

MOST IMMEDIATE
IMPORTANT

No. 17013/20/2024-PR
Government of India
Ministry of Home Affairs

Women Safety Division, 2nd Floor
Major Dhyan Chand National Stadium
India Gate, New Delhi-110001
October 16, 2024

To

- 1. The Chief Secretaries of all States and UTs**
- 2. DG/IG Prisons and Correctional Services of all States and UTs**

**Sub: Implementation of the provisions of Section 479 of 'The Bharatiya
Nagarik Suraksha Sanhita, 2023' (BNSS) by State Prison authorities
for providing relief to undertrial prisoners.**

Sir/Madam,

As you are aware, overcrowding in prisons, especially the issue of large number of undertrial prisoners, has been a matter of concern for the Government of India. For addressing the issue of long detention of undertrial prisoners and the hardship faced by them, the Ministry of Home Affairs has been taking various progressive steps from time to time, including grant of financial aid to the States and Union Territories (UTs) for providing relief to such prisoners in seeking release from prisons.

2. In context of the above, it is stated that Section 479 (1) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which has come into force with effect from 1st July 2024, provides that 'Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) **undergone detention** for a period extending up to **one-half of the maximum period** of imprisonment specified for that offence under that law, **he shall be released by the Court on bail.**'

3. **A new Proviso has been added** under Section 479 (1) of the BNSS, which reads as follows:

'Provided that where such person is a **first-time offender** (who has never been convicted of any offence in the past) **he shall 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 offence under that law.'

4. **Section 479 (3) of the BNSS casts a specific responsibility upon the Superintendent of Prisons**, where the accused person is detained, **to make an application to the concerned court for release of such prisoners on bail**. The text of Section 479 (3) is cited below for the information and attention of all prison authorities:

'The Superintendent of Jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, **shall forthwith make an application in writing to the Court** to proceed under sub-section (1) for the release of such person on bail.'

5. Recently, the Supreme Court of India, in its Order dated 23rd August 2024, in 'Inhuman Conditions in 1382 Prisons' (copy attached) noted that the provisions of Section 479 of BNSS **'shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 1st July 2024'**, the date when the new law came into effect. **The Hon'ble Court has directed the Superintendents of Jails** across the country that wherever accused persons are detained as undertrials, **their applications may be preferred** to the concerned Courts, upon completion of one-half/one-third of the period mentioned in sub section (1) of Section 479, for their release on bail.

6. All States and UTs are requested to take note of the **specific legal mandate cast on the Superintendent of Prisons** under their jurisdiction and disseminate this information to all relevant ranks, particularly the Superintendent of Prisons, and monitor the effective implementation of the new provisions of BNSS, as cited above.

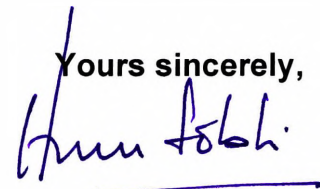
7. For assisting the State/UT Prison authorities in quick identification of eligible prisoners, the Ministry of Home Affairs has made **appropriate provisions in the national E-Prisons portal**, enlisting i) types of offences that prisoners have been charged with, ii) the maximum sentence for the offence committed, iii) the date of completion of one-half or one-third of the maximum period of imprisonment specified for an offence under the relevant law by a prisoner, etc. **The E-prisons portal has thus enabled the State Jail authorities to access the data of inmates in a quick and easy manner for identifying eligible inmates whose application needs to be moved to the Court for their release on bail.**

8. It is also brought to the attention of all States and UTs that some time back this Ministry had introduced a scheme namely **'Support to poor prisoners'**, aimed at providing relief to poor prisoners, who are either **unable to pay the amount of fine imposed on them or are unable to secure bail due to financial constraints**. Many such prisoners could be socially disadvantaged or may belong to low-income groups. With the endeavour of providing support to such prisoners, the Government

of India had decided to provide financial aid to such prisoners, through the respective States/UTs, which may help them in **paying their outstanding amount of fine or in securing bail bond**. Union Home Secretary, vide his letter dated 19th June, 2023, had forwarded the 'Guidelines and Standard Operating Procedure' of the Scheme to the Chief Secretaries and DG/IG Prisons of all States and UTs. **However, it is noted that many States/UTs are yet to take full advantage of this scheme** despite MHA's repeated persuasion in this regard.

