
(2021) 05 KL CK 0159
In the High Court Of Kerala
Case No : Writ Petition (C) No. 11316 Of 2021

Suo Motu

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 19-05-2021

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 23(4), 29(A)
Commercial Courts Act, 2015 — Section 12(A)
Negotiable Instruments Act, 1881 — Section 138(b), 138(c)
Indian Penal Code, 1860 — Section 498(A)
Code Of Criminal Procedure, 1973 — Section 41, 41(1), 41(A), 57, 167, 482
Dowry Prohibition Act, 1961 — Section 4
Constitution Of India, 1950 — Article 20(2), 21, 22(2), 141, 226, 227

Citation : (2021) 05 KL CK 0159

Hon'ble Judges : S. Manikumar, CJ; C.T. Ravikumar, J

Bench : Division Bench

Advocate : Ranjith Thampan, Thomas Abraham, Suman Chakravarthy, P. Narayanan

Judgement

S. Manikumar, CJ

1. Earlier, since normal court proceedings could not be carried out, it was felt necessary to extend the interim orders granted by the High Court and

the custody orders, in respect of children issued by the Family Courts, which were due to expire during the period of lockdown restrictions.

Accordingly, a Full Bench of this Court has passed an order dated 25th March, 2020, which was later on modified as per order dated 30th March,

2020. The said orders were periodically extended on various dates. The applications filed by Banks and other Organisations, to vacate the interim order, were also considered by this Court.

2. Consequent to the improvement of pandemic situations, the Hon'ble Supreme

Court, as well as other High Courts, have either vacated or disposed of the writ petitions registered suo motu, thus permitting the aggrieved persons on either side to proceed in the pending applications and other matters to be proceeded in accordance with

3. But, during the first week of May, 2021, since there was surge in Covid-19 pandemic situation, State Government have declared a lockdown with effect from 08.05.2021 till 17.05.2021 as per Government order dated 06.05.2021, and issued directions and guidelines for managing the pandemic situation and also for alleviating the grievance of the public in regard to their essential and unavoidable activities.

4. Thereafter, modifications were made as per order dated 7.5.2021, and later, on 14th May, 2021, a second phase lockdown in the State has been declared with effect from 16th May, 2021 to 23rd May, 2021, taking into account the spread of pandemic and the increase of Test Positivity Rate (TPR). Additional guidelines have been issued by the Government in the said order dated 14.05.2021, in respect of Thiruvananthapuram, Ernakulam, Thrissur, and Matappuram districts where infection showed an upward trend.

5. On account of the same, all the District Disaster Management Authorities have been directed to analyse the situations within the districts, and implement stringent containment measures wherever required. Therefore, normal proceedings before the Courts and Tribunals are not possible and in that view of the matter, it is decided to register the instant suo motu writ petition, in order to manage and tackle the second lockdown situation.

6. limitation, releasing Committee etc.

6. Suo motif proceedings are initiated for extension of orders, granted by this Court and for passing orders, on similar lines to the orders passed in W.P.(C) No. 9400 of 2020, registered suo motu by this Court, particularly, with the intention of dealing with legal matters, due to the emergent situation of pandemic Covid-19 and the complete lockdown declared by the Government of India on 24th March, 2020.

7. After deliberations, we are of the view that the orders passed by this Court during the first lockdown period are to be revived. We are also informed that Honible Apex Court has taken note of the present emergent situation, re-opened the earlier suto motu proceedings, and passed orders on 07.05.2021 issuing various directions, in view of the unprecedented surge in

Covid-19 resulting in steep hike in the number of people, who are affected by pandemic Covid-19. The Hon'ble Apex Court also restored its earlier order dated 25th March, 2020, and issued appropriate directions, in respect of extension of prisoners on parole, constitution of High Powered

8. The High Powered Committee constituted by this Court also met after the second lockdown and issued appropriate directions, in order to tide over the present pandemic situation.

9. We have heard learned Additional Advocate General Mr. Ranjit Thampan, Mr. Raj Kumar, learned counsel representing the Addl. Solicitor General of India, Mr. Thomas Abraham, President of Kerala High Court Advocates' Association, Mr. P. Narayanan, learned Senior Government Pleader, and Mr. Suman Chakravarthy, learned Senior Public Prosecutor.

10. On the aspect of limitation, in *In Re Cognizance for Extension of Limitation v. XXXX* [Order dated 27.04.2021 in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020], the Hon'ble Supreme Court held as under:

UPON hearing the counsel the Court made the following

ORDER

The Court is convened through Video Conferencing.

This Court took suo motu cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country.

Consequently, it was directed vide order dated 23rd March, 2020 that the period of limitation in filing petitions/ applications/ suits/ appeals/ all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15th March, 2020 till further orders.

Thereafter on 8th March, 2021 it was noticed that the country is returning to normalcy and since all the Courts and Tribunals have started functioning either physically or by virtual mode, extension of limitation was regulated and brought to an end. The suo motu proceedings were, thus, disposed of issuing the following directions:

1. In computing the period of limitation for any suit, appeal, application or

proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded.

Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of

limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining,

with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the

Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable

Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or

tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time

bound applications, including for legal purposes, and educational and job-related requirements.

Supreme Court Advocate on Record Association (SCAORA) has now through this Interlocutory Application highlighted the daily surge in COVID

cases in Delhi and how difficult it has become for the Advocates-on-Record and the litigants to institute cases in Supreme Court and other courts in

Delhi. Consequently, restoration of the order dated 23rd March, 2020 has been prayed for. We have heard Mr. Shivaji M. Jadhav, President

SCAORA in support of the prayer made in this application.

Learned Attorney General and Learned Solicitor General have also given their valuable suggestions.

We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation.

The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the

hardship of litigant-public in all the states. We, therefore, restore the order dated 23' March, 2020 th March, 2021 direct that continuation of the order

dated 8 the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether

condonable or not, shall stand extended till further orders.

It is further clarified that the period from 14th March, 2021 till further orders shall also stand excluded in computing the periods prescribed under

Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of

Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits

(within which the court or tribunal can condone delay) and termination of proceedings.

We have passed this order in exercise of our powers under Article 142 read with Article 141 of the Constitution of India. Hence it shall be a binding

order within the meaning of Article 141 on all Courts/Tribunals and Authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in 6 weeks.

11. In In Re: Constagion of Covid 19 Virus in Prisons [Order dated 07.05.2021 in LA. Nos..55273 & 55276 of 2021 in LA. No.48231 of 2020 in Suo

Motu Writ Petition (C) No.1 of 2020], the Honble Apex Court held as under:

ORDER

1. Application of impleadment Is allowed. The applicant who was already permitted to intervene in the Suo Motu Writ Petition filed the above I.A.s

seeking the following reliefs:

i. Pass an order directing the High Powered Committees as constituted vide order dated 23.3.2020 of this Honible Court to examine the current

situation of risk of virus spreading in prisons and recommend release of prisoners on interim bail/parole based upon the situation in the concerned

State.

ii. Pass an order directing the State Legal Service Authorities to strictly adhere to

the Standard Operating Procedures of National Legal Service

Authorities on the functioning of the Undertrial Review Committees as adopted vide order dated 04.12.2018 in WP(C) 406 of 2013 in ReInhuman

Conditions in 1382 Prisons by this Honible Court.

Ili. Pass an order directing the High Powered Committees/High Courts to identify and release the vulnerable categories of prisoners on an urgent basis.

iv. Pass an order directing the High Powered Committees / State Legal Services Authorities to periodically monitor the prisonwise occupancy rates in

their respective States, and give a report of the same to this Hon'ble Court of the prison occupancy as on 31st March, 2021, and the prospective

increase in occupancy rate on a monthly basis, in the format as annexed in Annexure A9.

v. Pass an order directing the DC Prisons to publish the prisonwise occupancy rates UTPs/Convicts/Detenues on their website monthly.

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vi. Pass an order directing the High Powered Committees / monitoring teams to prioritise healthcare in prisons and scrutinise the prisonspecific

readiness and response plans as directed by this Hon'ble Court vide its order dated 23.03.2020 in the present case.

vii. Pass an order directing the State Governments/ Union Territories to undertake a vaccination drive in the prisons across their respective States/

Union Territories.

viii. Pass any other order or further directions as this Court may deem fit or proper in the circumstances of the case.

2. On 11.03.2020, the World Health Organisation declared Covid-19 as a pandemic. On 16.03.2020, 107 persons were tested positive for Covid-19 in

our country. Anticipating the spread of Covid19 virus in overcrowded prisons, notices were issued to all the Chief Secretaries, Administrators, Home

Secretaries, Director Generals of Prisons and Departments of Social Welfare of all the States and Union Territories seeking their response regarding

immediate measures to be adopted for the welfare of inmates in prisons and juveniles lodged in remand homes.

3. On 23.03.2020, this Court directed the State Governments, Union Territories to constitute High Powered Committees tdetermine the class of

prisoners who can be released on parole or on interim bail for appropriate periods. It was left open to the High Powered Committees to determine the category of prisoners who should be released depending upon the nature of offence, the number of years to which he/she has been sentenced, the

severity of offences which he/she is charged with and the stage of trial or any other relevant factor which the Committee thinks appropriate. The

HighPowered Committees were directed to take into account the directions contained In para no.11 of the judgment of this Court in Arnesh Kumar v.

State of Bihar, (2014) 8 SCC 273. The HighPowered Committees were constituted in all the States, except a few. On the basis of recommendations

made by the High Powered Committees, a large number of prisoners were released either on interim bail or on parole.

4. Due to the reduction of the number of active cases, the released prisoners were directed to report back to prisons. We are informed that almost

90% of the prisoners who have been released ittt year have returned to prisons in February and March, 2021.

5. An unprecedented surge in Covid19 during the last few weeks has resulted in a steep spike in the number of people who are affected by Covid19.

In the present situation there is a serious concern about the spread of Covid19 in overcrowded prisons where there is lack of proper sanitation,

hygiene and medical facilities.

