



1-Cri. SMP-1-2021

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2021**

High Court on its own motion .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

**WITH  
INTERIM APPLICATION NO. 1339 OF 2021  
IN  
SUO MOTU PUBLIC INTEREST LITIGATION NO. 1 OF 2021**

Mrs. Sudha Dwivedi .. Applicant

**In the matter between :**

High Court on its own motion .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. Deepak Thakare, Public Prosecutor and Mr. Akshay Shinde  
"B" Panel Counsel for the Respondent-State.

Mr. Mihir Desai, Senior Advocate a/w Mr. Vijay Hiremath, Ms.  
Devyani Kulkarni and Mr. Mihir Joshi for intervenor – People's  
Union for Civil Liberties.

Mr. Neeschey Dixit a/w Mr. Estdev Dixit i/by Mr. Ranjit Agashe  
for applicant/intervener in IA No. 1339/2021.

Professor Vijay Raghavan, Centre for Criminology and Justice,  
School of Social Work, associated with Tata Institute of Social  
Sciences.

**CORAM : DIPANKAR DATTA, CJ &  
G. S. KULKARNI, J.**

**DATE : MAY 12, 2021**

**PC :**

1. Ever since a coordinate Bench of this Court had taken *suo motu* cognizance of news reports highlighting an alarming rise in COVID-19 cases in prisons of the State of Maharashtra and initiated this *suo motu* public interest litigation on 16<sup>th</sup> April, 2021, several orders have been passed by us to de-congest the correctional homes and to compel adherence to maintenance of COVID-19 protocol in such homes primarily to ensure safety and well-being of the correctional home inmates as well as the staff who, as of necessity, have to attend to duties thereat.

2. In course of a previous hearing, 29<sup>th</sup> April, 2021 to be precise, we had heard Mr.Kumbhakoni, learned Advocate General for the State of Maharashtra, Mr. Mihir Desai, learned senior advocate for Peoples Union for Civil Liberties, and Professor Vijay Raghvan, criminologist associated with the TATA Institute of Social Sciences, on the various issues that were raised to keep the onslaught of COVID-19 in the correctional homes at the bare minimum. The order passed on that day contained several directions in an attempt to address the issues that were raised.

3. Today, we have heard Mr. Desai, Mr. Deepak Thakare, learned Public Prosecutor, Mr. Dixit, learned advocate for the applicant in IA/1339/2021 and Professor Vijay Raghavan on the question of compliance with such directions by the State as well as other measures required to be taken.

4. While noting the progress made in achieving compliance of our earlier directions, we also propose to make additional

directions in the light of certain developments subsequent to such order dated 29<sup>th</sup> April, 2021.

5. (i) The first direction was in regard to activating the High Powered Committee (HPC) constituted in terms of the order of the Supreme Court dated 23<sup>rd</sup> March 2020 in Suo Motu Writ Petition (C) No. 1 of 2020. A request was made to the HPC to meet at least once before this Court closes for Summer Vacation and to identify, in its wisdom, such further categories of inmates who could be released in furtherance of the avowed object of reducing the problem of overcrowding in the correctional homes.

(ii) Mr. Thakare, learned Public Prosecutor appearing for the State has placed before us today a brief note. The brief note purports to place on record the steps that have been undertaken by the prison authorities to control the pandemic created by COVID-19 as well as comply with our order dated April 29, 2021. He has also placed before us the minutes of the HPC meetings dated 7<sup>th</sup> May 2021 (physical) and 11<sup>th</sup> May 2021 (through video conferencing). Such meetings were conducted not only in terms of our order dated 29<sup>th</sup> April, 2021, but also in terms of a recent order dated 7<sup>th</sup> May, 2021 passed by the Supreme Court in Suo Motu Writ Petition (C) No. 1 of 2020. The brief note as well as the minutes of the HPC meetings are taken on record.

