

(2021) 12 OHC CK 0159

In the Orissa High Court

Case No : Writ Petition (C) Nos. 6610 Of 2006 and 3368 of 2014

Krushna Prasad Sahoo

APPELLANT

Vs

State Of Odisha And Others

RESPONDENT

Date of Decision : 23-12-2021

Acts Referred:

Constitution of India, 1950 — Article 22
Code of Criminal Procedure, 1973 — Section 41A, 41B, 41C, 41D, 107, 108, 109, 151, 167(2)(a)(i), 167(2)(a)(ii), 433A, 436, 436A, 437(6)
Narcotics Drugs and Psychotropic Substances Act, 1985 — Section 19, 24, 27A, 36A
Indian Penal Code, 1860 — Section 302, 304, 379, 380, 381, 404, 420
Prisons Act, 1894 — Section 59
Probation of Offenders Act 1907 — Section 3

Citation : (2021) 12 OHC CK 0159

Hon'ble Judges : Dr. S. Muralidhar, CJ; A. K. Mohapatra, J

Bench : Division Bench

Advocate : Gautam Misra, S.K. Nanda, Ashok Kumar Parija, P.K. Muduli

Judgement

Introduction

1. A convict in the District Jail, Balasore filed these petitions highlighting various issues concerning the jails in Odisha. In the first petition, the Petitioner is represented by his lawyer, Mr. S.K. Nanda. In the second petition, soon after it was filed in 2014, this Court had appointed Mr. Gautam Misra, learned Senior Advocate as Amicus Curiae (AC) to assist the Court.

2. On 4th December, 2014, after perusing the note of the learned Additional Standing Counsel (ASC), this Court had indicated that it proposed to take up the following ten issues concerning the human rights of prison inmates:

"(i) Adoption of model jail manual prepared by NHRC.

(ii) Setting up of an appropriate authority to enquire the violation of human rights in custody.

- (iii) Procedure regarding purchase of medicine in jails.
- (iv) Effective treatment of prisoners and maintenance of good sanitation inside jails.
- (v) Payment of compensation to prisoners who die in custody due to medical negligence.
- (vi) Implementation of Hon'ble Supreme Court's guidelines regarding handcuffing during the transit.
- (vii) Implementation of the judgments of Hon'ble Supreme Court in Bhim Singh Vs. Union of India [W.P.(Crl.) No. 310 of 2005] and Arnesh Kumar vs. State of Bihar & Anr. [Criminal Appeal No. 1277 of 2014].
- (viii) Whether first time offenders, under trials, life convicts, other convicts, women and children are completely segregated from each other, keeping in mind the observations of the Hon'ble Supreme Court in the case of Sunil Batra, AIR 1980 SC 1579 (paragraph 65)?
- (ix) Whether cell phones are being used inside jails and what steps have been taken to stop the same?
- (x) What are the living conditions of the jails for inmates, more particularly, the accommodation available vis-à-vis the number of prisoners in the jails of the State?"

3. These petitions were listed in regular intervals in the first two months of 2015. Thereafter, they were not listed for over six years till 9th March, 2021, on which date a detailed order was passed by this Court noting that the Odisha Model Jail Manual had been published in 2020 adopting the model prepared by the National Human Rights Commission (NHRC). Indeed, the Home Department, Government of Odisha published notification dated 28 th September 2020, in exercise of the powers conferred under Section 59 of the Prisons Act, 1894, the Odisha Prison Rules 2020 (OPR, 2020).

Order dated 19th March, 2021

4. In its order dated 19th March 2021, this Court referred to the directions issued by the Supreme Court of India in the judgment dated 5th February, 2016 in Re: Inhuman Conditions in 1382 Prisons (2016) 3 SCC 700 as well as the subsequent judgment dated 15th September, 2017 in the same case reported in (2017) 10 SCC 658. In particular, a reference was made to the Standard Minimum Rules for Inmates of Prisons ('The Nelson Mandela Rules') which had been adopted by the United Nations on 17th December, 2015. This Court took note of the various directions issued by the Supreme Court in the aforementioned orders and the necessity to implement them "in letter and spirit to improve the conditions of the jails in Odisha". This Court emphasised that "this requires to be done in a time bound manner".

5. The State Government was, by the aforementioned order, asked to inform the Court the timelines within which it would implement the directions of the Supreme Court; issue instructions to prohibit handcuffing of the Prisoners in jail or while bringing them from the Jail to the Court; the efforts made for release of prisoners arrested in compoundable criminal cases. This Court, in the said order, acknowledged that without active participation of the Odisha State Legal Services Authority (OSLSA) and the Orissa High Court Legal Services Committee (OHCLSC), "many of the reforms that have been proposed in the above judgment of the Supreme Court may not be able to be implemented."

6. Taking note of the submissions of the AC regarding absence of jail visits by the District Magistrates (DMs), Visitors and medical personnel to the prisons, the Court issued the following directions in its order dated 9th March, 2021:

(i) Between 15th March, 2021 and 16th April, 2021 the District Magistrates of the various districts will make a surprise visit to the jails within their jurisdiction, in co-ordination with the Secretary of the concerned District Legal Services Authority (DLSA) or Taluk Legal Services Committee (TLSC) as the case may be and submit a Joint report to this Court on the conditions of the jails, condition of the prisoners, issues of overcrowding, the status of facilities within the jails including provisions for food and shelter, recreation etc. Preferably, these visits should be unannounced.

(ii) The State Government will also organize at least one medical inspection of each of the district jails and sub-jails in the State of Odisha by a team of medical professionals within the aforementioned period and the reports of such visits will also be placed before the Court on the next date.

(iii) Copies of such reports should be served in advance to the learned AC as well as Mr. Sahoo, learned AGA. The issues highlighted in such reports should be immediately acted upon by the State authorities without awaiting further directions from this Court.

(iv) The Court has been informed that every District Judge undertakes a visit to the jails within their jurisdiction every month and submits a report to this Court. A compilation of such reports for the months of January, February, and March, 2021 be placed before the Court on the next date by the Registrar General of this Court."

7. The Court directed that the authorities visiting jails must report on "rampant use of narcotics as well as mobile phones inside jails", installation of CCTVs in the jail. The Member Secretary, OSLSA was asked to take steps to facilitate the release of prisoners who were unable to be released on bail despite being granted bail on account of their inability to furnish bail bonds. The Member Secretary OSLSA was further asked to facilitate their release by getting panel counsel to file further applications before the Court which granted such bail, to modify the conditions in terms of the judgments of the Supreme Court on this issue.

