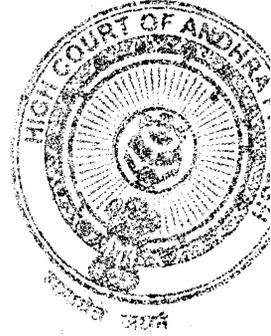


## IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MONDAY, THE SEVENTEENTH DAY OF MAY,  
TWO THOUSAND AND TWENTY ONE



**:PRESENT:**  
**THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR**  
**AND**  
**THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI**

**SUO MOTU WRIT PETITION NO: 10151 OF 2021**

In Re; Contagion of Covid Virus in prisons in the State of Andhra Pradesh

**AND**

1. The State of Andhra Pradesh, rep by Chief Secretary, AP Secretariat, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh
2. The State of Andhra Pradesh, rep by Principal Secretary, Home (Police) Department, AP Secretariat, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh
3. The State of Andhra Pradesh, rep by Principal Secretary, Home (Prisons) Department, AP Secretariat, Velagapudi, Amaravathi, Guntur District,
4. Director-General of Police, Government of Andhra Pradesh, Mangalagiri, Guntur District
5. Director General of Prisons & Correctional Services, Andhra Pradesh, D. No. 24-28/1-8A, Gulabi Thota, Durgapuram, Vijayawada-520003, Andhra Pradesh

**Respondents**

Petition under Article 226 of the Constitution of India praying this Hon'ble Court to issue a writ in the nature of Writ of Mandamus calling for the records from the Respondents, relating to the convicts and under trial prisoners in the State of Andhra Pradesh, and to direct all the jail superintendents and the judicial officers concerned for release of the convicts and undertrial prisoners on interim bail, as per Resolution Numbers 3 to 6 of the High Power Committee passed as per the directions of the Honourable Supreme Court Judgment dated 7-5-2021 in Sumo motu W.P.( C) No.1 of 2020 in RE: Contagion of Covid Virus in prisons – Viz, (3) resolved to release on interim bail all the convicts/under trail prisoners, who had been released on interim bail earlier pursuant to the resolutions of the High Powered Committee dated 26.03.2020 and 28.03.2020 but have been re-admitted to the prison unless they are not otherwise disqualified as per the resolutions of the Committee; (4) Resolved to release the other convicts/under trial prisoners who are in custody in connection with offences punishable with imprisonment for a term which may extend up to 7 years or less with or without fine and qualify for such release as per the resolutions of the High Powered Committee dated 26. 03.2020; (5) Resolved that the interim bail be granted for 90 days initially; and (6) Resolved that bail bonds shall be furnished to the satisfaction of the Magistrate concerned and the amount of bail bonds shall be reasonable. Under taking shall be furnished before release that the convict/under trial prisoner shall remain in home quarantine for 14 days after the release. Interim bail may be cancelled for violation of conditions of bail and the convict/under trial shall be forthwith taken into custody" - and to issue such other or further directions as this Hon'ble Court deems fit and proper.

The Suo Motu Writ Petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of The Advocate General appearing for the Respondent Nos.1, 2 & 4 and of the Public Prosecutor appearing for the Respondent Nos.3 & 5, **the Court made the following Order:-**

