

Shobha Gupta And Ors vs Union Of India And Ors on 23 March, 2020

Author: Hima Kohli

Bench: Hima Kohli, Subramonium Prasad

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 2945/2020
SHOBHA GUPTA AND ORS Petitioners
Through: Petitioners No.1 and 2 in person.
versus
UNION OF INDIA AND ORS Respondents
Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Abhigyan Siddhant, Adv. for R-1 and 2/UOI.
Mr. Anuj Aggarwal, ASC with Mr. Chaitanya
Gosain, Advocate for R-3 to R-6.
CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
ORDER

% 23.03.2020 CM APPL. 10238/2020 (exemption) Allowed, subject to just exceptions.

W.P.(C) 2945/2020

1. The present PIL seeks directions to the respondent No.1/Ministry of Law and Justice, respondent No.2/Ministry of Health and Family Welfare, respondent No.3/Chief Secretary, GNCTD, respondents No.4 and 5/Delhi Police and the respondent No.6/Lieutenant Governor, GNCTD, to take steps to temporarily release all the under trials and convicts, who are accused of offences where the maximum period of imprisonment prescribed under the I.P.C and other Statutes is upto 5 years and fine, i.e., for non-heinous crimes, and are lodged in Tihar, Mandawali and Rohini Jails in Delhi. Further, directions are prayed for, to segregate those inmates, who are ailing and provide them proper medical facilities.

2. Petitioners No.1 and 2, who appear in person, submit that in view of the recent Covid-19 pandemic in India and the Advisory issued by the Government of India and the State Governments directing social distancing to be maintained and further, in view of the lockdown of 80 Districts in the country including Delhi, in terms of the directions issued by the Central and State Governments only yesterday, it is imperative that the occupancy rate of the Jails in Delhi be brought down at the earliest to prevent the spread of Covid-19 virus in the prisons. Learned counsel submit that as on date, the occupancy rate of the prisoners in Jails in Delhi is 17,000 as against the holding capacity of 10,000 prisoners at one time. It is thus submitted that it is most urgent that the prisoners, who can be released on furlough, parole and emergency parole, may be released at the earliest.

3. We may note that the Hon'ble Supreme Court vide order dated 16.03.2020, in Suo Moto Writ Petition (Civil) No.1/2020, has observed that there is an imminent need to take steps to prevent contagious spread of Covid-19 virus in prisons across India and for the said purpose, has called upon all the Chief Secretaries/Administrators, Home Secretaries, Director Generals of all Prisons and Departments of Social Welfare of all the States and Union Territories to explain the steps being taken by them to deal with the health crisis arising out of Covid-19 and the immediate measures proposed to be adopted for medical assistance to prisoners in jail and juveniles lodged in Remand Homes, for protecting their health and welfare. A perusal of the order dated 16.03.2020, passed in the said petition shows that it is listed before the Supreme Court today itself for further consideration.

4. Since the Supreme Court is already seized of the matter and is examining the issue at a macro level, including the issue raised in the present petition, it may not be appropriate for this Court to entertain this petition.

5. At this stage, Mr. Anuj Aggarwal, learned ASC, GNCTD, who is present in Court on advance notice, states that the Prison authorities are conscious of the emergent situation and submits that the Home Department of the Government of NCT of Delhi is proposing to issue a Notification in exercise of its powers conferred under Section 71 of the Delhi Prisons Act, to add Rules 1219A and 1243A in the Delhi Prison Rules 2018, after Rules 1219 and 1243, respectively and introduce "60 days parole" in one spell instead of two spells of 30 days each in a year and further, introduce a temporary facility of "special furlough" to such category of prisoners and for such number of days as may be specified in the order, in situations like threat of an epidemic or natural disaster or for any such situation or circumstances, which warrants immediate easing of inmate population in the interest of the inmates and the society at large.

6. It is further submitted that a proposal has also been mooted to amend Rule 1202 of the Delhi Prison Rules 2018 to introduce the expression "emergency parole", which shall authorise the government to grant parole for upto 8 weeks in one spell, in addition to the regular parole, subject to such conditions as may be prescribed by the government, as provided in the rules in emergency situations like threat of epidemic, natural disaster or any other situations or circumstances, which warrant immediate easing of population of the inmates in the prison and in order to secure the interests of inmates, the prison administration and the society at large.

7. Learned counsel also states that in respect of the under trial prisoners (UTPs), who are booked in only 1 case in which the maximum sentence is 7 years or less and who have completed minimum 3 months in jail, it is proposed that they shall be granted interim bail for 45 days upon a request made by them, preferably on a personal bond. However, the mechanism in respect of the same has yet to be formalized by the concerned authorities.

8. In view of the submissions made by learned counsel for the respondents No.3 to 6 above, it is directed that the Govt. of NCT of Delhi and the Delhi Police shall take immediate steps, preferably within two days to implement its decisions, as recorded hereinabove.

9. Needless to state that the under trial prisoners shall be at liberty to apply for interim bails on account of the current situation, which shall also be taken into consideration by the appropriate courts and the said petitions shall be decided in accordance with law.

10. The petition is disposed of.

DASTI to parties under the signatures of the Court Master.

HIMA KOHLI, J SUBRAMONIUM PRASAD, J MARCH 23, 2020 rkb