

Ashok Kumar
HJS
Member Secretary



U.P. STATE LEGAL SERVICES AUTHORITY

(Constituted under the Legal Services Authorities Act, 1987)

To

1. The Registrar General
Hon'ble High Court of Judicature at
Allahabad.
2. Sri Awanish Kumar Awasthi, I.A.S.
Additional Chief Secretary (Home/Jails)
Govt. of Uttar Pradesh, Lucknow.
3. The Principal Secretary
Women & Child Development, Govt. of U.P.
4. Sri Hitesh Chandra Awasthy, I.P.S.
Director General of Police, Uttar Pradesh
5. Sri Anand Kumar, I.P.S.
D.G. (Prison)
Govt. of Uttar Pradesh, Lucknow.
6. The Director
Judicial Training & Research Institute
Gomti Nagar Lucknow

No. 1259/SLSA-15/2020 (PS/Sharan)

Dated: June 09, 2021

Sub: Regarding Compliance of the directions of the Meeting of the High Powered Committee (HPC) Dated 21-05-2021 & Hon'ble Supreme Court directions dated 07-05-2021 In Re Contagion of COVID Virus in Prisons:

Sir,

It is humbly submitted that a High Powered Committee (referred herein as HPC) was constituted in compliance of the directions issued by Hon'ble Supreme Court in the Writ Petition (C) No.01/2020 IN RE: CONTAGION OF COVID-19 IN PRISONS, comprising;

- 1- Hon'ble Mr. Justice Sanjay Yadav, the Executive Chairman, UP State Legal Services Authority/Patron-in Chief /the Acting Chief Justice of the Hon'ble Allahabad High Court;
- 2- Sri Awanish Kumar Awasthi, I.A.S., Additional Chief Secretary Home & Jails, Govt. of U.P.
- 3- Sri Hitesh Chandra Awasthy, I.P.S. D.G.P., Uttar Pradesh (Special Invitee)
- 4- Sri Anand Kumar, I.P.S., D.G. (Prison), Uttar Pradesh.

IIIrd Floor, Jawahar Bhawan Annexe, Lucknow-226001 (U.P.)

Phones (O) : 2286395, 2286260 Fax : 0522-2286260, 2287972 E-mail : upslsa@up.nic.in Website : www.upslsa.up.nic.in

Toll Free No. 1800 419 0234

(1) The said HPC held its meeting through virtual mode on 21.05.2021, in compliance of the order of Hon'ble Supreme Court *In Re Contagion Of COVID- Virus In Prisons (supra)* & resolved to issue the following directions among others for strict & immediate Compliance. (Serial numbers mentioned hereinafter in the quoted portion are as referred in the Minutes of HPC meeting dated 21.05.2021):-

(2) On the issue of clarification in regard to Para-9 of the HPC meeting dated 26.05.2021, the HPC held as under:-

"7:1: It is explicit that the category of persons comes under vulnerable section of inmates from the point of view of the susceptibility to infection and probable degree of causality in case of infection of Virus. The sizeable section of the inmates as the total number 2841 indicates the necessary policy formulation to achieve the purpose of decongestion of Jails. The question in regard to its implementation has been raised by the Prison Authorities under point-3 of letter dated 06.05.2021.

8- The Committee resolves that para 9 of HPC report is self contained provisions and it is not subject to the prohibition contained in Para 10 of HPC report dated 26.04.2021. However, Para 9 itself contains subjecting criteria as under;

"unless their release in the recorded opinion of the State Government is detrimental to Public Peace, Safety & Security, and the interest of the administration of Justice."