8. Further, the OSLSA was asked, in consultation with the jail authorities, to examine the possibility of conducting Jail Adalats for the purposes of compounding offences, which could facilitate early release of such prisoners.

Orders of April and May 2021

9. At the hearing on 7th April, 2021, this Court passed an order permitting the Common Human Rights Initiative (CHRI) to intervene in the petitions and make submissions. The Court subsequently directed that CHRI's prison inspection format be used for jail visits by DMs. On 19th April, 2021, the Court was informed by the AC that 470 prisoners all over the State were unable to avail bail despite being granted bail by the Courts. The Member Secretary, OSLSA was requested to ensure that as many prisoners as possible be extended assistance of OSLSA in this regard.

10. On 27th April, 2021, the State Government was directed to make "appropriate arrangements to ensure that no prison inmates are denied vaccination only on the ground that the inmate is unable to get registered on the COWIN portal. Alternate arrangements should be made to ensure that vaccination is not denied to such inmates." On 12th May 2021, the Court took note of the decision of the Supreme Court in *Hussainara Khatoon v. State of Bihar* (1980) 1 SCC 81 (paras-3 and 4) where it had been directed that whenever the prisoners were unable to furnish bail bonds, they should be released on Personal Recognisance Bond (PR Bond).

11. On 31st May, 2021, the Court took note of the detailed order passed on 7th May, 2021 by the Supreme Court of India in *Suo Motu Writ Petition (Civil) No.1 of 2020* (In Re: Contagion of COVID 19 virus in prisons). It was noted that the status of occupancy of jails in Odisha had been uploaded on the website of the Director General (DG) Prisons.

12. On 31st May, 2021 the learned AC drew the attention of the Court to the issue of overcrowding in the prisons in Odisha. The Court noted that there was overcrowding in at least six jails which included the District Jail in Phulbani, the Special Sub-Jail in Bhadrak and the Sub-Jails in Jajpur, Nayagarh, Paralakhemundi and Malkangiri. It was noted that the situation in Bhadrak Special Sub-Jail was particularly acute, where against a capacity of 166 there were over 430 prisoners. The Court observed that, "in the time of COVID 19 pandemic, this can also pose a serious risk to the health and safety of the prisoners as well as the jail staff." The following directions were then issued:

"6. The Court directs the State of Odisha to place before it, by the next date, a detailed action plan for dealing with this grave situation which requires immediate attention. The Court is of the view that there is an urgent need to decongest the prisons and to accommodate the prisoners in excess of the holding capacity of the concerned jail to be shifted in a phased manner in other safe and secure premises, which could be by upgrading other state buildings/facilities to meet the requirements of prisons. This aspect also must be taken into account

while preparing the action plan."

Orders of July and August, 2021

13. On 16th July, 2021 the Court took note of the fact that in one district Jail at Phulbani, one Special Sub-Jail at Bhadrak and eleven sub-jails, the overcrowding ranged between 161 to 260%. The affidavit filed by the Home Department and the DG (Prisons) stated that as of 3rd June, 2021, 737 convicted prisoners were released on Special Parole (Furlough) for a period of 90 days each, pursuant to the order dated 7th May, 2021 passed by the Supreme Court of India in *Suo Motu W.P.(C) No.1 of 2020*. 89 convicted prisoners had been released on furlough for a period of 14 days each during the months of April and May, 2021. The Court was informed that further steps were being taken for the release of 106 life convicts whose cases had been recommended by the State Sentence Review Board on different dates for premature release. The Court was informed that as of 3rd June 2021, 1239 inmates had either already been shifted or were being shifted from overcrowded jails to less populated jails.

14. The Court was also informed that as on 7th July, 2021, the cases of 1376 prisoners were being considered for shifting. It was noted that as of 31st May 2021, the excess prison population were in fact 242% in Malkangiri, 214% in Paralakhemundi, 209% in Nayagarh 163% and 220% in Jajpur. In Kodala Sub-Jail the prison population was beyond 255% and in Nuapada Sub-Jail, it was 260%. [These figures were inclusive of the original capacity of the respective jails]. Further affidavits were called from IG (Prisons) for the updated statistics on the exact number of prison inmates shifted from one jail to another.

15. As regards the Court's suggestions regarding "temporary prisons", it was stated in the affidavit dated 23rd August, 2021 of the DG Prisons and the Additional Chief Secretary Home Department, that the Superintendent of Police and District Magistrate of Bhadrak, Malkangiri, Kandhamal, Gajapati, Nayagarh and Jajpur districts have been requested to "select Government buildings with adequate security, secured boundary walls in order to accommodate prisoners" and submit feasibility reports. However, in response to such request, the Superintendents of Police (SPs) of Gajapati, Nayagarh and Jajpur denied availability of such facilities in their respective districts. As regards the remaining districts, the Dg Prisons stated that the "feasibility reports are still awaited."

16. On 16th July 2021, the Court underscored the need for a long-term plan to deal with the issue of overcrowding in prisons "on a consultative basis involving all the important stakeholders and civil society groups actively involved with these issues".

17. Again, on 26th August 2021, the Court observed that the latest figure as of 31st July, 2021 showed that the situation continued to be a cause of great concern with a large number of prisons in Odisha having beyond 20% overcrowding and a substantial number beyond 50% overcrowding. Even at the

jail in Bhubaneswar, the scheduled accommodation was 749 whereas the present prisoner population was 1006. The situation was as bad in Malkangiri. There the scheduled accommodation was 314, whereas the current inmate population was 679. In Bhadrak jail, the scheduled accommodation was 166, whereas the current population was 415.

18. At the hearing on 26th August, 2021 the Court took note of the contents of the affidavit dated 23rd August 2021 of the Deputy Inspector General of Prisons on the measures put in place to tackle the issue of overcrowding of jails. Inter alia, the affidavit stated that an action plan for 2020-21 and 2021-22 had been approved by Government for construction of additional wards in different jails of the State. It was expected that the scheduled capacity of some of the jails would be upgraded to accommodate 2994 more prisoners. It was further submitted that the new jail building of Special Sub-Jail, Bhadrak would be constructed on the proposed land with an enhanced capacity of 460.

19. On 26th August 2021, the Court reiterated the direction in the earlier order dated 16th July, 2021 and noted as under:

"5. The DG of Prisons and the Advocate General assure the Court that within the next two weeks a meeting will be convened of the Departments of Home, Prisons, Finance, Office of the Public Prosecutor and all the important stakeholders including civil society groups, and those conversant with the issues including the former Directors General of Prisons of some States, who could participate in the virtual mode and offer suggestions. The outcome of the meeting(s) should be the drawing up of a blue print/ action plan, in the short-term and in the long-term, addressing the issue of overcrowding for every jail i.e. circle jail, special jail, district jail, special sub-jail and sub-jail etc. in the State of Odisha. The minutes of such meeting(s) be placed before the Court by the next date along with an affidavit of the DG of Prisons."

