

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

THE HON'BLE THE CHIEF JUSTICE SRI VIPIN SANGHI
AND
THE HON'BLE SRI JUSTICE RAKESH THAPLIYAL

WRIT PETITION (PIL) NO. 136 OF 2020

27TH JULY, 2023

Between:

Santosh Upadhyay & another Petitioners

and

State of Uttarakhand & another Respondents

Counsel for the petitioners : J.S. Virk, learned *Amicus Curiae*,
with Mr. D.S. Mehta, learned
counsel

Counsel for the respondents : Mr. S.S. Chauhan, learned Deputy
Advocate General with Mr. Vikas
Pande, learned Standing Counsel
for the State

The Court made the following:

ORDER: (per Hon'ble The Chief Justice Sri Vipin Sanghi)

A compliance affidavit has been filed by the
State.

2. Ms. Radha Raturi, Secretary (Home), as well
as the Ms. Bimla Gunjiyal, Inspector General of Prisons,
Uttarakhand, have joined the proceedings virtually.

3. We have been taken through the compliance affidavit by Mr. Chauhan, and we have also interacted with the Secretary (Home), as well as the I.G. (Prisons).

4. The Chairperson of the Committee constituted by the Court, Mr. V.K. Singh, as well as Professor Murali Karnam have also joined the proceedings virtually.

5. We have heard their submissions.

6. What emerges from the compliance affidavit is, that the State is still taking the steps to comply with the recommendations, reports, and the directions of this Court. However, no conclusion has been reached. For example, in the matter of recruitment for filling up the vacant posts, it is informed that the process of recruitment is underway, but the same is still uncompleted. There is a grave dearth of personnel in the prison system of the State, which has led to lack of proper management of the prisons. As many as 03 posts of Superintendents, 27 Deputy Jailors, 261 Warders, 24 female Warders, 03 Personal Assistants, and 08 Pharmacists were vacant, when the existing requisition was made. As per the affidavit, the process for selection is underway, only in regard to the vacancies of

Superintendents / Deputy Jailors, and Warders / female Warders. In relation to the other posts, in which vacancy exists, there is no satisfactory answer. This is completely unacceptable. We direct the respondents to positively ensure that all the existing vacancies are filled within the next eight weeks.

7. Mr. Virk, learned *Amicus*, has pointed out that the occupancy of some of the jails is upto three times the capacity of these jails. He has, particularly, referred to the jails at Haridwar, Haldwani, Dehradun and Roorkee. It has been pointed out by Professor Karnam, that the inmates are having to sleep in shifts due to lack of space for the inmates in the jail. This situation is completely unacceptable. This leads to gross violation of human rights. The inmates inside the jail - most of whom are under-trials, and even the convicts, are entitled to the fundamental right to life, which means a life of bare minimum dignity and comfort.

8. A perusal of the affidavit also reveals that, repeatedly, the stringent financial position of the State has been cited, as a reason for steps not been taken to improve the conditions of the prisons. In our view, that cannot be an excuse, for it is the obligation of the State to ensure the provisions of basic and fundamental

facilities in the prisons. If the State cannot provide the bare minimum facilities in a jail, they have no business to keep the inmates in the jails.

9. It is submitted by Mr. Singh, as well as by Professor Karnam, that the root cause for the conditions of the jails is not the lack of funds. According to them, it is the proper management of the funds and the programmes, which is needed to ensure proper utilization of funds and management of jails. They submit that the State is slow in constituting the Prison Development Board. On account of such a body not existing, which would primarily focus on improvement of conditions in jail, the management of jails is not receiving the attention that it should.

10. Ms. Raturi states that the proposal to form the Prison Development Board has received the assent of Hon'ble the Chief Minister. However, the file is stuck with the Chief Secretary and the Financial Secretary.

11. It appears to us that the condition of the prisoners in the jails is not a priority for the Government. Such a situation is completely unacceptable.

12. We direct the Chief Secretary, as well as the Financial Secretary of the State to expedite the processing of the case relating to formation of the Prison Development Board. They should file their respective affidavits in this regard within two weeks. In case, the Prison Development Board is not constituted before the next date, they should also join the proceedings virtually.

13. It has been informed to us by Professor Karnam, that even in cases where bails are granted, it is taking upto three months to verify the sureties and, therefore, the release of the prisoners is delayed by that period. This situation is, rather, alarming. We direct the State authorities to ensure that the process of verification of sureties is expedited, and the same should be completed in the normal course, within one week of the passing of the order granting bail to the prisoners.

14. It is proposed that to decongest the jails, under-trials - who are undergoing trial in respect of offences where the maximum sentence is 07 years of imprisonment, should be released on personal bonds.

15. We direct the I.G. (Prisons) to file a report before this Court in respect of each of the jails,

informing the number of under-trials, who are presently in prison for offences where the maximum sentence is 07 years. It should also be indicated - as to in how many of the cases of such under-trials, orders of bail have been passed, and the reason for the under-trial not being released, despite grant of bail. The information should be furnished before the next date.

16. It has been pointed out that the difficulty in furnishing sureties also arises, since courts are insisting on furnishing of sureties in the form of charge on immoveable property. Many of the prisoners in the State belong to other States, such as, the State of Uttar Pradesh. Furnishing of sureties of immoveable property in other States, is rather difficult. It is suggested by Professor Karnam, that, instead cash sureties should be accepted, while imposing conditions for grant of bail. Ms. Raturi also supports this suggestion made by Professor Karnam.

17. We, accordingly direct that, in all cases where the maximum sentence can be upto seven years, where the accused are granted bail on furnishing of sureties, the courts shall not insist on furnishing of sureties in the form of immoveable property. Instead, cash sureties of the like amount should normally be accepted. However,

the concerned court may, for specific reasons to be recorded, insist upon furnishing surety / security of immovable property.

18. This order be communicated to all the District and Session Judges for onward communication to the courts within the District for compliance.

19. List the matter on 23.08.2023.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 27th JULY, 2023
Negi