

NATIONAL ALLIANCE FOR PEOPLE'S MOVEMENTS & ORS. A

v.

THE STATE OF MAHARASHTRA & ORS.

(Special Leave Petition (Criminal) No. 4116 of 2020)

SEPTEMBER 22, 2020 B

**[S. A. BOBDE CJI, A. S. BOPANNA AND
V. RAMASUBRAMANIAN, JJ.]**

Prisoners – Pandemic – Novel Coronavirus (Covid-19) – Decongestion of prisons – The Supreme Court had taken note of the pandemic situation and registered a Sua Motu Writ Petition (Civil) No. 1/2020 and in that context also referred to the decision taken by the government of India to issue an advisory regarding social distancing – The Court directed that each State/Union Territory shall constitute a High Powered Committee (HPC), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate – Pursuant to the direction, a High-Powered Committee was constituted in respect of the prisons in the State of Maharashtra – As per the guidelines, the Committee has classified the inmates of the prisons, broadly into three categories, viz. (i) undertrial prisoners/convicted persons who are facing trial or convicted to the maximum punishment of 7 years or less, (ii) The convicted persons whose sentence is above 7 years and (iii) The undertrial prisoners or convicted persons who are booked for serious economic offences/ bank scams and offences under Special Acts such as MCOC, PMLA etc. – The petitioners alleged discrimination in categorisation – The High Court held that the decision of HPC does not call for interference except to the extent of observations that were made in paragraph 36 of the order – On appeal, held: The said categorisation cannot be considered as unreasonable since at the first instance, the categorisation is required by the Court for grant of interim bail if such undertrial/ convicted person is seeking bail purely on taking benefit of the notification issued pursuant to such decision taken by the HPC – The exclusion made has a reasonable basis and cannot be termed arbitrary – The present methodology for grant of the interim bail is with the intention to avoid overcrowding in the unprecedented C
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- A *circumstance and the grant of bail in the present circumstances is an additional benefit to such persons – In that circumstance what has been curtailed by the HPC by excluding certain categories is only with a view to deny the benefit to certain category of jail inmates who are charged with serious offences which as an adverse effect on the society at large though the length of the punishment that can be imposed may be lesser – Such of those persons charged under the special enactments or convicted for a period, more than 7 years in any event if they are not otherwise disentitled to bail in the normal circumstance could still seek bail in accordance with law – All that the HPC has denied them is the benefit of seeking interim bail only*
- B *on the ground that they are entitled to be released in view of the Covid-19 situation and no other legal right has been denied – The High Court was accordingly justified in its conclusion.*
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Dismissing the petition, the Court

- HELD: 1. The very purpose of directing each of the States/**
- D **Union Territories to constitute a High-Powered Committee is that the HPC taking note of the subsisting position in such State will take a decision in the matter as the HPC will have the wherewithal to secure all details and take a decision. If the said aspect is kept in view, it is noticed that by the guideline dated**
- E **25.03.2020 the Committee in question has categorised the undertrials/convicted persons by the nature of the crime and the length of the punishment which will take care of the severity in the process of consideration. In that regard, insofar as the undertrial/convicted persons charged under the common law, namely, the Indian Penal Code; they are classified into two**
- F **categories i.e. category-(i) as punishment below 7 years and category-(ii) as punishment above 7 years so that the consideration could be in that manner. The Committee has thought it fit to separately classify the undertrials/convicted persons who are charged under the Special Enactments irrespective of the**
- G **duration of imprisonment notwithstanding the fact that the punishment imposed could be less than 7 years. In that regard, what has weighed with the HPC is that such enactments provide for additional restrictions on grant of bail in addition to those under the Criminal Procedure Code. The said categorisation in view of this Court cannot be considered as unreasonable since at**
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the first instance, based on the categorisation made a consideration is required by the Court for grant of interim bail if such undertrial/convicted person is seeking bail purely on taking benefit of the notification issued pursuant to such decision taken by the HPC. The exclusion made has a reasonable basis and cannot be termed arbitrary. [Para 11][1004-F-H; 1005-A-B]

2. As already indicated the present methodology for grant of the interim bail is with the intention to avoid overcrowding in the unprecedented circumstance and the grant of bail in the present circumstances is an additional benefit to such persons. In that circumstance what has been curtailed by the HPC by excluding certain categories is only with a view to deny the benefit to certain category of jail inmates who are charged with serious offences which has an adverse effect on the society at large though the length of the punishment that can be imposed may be lesser. Such of those persons charged under the special enactments or convicted for a period, more than 7 years in any event if they are not otherwise disentitled to bail in a normal circumstance could still seek for bail in accordance with law and cannot treat the pandemic as fortuitous circumstance to secure bail to which they were otherwise not entitled to in law by claiming equal treatment. All that the HPC has denied them is the benefit of seeking interim bail only on the ground that they are entitled to be released on bail in view of the Covid-19 situation and no other legal right has been denied. Therefore, in the circumstance where the present consideration for bail is not provided under a statute but is made available based on the order passed by this Court and further, when a known criteria is formulated by the HPC, which had all materials before it, an interference with the same in a petition of the present nature in any event would not have arisen and the High Court was accordingly justified in its conclusion. [Para 12][1005-C-G]