20. Further on 26th August, 2021 the Court issued directions regarding quarantine of prisoners, activating the e-mulaqat facility and conducting jail adalats. The Court further directed all the concerned DMs "to conduct a surprise visit to the jails within their jurisdiction and submit reports." The Court noted that "many of them have submitted reports", but directed that "as a follow-up each of them shall again visit unannounced, the jails within their jurisdiction, and submit a report by the next date."

21. On 6th November, 2021 the following order was passed:

"1. A convenience note has been prepared by Mr. Gautam Misra, learned Senior Advocate and Amicus Curiae in the matter highlighting with specific areas, in which, steps are required to be taken by State including the alignment of the present Prison Rules with the 'Nelson Mandela Rules' brought out by the United Nations; compensation for unnatural deaths; steps to reduce the same through training and sensitization programmes, medical assistance and so on and so forth.

2. The learned Advocate General appearing for the State states that the Director General of Prisons, Odisha is expected to convene a meeting of experts shortly to discuss each of the issues and formulate an appropriate response and plan of action including devising a Standard Operating Procedure.

3. List on 18th December, 2021."

Hearing on 18th December, 2021

22. At the hearing on 18th December 2021, which was in hybrid mode, the Court heard the submissions of Mr. Gautam Mmisra, the learned AC, Mr. S.K. Nanda, Advocate, Mr. P.K. Muduli, learned Additional Government Advocate (AGA); Mr. S.N. Das, learned Additional Standing Counsel who appeared in the Court physically. Mr. Ashok Kumar Parija, the learned Advocate General (AG); Mr. S.K. Upadhaya, the DG of Prisons; Mr. Sanjib Chopra, Addl. Chief Secretary to Government, Department of Home; Mr. Gouri Shankar Satapathy, Member Secretary, OSLSA; the District Judges and Member Secretaries, District Legal Services Authority (DLSAs) of Cuttack, Khurda, Jajpur, Jeypore, Malkangiri. Phulbani and Bhadrak and the Superintendent of Police (SP) Bhadrak appeared in virtual mode. The Court also heard, in virtual mode, the submissions of experts: Dr. Murli Karnam, Asst. Professor NALSAR University of Hyderabad; Dr. Vijay Raghavan, Project Director, Tata Institute of Social Sciences (TISS), Mumbai; Ms. Maja Daruwala, Chief Editor, India Justice Reports (IJR); Ms. Sugandha Shankar, Senior Programme Officer, Prisons Reforms Programme, CHRI and Mr. V.K. Singh, former DG Prisons, Telangana.

23. At the commencement of the hearing, Mr. P.K. Muduli, learned AGA, handed over an affidavit dated 17th December, 2021 of the Deputy Inspector General of Prisons in compliance with the directions issued by this Court on 6th November, 2021. The affidavit also contained a tabulated response to the AC's note dated 28th October, 2021.

24. The AC placed before the Court a detailed note on the recommendations and suggestions made by the Civil Society Organizations and individuals working on the issues concerning the prisons reforms at the two virtual meetings organized by the Office of the AG, Orissa on 16th and 23rd October, 2021. It may be mentioned here that the experts who attended the said meetings were present in virtual mode today and gave their suggestions.

Overcrowding in jails

25. A tabulated chart depicting the prison population in Odisha as on 31st October, 2021 was presented before the Court by the AC. It showed that there was as many as 87 jails in Odisha which include the five Circle Jails at Baripada, Berhampur, Choudwar (Cuttack), Koraput and Sambalpur; the nine District Jails at Angul, Balasore, Bhawanipatana, Bolangir, Dhenkanal, Keonjhar, Phulbani, Puri and Sundargarh; the Special Jails at Bhubaneswar and Rourkela; the Six Special Sub-Jails at Bhadrak, Bhanjanagar, Bonaigarh, Boudh, Deogarh and Talcher and

65 Sub-Jails, which include the Nari Bandhi Niketan at Sambalpur, the Biju Patnaik Open Air Jail at Khurda and the NCP Athagarh. Additionally, there are 59 children accompanying their parents in jails.

26. The data presented as of 31st October, 2021 [downloaded from the website of the IG (Prisons)] showed that most of the jails were overcrowded i.e. their current inmate population was beyond their maximum 'scheduled' capacity. As regards the five Circle Jails, in Baripada against a total scheduled accommodation of 591 [544 Male (M) and 47 Female (F)], the prison population was 665 comprising 143 convicts and 522 undertrials (UTs). In Berhampur, against the total scheduled accommodation of 743, the prison population was 956. In Choudwar, against the scheduled accommodation of 961, the prison population was 1205.

27. The Court was able to get further updated figures for some of the prisons while the hearing was in progress. In Koraput, prior to 31st October, 2021 against a scheduled accommodation of 739, the prison population was 737. It then became 904 and this included 167 convicts and 737 UTPs. However, the Court was informed that as of 15th December, 2021 the UTP population in Koraput had grown from 737 to 869 primarily due to transfer of some UTPs from the Malkangiri sub-jail, which in turn was overcrowded. In the Sambalpur Circle Jail, against the scheduled accommodation of 604, the prison population as on 31st October, 2021 was 634.

28. The Court now proceeds to highlight some of the stark instances of prison overcrowding which were focused on during the hearing. Conscious that the paucity of time would not permit examining the situation in each of the 87 jails, the Court decided to examine a broad representative sampling of overcrowded jails i.e. one Circle Jail [Choudwar/Cuttack], one District Jail (Phulbani), one Special Jail (Bhubaneswar), one Special Sub-Jail (Bhadrak) and three Sub-jails i.e. the ones at Jajpur, Jeypore and Malkangiri.

29. The figures relating to the Choudwar (Cuttack) Circle Jail have already been noted. In the Bhadrak Special Sub-Jail against the scheduled accommodation of 166, the prison population as on 31st October, 2021 was 456. In Bhubaneswar Special Jail, as against 749, it was 1163; in Phulbani District Jail, as against 277, it was 519; in Jajpur, as against 133, it was 325 (as of 15th December, 2021, this figure has risen to 529). In Jeypore, as against 282, it was 426 (as of 15th December, 2021) while now it has come down to 342; in Malkangiri, as against 314, the population as of 31st October, 2021 was 818. As on 15th December, 2021 it was 715, which is still a high figure.

