Court No. - 46

Case :- CRIMINAL WRIT-PUBLIC INTEREST LITIGATION No. - 2357 of 1997

Petitioner :- Bachchey Lal
Respondent :- State Of U.P. & Others
Counsel for Petitioner :- From Jail,Patanjali Misra Amicus C.
Counsel for Respondent :- A.G.A.

Hon'ble Amar Saran,J.
Hon'ble Karuna Nand Bajpayee,J.

We have heard Shri Sudhir Mehrotra, learned Special Counsel for the Allahabad High Court and Shri Vimlendu Tripathi, learned Additional Government Advocate.

By means of this order, we propose to call for a response from the respondents on the aspects mentioned hereinafter:

Response on recommendations of Tata Institute of Social Sciences (TISS)

At the outset we must record our heartfelt appreciation that 3 teams of 16 social activists of “PRAYAS” of the Tata Institute of Social Sciences (TISS), Mumbai have visited UP Central and district jail at Lucknow, Raebareilly, Allahabad, Mathura, Agra, Bareilly Meerut, Varanasi, Azamgarh, and Gorakhpur between June 20

and 30, 2014 pursuant to our request by an earlier order bearing their own expenses for travel to U.P., (with only marginal local logistical support for stay and visit to the jails in U.P. from the State) and have submitted a comprehensive report about the conditions of UP jails and also suggested certain reforms and other measures for improving the conditions of prisoners and jails. These recommendations *inter alia* mentioned in the report are:

(1) As far as possible, there should be daily jail courts/Lok Adalats, which should be attended by the Magistrate concerned, Public Prosecutor and legal aid lawyers for giving relief to economically weak and other prisoners, who are involved in minor offences .

(2) An attempt should be made to prevent juveniles who are below 18 years of age being lodged in jail and medical certificate etc be obtained, if there is reason to think that the prisoner is less than 18 years in age (as the team of TISS found some juveniles who clearly appeared to be below 18 years in age lodged in some

jails.)

3. The State Legal Services Authority (SLSA) and District Legal Services Authority (DLSA) should make available legal awareness material, such as posters and booklets in jails and also arrange regular sessions on legal rights and arrange legal aid for prisoners. Legal aid lawyers should also visit jails on a roster basis at least once a week. Para legals should be appointed by the DLSA to spread legal awareness, liaison with lawyers appointed on the DLSA panel. Final year law students should be associated with with DLSAs, for carrying out legal guidance and awareness work inside prisons on a regular basis. Efforts should be made for release of prisoners on personal bonds who are languishing in jail in petty and bailable offences. Also in non-bailable offences. the prisoners could be released on personal bonds involving matters covered by sections 436 and 436-A Cr.P.C by the Magistrate concerned. The Magistrate could allow the

prisoner to be released on personal bond after seven days in petty offences if he cannot arrange for sureties within the said period.

4. Old buildings should be identified, repaired and upgraded.
5. Separate balwadi spaces should be created in all women's sections for children below 6 years of women prisoners, preferably located outside the prison walls. Clean and hygienic drinking water facilities should be made available in every barrack of the prison. There is also a need to improve ventilation for circulation of fresh air and sunlight and electric fans should be installed in sufficient numbers in every prison. The existing toilets should be repaired and provided with sufficient water supply and new toilets should be built inside and outside the barracks. There is also an urgent need to increase the living spaces for women prisoners as there is extreme overcrowding in many of the women's sections in the prisons. Wherever possible kitchen facilities should be provided in women's sections of the

prisons. A separate space should be made available to run libraries and reading room in prisons. There should be provisions for emergency funds at the disposal of the prison superintendents to deal with crisis situations such as medical emergencies or any other unforeseen circumstances. All the vacant posts in the prisons should be filled up immediately in view of the chronic overcrowding situation and the overload of work on the staff. There is also a need to create new posts of female staff such as female jailors and welfare officers within the department for catering to the needs of women prisoners and their children. Full time medical officers, compounders nursing and para-medical staff in all the prisons should be appointed to take care of health needs of prisons. The Health Department should arrange for visiting specialists, such as, psychiatrists, skin specialists, gynecologists and pediatricians from the nearest civil hospitals to the prisons on a regular basis. All the posts of Probation Officers should be filled up by the

Department of Women and Child Development and they should visit the prisons at least once a week to identify cases for release on probation under the Probation of First Offenders Act and also to follow up cases of premature release with the government. Posts of Liaison Officer should be created in every prison to look into problems of families and children of prisoners left outside. These posts may be created within the Prison Department or on the basis of deputation from the Department of Women and Child Development. Posts of literacy teachers should be created in all the prisons to run education activities and manage library facilities in prisons. They may also coordinate with NGOs in these efforts to provide effective services and support to prisoners.

