

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).406/2013

IN RE-INHUMAN CONDITIONS IN 1382 PRISONS

Petitioner(s)

VERSUS

. &amp; ORS.

Respondent(s)

(TO BE TAKEN UP AT THE TOP OF THE BOARD.....[MR.  
GAURAV AGRAWAL, SENIOR ADVOCATE IS AMICUS CURIAE.] )

Date : 22-10-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE HRISHIKESH ROY  
HON'BLE MR. JUSTICE S.V.N. BHATTIFor Petitioner(s) By Post, AOR  
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Mr. Kartikeya Rastogi, Adv.

UPON hearing the counsel the Court made the following

#### O R D E R

The Court in this matter is required to balance two apparently conflicting situations. While the Indian jails are bursting at the seams and at the same time lakhs of jail inmates are crying hoarse for freedom. The latest data suggests that of the total jail inmates, over 4 lakh are of the undertrial category and they constitute over 75% of the incarcerated prisoners. The over crowding of the jails is pegged at around 131%. The undertrial inmates are undoubtedly facing criminal charges but under our jurisprudence, they are to be presumed innocent till proved guilty. The state of mind of the incarcerated can be best understood by the following lines penned by Oscar Wilde in his *Ballad of Reading Gaol*.

*"I know not whether Laws be right,  
Or whether Laws be wrong;  
All that we know who be in jail*

*Is that the wall is strong;  
And that each day is like a year,  
A year whose days are long."*

2. On 23.08.2024, when this case was last listed, Mr. Gaurav Agrawal, learned Amicus Curiae submitted that with effect from 01.07.2024 Section 479 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS) has replaced the similar provision under Section 436A of the CrPC. This provides for a measure of relief for the undertrial prisoners, who have undergone long incarceration.

3. The Section 479 of the BNSS makes separate provisions for those undertrials who are first time offenders (who have not been convicted of any offence) and those who are outside of that category. The benefit under the provision is inapplicable for those charged under heinous offence for which death or life imprisonment is specified as one of the punishment under law.

4. For the first time offenders, the proviso to Section 479 of the BNSS requires that such undertrials be released on bond if he has undergone detention for the period extending upto one-third of maximum imprisonment specified for such offence.

5. The period of detention for the other category offence is minimum half of the maximum period of imprisonment specified for the offence in question. This would apply for those who are not in the category of first time offenders.

6. This Court's order dated 23.08.2024 indicated that the aforesaid provision of BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered

against them prior to 1.07.2024 i.e. the date when the new legislation has come into effect.

7. Therefore specific direction was given by the Court for implementation of Section 479 of the BNSS by calling upon the Superintendents of Jails across the country and also to ensure processing of their applications through the concerned Court upon their completion of one-half or one-third of the sentence, as the case may be, as per Section 479 of the BNSS. The Court accordingly directed that requisite steps, where the focus is to ease the overcrowding of Jails in the country, should be taken, and Reports be furnished by the Superintendent of the respective jails to their respective Heads of the Department so that comprehensive affidavit can be filed by each State Government/ Union Territory, through their respective Chief Secretaries.

8. Within the permitted time of two months granted by this Court, we are informed by Mr. Gaurav Agrawal, and Ms. Rashmi Nandakumar that of the total 36 States/Union Territories, 19 States/Union Territories have filed their respective response on the steps taken by them towards implementation of this Court's aforementioned order dated 23.08.2024.

9. A cursory examination of Reports of few of the States/Union Territories would indicate that the process of identification of undertrials who are entitled to the benefit of release under Section 479 of the BNSS is somewhat, deficient. For instance, in the State of Andhra Pradesh, there is not a single undertrial who is falling within the permitted category of undertrials and deserves the benefit of

release on completion of one-half or one-third of the sentence under Section 479 of the BNSS. This information, if true, will require no further comment but if this is not the correct picture of the undertrials in the State of Andhra Pradesh, the loopholes will have to be plugged so that the correct picture is furnished to the Court. The above instance is mentioned only to sensitize the respondents to file reports with complete and accurate details.

10. That apart, the information furnished by some of the States and Union Territories while indicating that a few of the undertrials have been identified and applications are being processed on their behalf for their release, but we notice that the release orders are yet to be obtained. The impediment(s) in the release of the deserving undertrials, is not indicated in the Reports given by the concerned State/Union Territory.

11. To address the above concern, first and foremost, those States/ Union Territories who are yet to file the response, must do so on or before 8.11.2024.

12. In order to smoothen the process of identification of deserving undertrials, the Undertrial Review Committee (UTRC) present in each district must play a more pivotal role by coordinating with the Jail Superintendents of all Jails in the country. The Member Secretary of the District Legal Services Authority and State Legal Services Authority should mobilize their panel advocates/ para legal volunteers so that relevant information on the incarcerated undertrials can be updated. This should be a continuous process as a particular undertrial



may cross the threshold bar of one-half or one-third sentence the very next day or soon the information is collected. Therefore effective continuous steps must be taken to ensure release of the deserving undertrials under the provisions of Section 479 of BNSS, in a proactive way.

13. An undertrial, who is entitled to be released, under Section 479 of the BNSS deserves effective consideration under the beneficial provision of the law. An incarcerated person must be thinking constantly of the day when he can be out of the jail walls. The filing of appropriate supplementary reports by the States/Union Territories in terms of this Court's order dated 23.08.2024 is accordingly ordered. Mr. Gaurav Agrawal with the assistance of Ms. Rashmi Nandakumar representing NALSA will then collate the information of each State and Union Territory, in alphabetical order and file before the next hearing. In their respective response/additional response, the State/Union Territory must indicate the reasons why a particular undertrial has not got the benefit of release order, although he falls within the permissible category, under Section 479 of the BNSS and his applications were presented before the competent Court. This input enables this Court to issue directions to the Court for discharge of duty or function at their end.

14. Mr. Gaurav Agrawal, learned Amicus Curiae furnishes the additional note suggesting steps to reduce overcrowding in Jails. This Report relates only to five States and the suggestions made therein should therefore be circulated to all the Standing Counsel of these States/Union Territories. They

may peruse those suggestions and should revert back with their response on implementation of the suggestions/recommendations. This can be done in next ten weeks.

15. A copy of this order be communicated to Chief Secretaries of all the States and Union Territories.

16. The matter be listed on 19.11.2024.

[DEEPAK JOSHI]  
ASTT. REGISTRAR-cum-PS

[KAMLESH RAWAT]  
ASSISTANT REGISTRAR