30. From the submissions made by the experts as regards the major reasons for overcrowding, the following factors emerged:

(i) as against the All-India average of 69%, the percentage of UTPs in Odisha Jails is 78%;

- (ii) 95% of the prisoners were semi-literate or illiterate;
- (iii) 30% of the present population would be covered by the directions issued by the Supreme Court of India in *Arnesh Kumar v. State of Bihar* (2014) 8 SCC 273;
- (iv) There are still many prisoners who are unable to be released on bail on account of their inability to furnish surety.
- (v) Out of the 87 prisons in Odisha, 48 are overcrowded: 14 had an occupancy up to 120%; 18, between 121 and 150%; 10, between 150 and 200%; 4, between 200 and 299% and 2 prisons more than 300%. Going by the definition used by the European Committee on Crime Problems, prison overcrowding above 120% was considered 'critical overcrowding' and above 150% it was considered as 'extreme overcrowding'. 50% of the sub-jails are overcrowded and 14 of them have more than 150% of the prisoners. Of the six special sub-jails, five are overcrowded with occupancy between 104 to 220 of 4%.

31. Rule 1044 of the OPR 2020 lists "overcrowding" among the "situations to be handled on an emergency basis". The other relevant Rules of the OPR 2020 are:

"1102. Overcrowding shall be reported to the Inspector General of Prisons

(1) If a prison becomes overcrowded, the Superintendent shall take suitable action for accommodating all the prisoners properly, duly reporting the circumstance leading to overcrowding to the Inspector General of Prisons.

(2) Any other matter pertaining to overcrowding shall always be referred to the Inspector General of Prisons for orders.

1103. Reduction of Under-trial Prisoners

(1) The Prison Welfare Officer and Law Officer shall contact the concerned court for arranging bail of the under-trial Prisoners;

(2) The Inspector General of Prisons may be moved for transfer of prisons from one prison to another with the permission of the Court.

1104. Measures to relieve overcrowding

(1) As soon as prisoners in excess of the available accommodation are received in any prison or hospital, the Superintendent shall submit a report to the Head of the Directorate with a statement of the measures which he proposes to adopt to relieve the overcrowding, and such temporary arrangements, as he thinks best, shall at once be adopted for this purpose.

(2) The Superintendent shall also move the Head of Directorate for transfer of convicts to nearby Jails for temporary period where ever possible.

1105. Keeping prisoners in sheds or tents

(1) Prisoners in excess of the accommodation shall not, except as a temporary measure, be placed in work-sheds or verandahs, but shall be kept in sheds or

tents inside the prison.

(2) The Superintendent shall always obtain prior sanction, whenever necessary, for incurring expenditure in this regard and shall ensure economy in every aspect."

32. The affidavits of the DG Prisons filed thus far are silent on the status of implementation of the above rules. In terms of the directions issued by the Supreme Court in *Re: Inhuman Conditions in 1382 Prisons* (supra), in each of the 30 Districts in Odisha there are Under-trial Review Committees i.e. UTRCs which comprise the District Judge, the District Magistrate, the Secretary, DLSA, the Superintendent of Police (SP) and the Jail Superintendent. It must be noted that the National Legal Services Authority (NALSA) has prepared a Standard Operating Procedure (SOP) for the functioning of the UTRCs [available at <https://nalsa.gov.in/acts-rules/guidelines/standard-operating-procedure-sop-guidelines-for-utrcs>]. 14 categories of UTPs and the Prisoners are to be identified. The SOP also lays down that they could be released on bail without sureties, reduction of bail amount, provisional bail, or on PR Bond. The 14 categories identified in NALSA, SOP are as under:

"a. UPTs/Convicts covered under Section 436A Cr PC.

b. UTPs released on bail by the court, but have not been able to furnish sureties.

c. UTPs accused of compoundable offenses.

d. UTPs eligible under Section 436 of Cr PC.

e. UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely accused of offence under Sections 379, 380, 381, 404, 420 IPC or alleged to be an offence with not more than 2 years imprisonment.

f. Convicts who have undergone their sentence or are entitled to release because of remission granted to them.

g. UTPs become eligible to be released on bail u/s 167 (2)(a)(i) & (ii) of the Code read with Section 36A of the Narcotics Drugs and Psychotropic Substances Act, 1985 (where persons accused of Section 19 or Section 24 or Section 27A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.

h. UTPs who are imprisoned for offences which carry a maximum punishment of 2 years.

i. UTPs who are detained under Chapter VIII of the Cr PC i.e. u/s. 107, 108, 109 and 151 of Cr PC.

j. UTPs who are sick or infirm and require specialized medical treatment.

k. UTPs who are women offenders.

l. UTPs who are first time offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible.

m. UTPs who are of unsound mind and must be dealt with Chapter XXV of the Code.

n. UTPs eligible for release under Section 437(6) of Cr PC, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of 60 days from the first date for taking evidence in the case."

33. One of the suggestions made by the experts for reducing the overcrowding in jails is that in terms of the decision in *Arnesh Kumar* (supra), UTPs arrested for offences where the maximum sentence is 7 years or less, should be forthwith released on PR Bond, when unable to fulfil the monetary or 'property' bail condition.

34. At this stage, it must be noted that the High Powered Committee (HPC) set up in term of the order of the Supreme Court in *Suo Motu PIL No.1 of 2020* (In Re: Contagion of COVID 19 virus in prisons) was to identify vulnerable categories amongst prisoners who were susceptible of developing symptoms when exposed to the COVID virus. A similar exercise was undertaken correspondingly by the UTRCs. The said exercise is different from exercise to be undertaken by the UTRC in terms of the SOP of NALSA to identify prisoners who might be asked to be released in terms of the directions of the Supreme Court in *Re: Inhuman Conditions in 1382 prisons* (supra). The frequency of the meeting of the UTRCs has also varied correspondingly. While for release of prisoners as a result of the directions of the Supreme Court in *In Re: Contagion of COVID 19 virus in prisons* the UTRCs have been the meeting once in a week, the UTRCs have been meeting only once in a quarter for recommending release of prisoners in terms of the NALSA SOP and the directions of the Supreme Court in *Re: Inhuman Conditions in 1382 prisons* (supra).

35. With the situation regarding Covid-19 undergoing a change, there is a likelihood of many of the prisoners released pursuant to the directions of HPC and the UTRC in terms of the directions of the Supreme Court in *In Re: Contagion of COVID 19 virus in prisons* will soon be returning to the jails. This undoubtedly will further compound the problem of overcrowding in the jails in Odisha.

