


Minutes-of-meeting held under the Chairmanship of Hon'ble Mr. Justice R.K. Jain, Judge, Punjab and Haryana High Court, Chandigarh and Executive Chairperson, Punjab State Legal Services Authority, SAS Nagar, at his residence on 25.03.2020 at 12:30 hrs.

The meeting was attended by the following officers/members of the High Powered Committee:

1. Mr. R. Venkat Ratnam, IAS, Principal Secretary to Government of Punjab, Jail Department, Punjab.
2. Mr. Praveen K. Sinha, IPS, Additional Director General of Police, Prisons, Punjab.
3. Ms. Rupinderjit Chahal, Member Secretary, PULSA.

Agenda: Implementation of the directions issued by Hon'ble Supreme Court of India on 23.03.2020 in Sua Motu Writ Petition (Civil) No.1/2020- In RE: Contagion of Covid-19.

2. The Hon'ble Supreme Court of India in the Sua Motu Writ Petition(Civil) no. 1/2020 mentioned in subject in its Order dated 23-03-2020 has passed the following directions:

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- #1 Physical presence of all under-trial prisoners before the courts must be stopped forthwith, and recourse to Video Conferencing must be taken for all purposes.
 - #2 No routine transfers of prisoners from one prison to another except for de-congestion to ensure social distancing and medical assistance to an ill prisoner.
 - #3 No delay in shifting sick person to a Nodal Medical Institution in case any possibility of infection is seen.
 - #4 Prison specific readiness and response plans must be developed in consultation with medical experts. The Hon'ble Supreme Court has directed that *"Interim Guidance on Scaling-Up COVID-19 Outbreak Readiness and*

Response Operations in Humanitarian Situations" published by IASC of UN dated 17-03-2020 may be taken into consideration.

- #5 Monitoring team must be set up at the state level to ensure that the directives issued with regard to prison (and remand homes) are being complied with scrupulously.
- #6 Each State/UT to constitute a High Powered Committee to determine which class of prisoners can be released on parole, or on interim bail, for such period as may be thought appropriate. The Committee shall comprise of:
- (a) Chairman of the State Legal Services Committee;
 - (b) The Principal Secretary (Home/Prisons)
 - (c) Director General of Prisons.
- #7 The Under-trial Review Committee of each district shall meet every week (instead of every quarter at present) and take such decisions in consultation with the concerned authority as per the said judgement.
- #8 The High Powered Committee shall take into account the directions contained in para no. 11 in *Arnesh Kumar v. State of Bihar*, (1914) 8 SCC 273.

PROCEEDINGS OF THE HIGH POWERED COMMITTEE:

3. The Committee deliberated upon the above directions of Hon'ble Supreme Court of India. Upon detailed discussions, the Committee approved the following steps/actions to be taken by different authorities for implementation of the directions of the Hon'ble Supreme Court of India and in light of the unprecedented circumstances that exist in the country in light of the COVID-19 out-break:

- (i) Committee was informed by ADGP, Prisons, Punjab that directions Nos. 1, 2 and 3 are being implemented by the Prison department, Punjab.
 - All *peshis*/Court hearings are being conducted through video conferencing whenever required.
 - Transfers of prisoners have been ordered only for de-congestion of overcrowded jails. ADGP, Prisons brought to the notice of the Committee that there may be certain extreme emergencies where some trouble makers may have to be shifted out a prison to

maintain order. The Committee decided that shifting of such prisoners should be resorted to in very rare cases only and on the specific orders of ADGP, Prisons. All due precautions of quarantine/isolation may be observed in such eventuality.

- Instructions have been issued to all Jail Superintendents to ensure shifting of sick persons to Nodal Medical Institution in case any possibility of infection is seen.


(Action: ADGP, Prisons, Punjab)

- (ii) Regarding direction No. 4 above, Committee was informed by ADGP, Prisons, Punjab that detailed instructions have been issued to all Jail Superintendents for drafting of prison specific 'Readiness and Response Plans' immediately as per the guidelines referred to in the judgement. A 'COVID-19 Special Task Force' has also been set up at each prison to deal with any emergent situation. The Committee desired that the plans be prepared and rehearsed with all stake-holders.

(Action: ADGP, Prisons, Punjab)

- (iii) Regarding direction No. 5, Principal Secretary (Jails), Govt. of Punjab shall notify a State Level Monitoring team, and additional monitoring teams at the district level if so desired, with the mandate as enshrined in the judgement.