3. Having stated so it is necessary to indicate that the cause for grievance may arise for an individual undertrial/convicted prisoner only if such person has been discriminated as against the prisoner in the same category for which the benefit has been provided by the categorisation made by the HPC. That apart the intention being to decongest the prisons, as a first step the release

- A of the prisoners based on the impugned guidelines, held to be unflawed would be made. If, despite the release of the undertrial/convicted prisoners in the categories presently made does not achieve the purpose and the fact that additional prisons are set up also does not suffice and in that context if any modification with regard to the categories made by HPC is necessary; certainly
- B it would be open for the HPC to take note of the same and apply their mind to modify its guidelines in that regard. [Para 14][1006-B-D]

- C *The State of West Bengal v. Anwar Ali Sarkar* AIR (39) 1952 SC 75 : [1952] SCR 284; *Arun Kumar & Ors v. Union of India & Ors.* (2007) 1 SCC 732 : [2006] 6 Suppl. SCR 290; *K.R. Lakshman & Ors. v. Karnataka Electricity Board* (2001) 1 SCC 442 : [2000] 5 Suppl. SCR 535 – referred to.

Case Law Reference

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| D | [1952] SCR 284 | referred to | Para 8 |
| | [2006] 6 Suppl. SCR 290 | referred to | Para 8 |
| | [2000] 5 Suppl. SCR 535 | referred to | Para 8 |

- E CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) No. 4116 of 2020.

From the Judgment and Order dated 05.08.2020 of the High Court of Judicature at Bombay in PIL-CJ-LD-VC-NO. 44 of 2020.

SB Talekar, PB Suresh, Vipin Nair, Karthik Jayashankar, Sugghosh Subramaniam, Ms. Madhavi Ayyappan, Advs. for the appearing parties.

- F The following Judgment of the Court was delivered:

JUDGMENT

- G 1. The petitioners herein were before the High Court of Judicature at Bombay claiming to be in Public Interest (PIL-CJ-LD-VC No.44/2020) seeking that the decision of the High Powered Committee ('HPC' for short) dated 25.03.2020 to the extent of Clauses (iii), (iv) and (vii) of paragraph 8, decisions/minutes of HPC meeting dated 11.05.2020 excluding certain categories of offences provided in paragraph 5(i) and 5(ii) for the purpose of grant of interim bail and corrigendum dated 18.05.2020 of the Minutes of the Meeting of HPC dated 11.05.2020 to the extent of clarification that the class and/or category of offences
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determined by the HPC for temporary release be not read as a direction made by it for mandatory release of prisoners falling in that category or class and a further clarification that the case of every prisoner be considered on case to case basis for deciding the temporary release of such prisoners. The petitioners had also sought for a direction to the respondents to release the prisoners convicted for life imprisonment without insisting that they have been released in the past at least twice, either on furlough or parole.

2. The High Court on making a detailed consideration has arrived at the conclusion that the decision of the HPC does not call for interference except to the extent of the observations that were made in paragraph 36 of the order. The petitioners, therefore, claiming to be aggrieved are before this Court in this petition.

3. We have heard the learned counsel for the petitioners and perused the petition papers.

4. Though a detailed consideration has been made by the High Court whereunder separate concurring reasons are given by the learned Judges on the Division Bench, it is necessary to notice that the present issue has arisen only on the limited scope for grant of interim bail/parole/furlough due to the unforeseen circumstance of the pandemic, namely, Novel Coronavirus (Covid-19) which requires decongesting of prisons with the intention of social distancing to be maintained so as to prevent the spread of virus. It is in that circumstance, this Court while registering a *Suo Moto Writ Petition (Civil) No.1/2020* had taken note of the pandemic and in that context also referred to the decision taken by the Government of India to issue an advisory regarding social distancing. In that background, having taken note that there are 1339 prisons in this country and approximately 4,66,084 inmates are lodged in such prisons had adverted to the occupancy rate which is high and, therefore, considering the prisons to be overcrowded had issued certain directions to ensure decongesting and maintain social distance.