(iii) We have read the minutes of meetings held by the HPC. After thorough discussion and deliberation, the HPC has issued several guidelines/recommendations as contained in paragraph 16 thereof. All of them, we are inclined to believe, have been made bearing in mind the noble object that the

Supreme Court as well as this Court had in mind while initiating *suo motu* proceedings to de-congest the correctional homes. We need not refer to all the guidelines/recommendations contained in paragraph 16 in details here. Certain guidelines/recommendations do overlap the directions given by us while hearing this petition; nevertheless, the guidelines/recommendations being complementary to the directions issued by us, it is expected that the authorities, to whom such guidelines/ recommendations are directed and are binding, shall follow the same in letter and spirit.

6. (i) The second direction was with regard to devising ways and means to regulate the entry of staff in the correctional homes, since it was apprehended that such staff were the carriers of the virus and contributed to its spread among the inmates.

(ii) The steps taken by the State to regulate entry of prison staff entering the correctional homes have been indicated in paragraphs 6 and 8 of the brief note. It is revealed that pulse oximeter reading, temperature reading as well as tests for symptoms common to the infection in issue are required to be undergone by each staff. Such staff also has to wear appropriate masks, properly. Sanitizers have been made available as well as appropriate briefing is given to them for maintaining COVID-19 protocol inside the correctional homes.

(iii) Additionally, only those staff, who are vaccinated, are being assigned duties and to interact with the inmates. The State has assured that urgent steps would be taken to ensure that the entire prison staff is vaccinated at the earliest.

(iv) In our view, the steps are sufficient for the moment to ensure protection of inmates of correctional homes from being infected by the staff attending to their needs. We do encourage the State, as far as practicable, to have all the prison staff vaccinated as early as possible.

7. (i) Our third direction required the prison authorities not to compel an inmate to obtain release either on interim bail or emergency parole, without his free will/volition.

(ii) The HPC, in its minutes of meetings, has recorded that 26 inmates are not willing to apply for emergency parole and are not interested in being temporarily released. If indeed that be so, our direction in this behalf shall continue to operate until further orders.

8. (i) The fourth direction required the executive Government to frame an appropriate policy bearing in mind all attendant circumstances to ensure that an eligible inmate of a correctional home is not deprived of the benefits of the vaccine owing to absence of any of the enumerated identity cards, including Aadhar Card.

(ii) In course of hearing, our attention has been drawn by Mr. Desai to a Standard Operating Procedure (SOP) on COVID-19 ~ Vaccination of Persons without Prescribed Identity Cards through CoWIN portal dated 6<sup>th</sup> May 2021 ~ which stipulates that if a group of people is found not to have any of the 7 specified identity cards required for vaccination, such group of people may be registered on the CoWIN portal and further steps taken in accordance with the SOP for vaccination.

(iii) Although the document does not indicate the authority issuing it, we have been informed that the Ministry of Health and Family Welfare, Government of India has issued the SOP.

(iv) In such view of the matter, we direct the State as well as the prison authorities not to insist on production of Aadhar Cards by correctional home inmates and to proceed for vaccination of those inmates, not having the specified identity cards, in the manner as laid down in the SOP without any delay.

9. (i) Our fifth direction for setting up more temporary prisons over and above the 21 temporary prisons that had been set up is reportedly complied with by the State. According to the brief note, as on date, 40 temporary prisons are functional.

(ii) We record our satisfaction with regard to the prompt steps taken by the State to set up additional temporary prisons.

10. (i) The sixth direction required the State to ensure that the statutory mandate of the Maharashtra Prison (Prison Hospital) Rules, 2015 framed under the provisions of the Prison Act, 1894 are complied with as early as possible; also, if there be dearth of medical officers, a policy of rotation could be formulated and pressed into service.

(ii) The particulars of medical officers as well as para-medical staff as on 31<sup>st</sup> April 2021 posted in the various central prisons and district prisons, placed before us by Mr. Thakare, present a very dismal picture. In case of both medical officers and para-medical staff, nearly 1/3<sup>rd</sup> of the vacancies remain unfilled. That apart, though Medical Officers belonging to Classes I, II and III are shown to have been posted at various

correctional homes but the principle behind such posting has not been indicated in the brief note. Also, Yerwada Central Prison was found not to have the service of a single Medical Officer Class I.