(Action: Principal Secretary, Jails)

-  (iv) For implementation of direction No. 7, the Committee directed that all District and Sessions Judges shall convene meetings of Under-trial Review Committees every week, instead of the quarterly meetings held at present.

(Action: Concerned District and Sessions Judge of the District)

- (v) Regarding implementation of direction no. 8 mentioned above, the Committee directed that Police Department shall ensure that directions contained in para. 11 in *Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273* are complied with in letter and spirit.

(Action: Director General of Police, Punjab)

(vi) At direction No. 6, the Hon'ble Supreme Court has directed the constitution of a High Powered Committee. The mandate of the 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. The following suggestions have been put forth by the Hon'ble Supreme Court for consideration of release of prisoners:

(a) Prisoners convicted, or under-trial, for offences with prescribed punishment upto 7 years or less, with or without fine; and convicts who have been convicted for a lesser number of years than the maximum prescribed punishment for that offence;

(b) The Committee may consider criteria based on nature of offence, number of years to which he or she has been sentenced, or the severity of the offence for which facing trial, or any other relevant factor.

4. A detailed AGENDA NOTE was presented before the High Powered Committee by the ADGP, Prisons for consideration. Wide ranging deliberations were held by the Committee to decide on the procedure and criteria to be recommended. While the primary aim was to protect the health of prisoners and restrict transmission of COVID-19 by decongestion of the prisons, the overall good of society, and maintenance of order in society in these extraordinary times, was also kept in mind while making the recommendations.

 **RECOMMENDATIONS FOR RELEASE OF CONVICT PRISONERS:**

5. To de-congest the prisons of Punjab, the Committee recommends that the following procedure and criteria be followed for immediate release of convict prisoners on parole **for a period of 6 weeks.**

PROCEDURE FOR RELEASE OF CONVICT PRISONERS:

6. The Committee deliberated upon the procedure to be followed for implementing the above recommendations. The Committee felt that the present situation being faced by the country is unprecedented in scale and severity, and that the prisons face a real and serious threat of spread of COVID-19 epidemic which has been declared as a pandemic by the World Health Organization. In the

present circumstances, the Committee felt that there is likelihood of serious damage to the life of prisoners due to threat of COVID-19 spreading in prisons as has happened in certain countries. Hence, extraordinary steps need to be taken immediately to de-congest the prisons. The following recommendations regarding the procedure to be followed for release of convict prisoners are made:

- (i) There are sufficient cause as explained above to consider the current situation to be fulfilling the definition of "sufficient cause" as laid out in section 3(1)(d) of the Punjab Good Conduct Prisoners' (Temporary Release) Act, 1962. Hence, till 31st August 2020, powers of granting parole in cases recommended above shall be delegated to the Superintendent of the concerned Jail under Section 3(1)(d) of the above Act, by a notification to be issued by the Department of Prisons, Punjab.

The relevant provisions are reproduced below for reference.

Sec 3 Temporary release of prisoners on certain grounds;(1) *The State Government may, in consultation with the District Magistrate, and subject to such conditions and in such manner as may be prescribed, release temporarily for a period specified in sub-section (2) any prisoner if the state Government is satisfied that-*

a) a member of the prisoner's family has died; or (Amendment Act, 2015)

(aa) husband or wife or son or daughter or father or mother or brother or sister or grand-father or grand-mother or grandson or grand-daughter or father-in-law or mother-in-law of the prisoner is seriously ill; or"

(Amendment Act, 2015)

b) the marriage of prisoner's son or daughter is to be celebrated or;

c) the temporary release of the prisoner is necessary for sloughing, sowing or harvesting or carrying on any other agricultural operation on his land and no friend of the prisoner or a member of prisoner's family is prepared to help him in this behalf in his absence; or

(cc) a lady prisoner is pregnant and is likely to deliver a child; or; and

(Amendment Act, 2015)

d) It is desirable so to do for any other sufficient cause.

Explanation - The expression "sufficient cause" includes- (1) serious damage to life or property of the member of the family caused by any natural calamity; or (2) critical condition of any member of the family on account of accident; or (3) delivery of child by the wife of the prisoner.