36. Therefore, the Court would like to request the HPC to consider whether, given the dire situation of overcrowding in many of the jails in Odisha, the return of prisoners post the Covid-19 phase, whenever that might happen, should be staggered or deferred till such time concrete measures to decongest the existing overcrowded jails in Odisha is undertaken. It is of course for the HPC to make an objective assessment of the situation, as it develops, and suggest the modalities whereby the prisoners released for Covid-19 reasons will to return to the prison.

A copy of this order will be placed by the Secretary OSLSA before the HPC for its consideration.

37. The Court was also informed that the recommendations made by the UTRCs for release of the UTPs in terms of the SOP of NALSA read with the directions of the Supreme Court in *Re: Inhuman Conditions in 1382 prisons* (supra) do not always get accepted by the concerned Courts for various reasons. Further, the Court was informed by the Secretary of the DLSAs that the UTRCs are made aware of the judicial orders rejecting the UTRC's recommendations only at the next meeting of the UTRC.

38. The Court was informed in this context that where the UTP has his or her own counsel, the DLSA panel counsel/Jail Visiting Lawyer (JVL) may not submit an application on their behalf to the Court concerned on the basis of the recommendations of UTRCs. This might place the concerned UTP at a disadvantage.

Directions vis-à-vis overcrowding

39. In order to streamline the entire process, the Court issues the following directions:

(i) The meeting of the UTRCs for the purposes of implementation of the directions of the Supreme Court in *Re: Inhuman Conditions in 1382 prisons* (supra) read with the NALSA SOP, in the districts of Khurda, Cuttack, Balasore and Bhadrak will be held twice in a month till such time the prison population in these jails is less than 100% of their respective scheduled capacity. Once the aforementioned level of occupation is reached the UTRC meetings be held once a month.

(ii) The DLSA Panel/JVL will offer assistance to all inmates in whose favour recommendations are made by the UTRCs, in drafting application for bail, irrespective of whether the UTP concerned has his or her own lawyer or not.

(iii) The DLSA will have one panel lawyer observe the proceedings of the Court when such application of the concerned UTPs is taken up and inform the Member Secretary, DLSA that very day by the evening the outcome of the hearing of such application;

(iv) The Member Secretary, DLSA should be sent the copy of the order by the Court immediately after the order is signed. If the recommendation is not accepted, the order should contain reasons therefor.

(v) At the next meeting of the UTRCs, the order of the Court concerned should be placed for consideration.

(vi) The UTRCs will ensure that recommendations are made in respect of each of the 14 categories of prisoners as indicated in NALSA's SOP. For this purpose, the Court directs the Member-Secretary, OSLSA to again circulate NALSA's SOP on the functioning of the UTRCs to all the DLSAs. Further, the DLSA and the State

Prisons Department will use digital tools to prepare list of the prisoners identify the prisoners eligible for early release under Sections 167, 436 and 436-A Cr PC and for evaluating the cases that fall under the petty offences, eligible for Plea Bargaining or compounding.

(vii) A direction is issued to the District Courts that where it is found that a prisoner is unable to emerge from jail, despite being granted bail, for want of sureties to consider release on PR bond. A direction is further issued that consistent with the observations of the Supreme Court in numerous judgments including the recent orders emphasizing that bail is the rule and jail is exception, the District Courts should take up in all seriousness applications for bail and anticipatory bail particularly in magistrate triable offences. Judicial notice is taken of the fact that a large number of such applications are filed in the High Court even in magistrate triable offences. Since, according to the counsel appearing in such matters, the sub-ordinate Courts are reluctant to entertain such applications. The Odisha Judicial Academy (OJA) will hold orientation programmes for subordinate Court Judges specific to the issue of bail and anticipatory bails on a constant basis.

Adding to Jail Capacity

40. The Court is informed that in the districts of Malkangiri and Jeypore, over 90% of the UTPs are in custody for grave offence i.e. in possession of commercial quantity of Ganja thus attracting the severe provisions of the NDPS Act. Therefore, many of them may not qualify for release in terms of the NALSA SOP and the directions of the Supreme Court in the In Re: Inhuman Conditions in 1382 Prisons (supra) or Arnesh Kumar (supra).

41. The DG (Prisons) and the Secretary, Department of Home Affairs have assured the Court that they will be taking a periodic review of the progress in adding to the jail capacity in each of the overcrowded jails including the Circle Jail at Choudwar, the District Jail at Phulbani, the Special Jail at Bhubaneswar; the Special sub-jail at Bhadrak; and the sub-jails in Malkangiri, Jeypore, and Jajpur. The Court would like to underscore that the mere shifting and relocating of the prisoners from one prison to the other may not resolve the problem of overcrowding. It is not even an effective stop-gap arrangement since it pushes the status of the transferee jail to being an even more crowded prison. Further, from the prisoner's point of view, such relocation will cut him off totally from his family, who may not be able to visit him in jail often, create difficulties in his being produced before the Court resulting in further delay of the trial. Therefore, this cannot be a permanent solution to the problem.

42. The DG (Prisons) referred to his affidavit dated 17th December, 2021. The Court would only like to highlight that even as of 31st October, 2021, as against the total capacity in jail of 19855 the present prison population was 21767 and now must have gone up even more. While long term measures in Bhadrak and Malkangiri for construction of additional jail have been taken up, that would

obviously take some more time. Therefore, some solution to the problem of overcrowded jails will have to be found out in the short term.

43. Mr. V.K. Singh, the former DGP of Telangana spoke about lack of funds being one of the major constraints and how the Prison Development Board in Telangana was able to make use of the proceeds from the sale of prison products without it having to be deposited with the Government Treasury but with a Prison Development Board. He spoke of prisoners being treated as human resources and Prisons as Human Resources Development Centers.

44. The Court finds that the suggestions of Mr. V.K. Singh have already been taken note of by the Government of Odisha as stated in its affidavit dated 17th December, 2021. The statistics suggest that a distinction has to be made between habitual and first-time offenders for targeting correctional and welfare measures. Mr. V.K. Singh made a suggestion about the Government generating more employment for both skilled and unskilled labour at Petrol stations and construction sites. His suggestion regarding a correctional approach towards majority of the prisoners who have committed the crime "by accident" has been taken note of, according to the said affidavit of the State Government. Reference has been made to a circular dated 21st August, 2021 issued by the D.G. (Prisons) "5T Module" for the purposes of establishing a "Correctional and Services and Reforms Committee" for all the jails in the State of Odisha.

