

Minutes of Meeting dated 11thMay, 2021 at 5:00 p.m. through Video Conferencing (Cisco Webex) under the Chairpersonship of Hon'ble Mr. Justice Vipin Sanghi, Judge, High Court of Delhi & Executive Chairperson, Delhi State Legal Services Authority

The Meeting was attended by following Officers/Members of High Powered Committee through Video Conferencing:

1. Shri S.N. Shrivastava, Commissioner of PoliceMember
2. Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi
.....Member
3. Shri Sandeep Goel, Director General(Prisons),DelhiMember
4. Shri Kanwal Jeet Arora, Member Secretary, Delhi State Legal Services Authority (DSLISA).

Agenda: Effective implementation of the directions issued by Hon'ble Supreme Court of India in Suo Motu Petition (Civil) No.1/2020 - In Re: Contagion of COVID-19 vide its orders dated 23.03.2020 and 13.04.2020 and order dated 07.05.2021 passed in I.A. Nos.55273 & 55276 of 2021 in I.A. No. 48231 of 2020

Pursuant to spread of **Corona Virus (COVID-19)** across the globe and it being declared as **pandemic** by WHO, Hon'ble Supreme Court of India had taken up the issue of **over-crowding** of prisons, as a matter of **serious concern**, by way of above referred Suo-Motu Writ Petition and issued certain directions vide orders dated **23.03.2020** and **13.04.2020**. In compliance of those directions, UTPs and convicts were released on *interim bail* and *emergency parole* in the year **2020** thereby **reducing** the **jail population** to a large extent which saved the inmates from wrath of **COVID-19 (Novel Corona virus)**.

Owing to improved situation in and out of prison, the released persons (*except those who in the meantime were granted regular bail*) were directed to surrender. Accordingly, considerable number of released person returned back to jail in February and March, 2021. However, sizable number of persons did not surrender and are still absconding.

India, fortuitously escaped the full-blown wrath of the **COVID-19** virus, during the **first wave** that swept across its territory, only to be **miserably trapped** in the deathly coils of the **second wave** of the pandemic. Considering the unprecedented surge in **COVID-19** cases and in order to prevent the outbreak of **COVID-19 (Novel Corona virus)** as well as for reducing the population of **over-crowded jails**, Hon'ble Supreme Court of India vide order dated **07.05.2021** issued further directions in this regard, directing High Powered Committee to do the **needful**.

Hon'ble Supreme Court further *directed that Commissioner of Police, Delhi shall also be Member of this Committee*. Accordingly, Commissioner of Police, Delhi has joined the present meeting of this Committee, today.

Members of the Committee welcomed Commissioner of Police and apprised him of the resolutions passed in an emergent meeting of this Committee conducted on **4th May, 2021**.

Members of the Committee have gone through the directions passed by Hon'ble Supreme Court vide orders dated **7th May, 2021** and **revisited** its earlier resolutions on the following items of the Agendas:

ITEM NO.1: REVISITING THE CRITERIA ADOPTED IN MINUTES DATED 04.05.2021 FOR RECOMMENDING THE RELEASE OF UNDER TRIAL PRISONERS ON INTERIM BAIL

Members of the Committee taking into consideration sudden spurt of **COVID-19** cases inside the jails and in Delhi NCR and with intent to decongest the over-crowded Delhi Prisons had held an emergent meeting on **4th May, 2021** wherein under **Item No.4, Eleven different criteria** were laid down classifying **class/category** of prisoners and the period for which they are already in custody for the purposes of recommending their release on *interim bail* for a period of **90 days**.

Members of the Committee while resolving these **Eleven criteria** had taken into consideration the **guidelines** as well as the recommendations made by it, in its earlier meetings held last year. Almost all the criteria **except**

one which was recommended by this Committee vide its meeting dated **18th May, 2020** were resolved to be adopted for recommending the release of UTPs presently lodged in Delhi Prisons.

Members of the Committee have gone through the directions given by Hon'ble Supreme Court, wherein it was directed to adopt the guidelines followed by this Committee last year for releasing the Under Trial Prisoners on *interim bail*. Relevant portion of directions passed by Hon'ble Supreme Court of India is as under:

"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."

