

Court On Its Own Motion vs State (Govt. Of Nct Of Delhi) on 22 October, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Rekha Palli, Talwant Singh

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 4921/2021 and C.M. Nos. 28429/2021, 28436/2021, 29148/2021, 36497/2021, 36498/2021, 36515/2021, 36884/2021, 36905-06/2021& 36889/2021.

COURT ON ITS OWN MOTION

Through: Court on its own motion.

versus

STATE (GOVT. OF NCT OF DELHI)

Through: Mr.Santosh Kumar Tripathi
Counsel for the GNCTD.
Mr. Anil Soni, CGSC for
Mr. S.K. Sethi, Advocate
Mr. Pritish Sabharwal &
Kumar, Advocates for the
C.M. No.16293/2021.
Mr. Javed Ali, Advocate
applicant in C.M. No. 36
Mr. Aamir Chaudhary, Adv
the applicant in
36889/2021.
Mr. Arvind Kumar Shukla
Sharma, Advocates for th
in C.M. No.36905/2021.

IN RE: Extension of Interim Orders

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE TALWANT SINGH

W.P.(C) 4921/2021

Signature Not Verified
Digitally Signed
By: BHUPINDER SINGH
ROHELLA

Signing Date: 25.10.2021
19:04:07

ORDER

% 22.10.2021

1. Proceedings of the matter have been conducted through Video Conferencing.
2. Initially, this matter was placed before the Full Bench by Honourable the Chief Justice in the light of the order dated 19.04.2021, passed by the Division Bench in the present Writ Petition. The order dated 19.04.2021 of Division Bench reads as follows:

"In view of the alarming resurgence of Covid-19, the functioning of this Court is restricted only to extremely urgent matters vide Office Order No.1/R/RG/DHC/2021 dated 18.04.2021 with effect from 19.04.2021. The said Office Order reads as follows:

"In continuation of this Court's Office Order No.223/RG/DHC/2021 dated 8.4.2021, keeping in view the alarming rise in the Covid-19 cases in the NCT of Delhi, it has been ordered that all the Hon'ble Benches of this Court shall, with effect from 19.04.2021, take up extremely urgent matters filed in the year 2021 only. It has been further ordered that the other pending routine/ non-urgent matters and the matters filed/ listed before this Court between 22.3.2020 and 31.12.2020 shall not be taken up by this Court and such matters shall be adjourned "en bloc" as per the dates already notified. In case of any extreme urgency, the request in the pending matters may be made on the already notified designated link".

The GNCTD has imposed a curfew vide order passed today w.e.f 10:00 p.m, of 19.04.2021, whereunder strong measures have been enforced to prevent the spread of Covid-19 upto 26.04.2021.

In view of the curfew imposed by the GNCTD, and the extremely limited functioning of Courts, the routine matters would be adjourned en-bloc to the dates to be notified. Consequently, the advocates and the litigants would not be in a position to appear in the said matters, including those where stay, bail, parole have been granted by this Court, or the Courts Subordinate to this Court on or before 19.03.2021. As a result, interim orders operating in favour of the parties would start expiring on and from 19.04.2021.

Faced with a similar situation last year, Hon'ble the Chief Justice of this Court suo motu initiated W.P. (C) No.3037/2020, titled Court on its Own Motion v. State & Ors. - In Re: Extension of Interim Orders, for dealing with the aforesaid crisis. The same was listed before a Full Bench headed by Hon'ble the Chief Justice.

We are of the view that the situation which has now arisen requires similar response. Accordingly, we direct the registration of the present Petition as suo motu Writ Petition. The same be listed before Hon'ble the Chief Justice for constitution of an appropriate bench and for passing appropriate orders therein."

3. On 20.04.2021 the following effective order was passed by this Bench:

"Taking suo moto cognizance of the aforesaid extraordinary circumstances, under Article 226 & 227 of the Constitution of India, it is hereby ordered that in all matters pending before this court and courts subordinate to this court, wherein such interim orders issued were subsisting as on 19.04.2021 and expired or will expire thereafter, the same shall stand automatically extended till 16.07.2021 or until further orders, except where any orders to the contrary have been passed by the Hon'ble Supreme Court of India in any particular matter, during the intervening period.