6. Some income generating training programmes should be provided to the prisoners for their future rehabilitation and the assistance of concerned institutions, governmental and non-governmental be sought for in this regard. The department of social work should be invited for placement of

students in prisons to work on aspects relating to legal aid and guidelines and family counseling etc. Children in prisons should be included in the Integrated Child Protection Scheme (ICPS) of the Department of Women and Child Development. The district child protection unit should visit local prisons to get information about the children outside and then visit them in their homes and inform the prison family member about the condition of the child in his home or in the shelter home where he may be lodged.

7. The Director General of Police should also issue a circular making it mandatory for the police to take precautions for the welfare of children left outside, whose mothers are in jail after inquiring from the woman if she has minor children and whether adult supervision is provided for these children. In cases of absence of responsible adult supervision outside, till the age of 6 years the child could be kept in with his mother, who is in custody. For older children (or children below 6 years where the mother does not want to keep the child with

her), the Child Welfare Committee (CWC) should look to their welfare and institutionalization if necessary. An entry be made in the arrest memo about the action taken regarding the minor children of the woman, place it on record in court documents and inform prison authorities about the action taken at the time of judicial custody. The Probation Officer or DCPO be also informed about the action taken with regard to the children.

8. Rules, guidelines and circular for release of convicted prisoners on probation, parole and premature release as mentioned in the 2010 Handbook on Release of Prisonrs for Collectors, Police and Prison Officials published by the U.P. Prisons Department be scrupulously followed. The said rules/Handbook may also be made available to the Court on the next listing. The biggest weakness is the absence of personnel to follow up cases with the authority concerned and find out at which stage the matter was stuck and for what reasons. This could be done by the Probation Officers and Liaison officers if they are appointed

in sufficient numbers and are mandated to carry out this responsibility. These officers should be trained social workers who are sensitized to work with marginalized prison populations or their children.

9. Any rule by which parole is not permitted for prisoners whose appeals are pending in the higher courts should be done away with, as in practice appeals take 10-12 years in disposal and that such a clause should be deleted from the prisoners manual.

10. As a basket of services are needed for maintaining and rehabilitating prisoners, it is suggested that there be coordination mechanisms of the departments concerned – prisons, health, women and child development, technical education and library departments for vocational training and library facilities, police and legal services authorities. Likewise there is a need to set up a State and District Inter-Departmental Committees (Sub-committees) on Prisoners, chaired by the Home Secretary (at State level)

and District Judge (at district level), with Secretaries/ heads of departments of Prisons, police, law and judiciary, SLSA, Women and Child Development, social Justice, Technical Education, Health, Libraries, and Revenue, with NGOs, advocates or experts in prison reforms, legal aid, access to justice and rehabilitation of custodial populations at State level. The Committee with the IG (Prisons) as its member-secretary, should meet every 6 months and consider the prison and prisoner problems. At the district level, apart from the District Judges, District Probation Officer, SP, Civil Surgeion, District Education Officer, DRDA, Zilla Parishad, District Social Welfare Officer, NGOs working on prison issues and the Jail Superintendent as member secretary could be members of the committee, which should meet and discuss prison related problems quarterly. Higher level problems could be referred to the State Committee.

11. There is also a document containing " Expression of Interest to Start Model Socio-legal Guidance

and Rehabilitation Centre for Prisoners, Released Prisoners and Families of Prisoners." The Government should explore whether such a task could be entrusted to TISS or to the State Legal Services Authority as selections of such social workers and para legal workers could more effectively be carried out by the PRAYAS of Tata Institute of Social Sciences or by the State or District Legal Services Authority or with their coordination.

We would like a response of the Government, through the Principal Secretary (Home), U.P. and UPSLSA on the suggestions made in the report of the Tata Institute of Social Sciences on the next listing.