(iii) In course of hearing, while calling upon Mr. Thakare to explain how medical officers are classified and the principle that governs their posting, we also sought to impress upon him that at least efforts should have been made so that all the sanctioned posts are filled up and that there is zero vacancy *qua* such posts.

(iv) Sensing that he would have to weather a rough storm, Mr. Thakare frankly submitted that some time ought to be granted to the State to furnish full facts and figures and how the State proposes to deal with the problem of dearth of medical officers and para-medical staff at the various correctional homes.

(v) Since Mr. Thakare, without wasting precious judicial time, has prayed for an adjournment, we grant his prayer sounding a note of caution that omission and/or failure to deal with the concern at hand by the State in the near future may not be viewed lightly.

11. Insofar as the seventh direction is concerned, we find that the guidelines/recommendations of the HPC are comprehensive enough to take care of this issue and no further direction in this regard is called for.

12. (i) The eighth direction required the Undertrial Review Committee(s) to prepare their plan of action based on the SOP

prepared by the National Legal Services Authority (NALSA) and for the same to be placed before us for our consideration.

(ii) Here again, there appears to be a lack of initiative. The brief note is silent on whether any step has been taken in terms of the SOP by the Undertrial Review Committee(s).

(iii) We grant time to Mr. Thakare to respond, accepting his prayer.

13. (i) The ninth and final direction required the State and the correctional home authorities to do whatever else was required for the welfare and benefit of the inmates of the correctional homes and to bring down the number of positive cases.

(ii) To this end, the State asserts that additional 24,250 masks have been distributed amongst the correctional home inmates and the number of cell phone sets have been increased from 40 to 50. Further, 10,161 inmates, aged 18 years and more and having their Aadhar cards have been identified for vaccination, depending upon the availability of vaccines. Also, proactive role has been adopted for extending the rate of testing to the maximum number of inmates as well as staff subject to availability of RT-PCR tests.

(iii) The number of inmates who were positive as on 28<sup>th</sup> April, 2021 was 244, whereas the number has increased to 311 as on 10<sup>th</sup> May, 2021. The number of positive jail staff has, however, decreased from 117 to 107, as on the dates aforementioned. The numbers show that much is required at the end of the prison authorities to arrest the spread of the pandemic in the correctional homes.



(iv) We hope and trust that by the next date of hearing, the prison authorities shall be in a position to give us better particulars of how the affected inmates are being treated and what further measures have been taken to post medical officers/para medical staff in the correctional homes.

14. We have heard Mr. Desai voicing a grievance that number of inmates have been deprived of the opportunity of interacting with their family members on telephone twice a week, as earlier directed by us. Without examining the worth of such allegation, we direct the prison authorities to examine this allegation and if found to be true, to remedy it as early as possible.

15. Professor Vijay Raghavan has given the following suggestions: -

(i) Vaccination camps could be set up within the precincts of the correctional homes so that the inmates are not required to be transported to a distant vaccination centre and thereby make them run the risk of being infected;

(ii) Family members of the prison staff may be vaccinated;

(iii) If no identity card is available with or produced by a correctional home inmate and the same impedes the process of vaccination, other particulars like bank account numbers may be looked into for facilitating the vaccination drive;

(iv) Women and children inmates infected with diseases like HIV/Tuberculosis could be considered for release; and

(v) There is a report in the day's edition of Hindustan Times that there is an acute water shortage in Taloja correctional home and that immediate steps ought to be taken to restore the water supply.

16. Instead of making any direction on the above suggestions, we require the State to consider the same and take appropriate steps in relation thereto within the limits of its capacity. We hope and trust of being informed of some positive steps taken by the State in relation thereto, on the next date.

17. Post this *suo motu* PIL petition on 19<sup>th</sup> May, 2021 for further consideration. In the meanwhile, the State shall file an affidavit and put on record its compliance of the directions made hereinabove.

**(G. S. KULKARNI, J.)**

**(CHIEF JUSTICE)**