(Emphasis supplied)

Members of the Committee after having deliberated upon the **Eleven criteria** laid down by it, vide its meeting dated **4th May, 2021** have resolved that additional criteria adopted by this Committee last year in its meeting dated **18th May, 2020**, needs to be added to the **Criteria** already laid down by it, vide meeting dated **4th May, 2021**, in order to give effect to the directions passed by Hon'ble Supreme Court.

It is accordingly **resolved** to **add** following **xiith criteria** to the **Eleven criteria** already adopted vide minutes of Meeting dated **4th May, 2021** for grant of *interim bail* to the UTPs for **90 days**:

- (xii) Under trial prisoners (UTPs) facing trial for a case under **Section 302 IPC** and are **in jail for more than two years** with no involvement in **any other case**;

It is **resolved** accordingly.

In addition to above, Members of the Committee resolved to treat **female pregnant UTPs** as well as those **female UTPs** who are having their **minor children** with them in the jail, as a **separate class** in itself.

On being asked by the Chair, D.G. (Prisons) apprised that as on date there are **7 pregnant UTPs** and **25 female UTPs** who have their **minor children** residing with them in **Jail No.6 and 16**. After deliberation, it is resolved that these **female Under Trial Prisoners** may also be released considering the **virulent nature** and **lethal effect** of the new strain of **COVID-19 (Novel Corona virus)** owing to their precarious condition.

Accordingly, following criteria i.e. **criteria No.(xiii)** is added to the criteria already adopted for grant of *interim bail* for a period of **90 days**.

- (xiii) All **female Under trial prisoners (UTPs)**, who are **pregnant** and **female Under Trial Prisoners**, who are having their **minor child/children** with them in Jail.

Needless to say that the **criteria No.(xii)** and **(xiii)** added today to the **Eleven criteria** already adopted vide Minutes of Meeting dated **4th May, 2021** shall also be subject to the "**Exclusion Clauses**" mentioned in the Minutes of Meeting dated **4th May, 2021** as well as the **Exclusion Clause No. (vi.a)** added today hereinafter.

It is **resolved** accordingly.

Shri S.N. Shrivastava, Commissioner of Police raised his concern that the benefit of the criteria laid down by High Powered Committee **should not** be extended to the **habitual offenders** i.e. *those having multiple cases against them*. Letter No.606/P Sec-CP, Delhi written by Commissioner of Police is brought to the notice of the Committee.

Hon'ble Chair appreciated the concern raised by the Commissioner of Police. Members of the Committee have gone through this letter and have also considered the resolutions adopted by this Committee in its earlier meetings held last year. Perusal of the same makes it clear that it was specifically recorded in the Minutes of Meeting dated **28th March, 2020** that

Under Trial Prisoners **having more than one case** against him shall only be considered for *interim bail*, only if he is "**on bail**" in all other cases, except for which he is being considered.

Considering the present scenario and keeping a balance between the rights of Under Trial Prisoners as well as society at large so as to see that *law and order* is maintained, it is hereby **resolved** that :

If, the Under Trial Prisoner falling in one of the Eleven criteria laid down by this Committee in the Minutes of Meeting dated 4th May, 2021 and/or in any of the Two criteria laid down today hereinabove, has three or more criminal cases pending against him, then his case shall not be considered for grant of *interim bail*.

It is **resolved** accordingly.

ITEM NO.2: DELIBERATION ON RELEASE OF UNDER TRIAL PRISONERS WHO WERE EARLIER RELEASED ON THE CRITERIA LAID DOWN BY HIGH POWERED COMMITTEE IN ITS MEETING HELD LAST YEAR

Members of the Committee in its meeting dated **4th May, 2021**, while laying down various criteria recommended the release of Under Trial Prisoners on *interim bail* for a period of **90 days**. This Committee directed that all the UTPs falling in the recommended criteria may move appropriate application either through their **Private Lawyer** or through **Legal Aid Counsel of DSLSA**. That includes **not only** the UTPs who were released on *interim bail* last year under the criteria laid down by this Committee from time to time and surrendered in terms of **Minutes of Meeting dated 17th February, 2021**, but also those who have **now become eligible** for being released as per the criteria laid down in meeting dated **4th May, 2021** and one adopted herein above.