These factors are included to give the authorities latitude in decision making to safeguard the interest of general public /victim/and that of Justice. Broadly, many of prohibition contained in para 10 will come to play their influence in deciding whether their release is Detrimental to Public Peace, Safety & Security & in interest of Administration of Justice. However, it is manifestly avoided by HPC to apply them flatly with the objective to reconcile the interest of justice and the factor of probability of infection due to vulnerability by reason of gender, age and illness etc.. Hence, matter of Foreign National or a person convicted under Foreigners Act or offences under section 303, under UPCOCA 2017, Money Laundering Act, Gangster Act, POCSO will be judged under the clause given in para-9 of HPC report dated 26.04.2021 under the criteria whether "the release of convicts in the recorded opinion of the State Government is detrimental to Public Peace, Safety & Security, and the interest of the administration of Justice."

This HPC has been informed by Sri Awasthi (ACS) that State Of U.P has formed a committee vide GO.No.704,JI/22-3-2021-800(30)/20/21-tc-1, Administration Jail & Reforms, Section-3 Dated 18 May, 2021 comprising of District Magistrate, Head of Police department in district & Jail Superintendent in compliance of the order of HPC. Therefore, it is for this committee on the basis of the assessment of which the Government and the Prison Administration has to act besides the medical



reports as required under the relevant provisions of Jail Manual in respect to critically ill category of inmates/convicts under para-9. Therefore, it is not the Jail Authorities who has to assess the criteria but it is the committee formed by the Government that will decide whether a convict comes within a subjection clause or not. Accordingly the questions in respect to Para 9 stands answered and clarified.”

2:1: Concisely, the said question has been answered by the HPC as follows:-

3-	प्रस्तर-9	The following categories of prisoners /inmates shall also be entitled to parole for a period of 60 days due to this pandemic on conditions of parole as specified unless their release in the recorded opinion of the State Government is detrimental to public peace, safety & security, and the interest of the administration of justice.	उच्चाधिकार प्राप्त समिति द्वारा बिन्दु सं०-9 में विशेष पैरोल पर छोड़े जाने हेतु श्रेणी का निर्धारण किया गया है, परन्तु उक्त प्रस्तर में यह उल्लिखित नहीं किया गया है कि उच्चाधिकार प्राप्त समिति द्वारा बिन्दु सं०-10 में उल्लिखित बिन्दु A से K तक इस श्रेणी के सिद्धदोष बंदियों पर लागू होगा अथवा नहीं।	The para 9 of HPC report is self contained and independent provision and clause 10 is not a proviso of 9. Hence, provision of clause 10 in HPC report shall not apply to consideration of cases under clause 9 of HPC report directly.
----	-----------	--	---	--

(3) The questions no.2 & 3 raised by the State Government and the Prison Authorities have been answered and clarified by the H.P.C. as under;

“9- Question No. 1 & 2 of Annexure-3 relates to para-8 and its sub para- 4 & 5. Para 8 of the HPC report contains 6 bullets points and the Question no. 1 relates to bullet point no.5 and not to bullet point no.4 as mentioned in the question. Further, question no.2 relates to bullet point/ sub para no.4 of para 8 and it is not the last sub para/bullet point of para 8 of the HPC report as mentioned wrongly in question no.2 of letter dated 06.05.2021. The last bullet point no. 6 which starts with, “The D.G. Prison.....explored by this HPC.

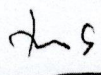
Para 8 sub Para/bullet point 4 is as under;

“ All those convicts who have been on Parole during this year 2020- 2021 or within last five years & has eligibility for general Parole otherwise, they be considered leniently for 60 days Pandemic Parole to achieve objective of decongestion in Jails/ remand homes.”

It is explicit that primary conditions like peaceful and timely return of the convicts from parole are fundamental and inherent prerequisite to be considered by the respective authorities for release of convicts on parole. Hence question no.2 is answered accordingly.

Para 8 sub Para/bullet point 5 is as under;

“Convicts whose matters of Parole are pending/ under consideration with the State Authorities shall forthwith be considered within 60 days of pandemic parole expeditiously and decided within 07 days henceforth.



It is further directed that Superintendent of Police and District Magistrate shall act pragmatically and with responsibility to assess the suitability for pandemic parole”.