**HON'BLE SRI JUSTICE C.PRAVEEN KUMAR**  
**AND**  
**HON'BLE SMT. JUSTICE LALITHA KANNEGANTI**

**Suo Motu Writ Petition No. 10151 of 2021**

**ORDER** : (per the Hon'ble Sri Justice C. Praveen Kumar)

1. On 07.05.2021 the Hon'ble Supreme Court of India in *Suo Motu Writ Petition (C) No. 1 of 2020* issued certain guidelines to prevent overcrowding of jails and prevent spreading of Covid-19 virus. The Court also directed the authorities to scrupulously follow the judgment of the Hon'ble Supreme Court in *Arnesh Kumar vs. State of Bihar* {(2014) 8 SCC 273}. One of the directions in the order relate to constitution of a High Powered Committee by the State Governments/Union Territories, if not already constituted, and the High Powered Committee constituted by the State overnments/Union Territories shall consider release of prisoners by adopting certain guidelines followed by them last year, at the earliest. Pursuant to the above, a High Powered Committee consisting of (i) Hon'ble Sri Justice Joymalya Bagchi (Executive Chairman, APSLSA, Amaravati); (ii) Hon'ble Sri Justice A.V.Sesha Sai (Chairman, APHCLSC, Amaravati); (iii) Sri Kumar Vishwajeet, I.P.S. (Principal Secretary, Home Department, Government of A.P.); & (iv) Sri Mohd. Ahsan Reza, I.P.S. (Director General of Prisons and Correctional Services, Andhra Pradesh) held a meeting on 12.05.2021 at 11.30 AM through Bluejeans App and resolved as under :

“1. Resolved that the Principal Secretary, Home Department shall issue instructions to the Director General of Police to direct all the Station House Officers in the State of Andhra Pradesh to scrupulously follow the directions of the Hon'ble Supreme Court of India in *Arnesh Kumar vs. State of Bihar* {(2014) 8 SCC 273} while arresting offenders in cases relating to offences punishable with imprisonment for a term which may extend up to 7 years or less with or without fine and that failure to comply with those directions shall render the police officers concerned liable for departmental action and also contempt of court.

2. Resolved that all the Principal District Judges in the State of Andhra Pradesh shall issue instructions to the Chief Judicial Magistrates and the Judicial Magistrates to ensure due compliance with the directions of the Hon'ble Supreme Court in *Arnesh Kumar's* case and that failure to comply with those directions shall render the Magistrate concerned liable for departmental action.

3. Resolved to release on interim bail all the convicts/under trial prisoners, who had been released on interim bail earlier pursuant to the resolutions of the High Powered Committee dated 26.3.2020 and 28.3.2020 but have been re-admitted to the prison unless they are not otherwise disqualified as per the resolutions of the Committee.

4. Resolved to release the other convicts/under trial prisoners who are in custody in connection with offences punishable with imprisonment for a term which may extend up to 7 years or less with or without fine and qualify for such release as per the resolutions of the High Powered Committee dated 26.3.2020.

5. Resolved that the interim bail be granted for 90 days initially.

6. Resolved that bail bonds shall be furnished to the satisfaction of the Magistrate concerned and the amount of bail bonds shall be reasonable. Undertaking shall be furnished before release that the convict/under trial prisoner shall remain in home quarantine for 14 days after the release. Interim bail may be cancelled for violation of conditions of bail and the convict/under trial shall be forthwith taken into custody.

7. Resolved to request the Principal Secretary, Home, and the Director General of Prisons to ensure adequate transport facility to the prisoners released on interim bail to return to their respective native places, keeping in view the restrictions on movement imposed by the Government.

8. Resolved to direct the Registrar General, High Court of Andhra Pradesh, to initiate a suo motu lis and place the matter along with these resolutions to submit before the Hon'ble the Chief Justice for His Lordship's consideration for assignment of the matter to appropriate Bench so that necessary orders may be passed directing all the Jail Superintendents and the Judicial Officers concerned for release of convicts and under trial prisoners, on interim bail, as per resolution Nos.3 to 6 herein.

9. Resolved that the SOP formulated by the NALSA for Under Trial Review Committee shall be followed.

10. Resolved to request the Director General of Prisons to upload the prison capacity and occupancy in all the jails in the State of Andhra Pradesh on the website of the Jail Department and to share the data with the APSLSA and such data shall also be uploaded on the websites of the APSLSA and the High Court of Andhra Pradesh.