(Amendment Act, 2015)

(2) ***

(3) ***

(4) *The State Government may by notification authorize any officer to exercise its power under this section in respect of all or any of the ground specified therein.*

(Action: Principal Secretary, Jails)

- (ii) As a one-time measure, Sec. 2-A of the Punjab Good Conduct (Temporary Release) Act, 1962, shall be kept in abeyance, till 31st August 2020. Superintendent of concerned Jails shall be empowered to process cases for parole of prisoners, who have already availed parole for first two quarters, anytime in the current calendar year. The relevant provisions are reproduced below for reference.

Sec. 2-A. The total period of temporary release of the prisoner, excluding the release availed of,-

(i) on the death of a family member of the prisoner; or

(ii) by a female prisoner on account of delivery of child, as the case may be, shall not exceed sixteen weeks, during a calendar year and shall be availed of on quarterly basis:

Provided that a prisoner, may avail such release for a continuous period of sixteen weeks, during the period falling between the 23rd day of November, 2018 to the 23rd day of November, 2019 as a onetime measure on pro-rata basis, however, subject to the other provisions of the Act:

Provided further that any prisoner, who is on temporary release for a specified period and wants to surrender before the expiry of his temporary release period, he shall be allowed to do so. (Amendment Act, 2018)

(Action: Concerned Jail Superintendent)

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- (iii) Further, as another one-time measure, till 31st August 2020, the Superintendent of the concerned jail shall process the application for parole within the first 4 months after the conviction of the prisoner by keeping in abeyance the Proviso of Rule 3(2) of the Punjab Good Conduct Prisoners' (Temporary Release) Rules, 1963. The relevant provisions are reproduced below for reference:

Rule 3, Procedure for temporary release. - (1) ****

(2) The Superintendent of Jail shall forward the application along with his report to the District Magistrate, who after consulting the Superintendent of Police of his District, shall forward the case with his recommendations to the

Inspector General. The Inspector General will then record his views on the case whether the prisoner is to be released or not and submit the same to the Releasing Authority for orders. The Distt. Magistrate, before making any recommendation, shall verify the facts and grounds on which release has been requested and shall also give his opinion whether the temporary release on parole or furlough is opposed on grounds of prisoner's presence being dangerous to the security of State or prejudicial to the maintenance of public order.

"Provided that no such application shall be proceeded by the Superintendent of Jail, unless the prisoner had maintained good conduct after his conviction atleast for four months in Jail (First Amendment) Rules, 2003"


(3) ****

(Action: Concerned Jail Superintendent)

(iv) Due to the curfew being imposed all over the state, the Committee felt that the purpose of the above recommendations will only be served if all the processes take place at the prison itself. As grant of parole requires execution of a Surety Bond, the following recommendations are made for facilitating the process of executing the Surety Bond:

1. The District Magistrate shall depute an empowered Executive Magistrate at all the jails falling in his jurisdiction. This Executive Magistrate shall be available every day till all such cases have been dealt with. The deputed Executive Magistrate shall process all the Surety Bonds at the jail premises itself.

(Action: Concerned District Magistrate)

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2. For acceptance of Surety Bonds, the following recommendations are made:
 - (a) For convicts who have availed regular parole before, the Surety Bond submitted for the last parole shall be extended and accepted. The person who executed the Surety Bond in the last parole shall be asked on phone and confirmation recorded in writing by the Executive Magistrate. In addition, a personal bond shall be executed by the convict.

(b) For convicts availing parole for the first time, the following options shall be offered -

- (i) Surety comes to the jail and executes the Surety Bond, or
- (ii) Surety submits the Surety Bond electronically to the satisfaction of the Executive Magistrate, or
- (iii) The convict executes a personal Surety Bond.

(Note: The executive Magistrate shall keep in mind that the primary objective is to grant liberal parole as per criteria mentioned below while at same time keeping sufficient safeguards).