45. The Court notes that the open prison facility in Khurda has 25 male prisoners as against the capacity of 125, leading to over 80% underutilization. Also, there is no open prison facility for women prisoners. Here again, the Home Secretary and the DG, Prisons were open to the suggestion made of increasing the number of open prisons. Mr. V.K. Singh suggested that semi-open prisons might also be a possibility to be explored. The Court would not like to suggest to the Government which of these systems or perhaps both should be adopted. The fact remains that there is an urgent need to increase the number of such facilities particularly for convicts in jails which include men and women. Concrete measures with regard to open prisons be taken and an action plan in this regard be submitted to the Court by the next date.

46. The Court directs the DG Prisons, Odisha to file an affidavit by the next date on the measures put in place for effective reduction of the prison population including the progress in adding to the capacity of overcrowded jails.

Tackling the problem of arbitrary arrests

47. Another important aspect that has been highlighted by the experts who participated in the hearing is the need to check arbitrary and needless arrests of persons as one of the measures to reduce the burgeoning prison population.

48. In *Joginder Kumar v. State U.P.* AIR 1994 SC 1349 the Supreme Court quoted the observation by the National Police Commission in its third report that 60% of all the arrests in India were either unnecessary or unjustified. It was

noted further that 43.2% of the expenditure in the jails was over such prisoners who on ultimate analysis, need not have been arrested after all. The Parliament in 2009 inserted Section 41 A to 41 D in the Code of Criminal Procedure 1973 (Cr PC). Section 41 A talks of the procedure for notifying this suspect to appear before the police only through a summons without having to be straightaway arrested; Section 41 B mandates that all arresting officers should wear identification tags displaying their names; should prepare an arrest memo and inform the arrestee's family or friend of his/her arrest; Section 41 C requires public display at the District level, of the names of the arrested persons, the names and ranks of their arresting officers and at the State level a larger data base of information on persons arrested. Section 41 D operationalizes the fundamental right under Article 22 of the Constitution of a arrested person to have a lawyer of his or her choice at some point during the interrogation.

49. The police authorities in Odisha will ensure that the above statutory provisions in the Cr PC are strictly implemented. The Police will publish every month on its website the relevant information as mandated to ensure transparency and accountability.

Police Station Duty Lawyer System

50. To ensure availability of legal assistance to a suspect, an informant/complainant, a victim of crime it is directed that OSLSA should, in consultation with the police in Odisha, put in place a 'police station duty lawyer system' at every police station in a district. Such duty lawyers whose names and mobile numbers will be displayed on a board in a prominent place at the police station should be prepared to offer their services 24 X 7. A roster of the lawyers who will attend to calls 24 hours in the day will be prepared and displayed prominently in every police station. In order to make this system effective, a direction is issued to the police as well as the OSLSA to launch a pilot project of the duty lawyer system in four police stations in Odisha preferably one in each of the four geographical regions beginning 1st February 2022. The NALSA guidelines in this regard be adhered to. An affidavit of compliance be filed by the next date.

Fees of panel counsel

51. One of the suggestions received during the hearing was the upward revision of the fees of panel counsel, JVLs and even Para Legal Volunteers (PLVs). The OSLSA will review the fee structure for panel counsel, JLVs and PLVs and come up with a revised circular in this regard consistent with the best practices elsewhere in the country within a period of three months from today. This is to tackle the refrain regarding inadequate honorarium to legal aid lawyers which demotivates them.

52. The following further directions are issued regarding JLVs and PLVs:

(i) The OSLSA will specify the minimum tenure, the period of appointment of JVLs. Women JVLs must visit the female wards in prisons. There shall be weekly

visits to prisons by both male and female JVLs;

(ii) The NALSA Hand Book of Formats for JVLs and Convict PLVs be provided to all JVLs and PLVs at the time of their appointment.

(iii) The DLSA will appoint one or two community PLVs to visit every district prison and Taluk Prison twice a week to assist the JVLs in the functioning of the Jail Prisoners Clinics.

(iv) The following registers be maintained in the prison clinic

(a) the Legal Aid Clinic work Register; (b) the Attendance Register. For the above purpose, sufficient stationery be provided to maintain proper records in the jail legal aid clinic and

(v) Ensure that computers provided to the jail are installed and used by the JVLs. The records to be maintained will also be maintained electronically and to this end a short orientation programme must be organized to familiarize JVLs to use computers to check the case status online, perform online legal research and draft legal documents and maintain electronic records of the work.

Probation of Offenders Act, 1958

53. The Court would also take note of the concerns expressed by the experts of the infrequent use by the Courts of the provisions of the Probation of Offenders Act (PO Act). Mr. Upadhaya, the DG (Prisons) was candid that although there were Probation Officers (POs) in each of the 30 districts, there was very little use made of the PO Act either due to lack of training and awareness of the POs themselves or the Courts not being inclined to do so.

54. The Court directs that the Odisha Judicial Academy (OJA) should conduct specific training/orientation workshops involving the POs under the PO Act and the trial Court judges on the need for more extensive use of the PO Act in cases involving offences triable by the Magistrates.

Custody warrant

55. On the issue of "custody warrant", the following observations in NALSA's SOP have been pointed out by the experts:

"...the need thereof arose since as on date the Prison Data is maintained only on the basis of case details received by the Jail Authorities from the First Custody Warrant which is in turn based solely on case particulars contained in the FIR. This data is amenable to change at different stages i.e. stage of filing of Chargesheet, framing of charge and then passing of final judgment, Adoption of this new Modified 'Custody Warrant' is necessary as unless the specific offence in which UTP is kept in detention is regularly updated, the software filters will not be able to give correct result. For example, an accused initially arrested u/s 302 IPC may be finally chargesheeted u/s 304 IPC. These new Modified Custody Warrants carry the particulars of the Legal Aid Counsel/Private Counsel

representing the UTPs at different stages."

56. Thus, the "custody warrant" should assist the Prison Department in having the complete update particulars of the prisoner and in particular at various stages of the progress of the case. The format of the "custody warrant" as provided in the NALSA SOP should be adopted, if not done already. The DG Prisons, Odisha in collaboration with the Member Secretary, OSLSA will ensure compliance with this direction.