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11. *Resolved that all the resolutions including the resolutions dated 26.3.2020 and 28.3.2020 of the High Powered Committee shall be uploaded on the websites of the APSLSA, the State Government (Home Department), and the High Court of Andhra Pradesh.*

12. *The Committee noted the steps taken in connection with the availability of medical facilities, medical tests and medical treatment of inmates and staff, maintenance of daily hygiene and sanitation in prisons, and other measures to prevent the spread of virus, as stated in the report submitted by the Director General of Prisons, and resolved to request the Director General of Prisons to persuade such steps with utmost zeal and intensity, to ensure safe and healthy environment in the prison system. Director General of Prisons to submit further report in this regard by the next meeting of the Committee.*

13. *The Director General of Prisons submitted about 643 prisoners and staff have been vaccinated till date and remaining prisoners and staff numbering 6000 approximately are yet to be vaccinated. The Principal Secretary, Home, is requested to take necessary steps to expedite the vaccination of all the prisoners and Jail staff in the State of Andhra Pradesh, keeping in mind the vulnerable status of prison inmates and jail staff who are staying and/or working in the confines of the prison system. The Principal Secretary, Home Department and the Director General of Prisons are requested to place reports before the Committee in this regard by the next meeting of the Committee."*

2. The resolutions of the High Powered Committee was brought to the notice of the Hon'ble Chief Justice, through a letter by the Member Secretary, Andhra Pradesh State Legal Services Authority.

By an office order dated 13.05.2021, the matter was directed to be listed before the 1<sup>st</sup> vacation court for passing necessary orders.

3. It is to be noted here that on 23.03.2020 the Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1 of 2020 directed the State Governments/Union Territories to constitute a High Powered Committee to determine the class of persons to be released on parole or on interim bail for a limited period. Pursuant thereto, the then High Powered Committee constituted by the State Government met in the premises of the Hon'ble High Court and resolved as under :

*"In the light of the directions of Hon'ble Supreme Court in Suo Motu Writ Petition (C) No.1 of 2020, dated 23.03.2020, the Government of Andhra Pradesh, in consultation with the Chairman of the Andhra Pradesh State Legal Services Authority, has constituted a Committee. Accordingly, after constitution, the Committee held its meeting in the premises of the Andhra Pradesh High Court. At the very outset, before getting more details regarding number of prisoners in different prisons in the State, in compliance with the orders of the Hon'ble Supreme Court, the Committee has resolved, firstly, to give a proposal to the Hon'ble the Chief Justice for constituting a Bench for issuance of general direction to all the Jail Superintendents regarding release of prisoners provisionally for a period of four (4) weeks on bail to those prisoners who are either convict or under trial for offences in which maximum sentence prescribed is not more than seven (7) years. However, this benefit can be given to only those under trials/prisoners who are not accused in more than one case and also are not accused in cases relating to offence under Section 376 IPC or offences under the POCSO Act.*

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*Regarding inmates of juvenile remand homes, information was furnished by the Director, Social Welfare, Ms. Krithika Shukla, that considering the limited number of such inmates and available space, social distancing can be maintained in the remand homes itself. In view of such information furnished by the Government, the Committee presently resolved not to issue any direction in this line.*

*In view of the guidelines of Hon'ble Supreme Court in **Inhuman Conditions in 1382 v. State of Assam** {(2016) 3 SCC 700}, and **Arnesh Kumar v. State of Bihar** {(2014) 8 SCC 273}, on collecting detailed information regarding number of prisoners kept in different jails and availability of proper space, the Committee may, after collecting such information, sit for further decision after two (2) days.*

*It is further clarified that after being released on provisional bail, the said prisoners/under trials will ensure to remain in quarantine for fourteen (14) days. This privilege for grant of provisional bail may not be applicable to the prisoners/under trials, who are diagnosed with autoimmune diseases, which can be clarified by the respective medical officers of the jails.*

*The prisoners/under trials who do not want to come out on provisional bail in this situation, they may not be compelled to go out and such prisoners/under trials may maintain social distancing in the prisons."*

4. In view of the resolution of the High Powered Committee, dated 26.03.2020, a Division Bench of this Court, in Taken Up Writ Petition No. 8130 of 2020, passed an order for implementation of the recommendations made by the High Powered Committee, dated 26.03.2020, apart from giving other directions. The Division Bench

after referring to the circular issued, directed release of the convicts and under trial prisoners, who were either convicted or detained for the offences where the maximum sentence prescribed is under less than 7 years, on their furnishing adequate bail bonds to the satisfaction of the Magistrate, if they are not second offenders and also not offenders under Section 376 of I.P.C. and POCSO Act, for a period of one month (which was extended later). The court also directed the Principal District & Sessions Judges to assign the Judicial Magistrate of that area to reach the concerned jail on being asked by the Superintendent of the Central Jail of that area for furnishing/accepting adequate bail bonds to the satisfaction of the Magistrate for their release to a limited period. It was further observed that undertaking shall be taken from them for being in quarantine for 14 days at their home under the surveillance of the Doctor with the help of the Police.

