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No. V-17013/24/2013-PR
Government of India
Ministry of Home Affairs
(CS Division)

5th Floor, NDCC-II Building
Jai Singh Road,
New Delhi, the 27th September 2014

To

- 1) The Additional Chief Secretary (Home)/Principal Secretary (Home Department)/Principal Secretary (Prisons)/
- 2) DG(Prisons)/IG(Prisons) of all States/UTs

Sub: Guidelines on reckoning half-life of time spent in judicial custody of Under-trial prisoners under Section 436A of Cr.P.C

Sir/Ma'am,

1. The State Governments and Union Territories have been requested to adopt various measures related to reduction in overcrowding by advisories dated 9th May 2011¹ and 17th January 2013² of the Ministry of Home Affairs by focusing on the release of under-trial prisoners (UTPs) who have spent more than half the period of their likely sentence u/s 436A of the Cr.P.C. It is seen that nearly 2/3rd of those incarcerated are UTPs and this ratio has remained constant lately. In many cases accused persons are kept in prison for very long periods as UTPs and are eligible to set-off u/s 428 of the Cr.P.C. In some cases the sentence of imprisonment ultimately awarded is a fraction of the period spent in jail as UTP. In some other cases the UTPs have even been acquitted. In many cases the accused person is made to suffer jail life for a period out of all proportion to the gravity of the offence or even to the punishment provided in the statute. As per the Advisory dated 17th January 2013 all the States/UTs have been asked to prepare lists of those UTPs who have completed half of their likely sentence (half-life) in prison so that the same could be taken up for review by the UTP review committees and the District Legal Service Authorities and they could be released on bail by the concerned Judge/Magistrate.

2. The Supreme Court has also been seized of this issue and being concerned has in *Bhim Singh vs. Uol and othrs. in W.P.(Crl.) No.310/2005 on 7th September, 2014*, issued the following directions:

¹ <http://mha.nic.in/pdfs/PrisonAdvisories-1011.pdf>

² http://mha.nic.in/sites/upload_files/mha/files/AdvSec436APrisons-060213_0.pdf

"We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of 436A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay."

To facilitate the compliance of the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the courts sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance."

3. Now it is essential that the order of the Supreme Court should be implemented earnestly. For reckoning the half-life of such UTPs, the principles of set off enunciated in section 428 of the Cr PC need to be considered particularly for those UTPs who have been arrested for more than one offence and the cases are pending in different courts under difference jurisdictions. An analysis has found that there are difficulties in determining the half-life of a sentence and hence States/UTs are advised to following these guidelines for various scenarios as to the half life that should be reckoned for a UTP who is to be taken up for review:

(a). **For those UTPs arrested for only one offence:-** the period of detention in prison during investigation, enquiry or trial in that case is to be considered for the purpose of reckoning half-life. He would be eligible for bail for the purpose of s 436 A of Cr.P. if he has been detained in prison for half the maximum tariff prescribed as a punishment for the offence.

(b). **For those UTPs arrested for more than one offence in the same case:-** where each of those offences attract separate sentences of differing lengths, one lesser and

the other larger, his period of half-life would be reckoned from the date of detention, and even when the half life is over for the lesser offence he would continue in detention, till the half-life of the sentence is over for the other graver offence which attracts a longer sentence.

(c) **For those UTPs arrested and being tried for more than one offence in separate cases:-**where each of those offences attract separate sentences of differing lengths, one lesser and the other longer, the periods of detention for both cases would be reckoned separately from the date of arrest if separate.

As an illustration, A is arrested on **01-01-2012** for an offence of theft u/s 379 of IPC which attracts a maximum punishment of 3 years. While in detention he is also declared an accused/accomplice in another offence u/s 239 of IPC for an offence of delivery of counterfeiting of coins which attracts a punishment of 5 years. The half-life of sentence to be reckoned would be with respect to the second offence.

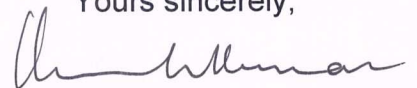
For further clarity, in another illustration, if A completes his half life for the first offence, where his detention is reckoned from 01-01-2012, his date of arrest, and is released on bail after 1 year 6 months and commits the second offence u/s 239 IPC while on bail, and is arrested again say on **01-08-2013**, his half life would now be considered from his second date of arrest without the benefit of setting off his earlier detention period.

It may be mentioned that for all the above cases, where the maximum tariff is life imprisonment for an offence committed by a UTP, then u/s 57 of IPC, life imprisonment should be considered should be 20 years imprisonment for which the half-life would be 10 years u/s 436A of Cr.P.C.

4. Action taken to prepare such lists of UTPs for review under s 436 A may be completed in a time bound manner. In addition, a permanent mechanism should be put in place for such scrutiny and short-listing of eligible UTPs to provide them relief and reduce overcrowding in prisons.

The receipt of this advisory may please be acknowledged.

Yours sincerely,



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