Members of the Committee have observed that Hon'ble Supreme Court taking note of raging pandemic has held that the inmates who were released last year, can be released **forthwith**, so as to save valuable time. Relevant portion of directions passed by Hon'ble Supreme Court are as under:

"Third, due to the immediate concern of the raging pandemic, this court has to address the issue of de-congestion. We find merit in the submissions 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 imposing appropriate conditions. Such an exercise is mandated in order to save valuable time."

(Emphasis supplied)

In view of above, Members of the Committee enquired from D.G. (Prisons) regarding number of such UTPs, who after having been released on *interim bail* had surrendered in jail.

D.G. (Prisons) has provided a list of such UTPs who after being released on *interim bail* under various criteria laid down by HPC in its earlier meetings last year had surrendered. This list consists of **1133 UTPs**. Having regard to the list submitted by D.G. (Prisons) which is annexed herewith along with present minutes as "Annexure-A", it is **resolved** that these **1133 UTPs** be released **forthwith** on *interim bail* for a period of **90 days** from the date of their release. Such release shall be deemed to be on the basis of orders passed by their respective Courts releasing them on *interim bail* last year, subject to their furnishing a fresh '**Personal Bond**' for a sum equivalent to the sum for which they had furnished the '**Personal Bond**' last year.

It is made clear that at the time of their release they shall **provide** their **mobile phone number** to the **Jail Authorities, SHO of the Police Station**, (*within whose jurisdiction UTP has last resided*) as well as to the concerned **SHO of the Police Station** (*where the FIR against the said UTP was registered*). These UTPs shall be released on the conditions that they shall stay **in touch** with the jail authorities telephonically and **shall not leave the State** without informing the Jail Superintendent and **shall not change the Mobile Number** without informing the new number, if any to the Jail Authorities and/or SHO of the concerned Police Station.

After release of these UTPs, D.G. (Prisons) shall get a district-wise list of such UTPs **so released** prepared and forward the same to the concerned Principal District & Sessions Judge. Principal District & Sessions Judges on receipt of this list, may inform the court concerned regarding release of such UTPs on *interim bail*.

D.G. (Prisons) **assures** to do the **needful**.

It is however, made clear that the UTPs who have now **become eligible** as per the criteria laid down in **Meeting dated 4th May, 2021** and **one adopted** hereinabove, shall move appropriate applications before the concerned Court, seeking *interim bail* as per resolution adopted in Minutes of Meeting dated **4th May, 2021**.

It is **resolved** accordingly.

ITEM NO.3: REVISITING THE "EXCLUSION CLAUSE" LAID DOWN IN MINUTES DATED 04.05.2021

Shri S.N. Shrivastava, Commissioner of Police has raised a concern that in these difficult times, some unscrupulous persons are indulged in **black-marketing** and/or **hoarding** of *Essential Drugs, Oxygen Cylinders, Oxygen Concentrator Machines* and other related items required for treatment of **COVID-19**. He voiced that such persons should not be extended the benefit of criteria laid down by this Committee.

Members of the Committee appreciated the concern raised by Commissioner of Police and observed that during these testing time, when people should come forward to assist each other, in order to come out of this **unprecedented situation**, some persons have indulged in making wrongful and undue profits by **black-marketing** and **hoarding drugs** and **products** required for treatment of this lethal virus.

It is accordingly **resolved** that following clause needs to be added to the "**Exclusion Clause**" mentioned in the Minutes of Meeting dated **4th May, 2021** after **Clause (vi)** as **Clause (vi.a)** :

(vi.a) All those persons arrested for **black-marketing** and **hoarding** of *Essential Drugs, Oxygen Cylinders, Oxygen Concentrators* and other such items required for treatment of **COVID-19**.

Members of the Committee having gone through the directions laid down by Hon'ble Supreme Court vide its order dated **7th May, 2021** more particularly **Para 11** thereof which is reproduced as under:

"Third, due to the immediate concern of the raging pandemic, this court has to address the issue of de-congestion. We find merit in the submissions 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 imposing appropriate conditions. Such an exercise is mandated in order to save valuable time."

deemed it appropriate to **revisit** the '**Exclusion Clause**' laid down in Minutes of Meeting dated **4th May, 2021**.