5. As seen from the material available on record, the High Powered Committee again met on 28.03.2020 and gave further directions (i) to implement the judgment of the Supreme Court in *Arnesh Kumar vs. State of Bihar* (supra) in its letter and spirit; (ii) to take steps for releasing under trial prisoners in view of the provision contained in Section 436-A of Cr.P.C.; (iii) to give instructions to the Member Secretary, State Legal Services Authority, Andhra Pradesh, to implement all the directions/recommendations made by the committee in consultation with the Secretaries of different District Legal Services Committees and encourage panel lawyers/para legal

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volunteers to be in touch with the concerned Jail Superintendents/Jailors.

6. Perused the record and heard the learned Public Prosecutor for the State of Andhra Pradesh.

7. Learned Public Prosecutor submits that nearly 114 out of 422 prisoners who were released earlier did not surrender till date. He further submits that while actual strength of jail in State of Andhra Pradesh is 8372, there are only 6905 persons and as such there is no congestion in the jails. He, however, submits that the Police are strictly following the guidelines laid down in *Arnesh Kumar's case*.

8. A reading of the order of the Apex Court clearly manifests and directs the Police Officers to strictly follow the guidelines laid down by the Apex Court in *Arnesh Kumar vs. State of Bihar* (supra). It would be appropriate, at this stage, to refer to the guidelines laid down in the said judgment, which are as under :

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

*"11.1. All the State Governments to instruct its police officers not to automatically arrest when a case under Section 498-A IPC is registered but to satisfy themselves about the necessity for arrest under the parameters laid down above flowing from Section 41 CrPC;*

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11.2. All Police Officers be provided with a check list containing specified sub-clauses under Section 41(1)(b)(ii);

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

11.4. The Magistrate while authorizing 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 authorize detention;

11.5. 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;

11.6. Notice of appearance in terms of Section 41-A CrPC 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;

11.7. 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 the High Court having territorial jurisdiction.

11.8. Authorizing detention without recording reasons as aforesaid by the Judicial Magistrate concerned shall be liable for departmental action by the appropriate High Court.

12. We hasten to <sup>add</sup> that the directions aforesaid shall not only apply to the cases under Section 498-A IPC or

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*Section 4 of the Dowry Prohibition Act, the case in hand, but also such cases where offence is punishable with imprisonment for a term which may be less than seven years or which may extend to seven years, whether with or without fine.”*

9. Taking into consideration the recommendations made by the High Powered Committee in its meeting held on 12.05.2021 and the order passed by the Division Bench, we not only direct the Principal Secretary, Home Department, to issue directions to the Director General of Police and to Station House Officers of State of Andhra Pradesh to scrupulously follow the directions of the Hon'ble Supreme Court in *Arnesh Kumar vs. State of Bihar* (supra) referred to above while arresting offenders in relation to the offences punishable with imprisonment for a term which may extend up to 7 years or less, but also direct release on interim bail all convicts and under trial prisoners who have been released on interim bail earlier pursuant to resolutions of the High Powered Committee on 26.03.2020 and 28.03.2020 and have been re-admitted to the prison, unless otherwise they are disqualified. We also direct the release of other convicts and under trial prisoners who are in custody in connection with offences punishable for a term which may extend up to 7 years or less with or without fine and qualified for such release as per the resolutions of the High Powered Committee dated 26.03.2020 i.e., except those who either second offender or convicted or facing trial for the offence punishable under Section 376 I.P.C. and POCSO Act. Having regard

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to the difficulty expressed by learned Public Prosecutor in tracing out inter-state dacoits after their release, the accused who are either convicted or facing trial for the offence punishable under Section 395 I.P.C. (dacoity) or Section 397 dacoity with murder, shall not also be given the benefit of interim bail.