6. Mr. Colin Gonsalves, learned Senior Counsel appearing for the Applicant submitted that the High Powered Committees which have been

constituted pursuant to the orders passed by this Court on 25.03.2020 should be directed to release all those prisoners who have been released last

year on regular bail. Such of those inmates who have been granted parole last year should be granted 90 days parole by this Court. He requested that

all orders of the HighPowered Committees shall be put on the website of the Governments. Mr. Gonsalves argued that the Standard Operating

Procedure (SOP) formulated by the National Legal Services Authority for release of prisoners should be taken into account by the HighPowered

Committees.

7. The learned Attorney General submitted that prisons need to be decongested by release of some prisoners In view of the grim situation, He

submitted that the High-Powered Committees may be permitted to adopt the

procedure that was followed earlier and release the prisoners on the basis of the guidelines formulated by them last year. The learned Attorney General requested for relaxation of handcuffing of the prisoners as during the present outbreak of Covid19 there is a great danger of spread of the virus to the police personnel who have to hold the hands of the accused while being escorted. The learned Solicitor General of India and Ms. Aishwarya Bhati, learned Additional Solicitor General also supported the learned Attorney General. A further request was made on behalf of the Union of India that the Commissioner of Police, Delhi be made a member of the High Powered Committee to be constituted by the Delhi Government.

8. We may notice that India has more than four lakh prison inmates. It is observed that some of the prisons in India are overburdened beyond optimal capacity. In this that the requirement of and are housing inmates regard, we may notice decongestion is a matter concerning health and right to life of both the prison inmates and the police personnel working. Reduction of impact of Covid19 requires this Court to effectively calibrate concerns of criminal justice system, health hazards and rights of the accused. From limiting arrests to taking care of Covid19 Patients, there is a requirement for effective management of pandemic from within the prison walls so as to defeat this deadly virus.

9. As a first measure, this Court, being the sentinel on the quiver of the fundamental rights, needs to strictly control and limit the authorities from arresting accused in contravention of guidelines laid down by this Court in *Amesh Kumar v. State of Bihar* (supra) during pandemic. It may be relevant to quote the same:

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

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

11.2. All police officers be provided with a check list containing specified subclauses under Section 41(1)(b)

11.3. The police officer shall forward the check list duly filled and furnish the reasons and materials which necessitated the arrest, while

forwarding/producing the accused before the Magistrate for further detention;

11.4, The Magistrate while authorising detention of the accused shall peruse the report furnished by the police officer in terms aforesaid and only after

recording its satisfaction, the Magistrate will authorise detention;

11.5. The decision not to arrest an accused, be forwarded to the Magistrate within two weeks from the date of the institution of the case with a copy

o the Magistrate which may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.6. Notice of appearance in terms of Section 41A CrPC be served on the accused within two weeks from the date of institution of the case, which

may be extended by the Superintendent of Police of the district for the reasons to be recorded in writing;

11.7. Failure to comply with the directions aforesaid shall apart from rendering the police officers concerned liable for departmental action, they shall

also be liable to be punished for contempt of court to be instituted before the High Court having territorial jurisdiction.

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

appropriate High Court.

12. We hasten to add that the directions aforesaid shall not only apply to the cases under Section 498A IPC or Section 4 of the Dowry Prohibition Act,

the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may

extend to seven years, whether with or without fine.

10. Second, the rapid proliferation of the virus amongst the inmates of congested prisons is a matter of serious concern. The HighPowered

Committees constituted by the State Governments/Union Territories shall consider release of prisoners by adopting the guidelines (such as inter alia,

SOP laid down by NALSA) followed by them last year, at the earliest. Such of those States which have not constituted High Powered Committees

last year are directed to do so immediately. Commissioner of Police Delhi shall also be a member of the HighPowered Committee, Delhi.

11. Third, due to the immediate concern of the raging pandemic, this court has

to address the issue of decongestion. We find merit in the submission of Mr. Colin Gonsalves, learned Senior Counsel appearing on behalf of the applicant, that the HighPowered Committee, in addition to considering fresh release, should forthwith release all the inmates who had been released earlier pursuant to our order 23.03.2020, by imposing appropriate conditions.

Such an exercise is mandated in order to save valuable time.

12. Fourth, further we direct that, those inmates who were granted parole, pursuant to our earlier orders, should be again granted a parole for a period of 90 days in order to tide over the pandemic.

13. Fifth, the fight against the pandemic is greatly benefitted by transparent administration. In this regard,

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decisions of High Powered Committees need to be

published on respective State Legal Service Authorities/State Governments/High Courts websites in order to enable effective dissemination of

information.

14. Overcrowding of prisons is a phenomenon, plaguing several countries including India. Some prisoners might not be willing to be released in view of

their social background and the fear of becoming victims of the deadly virus. In such extraordinary cases, the authorities are directed to be considerate

to the concerns of the inmates. The authorities are directed to ensure that proper medical facilities are provided to all prisoners who are imprisoned.

The spread of Covid19 virus should be controlled in the prisons by regular testing being done of the prisoners but also the jail staff and immediate

treatment should be made available to the inmates and the staff. It is necessary to maintain levels of daily hygiene and sanitation required to be

improved. Suitable precautions shall be taken to prevent the transmission of the deadly virus amongst the inmates of prisons. Appropriate steps shall

be taken for transportation of the released inmates of the prisons, if necessary, in view of the curfews and lockdown in some States.

