

**PROCEEDING OF THE COMMITTEE CONSTITUTED UNDER THE
DIRECTIONS OF THE HON'BLE SUPREME COURT HELD ON
28.03.2020 IN THE PREMISES OF THE HON'BLE HIGH COURT**

In view of the resolution, dated 26.03.2020, of this Committee, we again held meeting in the Court premises. In proceeding, dated 26.03.2020, the Committee had resolved to give proposal to the Hon'ble Chief Justice for constituting a Bench for issuance of general directions to all the Jail Superintendents regarding release of prisoners, provisionally. Accordingly, by order, on the same date *i.e.*, on 26.03.2020, the Hon'ble Chief Justice constituted a Special Bench and as per our resolution, directed that the convicts or under-trial offenders for the offences to which maximum sentence prescribed is not more than seven (7) years, may be released on *interim* bail on furnishing adequate bail bonds if they are not second offenders and also not offenders under Section 376 of IPC and POCSO Act, for a period of one month. For the purpose of bail bond, it is however directed that the Principal District and Sessions Judge shall assign the Judicial Magistrate to reach the District Jails on being asked by the superintendent of the Central Jail of his area, for furnishing/accepting adequate bail bonds to the satisfaction of the Magistrate, for their release to a limited period. The undertaking shall be taken from them for having quarantine for 14 days at their home under the surveillance of the Doctor with the help of the Police. It was further directed therein that violation of conditions would entail cancellation of the *interim* bail/suspension and such persons who violate the conditions may be taken to custody immediately.

The Direction of the Hon'ble Supreme Court in Suo Motu Writ Petition No.1 of 2020, dated 23.03.2020, was also to implement its earlier directions in a case reported in **Arnesh kumar v. State of Bihar** {(2014 (8) SCC 273}. The said case was mainly in relation to offence under Section 498-A of IPC but the Hon'ble Supreme Court had further directed to apply the same principle in cases relating to offences punishable with imprisonment for a term which may be less than seven (7) years or which may extend to seven (7) years with or without fine. The direction of the Hon'ble Supreme Court in **Arnesh Kumar** (*supra*) in Paragraph No.13 is as follows:

"13. Our endeavour in this judgment is to ensure that police officers do not arrest accused unnecessarily and Magistrate do not authorise detention casually and mechanically. In order to ensure what we have observed above, we give the following direction:

(1) All the State Governments to instruct its police officers not to automatically arrest when a case Under Section 498-A of the Indian Penal Code is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41, Code of Criminal Procedure;

(2) All police officers be provided with a check list containing specified sub-clauses Under Section 41(1)(b)(ii);

(3) The police officer shall forward the check list duly filed and furnish the reasons and materials which necessitated the arrest, while forwarding/producing the accused before the Magistrate for further detention;

(4) The Magistrate while authorising 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 authorise detention;

(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;

(6) Notice of appearance in terms of Section 41A of Code of Criminal Procedure 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;

(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 High Court having territorial jurisdiction.

(8) Authorising detention without recording reasons as aforesaid by the judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court."

Since there is already direction of the Hon'ble Supreme Court, the Director General of Police, Government of AP, can be requested to implement the direction of the Hon'ble Supreme Court in its letter and spirit, particularly in view of the present situation which has arisen due to Corona virus.

The Committee further resolved to take steps for releasing under-trials in view of provision contained in Section 436-A of Cr.P.C., as has been taken note by the Hon'ble Supreme Court in *Suo Motu Writ Petition No.1 of 2020*. Besides this, it has been resolved to examine the cases of convicts, who have already spent the maximum sentence imposed by the trial Court so that they may be released forthwith.

So far as overcrowding in different prisons within the territorial jurisdiction of the State of Andhra Pradesh is concerned, the Principal Secretary (Home) as well as the Director General (Prisons), after collecting information from all the prisons have come to the conclusion that considering the space in different prisons and limited number of prisoners at the moment, there is no reason for taking any steps for shifting/transferring any prisoner from one

prison to another. The Committee also resolved to issue instructions to the Member Secretary, State Legal Services Authority, AP, to implement all the directions/recommendations made by this Committee in consultation with the Secretaries of different District Legal Services Committees and encourage panel lawyers/para legal volunteers to be in touch with the concerned Jail Superintendents/Jailors.

Sd/-

HON'BLE SRI JUSTICE RAKESH KUMAR
EXECUTIVE CHAIRMAN,
A.P.STATE LEGAL SERVICES
AUTHORITY
AMARAVATHI

Sd/-

HON'BLE SRI JUSTICE A.V.SESHA SAL,
EXECUTIVE CHAIRMAN,
HIGH COURT LEGAL SERVICES
COMMITTEE
AMARAVATHI

Sd/-

PRINCIPAL SECRETARY
(HOME)

Sd/-

DIRECTOR GENERAL OF PRISONS

Date 28.03.2020

Note

1. Registrar General to place this report forthwith before the Hon'ble the Chief Justice for necessary action
2. Principal Secretary (Home) is requested to communicate this proceeding to the Director General of Police for necessary action.