(Action: Deputed Executive Magistrate)

CRITERIA FOR RELEASE OF CONVICT PRISONERS:

7. The Committee recommends that the following criteria shall be followed for release of **all Convict prisoners presently in custody in the jails -**

- (i) Prisoners convicted for an offence under POCSO Act, section 376 IPC, 379-B IPC, acid attack cases, Unlawful Activities (Prevention) Act, Explosives Substances Act and convicts who are foreign nationals shall not be considered for release.
- (ii) For **convicts under NDPS Act**, all convicts who have been sentenced for 3 years or less shall be considered for released on parole.
- (iii) For **convicts under all other cases**, the following criteria is recommended:
 - (a) All convict prisoners having no pending under-trial cases and sentenced upto 7 years, with or without fine, shall be considered for release on parole.
 - (b) All convict prisoners sentenced in one case upto 7 years, with or without fine, and having upto two under-trial cases; and is on bail in under-trial case(s), and further should have availed last parole peacefully, he/she shall be considered for release on parole.
 - (c) For convicts suffering from chronic diseases or pre-existing conditions, the Committee recommends that convicts suffering

from the following diseases and sentenced upto 10 years may be released on parole:

- Chronic Diabetes
- HIV
- Serious neurological issues (not simple depression)
- Chronic lung disease
- Severe Asthma
- Serious Heart condition.
- Pregnant women may also be considered.

Whether the patient falls under the above said category or not, shall be as per the report of the Jail Medical Officer and further certified by an SMO or the CMO.

(d) For convict prisoners aged 65 years and above, the following criteria shall be considered for release on parole –

- Convicts prisoners aged 65 years and above having no pending under-trial cases and sentenced upto 10 years, with or without fine.
- Convict prisoners aged 65 years and above, sentenced in one case upto 10 years, with or without fine, and having upto two under-trial cases, and is on bail in the under-trial case(s), and further should have availed the last parole peacefully.

(Action: Medical Officer of concerned Jail and SMO/CMO concerned)

8. For all convicts who are presently on parole, the Committee felt that the convicts on parole at present should not return to the prison in the next few weeks to ensure isolation of the prisons with the outside. The Chairperson mentioned that one Rajat Sharma @ Rajat Kumar through his advocate Ankush Sharma has submitted an application for extension of existing parole due to curfew being imposed. Taking into account this and similar such cases, the Committee recommends that **extension of parole by 6 (Six) weeks be granted to prisoners presently on parole.** However, the convict has the option of returning to the prison early with the approval of the concerned Superintendent of jail,

who shall take into consideration the prevailing situation of COVID-19 then while granting the approval to return.

(Action: Concerned Jail Supdts.)

9. It was brought to the notice of the Committee that substantial numbers of applications for parole are pending with different District Magistrates. The Committee recommends that all such cases be processed within a period of two days by the concerned District Magistrate, without fail, or return these cases to the Jail Superintendent immediately.

(Action: Concerned District Magistrate)

FOR RELEASE OF UNDER-TRIAL PRISONERS:

10. To de-congest the prisons of Punjab, the Committee recommends that the following procedure and criteria may be followed for release of under-trial prisoners on interim bail for a period of 6 weeks.

PROCEDURE FOR RELEASE OF UNDER-TRIAL PRISONERS:

11. In light of the unprecedented challenges being faced by the prison administration at present, the Committee recommends the following procedure/steps for facilitate grant of interim bail, while at the same time ensuring sufficient safeguards.

(a) The Chairperson of District Legal Services Authority-cum-District and Session Judge of the district in which the jail is situated shall himself hold or depute as many ADJs and other judicial officers for each Jail in the district. The deputed judicial officers shall hold Camp Courts at the jail premises for as many days as is necessary to decide the bail applications.

(Action: Concerned Chairperson, District Legal Services Authority)

(b) Bail shall be granted either on execution of a Bail Bond or on the personal bond by the under-trial. Execution of Bail Bond through online/electronic means may also be considered by the Judicial Officer concerned. In case the under-trial submits a valid passport the same be taken on record.

(Action: Deputed Judicial Officers)

CRITERIA FOR RELEASE OF UNDER-TRIAL PRISONERS:

12. The criteria to be followed for granting interim bail to under-trial prisoners shall be as described below:

- (i) No under-trial prisoner in custody for an offence under POCSO Act, under section 376 and 379-B IPC, acid attack cases, UAP Act, Explosives Substances Act and under-trial convicts who are foreign nationals shall be considered for interim bail.
- (ii) For under-trial prisoners in custody under NDPS Act, only those cases shall be considered where the contravention involves small quantity as defined under NDPS Act 1985.
- (iii) For **all other cases**, other than those described in (i) and (ii) above, the following criteria shall be followed:
 - (a) All under-trial prisoners in custody with upto two (2) under-trial cases pending, in which maximum prescribed punishment in both cases is 7 years or less
 - (b) For under-trial prisoners in custody of 65 years and above in age, all those having upto two (2) under-trial cases pending in which maximum prescribed punishment in both cases is 10 years or less, shall be considered.
 - (c) For under-trial prisoners in custody suffering from chronic diseases and pre-existing conditions, the Committee recommends that under-trial prisoners suffering from the following diseases, and where maximum prescribed sentence is upto 10 years may be released on interim bail:
 - Chronic Diabetes
 - HIV
 - Serious neurological issues (not simple depression)
 - Chronic lung disease
 - Severe Asthma
 - Serious Heart condition.
 - Pregnant women may also be considered.

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Whether the under-trial prisoner falls under the above said category or not, shall be as per the report of the Jail Medical Officer and further certified by an SMO or the CMO.

(Action: Medical Officer of concerned Jail and SMO/CMO concerned)

(d) In addition to the above, the Committee recommends that the cases under the following heads of crime may also be examined for release on interim bail for 6 weeks by the concerned Judicial Magistrate:

- Section 379 IPC (except 379-B IPC)- All cases where either only Section 379 IPC has been imposed, or in case of other sections, such sections should have a maximum prescribed punishment upto 7 years.
- Section 324 and 325 IPC
- 498-A IPC
- 406 and 420 IPC
- Cases under Excise Act

(iv) All prisoners in custody under section 107/151 CrPC may be considered for release on bail by the concerned Executive Magistrate immediately.

(Action: Concerned District Magistrate/ Commissioner of Police)

REMISSION ATJAIL SUPDT. and HOD LEVEL:

13. The Committee was informed that in accordance with provisions contained in para 581 of Punjab Jail Manual 1996, remission of 1 month by Superintendent of Jail and additional remission of 2 months by Head-of-department has been granted to eligible prisoners. The Committee appreciated this step.

(Action: ADGP, Prisons and Concerned Jail Superintendent)

MEASURES FOR MAINTAINING ORDER IN PRISONS:

14. It was brought to the notice of the Committee by ADGP, Prisons that incidents of indiscipline by prisoners have taken place at few prisons in Punjab (viz. CJ Bathinda, CJ Gurdaspur and DJ Mansa). This was due to rising frustration amongst prisoners on account of closure of *mulaqaat*, no hearing of bail cases due to closure of courts, and low physical activities due to enforcement of social

distancing. It was further mentioned that a very serious riot had taken place at Central Jail Dum Dum, Kolkata, W.B, on 21-03-2020, also attributed to above reasons. Agreeing to the proposal of ADGP, Prisons, the Committee directs that the Chairperson, DLSA-cum-District & Sessions Judge may either personally visit the jails every alternate day or depute an ADJ, to interact with the prisoners (while taking all precautions), so that the pent-up frustrations get a vent and order can be maintained. The Secretary, DLSA shall also regularly visit the prisoners and interact with the prisoners.

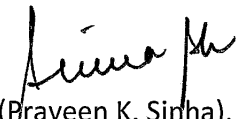
(Action: Concerned Chairperson, District Legal Services Authority)


15. ADGP, Prisons further informed that as physical *mulaqaat* has been suspended, prisoners were being educated towards using eMulakaat facility available on the ePrisons platform. However, it was informed that this is a cumbersome process and very few prisoners and their families have been able to use this facility so far. Hence, the Committee decided that jail authorities may make available the facility of '*video mulaqaat*' through **Whatsapp video call** with the registered visitors only. This shall be done under supervision and necessarily in the presence of a responsible jail official.


(Action: Concerned Jail Superintendent)

16. The Committee, as a final recommendation, calls upon the State Government and all officers concerned to ensure expeditious implementation of its recommendations in the spirit of the directions of the Hon'ble Supreme Court of India. It is a truism that the benefits of the recommendations shall only accrue if they are implemented in the shortest time possible.

The meeting ended with thanks to the Chair.


(Praveen K. Sinha), IPS
Addl. Director General of Police,
Prisons, Punjab, Chandigarh.


(R. Venkat Ratnam), IAS
Principal Secretary,
Jails, Punjab, Chandigarh.


(Mr. Justice R.K. Jain)
Chairperson,
Punjab State legal Services
Authority, SAS Nagar, Pb.