

Minutes of the meeting dated 08.05.2021 of the High-Powered Committee under the Chairmanship of Hon'ble Kumari Justice Sanju Panda, Judge, Orissa High Court and Executive Chairperson, Odisha State Legal Services Authority with regard to release of prisoners for decongestion of jails in view of spreading of Covid-19 disease, over telephonic conversation.

The Fifty-seventh meeting of HPC is convened through telephonic conversation by the following dignitaries:

- a. **Hon'ble Kumari Justice Sanju Panda, Judge, Orissa High Court and Executive Chairperson, Odisha State Legal Services Authority.**
 - b. **Shri Sanjeev Chopra, IAS, Principal Secretary, Home Department, Govt. of Odisha.**
 - c. **Shri Santosh Kumar Upadhyay, IPS, Director General of Prisons, Odisha.**
- I. The Member Secretary placed the following information for the period from **28.04.2021 to 05.05.2021** as received from all 30 DLSAs consequent upon the holding of Under Trial Review Committees in all districts for the aforementioned period, in view of the guidelines issued by the High-Powered Committee –

a)	No. of UTPs released on interim bail	:	75
b)	No. of Convicts released on Parole/Furlough/ Special Remission	:	0/0/0
c)	No. of prisoners found infected by COVID- 19	:	42
d)	No. of prisoners recovered from COVID-19	:	177
e)	No. of prisoners succumbed to COVID-19	:	1
f)	No. of prisoners kept in quarantine wards	:	1129

II. Report regarding prisoners infected by COVID-19

Sl. No.	District	Name of Jail	No. of prisoners affected by COVID & date on which identified	Treatment	Measures taken for safety
1.	Jharsuguda	Sub-Jail, Jharsuguda	2 nos. On dated 30.04.2021	After ascertaining the UTPs to be COVID-19 positive, the said UTPs were shifted to DHH, Jharsuguda and further shifted to OTDC Covid Care Centre, Jharsuguda.	i. Complete and full sanitization of the jail premises of Sub Jail, Jharsuguda. ii. Steps for COVID testing of all other inmates and staff of the jail. iii. Shifting of prisoners to Nodal Medical Institution in case emergency arises.
2.	Balangir	District Jail, Balangir	7 nos. On dated 01.05.2021	The said positive inmates have been kept in an isolation ward except one namely Sushanta Kumar Dhalasamanta who has been kept in specialized ward.	i. Complete and full sanitization of the jail premises. ii. Steps for COVID testing of all other inmates and staff of the jail.
3.	Boudh	Special Sub-Jail, Boudh	20 nos. On dated 05.05.2021	It has been decided by the UTRC to keep such affected inmates inside the jail in separate cell/room by following the guidelines of the Govt. The CDMO, Boudh is requested to send his team to the Special Sub Jail, Boudh to provide necessary advice and medicine to the inmates.	i. Complete and full sanitization of the jail premises. ii. Steps for COVID testing of all other inmates and staff of the jail. iii. Shifting of prisoners to Nodal Medical Institution in case emergency arises.
4.	Cuttack	Sub-Jail, Salipur	13 nos. On dated 05.05.2021	The said inmates have been kept in isolation ward. The Superintendent, Sub-Jail, Salipur has intimated and also requested to the CDMO, Cuttack to depute RRT team from CHC, Salipur for monitoring the health status & facilitating better treatment to the inmates.	i. Complete and full sanitization of the jail premises. ii. Steps for COVID testing of all other inmates and staff of the jail. iii. Shifting of prisoners to Nodal Medical Institution in case emergency arises.

The Secretary, DLSA, Boudh vide L. No. 552 dt. 05.05.2021 communicated that one UTP namely Ramesh @ Suresh Lenka has breathed his last while undergoing treatment for COVID-19 at Burla Hospital on 03.05.2021 and two numbers of UTPs who were found COVID positive have been released on bail on 03.05.2021 and 04.05.2021.

The DG Prisons placed before the HPC that the prisoners population has gone upto 19416 as on 01.03.2021 against 17542 as on 01.01.2020. He further apprised the committee that around 1200 UTPs in cases having punishment less than 7 years of imprisonment are in different jails who need to be released. He also proposes to consider special furlough for 30 days to convicts having good track record and timely return to jails on earlier occasions.

The Member Secretary, OSLSA placed before the HPC, copy of the letter received from the DG Prisons & DCS, Odisha vide Memo No. 8804 dated 30.04.2021 wherein he has requested the Registrar General, High Court of Orissa, Cuttack to issue suitable instructions to all the remanding courts and police authorities for early release of UTPs on bail who have been remanded for the offences punishable with imprisonment upto 7 years.

Taking note of the surge of second wave of COVID-19 pandemic, the Hon'ble Supreme Court of India vide **order dated 07.05.2021 in Suo Motu W.P.(C) No. 01/2020** has passed several directions as below to decongest prisons :

9. As a first measure, this Court, being the sentinel on the qui vive 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 Arnesh Kumar v. State of Bihar (supra) during pandemic.

11. Our endeavour in this judgment is to ensure that police officers do not arrest the accused unnecessarily and Magistrate do not authorize 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 498-A 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 sub-clauses under Section 41(1)(b)(ii);

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 authorizing 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 authorize 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 to 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 41-A 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. Authorizing 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 498-A 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 High-Powered 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 High Powered 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 High Powered 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, our attention was drawn to example of Delhi, wherein the prison occupancy is updated in websites. Such measures are required to be considered by other States and should be adopted as good practice. Moreover, all the decisions of High Powered Committees need to be published on respective State Legal Services 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 Covid-19 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.

At this juncture, the Member Secretary apprised the committee that the minutes of the HPC are being published in the official website of Odisha State Legal Services Authority (**oslsa.nic.in**) after each meeting. Therefore, the Hon'ble Chairman, HPC instructed the DG Prisons to update the prisons occupancy data in the Government of Odisha website, if not done yet as per the aforementioned direction of the Hon'ble Supreme Court.

General Instructions:

1. The HPC directs all the stakeholders to scrupulously follow the directions issued by the Hon'ble Supreme Court of India vide its order dated 07.05.2021 in W.P.(C) No. 01/2020.
2. The HPC resolves to direct all the stakeholders to follow the earlier guidelines issued by it for decongestion of prisons by releasing the prisoners on interim bail, parole, furlough, special remission etc. in appropriate cases and also ensure safety, hygiene, treatment and vaccination of jail inmates.
3. The HPC reiterates that the Chief District Medical Officer of concerned districts and the jail doctors should ensure the proper health condition of any such prisoner/UTPs before their release on interim bail or parole or furlough or special remission etc. through medical checkups on regular basis.
4. The Chairman, HPC further reiterates to scrupulously follow the directions contained **in Arnesh Kumar Vrs. State of Bihar, (2014) 8 SCC 273** in its letter and spirit so as to avoid fresh crowding of jails

during the second wave of the COVID pandemic by the Police (arresting officer) while making arrest in cases where the offences are punishable with less than 7 years imprisonment and by the concerned Courts during remand in such cases.

5. The HPC again directs the District Magistrates and Superintendent of Police of the Districts to make arrangements for transportation of the released prisoners to their respective places. The District Magistrates and Superintendent of Police shall also ensure that policies and guidelines of the Government regarding complete lockdown & shutdown shall not be violated during the ongoing process of de-congestion and the policy of social distancing be complied with in true spirit.

All the stakeholders are requested to submit compliance report regarding the above mentioned directions issued by the HPC to be placed before the HPC in its next meeting.

By Order

**Sd/-
Member Secretary
OSLSA**