Release of short term prisoners on probation or licence or grant of other relief to the short term prisoners

After the order of the Apex Court dated 9.7.2014 in Union of India v. Sriharan @ Murugan & Ors., in Writ Petition(s) Criminal) No (s). 48/2014 which has restrained the State from exercising the powers of remission in matters relating to life convicts, we think,

that in order to reduce jail over-crowding at least matters for remission/ release on license under the UP Probation of First Offenders Act, 1938 or under the Jail Manual and bail of short term sentenced or under trial prisoners and of old, ailing or women under trial or convicted prisoners (whose appeals have not been finally disposed of) be considered on a priority basis . A chart dated 8.7.2014 has been filed before us, which shows that there are 1377 prisoners who have undergone more than 1/3rd of their sentences and who have, therefore, become entitled for release on license under Rule (1)(2)(3) of UP Release on Prisoners Rules subject to the restriction mentioned in Rule 3 of their having served out 1/3rd of their sentence without remission of the period for which they were sentenced.

Likewise, under paragraphs (233-250 (especially 235) of the UP Jail Manual , the Revising Board consisting of the District Magistrate and the Sessions Judge in whose jurisdiction the central jail is situated and a non-official gentleman can consider the cases of all casual convicts with sentences of not less that three years and not more

than four years when they have served two years of their sentences and all casual convicts with sentences of over four years when they have served half of their sentences. For habitual convicts, who have served two-third of their sentences and have completed at least two and a half years of imprisonment and where the Superintendent is satisfied about the work and conduct of the convicts and their mental and physical condition, and considers them to be suitable for premature release.

We find that a large number of these cases, the plea taken for not completing the process as submitted in the report, in Chart (2) at point No. 4 is that the judgments are not available in spite of demand. In other cases, the reasons for not considering the nominal roll under paragraph 235 and Rule 4 of UP Prisoners Release on Probation Rules, 1938 was that the matter has been submitted to the District Magistrate and the Senior Superintendent of Police several months ago and has not been disposed of.

We would like the District and State Legal Services Authority to look into the issue in depth and to ensure

that in all cases, of short term prisoners orders on the applications for release are passed, and also to fix the blame on the appropriate level, where the file has got stuck and where the concerned authority is not disposing of the application.

The District Judges and the High Court registry must make the judgements of the trial Court available on demand by the Jail authorities or Revising committees for premature release within 10 days of the demand as directed in our order dated 26.3.2014. We make it clear that defaults in compliance with this direction will result in our calling for explanations from the concerned defaulting authorities in future. The jail authorities and UPSLSA shall bring to our notice all such cases where the judgments are not being made available by the concerned district Court or the High Court registry, so that we may seek explanations from the defaulting parties.

Alternatively, if the short sentence matter relates to a pending trial or appeal, and where the prisoners' lawyers (if any) are not taking interest, the State and District. The State and District Legal Services

Authorities should ensure that competent legal aid lawyers are selected who can take up prisoners' bail matters at the district or High Court levels.

Let the District Legal Services Authority also call for a report from the District Magistrates who have not passed orders in the applications for release of short term prisoners under the aforesaid provisions and an explanation may also be called for as to why the said applications have not been considered.

On the next listing, we would like a comprehensive response from the Principal Secretary (Home), Director General of Police and the State Legal Services Authority as to what steps are being taken and the procedure that has been developed and the time frame that has been fixed for disposal of such cases for release of short term prisoners and for releasing on license or on remission under Rule 4 (3) of the UP Prisoners Release on Probation Rules and paras 233 to 250 of the Jail Manual, and the steps if any that are taken against the particular defaulting authorities where files of such prisoners have got stuck and are not being disposed of.

Provision of legal aid at the High Court and district Court levels and conduct of daily or weekly jail lok adalats for disposal of minor cases

We would also like the District Legal Services Authority and the High Court Legal Services Authority to take steps proactive steps for providing legal aid for pressing the appeals/ bail applications on behalf of such prisoners, or for moving applications before concerned Courts for releasing prisoners on personal bonds and doing away with sureties/ or for reducing bail amounts for sureties, or for other purposes, in case their lawyers are not turning up and prisoners are prepared to accept legal aid.