12. After due deliberations, we are inclined to Issue the following directions, on similar lines, with the orders passed by this Court on 25th March, 2020

and 30th March, -2020 respectively.

13. We are informed that the High Court as well as the Courts in the District Judiciary and Tribunals have granted interim orders for a limited period

and Inasmuch as the litigants, their respective counsel, will not be in a position to approach the Courts/Tribunals for filing an application for extension,

during this total lockdown period, and therefore, necessary orders have to be issued, so as to enable the litigants not to suffer on account of their

inability to approach the Courts In the Districts/Tribunals, as the case may be. Therefore, in exercise of the powers conferred under Articles 226 and

227 of the Constitution of India, all the interim orders passed by all the Courts/ Tribunals upon which High Court exercises supervisory jurisdiction

under Article 227 of Constitution of India, which are due to expire during the lockdown period, are to be extended by this Court and accordingly, they

are extended upto 31.05.2021.

14. We also make it clear that, if any application is filed for extending/vacating an interim order and pending for orders in this Court, the interim orders

will have to be extended, accordingly all orders are extended up to 31-05-2021.

15. Earlier, in March, 2020, insofar as recovery proceedings under the State Laws are concerned, Mr. Ranjith Thampan, learned Additional Advocate

General submitted that, in all recovery matters, such as electricity, water, Abkari and other matters, Council of Ministers, Government of Kerala has

already taken a decision that, no recovery proceedings would be initiated or recovery proceedings already initiated, would not be proceeded further.

Learned Additional Advocate General submitted that Government would maintain the position till 31.05.2021. Submission of the learned Additional

Advocate General is placed on record.

16. Insofar as recovery proceedings by Government of India and Public Sector Undertakings owned or controlled by the Government of India,

attention was invited to an order of this Court passed in W.P.(C) No.8231 of 2020 dated 19.03.2020, which was taken on appeal by the Union of

India, in Special Leave Petition (Civil) Diary Nos.10669/2020, wherein, the Hon'ble Supreme Court of India on 20.03.2020 has passed the following

orders:

The Registry is directed to accept these special leave petitions against the judgment and order(s) passed by the High Court of Judicature at Kerala,

Ernakulam Bench in Writ Petition (Civil) No. 8231/2020 and of the High Court of Judicature at Allahabad, Allahabad Bench in Writ Petition (Civil)

No.7014/2020. Permission to file special leave petitions is granted Issue notice.

In the meantime, there shall be ex-parte ad-interim stay of the impugned judgment and order(s) passed in the aforesaid writ petitions and of further

proceedings before the High Court(s), in view of the stand taken by the Government of India through learned Solicitor General, before us, that the

Government is fully conscious of the prevailing situation and would itself evolve a proper mechanism to assuage concerns and hardships of every one.

17. Earlier, the learned Assistant Solicitor General of India submitted that the order of the Hon'ble Supreme Court dated 20.03.2020 would implicitly be

adhered to by Government of India and Public Sector Undertakings, even in the second lockdown.

18. Taking note of the submission of the Government of India and the order of the Honble Supreme Court dated 7.5.2021, which revived the orders

passed during the first lockdown, that a proper mechanism be evolved, in exercise of the powers under Articles 226 and 227 of the Constitution of

India, we also deem it fit to state that until such time, we hope that no action would be taken.

19. Insofar as Criminal matters are concerned, we are also informed by Mr. Suman Chakravarthy, learned Senior Public Prosecutor that High

Court/Sessions Courts would have granted anticipatory bail for a limited period, which may expire during this lockdown period, and inasmuch as the

High Court/Sessions Courts are not fully functioning, orders have to be issued by the High Court in exercise of the powers conferred under Articles

226 and 227 of the Constitution of India and under the inherent powers of the High Court under Sec.482 of the Cr.P.C.

20. With regard to the above said submissions, orders of bail or anticipatory bail, restricted for a limited period, which may expire during the lockdown

period, have to be extended. Therefore, In exercise of the powers conferred under Articles 226 and 227 of the Constitution of India and Section 482

of the Cr.P.C., interim orders, in the above matters, will stand extended as hereafter.

21. Attention of this Court was also invited to the order of the Honible Apex Court in Suo Motu Writ Petition (C) No.1/2020 In Re: Contagion of

COVID 19 Virus in Prisons dated 23.03.2020, wherein, after considering the outbreak of COVID-19, hardships faced by the litigants/lawyers, staff in

the Courts, convict prisoners, as well as undertrials, the Honble Supreme Court, taking note of Article 21 of the Constitution of India, has issued the

following directions:

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, (ii) Director General of Prison(s), to determine which

class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory

could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or

less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

It is made clear that we leave it open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid,

depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the offence with which he/she is

charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

The Undertrial Review Committee contemplated by this Court in *re Inhuman Conditions in 1382 Prisons*, (2016) 3 SCC 700, shall meet every week

and take such decision in consultation with the concerned authority as per the said judgment. The High Powered Committee shall take into account the

directions contained in para no.11 in *Arnesh Kumar V. State of Bihar*, (2014) 8 SCC 273.