Complaint Boxes in jails

57. The DG (Prisons) agreed that the system of installing complaints/suggestion boxes in every jail, to be opened only by the Member Secretary, DLSA can be adopted. This would be consistent with the Nelson Mandela Rules that require a transparent and independent complaint mechanism to be put in place to check prison excesses and abuses. Accordingly, a direction is issued that not later than 2nd February, 2022 in every jail in Odisha there should be a complaint box which should be opened only by the Member Secretary, DLSA or to any other official of the DLSA authorized by the Chairman, DLSA. In other words, the key to the said complaint/suggestion box will be available only to the Member Secretary, DLSA or such authorised person of the DLSA. The Member Secretary DLSA will then take up such of the complaints as require action, with the appropriate Officer in the Directorate of Prisons, Odisha in compliance with the "Nelson Mandela Rules". The report of the action taken on the complaint should be provided by the Directorate of Prisons both to the complainant as well as Member Secretary, DLSA within a period of 10 days from the date of receipt of such complaint.

Children in jails

58. As already noticed, there are at present around 59 children in the jails in Odisha. The Court is informed that there are detailed schemes formulated both in Rajasthan and Maharashtra relating to the children in prisons as well children of prisoners, who may not be inside prisons themselves. During the hearing, both the Home Secretary as well as the DG (Prisons) were open to the suggestion of adopting the best elements of such schemes to prepare a scheme for children of prisoners in Odisha which will include mandating a minimum stipend per child per month to meet the expenses connected with a decent standard of living and subsidising the entire expenses connected with the education of such children. A detailed scheme concerning children of prisoners whether within or outside prison be formulated within a period of two months and placed before the Court by the next date. The Court clarifies that the Government need not wait for the Court's green signal to operationalize the aforementioned scheme.

59. The guidelines laid down by the Supreme Court in the case of R.D. Upadhyay v. State of AP (2007) 15 SCC 337 as regards a special diet for children should be kept in view. In Maharashtra, under the ICDS scheme Anganwadis have been established both within the prisons and some outside them. There are also Balwadis set up outside the prison premises to cater to the needs of children. In

Rajasthan and Maharashtra there are similar schemes. The best of these practices be adopted for the State of Odisha.

Inspection of Jails

60. The Court is informed that under the OPR, 2020 the following seven types of inspections are envisaged: (i) Informal inspections conducted by prison officers (Rule 702, OPR 2020); (ii) Formal inspection by an Inspecting Officer designated by the Government (Rule 703, OPR 2020); (iii) Inspections by Board of Visitors (BoVs) (Chapter XXXV, OPR, 2020); (iv) Half yearly inspections by Senior Superintendent and range DIG (Rules 704 and 855, OPR, 2020); (v) Annual inspections by Head of the Directorate or any other officer of the rank of Deputy Inspector General of Prisons and above from the Prisons Headquarters (Rules 26, 27 and 706, OPR, 2020); (vi) Joint Inspection by the Superintendent and Executive Engineer to examine prison buildings (Rule 1130, OPR, 2020); (vii) Inspections by District & Sessions Judge (Rule 890, OPR, 2020). Additionally, judicial officers and National and State Human Rights Commissions have the mandate to monitor prisons.

61. The OPR 2020 however does not provide for (i) any educational qualifications/criteria for appointment of non-official Visitors (NOVs); (ii) training of NOVs; (iii) reporting to State government; (iv) action taken reports to be submitted by prison authorities to the BoVs, as suggested by the Ministry of Home Affairs' 'Advisory for appointment and working of Non-Official Visitors for Prisons' dated 18 February 2011.

62. The Court directs the Government of Odisha to ensure that:

- a. NOVs are appointed for all prisons, including special jails, sub-jails, special sub-jails, women jails and open-air prisons;
- b. District Magistrates constitute BOVs for every prison;
- c. training/orientation programmes for NoVs are organized in collaboration with any of the three Regional Institutes of Correctional Administration in the country;
- d. The OPR, 2020 incorporates the suggestions provided in the MHA's Advisory for appointment and working of NoVs for Prisons, dated 18 February 2011.

63. The Prison Department will publish prison-wise information on the visits by the BoVs/NoVs. The BoVs should ensure that the quality of food served in jails in Odisha is at acceptable levels. It is accordingly suggested that on every visit by the BoVs to jails, preferably without prior announcement, they will ensure that they partake of a meal with the inmates. They will time their visits accordingly. This will help to improve the quality of the food being served in prisons.

64. The Court also reiterates the directions issued para 11 of its order dated 26th August 2021 regarding surprise/unannounced visits by DMs to jails within their jurisdiction. The AC informs the Court that many of the reports of the visits by the DMs, in the format designed by CHRI, have not yet been submitted. The

Member Secretary, OSLSA will ensure that at least ten days prior to the next date, the reports of the DMs of such visits be collated and be provided to the Court as well as the AC.

Release of Prisoners

65. Regarding release of prisoners under Section 433 A Cr PC under permanent parole, it was suggested to the Court that a system that has been in operation in Rajasthan, with good results, could be examined for its adoption with suitable modifications for Odisha. It was pointed out that in Telangana, such practice was adopted which ultimately resulted in considerable reduction in the prison population. Some of these measures were providing for the release of:

(i) All convicted women prisoners sentenced to imprisonment for life, including those governed by Section 433-A Cr PC who have undergone an actual sentence of 6 years including remand period and total sentence of 8 years including remission.

(ii) All convicted male prisoners sentenced to imprisonment for life including those governed by Section 433-A Cr PC and who have undergone an actual sentence of 10 years including remand period and total sentence of 14 years including remission.

(iii) All male convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A Cr PC aged more than 65 years and have undergone an actual sentence of 6 years including remand period and total sentence of 8 years including remission shall be released.

(iv) All women convicted prisoners sentenced to imprisonment for life including those governed by Section 433-A Cr PC aged more than 60 years and have undergone an actual sentence of 6 years including remand period and total sentence of 7 years including remission.

66. The State of Odisha will review its existing Scheme/ guidelines on release of prisoners within a period of three months from today and place it on affidavit before this Court by the next date.

Wages payable to Prisoners

67. One of the issues highlighted was of payment of wages to the prisoners. The practice in jails in Odisha, the Court was informed, is that while convicts are engaged in activities of carpentry, farming, etc., it is voluntary when it comes to undertrials. The Court finds that the rate of wages offered to prisoners, when compared to the best practices elsewhere in the country, is abysmally low. The Court was shown copy of a recent circular dated 25th May 2021 issued under the Minimum Wages Act by the Labour Commissioner of Odisha fixing the minimum wages for unskilled category @ Rs.311/- per day; for semiskilled @ 351/-, for skilled @ Rs.401/- and for highly skilled @ Rs.461/- per day. In comparison, the 'revised' wages paid to prisoners for their labour in terms of a recent circular

dated 18th June, 2021 of the Home Department is Rs. 50 per day for 'unskilled', Rs. 60 per day for semi-skilled and Rs. 70 per day for skilled work. This is a pittance.