5. At the first instance this Court through the order dated 16.03.2020 had directed notice to be issued to all the stakeholders in this regard so as to suggest immediate measures which should be adopted for the medical assistance to the prisoners in all jails and the juveniles lodged in the Remand Homes for protection of their health and welfare. Subsequently, through the order dated 20.03.2020 this Court *inter alia* issued the following directions:

A “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
B 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.

C 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
D facing trial or any other relevant factor, which the Committee
may consider appropriate.”

6. Pursuant to the direction, a High-Powered Committee was
constituted in respect of the prisons in the State of Maharashtra, the
State in respect of which the present issue has arisen. The HPC having
E deliberated has issued the guidelines dated 25.03.2020 as formulated in
its meeting. The Home Department, Government of Maharashtra has
notified the same on 08.05.2020. As per the guidelines, the Committee
has classified the inmates of the prisons, broadly into three categories,
viz (i) undertrial prisoners/convicted persons who are facing trial or
convicted to the maximum punishment of 7 years or less, (ii) the convicted
F persons whose sentence is above 7 years and (iii) the undertrial prisoners
or convicted persons who are booked for serious economic offences/
bank scams and offences under Special Acts such as MCOC, PMLA,
MPID, NDPS, UAPA etc.

7. Thus, having classified the jail inmates to different categories
G on such basis, consideration of the ‘nature of the offence’ and the ‘severity
of offence’ has been indicated to be adopted as the yardstick
while considering their case for grant of interim bail in such situation. The
petitioners while assailing the said guidelines had alleged discrimination
in the categorisation and also unreasonableness in imposing the condition
H of earlier release in respect of the convicted persons for the sentence of

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more than 7 years. It is relevant to notice that infact this Court through the order dated 23.03.2020 had permitted such broad classification for the purpose of consideration. A

8. On the contentions urged and the decisions cited before the High Court we are of the opinion that the High Court in fact has appropriately adverted to the same and has not committed any error in arriving at its conclusion. In this regard we notice that the High Court has aptly referred to the decision of this Court in the case of *The State of West Bengal vs. Anwar Ali Sarkar* (AIR (39) 1952 SC 75), *Arun Kumar & Ors vs. Union of India & Ors.* (2007) 1 SCC 732 and *K.R. Lakshman & Ors. vs. Karnataka Electricity Board* (2001) 1 SCC 442 wherein the circumstances when requirement of Article 14 of the Constitution is to be satisfied is considered in detail. It is articulated therein that equality before the law or the equal protection of laws does not mean identity or abstract symmetry of treatment and that reasonable classification is permitted. In that background the High Court while approving the categorisation made by HPC has gathered the intention of the order dated 23.03.2020 passed by this Court in its correct perspective. B C D

9. While arriving at such conclusion, in addition to the reasons assigned by the High Court we cannot also lose sight of the fact that the entire right to claim such interim bail has arisen in the unprecedented circumstance of the pandemic and the consideration for interim bail is not in the nature of a statutory right for bail based on other legal consideration but is more in the nature of human right to safeguard the health. The provision for bail as otherwise provided in law in any case would be considered by the competent courts if such right for bail is made out before the competent court irrespective of the pandemic or not. The present option provided is only as a solution to help decongestion and to avoid the spread of virus. At the same time the benefit granted in such circumstance cannot be to the detriment of social order by releasing all categories of prisoners irrespective of the categorisation to be made depending on the severity of the crime etc. The genesis for the present claim being the order passed by this Court in a Suo Motu Writ Petition, a balance was struck. As such, as noticed from the extracted portion of the order (supra), this Court had directed the constitution of the HPC consisting of a senior High Court Judge and highly placed officials so that an appropriate categorisation be made in each State dependant on the circumstance arising therein. Further, the intention of this Court was E F G H

- A not that every undertrial or convicted prisoner is to be released irrespective of the nature of offence or severity thereof. The consideration was for the purpose of decongesting the prisons so that social distancing could be maintained to avoid the spread of virus. In that circumstance the consideration would certainly be different in each State/Union Territory depending on the occupancy in the prison, the spread of virus, the infrastructure available and the need, if any, to release certain number of prisoners so as to decongest.
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10. The above noted intention is manifest in the subsequent order dated 13.04.2020 passed by this Court, which reads as hereunder;

- C “We are informed that the State of Bihar has not found it appropriate to release the prisoners for complete absence of any patient suffering from coronavirus within the prisons and also for the reason that the prisons are not overcrowded. Moreover, even in one case the murder of a prisoner who was “accused” of suffering from coronavirus has been reported.
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- E We make it clear that we have not directed that States/ Union Territories to compulsorily release the prisoners from their respective prisons. The purpose of our aforesaid order was to ensure the States/Union Territories to assess the situation in their prisons having regard to the outbreak of the present pandemic in the country and release certain prisoners and for that purpose to determine the category of prisoners to be released.”