22. Apart from the above, Mr. Suman Chakravarthy, learned Senior Public Prosecutor submitted that, Government of Kerala have already constituted

a High Powered Committee comprising of (1) Executive Chairman of the State Legal Services Authority; (2) the Principal Secretary (Home/Prisons)

as the case may be; (3) Director General of Prisons to adhere to the directions issued by the Hon'ble Supreme Court in *Suo Motu Writ Petition (C)*

No.1/2020.

23. While passing orders in the *Suo Motu Writ Petition*, the Hon'ble Supreme Court has made it clear that, State/Union Territories could consider

release of persons who are convicted or 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.

24. The Hon'ble Apex Court has also made it clear that, it is open to the High Powered Committee to determine the category of prisoners who should

be released as aforesaid, depending upon the nature of offence, the number of years to which he or she has been sentenced or the severity of the

offence with which he/she is charged with and is facing trial or any other relevant factor, which the Committee may consider appropriate.

25. As regards the above directions, Government of Kerala have issued a notification dated 25.03.2020, which is extracted below:

(Emblem)

GOVERNMENT OF KERALA

Abstract

Home Department - Prisons - Outbreak of Covid 19 pandemic - Controlling of overcrowding - Directives of the Hon'ble Supreme Court -

Implemented -

Orders issued.

HOME (B) DEPARTMENT G.O.(Rt)No. 970/2020/1-101vIE Dated, Thiruvananthapuram 25/03/2020 Read 1. Order of the Hon'ble Supreme Court

Suo moth Writ Petition (C) No.1/2020 dtd 23/03/2020.

2, Letter No. WP2-7212/2020/Pr.HQ dtd. 23.03.2020 of the Director General of Prisons and Correctional Services.

ORDER

As per the order read as 1 paper above the Hon'ble Supreme Court of India ordered all State Governments and UTs to take urgent measures to

reduce overcrowding in Prisons across the Country to control the outbreak of pandemic Covid 19. The Director General of Prisons and Correctional

Services also vide letter read as 2' paper above requested Government to implement certain measures for reducing overcrowding in Prisons.

Government have examined the matter in detail and are pleased to order as follows.

1. A High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Additional Chief Secretary (Home & Vig)

(iii) Director General of Prison(s), is hereby constituted, to determine which class of prisoners can be released on parole or on interim bail.

a) The committee shall consider and recommend to Govt. the release of prisoners who have been convicted or are under-trial 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.

b) High Powered Committee shall determine the category of prisoners who should be released as aforesaid, depending upon the nature of offence, the

number of years to which he or she has been sentenced or the severity of the offence with which he/she is charged with and is facing trial or any

other relevant factor, which the Committee may consider appropriate and

forward such recommendation to Govt.

2. Physical presence of all the undertrial prisoners before the Courts shall be stopped forthwith and recourse to video conferencing for all purposes.

3. The transfer of prisoners from one prison to another for routine reasons must not be resorted except for decongestion to ensure social distancing

and medical assistance to an ill prisoner. Also, there should not be any delay in shifting sick person to a Nodal Medical Institution in case of any

possibility of infection is seen.

3) The Director General of Prisons & Correctional Services shall develop Prison specific readiness and response plans in consultation with medical

experts. ""Interim guidance on Scaling-up Covid-19 Out break in Readiness and Response Operations in camps and camp like settings"" jointly

developed by the International Federation of Red Cross and Red Crescent (IFRC), International Organisation for Migration(IOM), United Nations

High Commissioner for Refugees (UNHCR) and World Health Organisation (WHO), published by InterAgency Standing Committee of United

Nations on 17 March, 2020 may be taken into consideration for similar circumstances.

4. A monitoring team consist of Deputy Inspector General in the respective Zone, Superintendents of Prisons in the respective Prisons and Medical

officer in the respective Prison is constituted to ensure that the directives issued in item (3) with regard to prison and remand homes are being

complied with scrupulously.

5. The Under-trial Review Committee contemplated by the Apex Court In re Inhuman Conditions in 1382 Prisons, (2016) 3 SCC 700, shall meet every

week and take such decision in consultation with the concerned authority as per said judgment.

6. The Director General of Prisons and Correctional Services is empowered to grant Ordinary leave to eligible prisoners in a single spell of 60 days,

subject to all other conditions of leaves, in relaxation to rule 397 (b) of Kerala Prisons and Correctional Services (Management) Rules 2014 to reduce

the number of prisoners in prisons.

7. Dueto the lack of public transport system as the prisoners cannot report back in prison after the expiry of their period of leave in time, such

overstayal period upto April 15 shall be considered as bail (shall not be

considered as sentence undergone), provided that such prisoners shall report to the police station nearby and the Station House Officer shall report the position to prison authorities concerned.

The Director General of Prisons and Correctional Services shall implement item(6) of this order with immediate effect.