68. The Court would like to remind the State Government of the legal requirements as spelt out in paragraph 34 of the judgment of the Supreme Court in *State of Gujarat v. Hon'ble High Court of Gujarat* (1998) 7 SCC 392 where it was observed as under:

"34. All the learned counsels who argued before us are in unison in agreeing to the proposition that no prisoner can be asked to do labour, free of wages. It is not only the legal right of a workman to have wages for the work, but also a social imperative and an ethical compulsion. Extracting somebody's work without giving him anything in return is only reminiscent of the period of slavery and the system of begar."

69. In the same judgment, a series of guidelines had been set out on the modalities for fixing the wages to be paid for prisoners. The best practices in regard to wages to prisoners in the neighbouring State of Bihar, Jharkhand, West Bengal, Telangana and Chhattisgarh may be adopted and a fresh circular be brought out by the Government of Odisha within a period of two months from today and in any event not later than 1st March, 2022.

70. Connected with the payment of wages, is the setting up of jail industries. Annexure-G to the affidavit dated 17th December 2021 of the DG prisons gives the list of activities in the Circle Jails, District Jails and a handful of Sub-Jails. This needs to be expanded substantially so that there is some activity in every jail and sub-jail in Odisha. The DG Prisons will inform the Court on affidavit to be filed by the next date how it proposes to adopt the model of setting of a Prison Development Board and increasing the number of activities in the jails in Odisha that can contribute to the welfare of the prisoners.

Payment of compensation for death of prisoners

71. Rule 1028 of the OPR 2020 sets out the steps to be taken in the event of a death of a prisoner in custody. Rule 1026 of OPR 2020 talks of certification by a Medical Officer. Rule 1032 talks of post-mortem examination by 'the outside Medical Officer.'. It is not clear how these provisions are actually followed in practice. In the affidavit filed on 17th December 2021 in Annexure-A, the DG Prisons has given the details of payment of compensation for prison custodial deaths. In respect of some of the nine prisoners who are stated to have died in jails in Odisha during 2020-21, and later the payment to the next of their kin is stated to be "under process". Also, the basis for fixation of the compensation amount is not clear. Instead of getting in every case the OHRC or NHRC to fix the compensation amount, a system/scheme should be put in place by the Government itself for such payment. This should be devised in consultation with civil society groups working in the area of prison reforms so that the best practices elsewhere can be adopted.

72. Although the DG, Prisons stated that a judicial enquiry is in fact held even where the death of a prisoner is stated to be due to 'natural' causes, the Court would like a confirmation of the exact process being adopted by way of an affidavit to be filed by the DG Prisons by the next date. The said affidavit will further confirm that payment has indeed been made to the family/next of kin of every person who died in prison in Odisha during 2020-21 and later, as indicated in Annexure-A to the affidavit dated 17th December, 2021. Also, copies of the detailed instructions issued to operationalize the relevant Rules in the OPR and in particular Rules 1026 to 1032 be enclosed with such affidavit.

Medical and mental health care

73. The Court notes that Chapter XXXVIII of the OPR 2020 deals with medical care. Rule 976 OPR 2020 mandates that hospital accommodation should be provided on the scale of 5% of the daily average of the inmate population in all jails. There are two types of hospitals i.e. Type-A and Type-B. It also specifies the staff and equipment of two types of hospitals.

74. Mr. V.K.Singh highlighted the need to pay attention to the mental health needs of prisoners. Rule 988 of OPR 2020 requires inter alia a prison hospital to have a psychiatric unit with equipment. In addition, there is a need for regular visits by clinical psychologists and counsellors to prisons on a regular basis.

75. In the affidavit dated 17th December 2021 of the DG Prisons, reference has been made to an order dated 15th November 2021 issued by the Health and Family Welfare Department deploying Psychiatric Specialists, Senior Residents and Clinical Psychologists from Medical Colleges and Hospitals and District Head Quarter Hospitals to different districts not having skilled mental health professionals to provide screening, counselling, treatment, follow up and evaluation of prison inmates having mental illness. How effective these measures have been is not clear. The number of consultations that such mental health professionals have had at the request of prisoners, without having to disclose their names, since the issuance of the above order be indicated in an affidavit to be filed by the DG Prisons before the next date.

Concluding directions

76. The Court is conscious that it has issued a slew of directions and it is now for the authorities concerned to ensure their implementation. The Court also makes it clear that the aforementioned directions are in addition to the directions issued in the earlier orders. This matter has, from the beginning, proceeded on a non-adversarial basis and the directions issued, in consultation and with inputs from all the actors, are with the sole purpose of improving the condition of prisons and prison inmates in Odisha. Although the Court has in this order taken up seven jails as a sampling, the situation in most of the other jails is not very different. The Court has issued the directions with the expectation that with all the measures envisaged being made operational, the prison population in Odisha is progressively reduced to manageable levels. The Court is conscious that many of

the measures will have to be implemented over a considerable period of time. As the experts repeatedly pointed out during the hearings, the problem of overcrowding in jails cannot be tackled on a piecemeal or ad hoc basis. It requires a whole slew of measures to be put in place to achieve that goal.

77. Implementing the directions issued thus far by the Court in this matter will require the active involvement and co-operation of a number of State and non-state agencies. The Court therefore considers it necessary to further direct the setting up of a nodal mechanism for implementation of the directions. It is accordingly directed that the Government of Odisha shall, within ten days from today, set up a Committee for implementation of the Court's directions, comprising:

(i) The Home Secretary, Government of Odisha

(ii) The Principal Secretary, Law and Justice, Government of Odisha; (iii) The DG of Police or his nominee

(iv) The DG Prisons

(v) Representatives of the Health Department and the Women and Child Development Department, Government of Odisha;

(vi) the Member Secretary, OSLSA who shall also be the convenor of the Committee. The AC shall be an invitee to the meetings.

78. The Committee will hold its first meeting not later than 10th January, 2022 and as many meetings as considered necessary but definitely once in every fortnight. The Court expects that by the next date at least four such meetings would have been held. The Member Secretary, OSLSA will prepare a list of all the directions issued/requests made by the Court (to the various authorities) not only in this order but in the previous orders as well and circulate it to the members of the above Committee not later than 3rd January 2022. He will also transmit the list of directions to each of the Member Secretaries of the DLSAs, the District Judges, the SPs and the DMs for implementation. The Committee will ensure the filing of the affidavits as directed by this Court within the time as indicated.

79. List on 8th March, 2022.

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