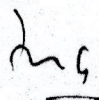
Question no.1 relates to this above quoted para of HPC report. According to the primary rules of comprehension of legal document and rules of interpretation, the directions to the Superintendent of Police and District Magistrates are in respect to matter already pending for under considerations at the time of report of the HPC, since these authorities are involved in the process of granting parole. The directions to these authorities do not relate to the other sub points or bullet points of para-8.”

3:1: Concisely, the said question has been answered by the HPC as follows:-

क्र० सं०	उच्चाधिकार प्राप्त समिति द्वारा की गयी संस्तुतियाँ		अभियुक्ति	Order/Clarification of the HPC.
	प्रस्तर	विवरण		
1-	प्रस्तर-8 का बुलेट-4	It is further directed that the Superintendent of Police and District Magistrate shall act pragmatically and with responsibility to assess the suitability for pandemic parole.	क्या बंदियों को पैरोल देने के सम्बन्ध में जिलाधिकारी एवं पुलिस अधीक्षक से समन्वय स्थापित कर उनका मंतव्य लिया जाना है।	This direction occurs as part of sub-para 5 of Para 8 of HPC report & applies to that sub para 5 only.
2-	प्रस्तर-6 का अंतिम पैरा	All those convicts who have been on parole during this year 2020-2021 or within last five years & has eligibility for general parole otherwise, they be considered leniently for 60 days pandemic parole to achieve objective of decongestion in jails/remand homes.	क्या विगत 5 वर्षों में पैरोल पर गये बंदियों के सम्बन्ध में उनके शांतिपूर्ण व समय पर कारागार पर वापस आने की शर्त लागू नहीं होगी।	The conduct of the convict while on parole is relevant even for the parole granted within 05 years.

(4) In the matter of the action on the release of Prisoners on Parole, the H.P.C. observed and directed as under;

“11- Sri Awanish Kumar Awasthi, I.A.S. Additional Chief Secretary Home & Jails, Govt. of U.P has informed that government has acted swiftly in the matter of Parole by constituting Committee Vide G.O.No.689 JI/22-3-2021-8-(30)/2020 of Jail Administration and Reform Section-3, Dated:14 May, 2021 for convicts upto imprisonment of seven years and G.O.No.693 JI/22-3-2021-8-(30)/2020 of Jail Administration and Reform Section-3, Dated 19 May, 2021 for releasing 1018 Convicts on Parole has been issued. It is also assured by Sri Awanish Kumar Awasthi that the State Govt. shall also take the next step as necessary. Sri Anand Kumar, I.P.S. DG, Prison has also assured that prison administration shall act in a pro-active manner.



This HPC finds that action on the report of HPC is in process and the same shall be expedited."

(5) As to the role & participation of the Ministry of Women & Child Development, and also on the question of applicability and extent of applicability of the HPC report dated 26.05.2021 to the **Cases of Children in conflict with law detained under the Juvenile Justice (Care & Protection of Children) Act 2015**, the H.P.C. held as under;

"12- This HPC finds lack of data and action in **Cases of Children in conflict with law detained under the Juvenile Justice (Care & Protection of Children) Act 2015**. It is hereby clarified that the report of HPC dated 26-04-2021 as well as report dated 10-05-2021 shall apply to such Juvenile Delinquents. It is further emphasized that the prohibition for Parole and interim bail as contained in para 10 of the HPC report shall not apply in the matter of such Juvenile Delinquents.

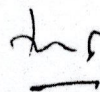
13- The HPC considered that matter of relaxing the prohibition as stipulated in Para 10 (a) of HPC report Dated 26-04-2021. The HPC does not find proper and sufficient ground to relax the prohibitions contained therein.

15- The Ministry of Women & Child Development is administering department for the Juvenile Justice (Care & Protection of Children) Act. Hence, the Secretary of that Ministry be invited as special invitee in next meeting and the Order of this HPC be sent to him /her for ensuring compliance and ensure all measures for Prevention, Containment and Treatment at the places of the custody of such children in conflict with law."