11. Therefore, the very purpose of directing each of the States/ Union Territories to constitute a High-Powered Committee is that the HPC taking note of the subsisting position in such State will take a decision in the matter as the HPC will have the wherewithal to secure all details and take a decision. If the said aspect is kept in view, it is noticed that by the guideline dated 25.03.2020 the Committee in question has categorised the undertrials/convicted persons by the nature of the crime and the length of the punishment which will take care of the severity in the process of consideration. In that regard, insofar as the undertrial/convicted persons charged under the common law, namely, the Indian Penal Code; they are classified into two categories i.e. category-(i) as punishment below 7 years and category-(ii) as punishment above 7 years so that the consideration could be in that manner. The Committee has thought it fit to separately classify the undertrials/convicted persons who are charged under the Special Enactments irrespective of the duration of imprisonment
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notwithstanding the fact that the punishment imposed could be less than 7 years. In that regard, what has weighed with the HPC is that such enactments provide for additional restrictions on grant of bail in addition to those under the Criminal Procedure Code. The said categorisation in our view cannot be considered as unreasonable since at the first instance, based on the categorisation made a consideration is required by the Court for grant of interim bail if such undertrial/convicted person is seeking bail purely on taking benefit of the notification issued pursuant to such decision taken by the HPC. The exclusion made has a reasonable basis and cannot be termed arbitrary.

12. As already indicated the present methodology for grant of the interim bail is with the intention to avoid overcrowding in the unprecedented circumstance and the grant of bail in the present circumstances is an additional benefit to such persons. In that circumstance what has been curtailed by the HPC by excluding certain categories is only with a view to deny the benefit to certain category of jail inmates who are charged with serious offences which has an adverse effect on the society at large though the length of the punishment that can be imposed may be lesser. Such of those persons charged under the special enactments or convicted for a period, more than 7 years in any event if they are not otherwise disentitled to bail in a normal circumstance could still seek for bail in accordance with law and cannot treat the pandemic as fortuitous circumstance to secure bail to which they were otherwise not entitled to in law by claiming equal treatment. All that the HPC has denied them is the benefit of seeking interim bail only on the ground that they are entitled to be released on bail in view of the Covid-19 situation and no other legal right has been denied. Therefore, in the circumstance where the present consideration for bail is not provided under a statute but is made available based on the order passed by this Court and further, when a known criteria is formulated by the HPC, which had all materials before it, an interference with the same in a petition of the present nature in any event would not have arisen and the High Court was accordingly justified in its conclusion.

13. That apart, keeping in perspective the object with which the interim bail was ordered to be considered for the purpose of avoiding overcrowding, the High Court has taken note of the factual position that as on 24.07.2020, as per details furnished, 10338 prisoners were released on interim bail/parole and presently 26,279 prisoners are in prison. Since it was contended on behalf of the petitioners that the official capacity is

A only 23,217, the State Government had indicated that temporary prisons have been set up in 36 locations and about 2597 prisoners are occupying the same as of now and more will be shifted to avoid overcrowding in the existing prisons, which indicates that appropriate steps are being taken to achieve the object.

B 14. Having stated so it is necessary to indicate that the cause for grievance may arise for an individual undertrial/convicted prisoner only if such person has been discriminated as against the prisoner in the same category for which the benefit has been provided by the categorisation made by the HPC. That apart the intention being to decongest the prisons, as a first step the release of the prisoners based on the impugned guidelines, held to be unflawed would be made. If, despite the release of the undertrial/convicted prisoners in the categories presently made does not achieve the purpose and the fact that additional prisons are set up also does not suffice and in that context if any modification with regard to the categories made by HPC is necessary; certainly it would be open for the HPC to take note of the same and apply their mind to modify its guidelines in that regard.

E 15. Therefore, it would still be open for the petitioners to obtain necessary statistics and if any modification of the guidelines is necessary in future, they will be at liberty to submit an appropriate representation to the HPC which would in that circumstance look into the same and arrive at a conclusion at its discretion depending on the need or otherwise to modify its guidelines. In that view, we are of the opinion that when such factual consideration to achieve the object alone is necessary and the HPC is constituted for the very purpose, interference in a judicial proceeding of the present nature to alter the criteria would not arise unless it is shown to be so arbitrary that no reasonable person can accept. But in circumstances where there is any individual discrimination amongst the prisoners in same category and similarly placed, it would be open for the competent Court to examine the same to that limited extent when grievance is raised by the person who is denied the benefit if he/she is entitled to such benefit.

G 16. With the afore-stated observations, the above petition stands dismissed. No order as to costs. Pending application, if any, stands disposed of.