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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 5698/2024 & CM APPL. 23540/2024

GAUTAM KUMAR LAHA

..... Petitioner

Through:

Mr. Praveen Agrawal, Mr. Rajesh Ranjan Singh, Ms. Preeti Chaudhary and Ms. Stanzin Uron, Advocates with Petitioner in person

versus

UNION OF INDIA & ORS.

..... Respondent

Through:

Mr. Chetan Sharma, ASG, Mr. Apoorv Kurup, CGSC and Mr. Akhil Hasija, Mr. Vinay Yadav, Ms. Nidhi Mittal, Mr. Saurabh Tripathi and Mr. Vikramaditya Singh, and Mr. Amit Gupta, Advocates for R-1
Mr. Santosh Kr. Tripathi, Standing Counsel (Civil), GNCTD with Ms. Prashansa Sharma and Mr. Kartik Sharma, Advocates for R-2 and 3
Ms. Beenashaw Soni, Panel Counsel, DHC with Ms. Mansi Jain, Ms. Ann Joseph, Advocates for R-4/DHC

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Date of Decision: 24th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ : (ORAL)

CM APPL. 23540/2024 (for exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the present application stands disposed of.



W.P.(C) 5698/2024

1. Present Public Interest Litigation ('PIL') has been filed under Articles 20, 21 and 226 of the Constitution of India, on 18th April, 2024, seeking the following reliefs:

(i) Direction to the Respondents for issuing guidelines for release of undertrial prisoners (bail), which is to be followed by the judicial officer.

(ii) Direction to the Respondents to constitute a committee at district level consisting of District Judge, Deputy Commissioner of Police of concerned district, District Magistrate and Two members from general public to be chosen by the Hon'ble Chief Justice of this Court.

(iii) Direction to the said committee constituted under clause (ii) to hold meeting at least once every month to decide as to which undertrial prisoners can be released and send their name to the concerned magistrate for passing an appropriate order of bail with requisite bail conditions.

(iv) Direction to the said committee to submit a monthly report to the Hon'ble Chief Justice of this Court for appropriate action.

2. Learned counsel for the Petitioner contends that this PIL is filed for the benefit of undertrials, who are languishing in over-populated/over-crowded jails pending their trial. He states that if the present PIL is allowed it will put the overpopulated jails under check of a judicial officer and an expert committee, which would eventually result in dignified life for the undertrial prisoners.

3. He states that as per the data available on the website of the National Crime Record Bureau ('NCRB') as of 2021, there were 1319 prisons in the country, with actual capacity of 4,25,609, against which 5,54,034 prisoners are lodged in these jails.



4. He states that particularly in Delhi there are three prison complexes with sanctioned inmate strength of 10026 against which 19500 prisoners are lodged as per the data of the year 2021. He states that the convict occupancy rate in Delhi Prisons is only 16.22%, meaning thereby, that 83.33% of the total population of Delhi prisons consists of undertrial prisoners.

5. He states that the percentage of Delhi's undertrial prisoners is more than the national average and also the total number of undertrial prisoners in Delhi is the third highest in the Country. He further states that 32.5% of total undertrial prisoners are in jails for more than one year, which further aggravates the situation in these overpopulated jails.

6. He states that another aspect of the said shocking situation of undertrial prisoners in Delhi is that the charge sheeting rate in Delhi is only 31% against the national average of 73% of the total FIRs filed; and the conviction rate in Delhi is 16.22%. He states that the above said data prima facie shows that the fundamental rights of these undertrial prisoners are being adversely affected and violated.

7. He states that the Supreme Court in the case of ***Gurbaksh Singh v. State of Punjab***¹ has held that the bail is a rule and the same is not to be withheld as a form of punishment. He states that the Criminal Procedure Code, 1973 under Chapter XXI A, permits the acquittal of undertrial prisoners who enter a plea bargain by offering to undergo not less than 25% of the total permissible sentence; and on the same principle the under-trial prisoners can be granted bail pending trial, even though they have not offered to enter into a plea bargain,

¹ 1980 (2) SCC 565.



8. In reply, learned ASG appearing for the Respondent No.1 states that the issues raised by the present Petitioner are directly pending consideration before the Supreme Court in WP(C) 406 of 2013. He has placed reliance on the 'Standard Operating Procedure For Under-Trial Review Committees' ('SOP') drafted by NALSA and taken on record by the Supreme Court vide order dated 4th December, 2018. He states that infact, the issue pending before the Supreme Court is of much wider amplitude and encapsulates the relief which is sought in this petition. He states that this petition can be disposed of granting liberty to the Petitioner herein to approach the Supreme Court.

9. In addition, learned Standing Counsel for the Respondent Nos. 2 and 3 states that the issue being raised by the Petitioner herein is within the consideration of the Government and the said issue can be resolved by coming up with more and better infrastructure. He states that the Government of NCT is already cognizant of the issue and the steps are being taken in that regard. He states that the ad-hoc relief which is being prayed for by the present Petitioner in the form of an extra-judicial mechanism will further burden this Court with frivolous petitions.

10. We have heard the learned counsel for the parties and perused the record.

11. The learned ASG has placed before us the letter dated 18th February, 2019 issued by the Ministry of Home Affairs, Union of India ('MHA') to all the States/Union Territories including GNCTD bringing to their notice the SOP framed by NALSA and taken on record by Supreme Court in W.P.(C) 406/2013 *RE-Inhuman Conditions in 1382 Prisons v. Director General of Prisons and Correctional Services & Ors.* and the orders dated 31st October,



2017 and 4th December, 2018 passed in the said writ petition; with a direction to the States/Union Territories to comply with the same.

12. A perusal of the aforesaid orders of the Supreme Court and the SOP framed by NALSA reveals that the reliefs sought by the Petitioner at prayers (i) to (iv) do not arise for consideration and already stand addressed in the aforesaid writ petition. Firstly, an Under Trial Review Committee ('UTRC') already stands constituted and its composition is set out in Part I, clause (d) of the SOP. Secondly, 14 categories of inmates eligible for early release already stands identified in the SOP at paras 3.3.1 to 3.3.14. Thirdly, the UTRC has been enjoined with the obligation to ensure that the under-trials covered under the said 14 categories get benefit without delay. Lastly, the UTRC has been directed to convene regular meetings for implementing the SOP and submit its action taken report to the concerned State Legal Services Authority, which report is being forwarded to NALSA and filed before the Supreme Court. The writ petition remains pending and is being heard by the Supreme Court.

13. In the same writ petition, the Supreme Court vide orders dated 14th December, 2023, 30th January, 2024 and 16th February, 2024 has also taken up the pressing issue of setting up more jails in each State/Union Territory due to overcrowding. In this regard, the Supreme Court has issued directions to each State Government to set up a designated Committee, which has its focus on taking steps for setting up new jails, expanding the existing facilities in the jails and providing facilities to the inmates through the use of technology. Thus, the issue of overcrowding urged in the present petition is also directly under consideration in the pending writ petition before the Supreme Court.



14. We are therefore satisfied that since the issues raised by the Petitioner in the present petition are directly in issue in the W.P.(C) 406/2013 pending before the Supreme Court and are being supervised therein, we find no reason for entertaining the present petition.

15. Accordingly, the present petition is dismissed alongwith pending applications.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 24, 2024/rhc/sk