(6) In the matter of compliance of the pronouncement of Hon'ble Supreme Court in **Arnesh Kumar Vs State Of Bihar**, (2014) 8 SCC,273, The H.P.C. took cognizance of official communication by the Police authorities on the subject and in respect to sensitization of Stake holders held as under;

"The HPC in this regard has directed the Director JTTRI to organize a sensitization programme virtually for Judicial Officers and Police Officials. The HPC is informed that such a programme is being organized by the JTTRI in the first week of June 2021 due to pre-onement of Summer Vacation by Hon'ble High Court due to Covid-19. The Synopsis of such a programme be submitted.

DGP, Police submits that Police department will participate in such a programme as informed. The Director, Judicial Training & Research Institute to send the programme to the Director General of Police, Uttar Pradesh also."



(7) In the matter of Prisoners undergoing imprisonment in default of payment of fine as ordained in their order of conviction, The H.P.C. directed as under;

"19- The Prison Administration has submitted a list of cases where accused are detained in default payment of fine. Member Secretary, UP State Legal Services Authority is directed to analyze the list and devise the legal strategy, so that the poor and deserving prisoners may be released at the earliest."

(8) In the matter of Prevention, Containment and treatment as well as sanitization and cleanliness of the prisons and associated matters, H.P.C. has issued directions as enumerated in Annexure 1.

It is, therefore, requested your good self to kindly issue necessary directions to all the concerned Authorities/Departments for ensuring the strict compliance of the aforesaid directions issued by the Hon'ble High Powered Committee in letter and spirit.

Encl: Annexure No.1

Yours sincerely

(Ashok Kumar)

Member Secretary

Copy forwarded to the following for information and necessary compliance.

- 1- The Private Secretary to the Hon'ble Executive Chairman, UPSLSA /Patron-in-Chief/the Acting Chief Justice, Hon'ble Allahabad High Court.
- 2- All Chairmen/Secretaries, District Legal Services Authorities, U.P.
- 3- The Secretary of the State Monitoring Committee (SMC) for effective implementation of the aforesaid directions issued by HPC.

(Ashok Kumar)
Member Secretary

Annexure-1:

S.N.	Topic of Enquiry		Report of concerned Authority	Comments of the HPC	Further Directions.
1.	2.		3.	4.	5.
	Main Topic	Sub-Topics			
1.	Preventive & Containment measures for Covid-19	<p>1. Temporary Jails.</p> <p>2. Isolation Ward.</p> <p>3. Quarantine of newly admitted prisoners.</p> <p>4. Scanning of staff and other services providers.</p> <p>5. Suspension of Visits and group activities.</p>	<p>Established 52 Temporary Jails in 45 Districts.</p> <p>Established in all Jails of U.P.</p> <p>Arrangements have been made in Jails.</p> <p>Scanning of staff and other service provider is being undertaken.</p> <p>It is being enforced. Interaction with prisoners with their kin is being allowed only through phone calls.</p>	<p>Initiative is well meaning and effective as a Containment measure to prevent the spread Virus Covid-19 in Jail.</p> <p>This is a very essential requirement & the same has been completed.</p> <p>It is an essential requirement/measure to prevent the spread Virus Covid-19 in Jail.</p> <p>It is a mandatory requirement.</p> <p>It is necessary to prevent spread of virus from outside into jail precincts. However, communication channels requires to be kept alive to fight psychological problems like anxiety, depression etc during the Pandemic.</p>	<p>There are 71, Jails in the State Of U.P. Hence, Measures of temporary jails be adopted in other Jail also as per requirement.</p> <p>The isolation wards be maintained properly and hygienically.</p> <p>This practice be continued.</p> <p>SMC TO enquire whether this practice of Scanning is being adopted in all Jails and what are the modes adopted for the same?</p> <p>1. Communication of prisoner with outside world be monitored from the point of safety and security as well as it be recorded. However, genuine communication be liberally allowed. Possibility of Video call be explored. The policy is to prevent the spread of virus but measures be taken to ensure that it should not lead to utter seclusion as that will lead to other psychological problems for the inmates. Further, other entertainment modes other than involving congregation be explored to de-stress the inmates during this pandemic.</p> <p>2. Data on communication with family be compiled as per direction of HPC, para 6:2 & 6:2:1 of HPC report.</p>

