

ITEM NO.2

COURT NO.9

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

WRIT PETITION (CIVIL) NO. 406/2013

IN RE-INHUMAN CONDITIONS IN 1382 PRISONS

[MR. GAURAV AGRAWAL, SENIOR ADVOCATE, AMICUS CURIAE.]

Date : 23-08-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SANDEEP MEHTA

By Post

Mr. Gaurav Agrawal, Sr. Adv. (*Amicus Curiae*)

For Respondent(s)

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**UPON hearing the counsel, the Court made the following
O R D E R**

1. This order is in continuation of the order passed on 13th August, 2024. On the last date of hearing, Mr. Gaurav Agrawal, learned *Amicus Curiae* had submitted that the Bharatiya Nagarik Suraksha Sanhita, 2023¹, which has replaced the Code of Criminal Procedure, 1973 w.e.f. 01st July, 2024, contains a provision under Section 479 relating to the 'Maximum period for which an undertrial prisoner can be detained'. The attention of this Court was drawn to the first proviso to Section 479 to urge that a first-time offender (who has never been convicted for any offence in the past) is required to be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such an offence under a particular law.
2. Having regard to the fact that the substituted provision under the BNSS is more beneficial *vis-a-vis* Section 436A of the Code of Criminal

Procedure, 1973, wherein the period undergone by the first time offender was prescribed as up to half of the maximum period of imprisonment specified for such an offence, this Court had called upon the learned Additional Solicitor General to obtain instructions from the Department and submit a clarification regarding application of the said provision to all undertrials across the country.

3. Today, Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that pursuant to the aforesaid order, instructions have been obtained from the Department to the effect that the aforesaid provision under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01st July, 2024, the date when the newly minted legislation has come into effect.

4. In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.

5. The aforesaid steps shall be taken as expeditiously as possible, preferably within two months from today. Reports shall be submitted by the

Superintendent Jails to their respective Heads of the Department within the same time line for a comprehensive affidavit to be filed by each State Government/Union Territory through their respective Chief Secretaries. The affidavits shall furnish the details of the number of undertrials who would be entitled to extension of the benefit of Section 479 of the BNSS, the number of applications moved before the concerned Courts for their release and the number of undertrials actually released by the date of filing of the affidavits.

6. Compliance of the aforesaid provisions shall be made by the concerned District & Session Judges in all States/UTs who are in-Charge of the Under Trial Review Committees so that there is no laxity in implementation of the aforesaid beneficial provision.

7. List on the date already fixed, i.e. 22nd October, 2024, at the top of the Board.

(POOJA SHARMA)
COURT MASTER (SH)

(NAND KISHOR)
COURT MASTER (NSH)