(By order of the Governor)

DR. VISHWAS MEHTA

ADDITIONAL CHIEF SECRETARY

26. We are informed that similar orders are passed by the State Government. As regards bail applications of convicts and under-trial prisoners, the

High Court, on the administrative side, had taken a decision to hear the applications seeking bail/anticipatory bails/ suspension of sentence, as the case may be, and posted some of the cases for hearing.

27. Now, the Hon'ble Supreme Court in Sac Motu Writ Petition (C) No.1/2020 has issued fresh directions to the State Governments/Union Territories

to constitute a High Powered Committee, in respect of bail matters, which has already been done, on revival of the earlier order. Notwithstanding that,

the High Powered Committee is requested to decide the bail applications periodically, if required.

28. Earlier, in March, 2020, it was observed that in the interim order of the Hon'ble Apex Court, there was no reference to the anticipatory bail

applications. On instructions, Mr. Ranjith Thampan, learned Additional Advocate General submitted that, in view of the 2nd lockdown in the State as

explained above, and the difficulties expressed by the staff, and Law officers attached to the Office of the Advocate General, they may not be able to

attend the office or Courts.

29. At that time, representing the Advocates, Mr. Thomas Abraham, President of the Kerala High Court Advocates' Association, reiterated that, the

same difficulty and hardship are faced by the staff attached to the learned counsel, litigants, and having regard to the right of personal liberty

guaranteed under Article 21 of the Constitution of India, a general order, as regards anticipatory bail applications, is required to be passed. 30.

Therefore, taking note of the above said situation, in our order dated 25.03.2020, we observed that the right of personal liberty guaranteed under

Article 21 of the Constitution of India should not, at any rate, be infringed by arresting an accused, except in matters where arrest is inevitable.

However, the State is at liberty to take appropriate decisions In respect of heinous/serious offences and in the rest of the cases, the State may act

accordingly. Mr. Suman Chakravarthy, learned Senior Public Prosecutor, submitted that the decision of the Hon'ble Apex Court in *Arnesh Kumar v.*

State of Bihar [12014) 8 SCC 273] would be strictly adhered to. Said submission of the learned Senior Public Prosecutor is placed on record.

31. In *Arnesh Kumar v. State of Bihar* (cited supra), the Hon'ble Apex Court held thus:-

-8. Law Commissions, Police Commissions and this Court in a large number of judgments emphasized the need to maintain a balance between

individual liberty and societal order while exercising the power of arrest. Police officers make arrest as they believe that they possess the power to do

so. As the arrest curtails freedom, brings humiliation and casts scars forever, we feel differently. We believe that no arrest should be made only

because the offence is non-bailable and cognizable and therefore, lawful for the police officers to do so. The existence of the power to arrest is one

thing, the justification for the exercise of It is quite another. Apart from power to arrest, the police officers must be able to justify the reasons thereof.

No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent and wise for

a police officer that no arrest is made without a reasonable satisfaction reached after some investigation as to the genuineness of the allegation.

Despite this legal position, the Legislature did not find any improvement. Numbers of arrest have not decreased.

Ultimately, the Parliament had to intervene and on the recommendation of the 177th Report of the Law Commission submitted in the year 2001,

Section 41 of the Code of Criminal Procedure (for short 'Code of Criminal Procedure'), in the present form came to be enacted. It is interesting to note

that such a recommendation was made by the Law Commission in its 152nd and 154th Report submitted as back in the year 1994. The value of the

proportionality permeates the amendment relating to arrest. As the offence with which we are concerned in the present appeal, provides for a

maximum punishment of imprisonment which may extend to seven years and fine, Section 41(1)(b), Code of Criminal Procedure which is relevant for

the purpose reads as follows: 41. When police may arrest without warrant.-(1)
Any police officer may without an order from a Magistrate and without
a warrant, arrest any person -

(a) xxxxxx

(b) against whom a reasonable complaint has been made, or credible information
has been received, or a reasonable suspicion exists that he has

committed a cognizable offence punishable with imprisonment for a term which
may be less than seven years or which may extend to seven years

whether with or without fine, if the following conditions are satisfied, namely:

(i) xxxxx

(ii) the police officer is satisfied that such arrest is necessary -

(a) to prevent such person from committing any further offence; or

(b) for proper investigation of the offence; or

(c) to prevent such person from causing the evidence of the offence to disappear
or tampering with such evidence in any manner; or

(d) to prevent such person from making any Inducement, threat Or promise to
any person acquainted with the facts of the case so as to dissuade him

from disclosing such facts to the Court or to the police officer; or

(e) as unless such person is arrested, his presence in the Court whenever
required cannot be ensured, and the police officer shall record while making

such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not
required under the provisions of this Sub-section, record the reasons

in writing for not making the arrest.

xx xxx xxx

From a plain reading of the aforesaid provision, it is evident that a person
accused of offence punishable with imprisonment for a term which may be

less than seven years or which may extend to seven years with or without fine,
cannot be arrested by the police officer only on its satisfaction that

such person had committed the offence punishable as aforesaid. Police officer
before arrest, in such cases has to be further satisfied that such arrest

is necessary to prevent such person from committing any further offence; or for
proper investigation of the case; or to prevent the accused from

causing the evidence of the offence to disappear; or tampering with such evidence in any manner; or to prevent such person from making any

inducement, threat or promise to a witness so as to dissuade him from disclosing such facts to the Court or the police officer; or unless such accused

person is arrested, his presence in the court whenever required cannot be ensured. These are the conclusions, which one may reach based on facts.