10. We also direct all the Principal District Judges to ensure that the Magistrates of the concerned areas shall make themselves available on being asked by the Superintendent of Jails of that areas for accepting the bail bonds of those who are entitled for release, which shall be to the satisfaction of the said Magistrates. We further direct that the interim bail granted pursuant to this order, shall be for a period of 60 days initially. Further, an undertaking shall be taken before the release of the convict or under trial prisoner that he/she shall remain in home quarantine, for a period of 14 days in his home under the surveillance of the Doctor or the Police, as the case may be, and in case of any violation, the interim bail granted may be cancelled. Basing on the resolutions of the committee this Court also requests the Principal Secretary, Home, and the Director General of Prisons to ensure adequate transport facilities to the convicts released, enabling them to return to their respective native places keeping in view of the covid guidelines and the restrictions imposed on the movement by the Government. In case of prisoners who are not willing to get themselves released, having regard to the social background and fear of becoming victims of virus, the jail authorities are directed to ensure

that proper medical facilities are provided to all prisoners in case of they getting infected with covid. Further, the authorities are directed to take all possible steps to maintain hygiene and also the covid protocols in the prisons so as to prevent transmission of deadly virus amongst the inmates of the prison.

11. In so far as the inmates of Juvenile Remand Homes are concerned, it is reiterated that considering number of inmates and space available, social distancing shall be maintained. It is needless to mention that even in Juvenile Remand Homes the authorities shall maintain all the Covid protocols. Before parting, we also direct the Director General of Prisons to upload the prison capacity and occupancy in all the jails in the State of Andhra Pradesh on the website of the Jail Department and to share the data with the APSLSA and such data shall also be uploaded on the websites of the APSLSA and the High Court of Andhra Pradesh.

12. The above directions shall be remain in force for a period of eight weeks from today and the authorities concerned, including the Principal District Judges, shall forthwith take steps in implementing the directions given above.

13. List after six weeks.

//TRUE COPY//

SD/- V.DIWAKAR  
DEPUTY REGISTRAR  
  
SECTION OFFICER

**To,**

1. All the Principal District and Sessions Judges in the State of A.P.,  
**(to circulate among all the Judicial Officers in the District) (BY SPEED POST)**
2. The Chief Secretary, AP Secretariat, State of A.P., Velagapudi, Amaravathi, Guntur District, Andhra Pradesh
3. The Principal Secretary, Home (Police) Department, State of A.P., Secretariat, Velagapudi, Amaravathi, Guntur District, Andhra Pradesh
4. The Principal Secretary, Home (Prisons) Department, State of A.P, Secretariat, Velagapudi, Amaravathi, Guntur District,
5. The Director-General of Police, Government of Andhra Pradesh, Mangalagiri, Guntur District
6. The Director General of Prisons & Correctional Services, Andhra Pradesh, D. No. 24-28/1-8A, Gulabi Thota, Durgapuram, Vijayawada-520003, Andhra Pradesh  
(to circulate among all the Jail Superintendents in the State of Andhra Pradesh and all the Juvenile Remand Homes in the State of Andhra Pradesh).  
**(Addresses from 2 to 6 by Special Messenger)**
7. The Member Secretary, A.P. State Legal Services Authority, High Court Buildings, Nelapadu, Guntur District, A.P.
8. The Registrar General, High Court of A.P., Nelapadu, Guntur District (for Information)
9. The Registrar (Judicial), High Court of A.P., Nelapadu, Guntur District, A.P.
10. Two CCs to the Advocate General, High Court of A.P., Amaravathi[OUT]
11. Two CCs to the Public Prosecutor, High Court of A.P., Amaravathi[OUT]
12. Two spare Copies

SKM

**HIGH COURT**

**CPKJ & LKJ**

**DATED:17/05/2021**

**ORDER**

**SUO MOTU WP.No.10151 of 2021**



**DIRECTION**