		6. Social distancing Measures.	SMC reports that food is being served in the ward itself.	The Practice of the Service of food inside ward itself is a good initiative.	The initiative be Continued. Food planning in view of Pandemic and necessity of immunity through natural food may be taken care of.
		7. Vaccination of inmates.	92.18% of inmates of above 45 Years have been vaccinated (24,191 out of total 26,242 Prisoners) & 11775 prisoners have been admitted second dose.	Well intended and good initiative. This is appreciable feat achieved by Jail administration.	The Vaccination drive should continue.
		8. Monitoring Mechanism.	Formation of "Special Task Force." And "Quick Response Team" In each Jail has been formed The Quick Response Team attends to the cases of urgent necessity.	Very good self regulating & inter-institutional mechanism.	1-Methology be devised for supervision of the special task with aim to improve in it's functioning and improve overall functioning of Covid-19 prevention, Containment and treatment mechanism in each Jail. 2- The Chairman/ Secretary DLSA should inspect Jails and inspect the work of "task Force"& suggest measures to improve it's functioning.
		9. Health Audit.	As per report of SMC, Letter has been written to CMO's. The Health Audit Reports of the districts have not been received.	Compliance has not been done.	Health Audit of all Jails be completed at a early date. The Prison Authorities and the Ministry of Health, Govt. of UP to cooperate and coordinate.
		10. Preparation of Specific Readiness and Response Plan.	No progress has been made on this account.	This is systematic decentralized measures for Prevention, Containment & treatment and hence, should be prepared as per directions of the HPC.	Para-6:8: of HPC be implemented.
		11. Availability of mask and sanitizer	SMC, report is silent on this aspect.	These are primary and effective measures to fight the Covid-19 Pandemic.	Para 6:5 (d) of HPC report be strictly complied at an early date.

2.	Sanitation measures.	-	Daily cleaning and sanitation of prison campus, along with barracks, on regular intervals is being	The directions have been Complied.	It be continued and monitored by higher Jail Officials and Officer visiting Jail as per existing regulations.
3.	Testing for Covid-19 of Prisoners.	—	undertaken. As on 17-05-21, a total of 54,5845 inmates and staff (numbering 9691) have been tested .Out of which 18,508 have reported POSITIVE and 17,385 negative. The details are enumerated in the table contained in the SMC report.	The Jail administration have been pro-active on this front and rightly so. Due to this measure only 08 deaths of inmates are attributed To Covid-19 infections .Besides, figure of the inmates and keeping in view the scale of the spread of virus in society and strength of the Jail staff, the inmates and staff under treatment is also on a lesser side.	The testing measure is recognized good initiative& tool to contain the spread of Covid-19 virus. It be kept enforced strictly.
4.	Treatment Measures.	—	The SMC report points out that a total of 1096 prisoners and staff as on 17-05-2021 are under treatment which is being provided in isolation wards as established and barracks established in Jails .Besides.L-1,2&3,Hospitals are also being utilized. Officials and staff are also put on home quarantine.	The system established for treatment is comprehensive and appreciable as per COVID-19 Protocol.	The quality of treatment as provided be maintained.Covid-19 protocol be strictly kept followed up.
5.	Training and awareness drive in Prisons.	—	Awareness programs regarding “Dos and Dents” about prevention of transmission of Covid-19 are being Continued.	Details of this campaign is lacking in the SMC report.---	1-A structured module be prepared and periodical drive be initiated. 2. Resource persons from the staff itself be prepared with the help of expert in field of Covid-19 Management. 3. Written material /audio-visual mode information be also disseminated among the prisoners. 3. SLISA to ensure that proposed Covid-19 Hand book be made available to all the prisons through DG, Prison in virtual mode expeditiously as available.