9. It is expected that with the active involvement and monitoring by the States and UTs, **the new provisions of law will go a long way in not only mitigating the situation** of long detention faced by undertrial prisoners but will also address the issue of overcrowding in prisons. **States and UTs are requested to take full advantage of the national ePrisons portal and the Support to Poor Prisoners Scheme for providing relief to prisoners.**

Yours sincerely,

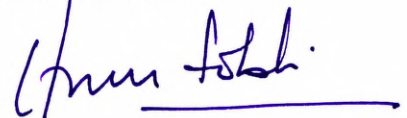


(Arun Sobti)
Director (Prison Reforms)
Tele: 2307 5297
Email: dspr.atc@mha.gov.in

Copy to:

- i) The Secretary, Department of Justice, Jaisalmer House, New Delhi.
- ii) The Member-Secretary, National Legal Services Authority, 12/11, Jam Nagar House, Shahjahan Road, New Delhi

- with the request to issue suitable instructions to all State/District Legal Service Authorities to coordinate with the State Jail authorities/Superintendent of Prisons for preferring applications of eligible prisoners in the concerned Court in compliance of the Orders of the Hon'ble Supreme Court of India.



(Arun Sobti)
Director (Prison Reforms)
Tele: 2307 5297
Email: dspr.atc@mha.gov.in

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)

Mrs. Aishwariya Bahti, A.S.G.
Mr. R Bala, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mrs. Suhasini Sen, Adv.
Mr. Ishaan Sharma, Adv.
Mrs. Shagun Thakur, Adv.
Mr. Kamendra Mishra, Adv.
Mrs. Neelakshi Bhadouria, Adv.

Ms. Aishwarya Bhati, A.S.G.
Mr. R Bala, Sr. Adv.
Mrs. Suhashini Sen, Adv.
Mr. Ashok Panigrahi, Adv.
Mr. B K Satija, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Kartikay Agrawal, Adv.
Mr. Abhishek Kumar Pandey, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Raman Yadav, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mrs. Ameya Vikrama Thanvi, Adv.
Mr. Arvind Kumar Sharma, AOR

Signature Not Verified

Digitally signed by
KAVITA PAWUJA
Date: 2024.08.27
18:33:17IST
Reason: —

	Mr. Mahfooz Ahsan Nazki, AOR
	Mr. Shuvodeep Roy, AOR Mr. Saurabh Tripathi, Adv.
Arunachal Pradesh	Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.
R-5	Ms. Pragati Neekhara, AOR
Gujarat	Ms. Swati Ghildiyal, AOR Ms. Deepanwita Priyanka, Adv. Ms. Devyani Bhatt, Adv. Ms. Neha Singh, Adv.
Goa	Mr. Surjendu Sankar Das, AOR Mr. Anand Murthi Rao, Adv.
Haryana	Mr. B.K. Satija, A.A.G. Mr. Samar Vijay Singh, AOR Mr. Keshav Mittal, Adv. Ms. Sabarni Som, Adv. Mr. Fateh Singh, Adv. Mr. T. N. Surendranath, Adv. Mr. Atul Arvind, Adv. Mr. Ritesh Kumar Gupta, Adv. Mr. Prakhar Garg, Adv.
R-9	Mr. Parth Awasthi, Adv. Mr. Pashupathi Nath Razdan, AOR Ms. Maitreyee Jagat Joshi, Adv. Mr. Astik Gupta, Adv.
Himachal Pradesh	Ms. Inderdeep Kaur Raina, Adv. Mr. Kartikeya Rastogi, Adv. Mr. Rishi Malhotra, AOR
Karnataka	Mr. V. N. Raghupathy, AOR
Kerala	Mr. C. K. Sasi, AOR Ms. Meena K Poullose, Adv. Ms. Anupriya, Adv.
R-14	Ms. Mrinal Gopal Elker, AOR Mr. Bittu Kumar Singh, Adv. Ms. Chhavi Verma, Adv.
Maharashtra	Mr. Bharat Bagla, Adv. Mr. Siddharth Dharmadhikari, Adv.

	Mr. Aaditya Aniruddha Pande, AOR Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Ms. Preet S. Phanse, Adv. Mr. Adarsh Dubey, Adv.
Manipur	Mr. Pukhrambam Ramesh Kumar, AOR Mr. Karun Sharma, Adv. Ms. Anupama Ngangom, Adv. Ms. Rajkumari Divyasana, Adv. Mr. R. Rajaselvan, Adv.
Meghalaya	Mr. Amit Kumar, Adv. General, Sr. Adv. Mr. Avijit Mani Tripathi, AOR Mr. T.K. Nayak, Adv. Ms. Rekha Bakshi, Adv. Ms. Marbiang Khongwir, Adv. Mr. Upendra Mishra, Adv.* Mr. P.S. Negi, Adv.*
R-18	Mr. Siddhesh Shirish Kotwal, AOR
Nagaland	Ms. K. Enatoli Sema, AOR Ms. Limayinla Jamir, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmai, Adv.
Odisha	Ms. Anindita Pujari, AOR
Punjab	Mr. Mohd Irshad, A.A.G. Mr. Karan Sharma, AOR
Rajasthan	Mr. Sandeep Kumar Jha, AOR
Sikkim	Mr. Raghvendra Kumar, AOR Mr. Anand Kumar Dubey, Adv. Mr. Simanta Kumar, Adv. Mr. Devvrat Singh, Adv. Mr. Maneesh Pathak, Adv. Mr. Jainendra Kumar, Adv.
Tamil Nadu	Mr. Amit Anand Tiwari, Sr. A.A.G. Mr. Sabarish Subramanian, AOR Ms. Devyani Gupta, Adv. Mr. Vishnu Unnikrishnan, Adv. Mr. Naman Dwivedi, Adv. Mr. C Kranthi Kumar, Adv. Ms. Tanvi Anand, Adv. Ms. Saushria Havelia, Adv.