We are disturbed to note that in such category of cases hardly 40 or 50 persons have sought legal aid, and across the State prisons according to a chart furnished by the District Jail authorities dated 8.7.14 only 1 prisoner above 70 years who had undergone 5 years imprisonment asked for legal aid. This clearly reflects the indifferent manner that the old prisoners may have been approached for legal aid by the jail or other

authorities and the defunct and sub-standard quality of the legal aid that is being offered to the prisoners.

Competent and motivated lawyers should be invited and encouraged to furnish legal aid. Lawyers who are competent (as assessed by the Courts before which they appear), and regular in their work, be issued certificates of merit. Legal aid lawyers who try to extract money from prisoners seeking legal aid should be black listed and punished.

Regular payments for legal aid lawyers must be ensure and the per diem amount for jail visits by legal aid lawyers needs to be raised. These are matters to be considered by the UP SLSA and the High Court and government.

We find that in the year 2014 as per Chart 8, only 533 prisoners were released on the basis of jail lok adalats across all UP jails. This is an inadequate number of prisoners who have been released for minor crimes. We recommend that jail lok adalats e conducted on a daily, bi-weekly or weekly basis in the jails on the lines suggested by TISS or any other alternative lines that the Registry and the State or District Legal Services

Authority, by ensuring regular presence of Magistrates, Public Prosecutors, and legal aid lawyers, in the jails who could move and dispose of applications for releasing prisoners who voluntarily plead guilty in petty crimes, or on bail, on personal bonds or on low bail amounts for sureties,with or without conditions such as periodical attendance before Courts or the police station, or on probation under the Probation of Offenders Act 1958 or under the provisions of s. 436 or 436 A Cr.P.C. as such steps would greatly reduce jail overcrowding.

We would like a response on these suggestions from the UP SLSA, the State government (through the Principal Secretary (Home) U.P., and High Court registry on these aspects on the next listing.

Issue of prisoners in jail after bail orders

There is a considerable discrepancy in the figures as to the number of prisoners who are in jail after getting bail for 2 months after their bail orders. According to Sri Vimlendu Tripathi, learned AGA and the CD containing details in soft copy supplied by the Jail authorities there

are 155 such prisoners confined in various jails in U.P., which includes 120 male and 35 female prisoners. According to Chart 4, Proforma 6 dated 8.7.14 the total number of such prisoners was 140. According to Shri Sudhir Mehrotra, learned Special Counsel for the High Court, there could even be about 200 such prisoners. However, Shri Mehrotra pointed out that in certain cases prisoners disclosed to the jail authority that they have got bail, but on enquiry it was learnt that the prisoner had actually not got bail. It was possible that the prisoners were actually mis-informed by their pairokars or they may have been prevaricating about their bail status. A perusal of the CD also shows that in many cases the date of bail order is not mentioned. In other cases it is also possible that the jail authorities may have only made a cursory enquiry regarding the bail status of the prisoners, and missed out some prisoners who were in jail despite their being granted bail.

We therefore, direct the JR (Inspection) assigned to this case, to send the particulars of all such prisoners who are shown to be bailed out, in the CD or who claim to be

bailed out, (but the date of bail order is not mentioned) to the concerned districts separately for cross-check by the District Judges (DLSAs) about the accurate number of such prisoners from the concerned courts and from the bail and release registers maintained in the concerned Courts. The DLSAs are also further directed to get inquiries made at each of the barracks by the visiting legal aid lawyers and visiting judicial authorities in the concerned central or district jails, if there are any further prisoners who have been bailed out, but there particulars are not mentioned in the CD. The district judges should ensure that the registers relating to grant of bail, and release on bail maintained by all the concerned bail granting or releasing Courts are being properly filled up and maintained as that would also facilitate cross checking of information from prisoners regarding their bail status.

All district judges are also required to inquire from the bail granting or releasing court in each case of failure to release the accused after 2 months of the bail order as to the reasons for non-release of prisoners who have been granted bail, and the steps taken by the DLSAs for

expediting release of prisoners on bail after bail orders. The District Judges/ DLSAs must furnish information to this Court on all these points on the next listing.