Law mandates the police officer to state the facts and record the reasons in writing which led him to come to a conclusion covered by any of the

provisions aforesaid, while making such arrest. Law further requires the police officers to record the reasons in writing for not making the arrest. In

pith and core, the police officer before arrest must put a question to himself, why arrest? Is it really required? What purpose it will serve? What object

it will achieve? It is only after these questions are addressed and one or the other conditions as enumerated above is satisfied, the power of arrest

needs to be exercised. In fine, before arrest first the police officers should have reason to believe on the basis of information and material that the

accused has committed the offence. Apart from this, the police officer has to be satisfied further that the arrest is necessary for one or the more

purposes envisaged by Sub-clauses (a) to (e) of Clause (1) of Section 41 of Code of Criminal Procedure.

9. An accused arrested without warrant by the police has the constitutional right Under Article 22(2) of the Constitution of India and Section 57, Code

of Criminal Procedure to be produced before the Magistrate without unnecessary delay and in no circumstances beyond 24 hours excluding the time

necessary for the Journey. During the course of investigation of a case, an accused can be kept in detention beyond a period of 24 hours only when it

is authorised by the Magistrate in exercise of power Under Section 167 Code of Criminal Procedure. The power to authorise detention is a very

solemn function. It affects the liberty and freedom of citizens and needs to be exercised with great care and caution. Our experience tells us that it is

not exercised with the seriousness it deserves. In many of the cases, detention is authorised in a routine, casual and cavalier manner.

Before a Magistrate authorises detention Under Section 167, Code of Criminal Procedure, he has to be first satisfied that the arrest made is legal and

in accordance with law and all the constitutional rights of the person arrested Is satisfied. If the arrest effected by the police officer does not satisfy

the requirements of Section 41 of the Code, Magistrate is duty bound not to authorise his further detention and release the accused. In other words, when an accused is produced before the Magistrate, the police officer effecting the arrest is required to furnish to the Magistrate, the facts, reasons and its conclusions for arrest and the Magistrate in turn is to be satisfied that condition precedent for arrest Under Section 41 Code of Criminal Procedure has been satisfied and it is only thereafter that he will authorise the detention of an accused. The Magistrate before authorising detention will record its own satisfaction, may be in brief but the said satisfaction must reflect from its order. It shall never be based upon the ipse dixit of the police officer, for example, in case the police officer considers the arrest necessary to prevent such person from committing any further offence or for proper investigation of the case or for preventing an accused from tampering with evidence or making inducement etc., the police officer shall furnish to the Magistrate the facts, the reasons and materials on the basis of which the police officer had reached its conclusion. Those shall be perused by the Magistrate while authorising the detention and only after recording its satisfaction in writing that the Magistrate will authorise the detention of the accused. In fine, when a suspect is arrested and produced before a Magistrate for authorising detention, the Magistrate has to address the question whether specific reasons have been recorded for arrest and if so, prima facie those reasons are relevant and secondly a reasonable conclusion could at all be reached by the police officer that one or the other conditions stated above are attracted. To this limited extent the Magistrate will make judicial scrutiny.

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11. Aforesaid provision makes it clear that in all cases where the arrest of a person is not required Under Section 41(1), Code of Criminal Procedure, the police officer is required to issue notice directing the accused to appear before him at a specified place and time. Law obliges such an accused to appear before the police officer and it further mandates that if such an accused complies with the terms of notice he shall not be arrested, unless for reasons to be recorded, the police officer is of the opinion that the arrest is necessary. At this stage also, the condition precedent for arrest as envisaged Under Section 41 Code of Criminal Procedure has to be complied and

shall be subject to the same scrutiny by the Magistrate as aforesaid.

32. On 25.03.2020, we ordered thus:

In the event of any arrest, the Constitutional obligation under Article 20(2) shall be followed in letter and spirit. Overcrowding in Prisons is one of the issues taken up by the Honble Supreme Court in *Suo Motu Writ Petition (C) No.1/2020*. Therefore, learned Magistrates/Judges before whom the accused is produced, depending upon the nature of offence, shall consider as to whether judicial/police custody is required or not. Needless to state that, bail is the rule and jail is an exception. We make it clear that, the above said directions stand excluded to subjects relating public order/law and order and any action taken by the State Government to combat the outbreak of COVID-19 and actions taken thereof.

33. Today, in this *Suo Motu Writ Petition*, we revive the order passed on 25.03.2020. 34. Earlier, Mr. Ranjith Thampan, learned Additional Advocate

General also submitted that, insofar as Local Self Government Institutions are concerned, Government have issued instructions not to take any coercive action. Therefore, we ordered thus:

It is sincerely expected that, due to the outbreak of COVID19, State Government, LSG Institutions, Government of India, and Public Sector

Undertakings owned and controlled by the State/Central Governments that no coercive action be taken since there is no opportunity to the persons to approach the Courts at present.