Mr. Danish Saifi, Adv.

R-26 Mr. Siddharth Sangal, AOR

U.P. Ms. Garima Prashad, Sr. A.A.G.
Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.
Mr. Manoj Kumar Sharma, Adv.

West Bengal Mr. Srisatya Mohanty, Adv.
Ms. Astha Sharma, AOR
Mr. Shreyas Awasthi, Adv.
Ms. Muskan Surana, Adv.

INT Ms. Pallavi Langar, AOR

INT Ms. Namita Choudhary, AOR
Mr. Ashutosh Kumar Sharma, Adv.
Mr. Sandeep Kumar Jha, AOR

Bihar Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.
Mr. Kashif Irshad Khan, Adv.
Mr. Abhimanyu Jhamba, Adv.

IMPL Ms. Rashmi Nandakumar, AOR
Ms. Yashmita Pandey, Adv.

IMPL Mr. Rajendra Sahu, AOR
Ms. Hema Sahu, Adv.
Mr. Rishabh Sahu, Adv.
Mr. C L Sahu, Adv.
Dr. Vikas Pahal, Adv.

IMPL Mr. Gurmeet Singh Makker, AOR

Mizoram Mr. Anando Mukherjee, AOR
Mr. Shwetank Singh, Adv.
Ms. Akshata Chhabra, Adv.

INT Mr. Chandra Prakash, AOR

Jharkhand Mr. Tapesk Kumar Singh, Sr. Adv, A.A.G.
Mr. Shantanu Sagar, AOR
Mr. Prabhat Ranjan Raj, Adv.
Mr. Anil Kumar, Adv.
Mr. Gunjesh Ranjan, Adv.
Mr. Manoneet Dwivedi, Adv.

IMPL

Mr. Salvador Santosh Rebello, AOR
Mr. Raghav Sharma, Adv.
Ms. Kritika, Adv.
Mr. Prateek Tanmay, Adv.
Ms. Pooja Gill, Adv.

Mr. Gaurav Agrawal, AOR

Mr. Sameer Abhyankar, AOR
Mr. Aakash Thakur, Adv.
Mr. Rahul Kumar, Adv.
Mr. Kushagra Aman, Adv.
Ms. Ayushi Bansal, Adv.

Mrs. Aishwarya Bhati, A.S.G.
Mr. Amrish Kumar, AOR
Mrs. Suhasini Sen, Adv.
Mr. Kamendra Mishra, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Sarthak Karol, Adv.
Mr. Ameyvikrama Thanvi, Adv.

Mr. Guntur Pramod Kumar, AOR
Ms. Prerna Singh, Adv.
Mr. Dhruv Yadav, Adv.
Mr. Keshav Singh, Adv.

Chhattisgarh

Mr. Abhishek Pandey, Adv.
Mr. Prashant Kumar Umrao, AOR

Mrs. Aishwariya Bahti, A.S.G.
Mr. R Bala, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mrs. Suhasini Sen, Adv.
Mr. Ishaan Sharma, Adv.
Mrs. Shagun Thakur, Adv.
Mr. Kamendra Mishra, Adv.
Mrs. Neelakshi Bhadouria, Adv.

UT OF A&N

Mr. K. M. Nataraj, A.S.G.(NP)
Mrs. Indira Bhakar, Adv.
Mrs. Mrinal Elkar Mazumdar, Adv.
Mr. Rajesh Singh Chauhan, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Harish Pandey, Adv.
Mr. Shashwat Parihar, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Varun Chugh, Adv.
Mr. Bhuvan Kapoor, Adv.

Mr. Krishna Kant Dubey, Adv.
Mr. Shreekant Neelappa Terdal, AOR
Mr. Vineet Singh, Adv.*

INT

Mr. Ajay Verma, Adv.
Mr. Vaishnav Kirti Singh, Adv.
Mr. Krishna Sharma, Adv.
Mr. Durgesh Ramchandra Gupta, AOR

Mr. Prashant Singh, AOR

Ms. Devina Sehgal, AOR
Mr. Dhananjay Yadav, Adv.

**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)