If required the DLSAs may get applications moved by Legal aid lawyers before the concerned bail granting Court for modifying the conditions of the bail order, by either facilitating the release of the prisoner on personal bonds, or on vastly reduced bonds for sureties if he is very old, unwell or a woman who is unlikely to abscond from justice as provided for in Moti Ram and others v. State of M.P., (1978) 4 SCC 47 or Hussainara Khatoon (I) v. State of Bihar, (1980) 1 SCC 81, with or without additional conditions such as periodical reporting before the concerned Courts or the police station. A bailed out prisoner unable to immediately arrange for sureties prior to his release, could also be released on bail on his personal bond with the condition of periodical reporting before the Court or police station, till such time that he is able to produce sureties for his bail, when the condition of periodical reporting could be done away with.

For minor matters, where there are no allegations of

criminal antecedents, this option of releasing the bailed out accused on personal bonds who is unable to arrange for bonds within a week may be liberally exercised, by the Court granting bail. As suggested by the TISS in its report, that similar to the Maharashtra practice, any relation of the bailed out accused, even if he lacks property for security, but has a settled job and abode, could be allowed to stand surety for the accused, after the Court is satisfied on inquiry about the status of the surety by the probation officer or other concerned official. These are only suggestive measures for release of a bailed out accused, who is unable to arrange for the surety, because of his poor economic status, Courts must think creatively for securing the legal and fundamental rights of the accused who has been granted bail, and simultaneously for ensuring his co-operation with the judicial process, so that no impression is created that the Court makes a distinction between the monied and the hapless impecunious accused in matters of release from jail after bail.

Even so far as bails granted by the High Court are concerned, if no bail amount has been fixed by the High

Court, the releasing Magistrate or other Court may consider substantially reducing the bail amount, if the prisoner is not being able to secure release for two months after the bail order, because of the inability of the prisoner to arrange for persons to stand surety for him on the required heavy bail amount. Only if the accused is unable to produce sureties even on the reduced bail amount, an application could be moved by the legal aid or other lawyer at the High Court for releasing the accused on a personal bond, with or without any additional conditions for release that the High Court may or may not chose to impose on the accused who is unable to arrange for sureties.

We also need to make it clear that this Court may need to call for explanations and to recommend action on the judicial or administrative side in the future against indifferent and insensitive subordinate Courts which are obdurately failing to take steps for releasing bailed out accused, who are unable to arrange for adequate sureties, by failing to modify bail orders, passed by themselves with or without imposing additional conditions in view of the inability of the prisoner to

arrange adequate sureties for his release on bail . In case the bail order has been passed by a superior court which calls for modification, it shall be incumbent on the releasing court to intimate the District Legal Services Authority/District Judge or the High Court Registrar as the case may be to get the order modified with the aid of legal aid counsel (in case there is no private counsel).

The feedback on this point may be furnished to the Court by the DLSAs and the Registry on the next listing. UP SLSA to also ensure compliance of these directions.

Dealing with the cases of old prisoners whose trials are pending or who have been convicted by the trial Court and whose appeals are pending in the High Court

According to the figures mentioned in the CD (soft copy), between the ages of 70 to 75 years in all the jails in U.P., there are 898 such prisoners, which includes 713 convicted prisoners and 185 under trials. Above the age of 75 years there are 634 such prisoners, which includes 533 convicted and 101 under trial prisoners.

The charts also mention the name and other particulars of the prisoner, the jail, the crime and trying/ convicting Court, period of sentence (if convicted) and the period spent in jail.

We again direct the JR (Inspection) to communicate the figures of all such prisoners district wise to the DJs/ DLSAs, who may after taking measures for reducing the presence of such prisoners by taking up cases of such old prisoners after prioritizing cases on the basis of period of sentence served out, comparative age of the prisoner, health status of the prisoner, the minor nature of the offence. If the prisoner agrees legal aid could also be provided to him for the purpose of his bail. Also in the case of old prisoners, if it appears to the Court granting bail that the prisoner may not be able to arrange sureties on heavy bail bonds, it may release the prisoner on personal bonds or on vastly reduced bonds, with or without conditions.

The Registry and the DLSAs shall send detailed compliance reports on this direction, and the extent to which the prison population of such prisoners has been reduced on the next listing. UP SLSA to ensure

compliance of this direction also and also submit its report on the next listing.

List on 22.09.2014.

Let a copy of this order be also forwarded to Tata Institute of Social Science, Bombay.

Order Date :- 28.8.2014
Ishrat