35. On this day, he reiterated the said position. Said submission be honoured.

36. On 30.03.2020, a Full Bench of this Court passed the following order:

This Court hereby grant interim bail to all undertrial/remanded prisoners incarcerated in the jails within the State, who face accusation of having committed offences punishable upto 7 years or less, with or without fine. The above order will not apply to prisoners having criminal antecedents, previous convictions or in the case of habitual offenders; and also with any respect to persons undergoing trial or remanded custody in more than one cases.

37. The Superintendent of the jails concerned were directed to release the category of prisoners with respect to whom the interim bail is granted as mentioned above, on their furnishing a declaration showing their intended place

of residence, with their telephone number and the telephone number of any of their family member or other relatives, and on+ executing a self bond, without sureties, ensuring that they will appear either before the court concerned or before the Superintendent of jail as and when required.

38. The prisoners released on interim bail, as mentioned above, shall report to the local police station within their place of residence, Immediately on reaching its jurisdiction. The jail authorities shall also give due intimation to such police stations, with respect to release of the prisoners. The declaration executed by the prisoners shall also contain an undertaking to the effect that they will strictly abide by the guidelines issued with respect to keeping of social distancing, in the wake of the declared lockdown. They shall also undertake that they will remain in their declared place of residence, totally avoiding any type of travel or exposure to the public.

39. On the same lines, the interim bail granted, as above, shall be limited upto 31.05.2021 or till the end of the lockdown period by the Government, whichever is earlier. In case, the lockdown period is extended beyond 31.05.2021, the interim bail granted will continue till such extended period. On expiry of the period of interim bail, as mentioned above, released prisoner shall appear before the jurisdictional court, within 3 days thereof. On such appearance, the court concerned shall consider his application for bail and shall pass appropriate orders, taking note of all circumstances and attendant factors.

40. We also make it clear that, the person released on interim bail, as above, shall be liable to be arrested and produced before the jurisdictional court, in case of violation of any of the conditions stipulated as above or in case they are found indulging In any activity endangering law and order or breach of public order and tranquility, or In any manner intimidating or influencing the witnesses.

41. We take note of the fact that for the consideration of extremely urgent cases, already filed or to be filed before this Court, including bail applications, requisite number of Benches have been constituted.

42. Mr. Thomas Abraham, President of the Kerala High Court Bar, has expressed the inconveniences faced by learned Advocates, clerks and staff, due to the lockdown restrictions and according to him, if necessary directions are not issued, it would interfere with the administration of Justice. In

that regard, we take note of the fact that in the orders issued by the State Government, a mechanism is provided to grant permission for movement, taking into account emergent situations. Therefore, we direct the appropriate statutory authorities/police to consider any application or declaration or information, as the case may be, received from the lawyers, physically or through electronic mode, for their movement and also the movement of clerks and other required staffs, appropriate decision, in accordance with law, shall be taken, without any delay, so as to enable the movement. Mr.

Ranjith Thampan, learned Additional Advocate General, submitted that a mechanism would be evolved. State to act immediately, as assured.

43. As done earlier, we further make it clear that for the purpose of considering bail applications of under-trial/remanded prisoners, who do not fall

within the category, for which interim bail is granted through this order, as well as for moving for statutory bail under Section 167(2) of the Cr.P.C, the

learned Sessions Judges in the State are hereby authorised to consider such bail applications submitted through e-mail and to dispose of such

applications through video-conferencing, after hearing the Advocate concerned as well as the Public Prosecutor. The learned Principal Sessions

Judge or any Additional Sessions Judge authorised in this behalf or to whom such bail applications are made over, shall deal with such bail applications

in accordance with the above said directions and on the basis of the modalities which will be prescribed by issuing relevant instructions.

44. Before parting with, It is made clear that the extension granted to the interim orders, through orders of this Court would stand further extended

upto 31.05.2021. However, the aggrieved party will be at liberty to move for vacating such orders, before the appropriate court in accordance with the

office orders issued by this court.

45. The Registry of this Court shall forward a copy of this order to the Director General of Prisons and Correctional Services for issuing necessary

directions for immediate compliance. The copy of this order shall also be uploaded in the official website of the High Court and shall be sent to all the

subordinate courts through email. The order be communicated to the media, both print and visual for intimation of the public.

46. We also make It clear that the directions issued above, are with reference to the orders of the Hon'ble Apex Court dated 7th May, 2021 and the

directions issued by this Court are subject to the directions issued by the Hontle Apex Court, as stated above.

47. We are also of the view that with respect to the matters under Sec.138 of the Negotiable Instruments Act, 1881, Courts would have issued

directions, for appearance or payment of certain amounts, due under cheques issued and dishonoured, and in such matters also, there will be a

difficulty for the litigant to adhere to the directions/orders issued, as regards appearance or payment, within such time as ordered, as the case may be,

and considering the lockdown and the restriction in movement of the above, to seek for modification of any such orders, the same have to be regulated

as well.

48. In the above circumstances, we direct that with respect to the matters arising out of the proceedings under Sec.138 of the Negotiable Instruments

Act, interim orders, if any, issued already need not be enforced until 31.05.2021.