Needless to clarify that in case, the aforesaid extension of interim order causes any hardship of an extreme nature to a party to such proceeding, they would be at liberty to seek appropriate relief, as may be advised."

4. Since the lockdown was extended from time to time by the Government with few relaxations and the restrictive functioning of the Courts continued, so the order dated 20th April, 2021 was extended from time to time on 16.07.2021, 27.07.2021 and 13.08.2021. Lastly vide order dated 24th September, 2020 (read with clarification on 01.10.2021), the interim orders were extended till today.

5. A Status Report dated 22nd October, 2021 has been filed by Prison Authorities and the relevant extract is reproduced hereunder:

(i) "That after passing the order dated 20.04.2021 of this Hon'ble Court, the High Powered Committee had also convened a meeting and vide its minutes dated 04.05.2021 in view of second wave of Covid - 19 which as per expert opinion was more virulent and fatal in comparison to the last year's strain and to prevent the outbreak of Covid-19 inside Jails certain categories of prisoners were again identified to be considered for release on Interim Bail. Thereafter in pursuance to order dated 07.05.2021 of Hon'ble Apex Court, the Commissioner of Police, Delhi has also made a Member of the Committee. Accordingly, in pursuance to the meetings held on 04.05.2021, 11.05.2021 and 08.09.2021 and on the basis criteria adopted therein a total 3828 numbers of prisoners have been released during second wave of Covid-

19 on Interim Bail on the basis of criteria laid down by HPC and 793 under non-HPC category i.e. by their Trial/Concerned Courts. The number of UTPs released particularly in heinous offences like rape, murder, NDPS and POCSO areas under:

Offence

No. of UTPs
(under HPC criteria)

No. of
(Non-HPC

(ii) That similarly, Government of NCT of Delhi has also issued order dated 14.05.2021 to release the eligible convicts on Emergency Parole subject to the screening and recommendation of a Committee Constituted for the purpose. Accordingly, 843 convicts have been released on Emergency Parole, so far.

(iii) That it is pertinent to mention here that in Delhi Prisons there are 16 Jails housing 17537 number of prisoners as on 21.10.2021 against the sanctioned capacity of 10026. It may also be mentioned here that all necessary measures are being taken to combat the pandemic/second wave of Covid-19 inside the Jail premises like testing, vaccination, isolation of suspicious/affected prisoners, other necessary protocols of Covid-19 issued time to time by Government. As on 21.10.2021 the cumulative figure of fresh cases of Covid-19 positive in Delhi Prisons (16 Jails) since March, 2021 is as follows:

Prison Inmates	383 (Recovered: 375, Death: 08, Active Cases: Nil)
Prison Staff	383 (Recovered: 225, Death: Nil, Active Cases: 01)

(iv) That the Prison administration is ready with the necessary arrangements in case the Hon'ble Court passes orders to remand the UTPs presently on interim-bail back into judicial custody."

6. The matter has been taken up today. We have perused the report received from jail and we have heard Mr. Santosh Kumar Tripathi, learned Standing Counsel for Govt. of NCT of Delhi. The information submitted by the jail authority reveals that 793 undertrials involved in heinous crimes were granted interim bail by the District Courts, which have been extended from time to time on the strength of orders dated 20.04.2021 and subsequent orders passed by this court. 3828 undertrials were granted bail as per the recommendations of the High-Powered Committee. It is admitted by Mr. Tripathi that there is a typographical mistake in the last table of report, where the total number of infected staff has been shown as '383', whereas the same ought to be '226'.