The '**Exclusion Clause**' No.(vii) and (viii) are reproduced as under:

(vii) Those Under Trial Prisoners who are now in custody for an offence committed by him during the period of interim bail granted to him on the basis of criteria adopted by High Powered Committee in its earlier meetings;

(viii) Those Under Trial Prisoners who were granted interim bail on the basis of criteria adopted by High Powered Committee in its earlier meetings but failed to surrender in terms of the surrender order and are now in custody, only on execution of non-bailable warrant against him/them.

On enquiry by the Chair, D.G. (Prisons) has apprised that **no** Under Trial Prisoner is in jail, falling under the **Exclusion Clause No.(viii)**.

Shri S.N. Shrivastava, Commissioner of Police as well as D.G. (Prisons) brought it to the notice of this Committee that there are certain UTPs who after having availed the benefit of release on *interim bail*, in terms of the criteria laid down by this Committee in its earlier meetings held last year have not surrendered. They stated that such UTPs should not be extended the benefit of criteria laid down by this Committee on **4th May, 2021** and the one adopted hereinabove today.

After deliberations, it is **resolved** that all those UTPs who after having availed the benefit of *interim bail* granted to them last year, on the basis of criteria laid down by High Powered Committee in its earlier meetings and have not surrendered on the scheduled date of surrender despite directions to that effect, **SHALL NOT** be entitled to avail the benefit of criteria laid down by this Committee on **4th May, 2021** and those laid down today hereinabove, even after their apprehension/re-arrest. '**Exclusion Clause**' **No.(viii)** is accordingly **reframed** as under:

(viii) Those Under Trial Prisoners who were granted interim bail on the basis of criteria adopted by High Powered Committee in its earlier meetings but failed to surrender on scheduled date in terms of the surrender order and are now in custody, after their apprehension/re-arrest.

The Minutes of the Meeting dated **4th May, 2021** stands **modified** to that extent.

It is **resolved** accordingly.

On inquiry by Chair, D.G. (Prisons) has apprised that there are **143 Under Trial Prisoners** who are now in custody for an offence committed by them during the period of *interim bail* granted to such UTPs on the basis of criteria adopted by this Committee in its earlier meetings and thus fall under the **Exclusion Clause No.(vii)**.

Members of the Committee have reminded themselves of the directions given by Hon'ble Supreme Court in **Para 11** of its order dated **7th May, 2021** wherein it has been specifically directed that those inmates who were released earlier pursuant to order dated 23.03.2020 and the criteria laid down by High Powered Committee, should be released forthwith.

After considerable deliberations, Members of the Committee are of the opinion that the **Exclusion Clause No. (vii)** mentioned in the Minutes of Meeting dated **4th May, 2021** is desirable to be maintained. However, the directions issued by Hon'ble Supreme Court in **Para 11** of its order dated **7th May, 2021** facially suggests that even those who were released earlier and committed crime after such release, should be released. It appears that it was not brought to the notice of Hon'ble Supreme Court that there are cases where the released UTPs have committed crime after their release on *interim bail* last year, when it issued the general directions in **Para 11** of its order dated **7th May, 2021**.

After making deliberations, Members of the Committee **resolved** that let a **clarification** be sought from Hon'ble Supreme Court in this regard, by moving appropriate I.A. at the earliest and the release of these prisoners may **await** the clarification.

Kanwal Jeet Arora, Member Secretary, DLSLSA is accordingly **directed** by this Committee to move appropriate I.A. before Hon'ble Supreme Court at the earliest.

It is **resolved** accordingly.

ITEM NO.4: GRANT OF EMERGENCY PAROLE TO THE CONVICTS

Members of the Committee have gone through the directions passed by Hon'ble Supreme Court vide its order dated **7th May, 2021** which is reproduced as under:

"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."

