local Municipal Authorities are called upon to sanitize prisons on a weekly basis. In addition, the prisoners/inmates volunteer to undertake sanitization activities on a daily basis. Special attention is being paid to toilets.
- v) Use of sanitizers, soap, face masks and social distancing, both by inmates as well as prison staffers is ensured. Adequate quantities of sanitizer, soap and masks are provided.
- vi) More than 66,000 Covid 19 tests on inmates and 4000 on prison staffers have been undertaken so far.
- vii) 2,722 vaccine jabs were administered to the prisoners/inmates.
- viii) A total of 124 smart phones and 73 coins box sets have been provided for prisoners/inmates to communicate with their lawyers as well as family members. In addition, the Video Conferencing facilities between the prisons and courts have been put to use for communication with lawyers.
- ix) Dedicated email ids have been displayed on the Maharashtra Prisons website for lawyers to



communicate with the inmates. Detailed information pertaining to Covid 19 status in prisons is also displayed on this website.

- x) A total of 10,811 prisoners/inmates have been released on emergency parole or interim bail following the outbreak of Covid 19 pandemic.
- xi) Out of the 3,555 prisoners/inmates who tested positive so far, 3,222 have been cured and there has been 13 deaths till date.
- xii) In case of prison staffers 715 out of 836 who tested positive have been cured. There has been 9 deaths.

16. Having regard to the facts and circumstances and having taken stock of the entire situation arising out of the “second wave” of corona virus (Covid 19), this Committee issues the following guidelines/ recommendations:

- (i) The decisions taken in the HPC meetings dated 25<sup>th</sup> March, 2020 and 11<sup>th</sup> May, 2020 read with Corrigendum dated 18<sup>th</sup> May, 2020 setting out the category of prisoners to be released on interim bail or emergency parole are reiterated and shall continue to operate.
- (ii) The 12,751 Applications for interim bail which are still pending before the various Courts and all other Applications for interim bail filed during the interregnum claiming benefit of the decisions of the High Power Committee shall be decided within 10 days from today i.e on or before 20 May 2021.
- (iii) All pending Applications before the Authorities for emergency parole be also decided within a period of 10 days from today i.e on or before 20 May 2021.
- (iv) Considering the change in the circumstances, the 3,182 prisoners, whose Applications for interim bail were rejected, may apply for interim bail afresh and the same shall be considered by the Court without

being influenced by the earlier orders passed by the Courts.

- (v) Applications by the prisoners who fall in the category as determined by the HPC and who are 65 years of age and above and having co-morbidities [as spelt out by Indian Council for Medical Research (ICMR)], shall be considered more sympathetically notwithstanding the rejection of their earlier Application, if any.
- (vi) The Authorities to take appropriate steps in accordance with law to shift some of the prisoners from prisons which are over populated i.e more than their capacity to the prisons which are less populated.
- (vii) The Commissioners of Police/Superintendents of Police of all Districts in Maharashtra to issue necessary advisories/instructions to the Officers-in-charge of all Police Stations within the District so as to ensure the guidelines laid down by the Hon'ble Supreme Court in the case of **Arnesh Kumar vs. State of Bihar** are adhered to. The operative part of the said judgment be circulated to all the Officers-in-charge of the Police Stations.
- (viii) Regular testing be done of the prisoners as well as the jail staff. Appropriate medical facilities and treatment be made available to the prisoners and prison staff who are afflicted by the corona virus (Covid 19).
- (ix) Prisoners as well as the prison staff be vaccinated at the earliest by conducting vaccination drive as and when sufficient stocks are made available. The Home Department, Govt. of Maharashtra to take up the issue of vaccination with the Health Department, Govt. of Maharashtra so as to set up Vaccination Centres in all the prisons of Maharashtra.
- (x) Separate isolation cells be set up in jails wherever necessary.
- (xi) 1182 convicted prisoners entitled for release in terms of the directions of the Hon'ble Bombay High Court in

various decisions if they comply with requisite conditions, shall also be released within 10 days if the conditions are complied.

17. Inasmuch as the Hon'ble Supreme Court and Hon'ble High Court are in seisin of the matter, this decision of the Committee shall be subject to further orders being passed by the Hon'ble Supreme Court and Hon'ble High Court.

Sd/-

Justice Shri A.A. Sayed,  
Judge, Bombay High Court  
And Executive Chairman of Maharashtra State Legal Services  
Authority

Sd/-

Shri Anand Limaye,  
Additional Chief Secretary (Appeals and Security),  
Home Department, State of Maharashtra

Sd/-

Shri Sunil Ramanand,  
Add'l Director General of Police and  
Inspector General, Prisons, Pune.