7. We have considered all relevant aspects. At the relevant time, interim bail and interim stay extension order was necessitated, because functioning of the Courts was curtailed due to complete lockdown declared on 19.04.2021. But now the situation has greatly improved and all Courts at High Court and District Court level are functioning through physical mode/VC mode. Taking cognizance of this positive development, the Supreme Court vide order dated 23.09.2021 in Suo Moto Writ Petition (Civil) No.3/2020 vacated the stay on limitation w.e.f. 03.10.2021 in recognition of the fact that it is no longer onerous for parties to seek access to justice. There is no spread of Covid-19 in the jails, and out of about 17 thousand prisoners, not even one of them is infected and among prison staff, there is only one active case. Thus, we deem it proper to modify our order dated 20th April, 2021, extended from time to time, as under:

(i) As far as the first category of 793 undertrials involved in heinous crimes, who were granted interim bails by the District Courts, there shall be no further extension of interim bails under the orders of this Court. However, to facilitate their surrender before jail authorities and to avoid any inconvenience being caused to the jail authorities during surrender of a large number of under trials, it is ordered that the surrender shall take place in the following phased manner:

(a) The prisoners of Central District, Tis Hazari Courts, shall surrender on 8th November, 2021.

(b) The prisoners of West District, Tis Hazari Courts, shall surrender on 9th November, 2021.

(c) The prisoners of Patiala House Courts, New Delhi District shall surrender on 10th November, 2021.

(d) The prisoners of East District, Karkardooma Courts, shall surrender on 11th November, 2021.

(e) The prisoners of North East District, Karkardooma Courts shall surrender on 12th November, 2021.

(f) The prisoners of Shahdara District, Karkardooma Courts shall surrender on 13th November, 2021.

(g) The prisoners of North District, Rohini Court shall surrender on 14th November, 2021.

(h) The prisoners of North West District, Rohini Courts shall surrender on 15th November, 2021.

(i) The prisoners of South West District, Dwarka Courts shall surrender on 16th November, 2021.

(j) The prisoners of South District, Saket Courts, shall surrender on 17th November, 2021.

(k) The prisoners of South East District, Saket Courts, shall surrender on 18th November, 2021.

(l) The prisoners of Rouse Avenue Courts Complex, New Delhi shall surrender on 19th November, 2021.

(ii) The above 793 prisoners are at liberty to move the respective courts for extension of their interim bails and the concerned courts shall consider the said applications for extension of interim bails on its own merits and take a decision accordingly, without being influenced by any order passed by this Court in the past.

(iii) As far as 3828 prisoners, who have been granted bail on the recommendation of High-Powered Committee are concerned, they are governed by the order of the Supreme Court dated 16.07.2021 in *Suo Moto Writ Petition (C.) No.1/2020* and, consequently, they are not directed to surrender presently. So far as they are concerned, their surrender would have to await further orders/ directions from the Supreme Court.

(iv) As far as prisoners who were granted interim bails by this Court are concerned, they shall surrender before the concerned jail superintendent(s) on 20th November, 2020. However, as stated above, all these prisoners are at liberty to move applications for extension of their interim bails before the concerned benches of this Court, if so advised, and their applications will be considered on merit without being influenced by any order passed by this Full Bench.

(v) As far as interim orders passed in the civil matters are concerned, which were extended vide orders dated 20th April, 2021 and subsequent orders, it is hereby ordered that all such interim orders shall cease to have effect on the next date of hearing in the said matters. However, the parties in the said matters are at liberty to move the concerned courts for extension of the interim orders and the said courts shall consider extension of the interim orders on merit without being influenced by any orders passed by this Court in this matter.

8. The jail authorities shall make appropriate arrangements to ensure surrender of the prisoners as detailed above and take all required steps in view of the guidelines issued by the Government Authorities from time to time to contain the spread of Covid-19.

9. This order shall also apply to all other undertrials, who were granted interim bail during pendency of this petition by this Court or any Court subordinate to it. However, this order shall not apply to any undertrial, who has been granted interim bail by Hon'ble Supreme Court of India, or on the basis of the recommendations of the High Powered Committee.

10. In view of the above, no further orders are required to be passed in the instant writ petition at this stage and the same is disposed of accordingly.

11. The Registry is directed to immediately upload this order on the website of this Court and to circulate it to all the Hon'ble Judges of High Court of Delhi and same be also conveyed to the Standing Counsels for UOI, GNCTD, DDA, Civic Authorities etc., and also to Delhi High Court Bar Association, all the other Bar Associations of Delhi, as well as to all the District Courts subordinate to this Court.

VIPIN SANGHI, J.

REKHA PALLI, J.

TALWANT SINGH, J.

OCTOBER 22, 2021