In view of the above, Members of the Committee have revisited the resolution adopted in the meeting dated **4th May, 2021**. During Meeting dated **4th May, 2021**, Members of the Committee had recommended, Govt. of NCT of Delhi to release the **eligible convicts** on '**Emergency Parole**' for a period of **8 weeks**, in terms of recommendatory letter dated **26.04.2021** to of D.G. (Prisons) to Special Secretary (Home), Govt. of NCT of Delhi.

Considering that Hon'ble Supreme Court has directed that the convicts who were granted *emergency parole earlier* should be granted *parole* for a period of **90 days**, therefore, Members of the Committee recommends Govt. of NCT of Delhi to release the **eligible convicts** on '**Emergency Parole**' for a period of **90 days** instead of **8 weeks** as recommended earlier.

Shri B.S. Bhalla, Principal Secretary (Home), Govt. of NCT of Delhi **assures** the Committee that he shall put his **concerted efforts** to get the needful done at the earliest.

ITEM NO.5: IMPLEMENTATION OF DIRECTIONS/GUIDELINES LAID DOWN BY HON'BLE SUPREME COURT IN "ARNESH KUMAR VS. STATE OF BIHAR"

Members of the Committee have gone through the directions passed by Hon'ble Supreme Court in **Para 9** of its order dated **7th May, 2021**. Members of the Committee have also considered the resolution adopted by it vide its Meeting dated **4th May, 2021** under the heading "**Additional Points**".

It has been **unanimously** agreed by all the Members that compliance of the **guidelines** laid down in *Arnesh Kumar's* case would definitely de-stress the overcrowded jails. Vide Minutes of Meeting dated **4th May, 2021** a request letter was directed to be sent to Commissioner of Police, Delhi for issuance of appropriate directions to the Investigating Officers so as to **dissuade** them from mechanically arresting the persons accused of an offence punishable **upto or less than 7 years** imprisonment. As, Commissioner of Police is now a Member of this Committee, he states that he has **sensitized** all the Investigating Officers to follow the guidelines laid down by Hon'ble Supreme Court.

So far as maintenance of **social distancing, hygiene, sanitation** and **masking** of inmates and jail staff is concerned, D.G. (Prisons) has stated that he has **sensitized** all the jail officers and officials to comply with all the resolutions adopted by this Committee, in its earlier meetings.

ITEM NO.6: HONORUING THE WISHES OF JAIL INMATES FOR NON-AVAILING THE BENEFIT OF CRITERIA LAID DOWN BY THIS COMMITTEE

Members of the Committee have gone through the directions passed by Hon'ble Supreme Court vide its order dated **7th May, 2021**. Relevant portion of which is reproduced as under:

"14.---Some prisoner might not be willing to be released in view of their social background and the fear of becoming victim of the deadly virus. In such extraordinary cases, the authorities are directed to be considerate to the concerns of the inmates"

Having gone through the above directions passed by Hon'ble Supreme Court, it is **resolved** that the UTPs/convicts falling under the criteria laid down by this Committee for being released on *interim bail/emergency parole*, if are **not willing** for release, either due to fear of infection of virus once they are out of jail or having no place or relative to go to, or for any other reason, then such UTPs/Convicts **shall not be forcibly released** under the criteria laid down by this Committee. Jail officials shall consider all such cases with **empathy**.

D.G. (Prisons) stated that he shall **sensitize** the Jail Superintendent in this regard and shall **ensure** compliance of directions passed by Hon'ble Supreme Court.

Minutes of Meeting be **uploaded** on the **website** of *Delhi High Court, Delhi District Courts* and *Delhi State Legal Services Authority* as was being done earlier and also in compliance of directions given by Hon'ble Supreme Court in its order dated **7th May, 2021**.

Minutes of this meeting be implemented by all concerned, in anticipation of the signatures of Members and Chairperson of the committee.

Meeting ended with Vote of Thanks to the Chair.

**S.N. Shrivastava,
Commissioner
of Police, Delhi**

**B.S.Bhalla,
Principal Secretary
(Home), GNCTD**

**Sandeep Goel
D.G (Prisons)**

**Kanwal Jeet Arora
Member Secretary,
DSLISA**

**Hon'ble Mr. Justice Vipin Sanghi
Executive Chairperson DSLISA**