

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

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

23RD AUGUST, 2023

WRIT PETITION (PIL) No. 136 OF 2020

Santosh Upadhyay and another.

...Petitioners

and

State of Uttarakhand and another.

...Respondents

And

WRIT PETITION (PIL) No. 91 OF 2019

Ramchandra Alias Raju Verma.

...Petitioner

and

State of Uttarakhand and another.

...Respondents

Counsel for the petitioners in : Mr. D.S. Mehta, learned counsel.
WPPIL No. 136/2020.

Counsel for the petitioner in WPPIL : Mr. Jagjit Singh Virk, learned *Amicus*
No. 91/2019. *Curiae*.

Counsel for the State of : Mr. Sunil Khera, learned Deputy
Uttarakhand. Advocate General for the State of
Uttarakhand.

COMMON ORDER : (per Sri Vipin Sanghi, C.J.)

In compliance of our order dated 27.07.2023,
the State has filed two compliance affidavits. One
affidavit has been filed by the Inspector General of

Prisons, Uttarakhand, District Jail Campus, Suddhowala, Dehradun, and the other has been filed by the Additional Secretary, Department of Home, Government of Uttarakhand. Ms. Radha Raturi, Secretary (Home), Government of Uttarakhand has also joined the proceedings virtually, along with the Inspector General of Prisons.

2. We have heard the learned counsels, as well as Mr. Vijay Raghavan and Mr. Murali Karnam, the Members of the Committee, who have submitted their report.

3. The affidavit filed by the IG, Prisons discloses that, currently, there are 740 incarcerated individuals within the jails of Uttarakhand, who are under trial for offences, where maximum sentence is seven years. The complete list of all such under-trials has been provided as Annexure No. 1 to the affidavit. The jail-wise summary of the under-trials has also been tabulated in the affidavit. It is also stated that there are 23 inmates, out of the said 740 under-trials, who have either not furnished their sureties, or are not in a position to submit their sureties, despite grant of bail to them. All

such cases have been enlisted in Annexure 2 to the affidavit.

4. In respect of the 740 under-trials, who are enlisted in Annexure No. 1 to the affidavit of the IG, Prisons, we direct that the bail applications of the said under-trials, if pending, should be decided without any delay, and strictly in compliance of the judgment of the Supreme Court in ***Satender Kumar Antil v. Central Bureau of Investigation and another, (2022) 10 SCC 51***, and, in particular paragraph no. 100.11 thereof, which directs that bail applications ought to be disposed of within two weeks, except if the provisions mandate otherwise, with the exception being an intervening application. The State should bring to notice of the concerned Courts our order, as well as the particulars of the Bail Applications of the under-trials enlisted in Annexure No. 1, which are pending in the said Courts. This order shall also be communicated/ circulated to all the District and Sessions Judges for onward communication to all the concerned Courts dealing with Bail Applications of the under-trials, who are facing trials in cases, where the maximum sentence is seven years. The under-trials, enlisted in Annexure

No. 1, should also be communicated our order through the concerned Jail Superintendents, so that they may be able to seek disposal of their pending bail applications, if filed, or as and when filed.

5. In relation to the under-trials, who, despite grant of bail, have not been released, we find that some of them have recently been granted bail, but they have not furnished their sureties, as directed by the Court, possibly on account of their involvement in few other cases. The particulars of such under-trials are mentioned in Annexure No. 2. Leaving apart such of the under-trials, who are involved in several cases, and who do not appear to have furnished sureties for the reason that they may not have obtained bail in other cases in which they are involved, insofar as other under-trial prisoners are concerned, such of them, who have remained incarcerated for more than six months, and have not been able to furnish sureties for a month, after passing of the orders granting bail in their favour, should be released upon their furnishing their own personal bonds. This is a continuing direction, and the concerned Courts and other authorities shall continue to implement

this direction, as and when a case is found to fall in this category.

6. The affidavit of Shri Atar Singh, the Additional Secretary, Department of Home discloses that the Prison Development Board has been constituted in pursuance of Section 59 of the Prison Act, 1894. The learned counsel for the State has tendered in Court a notification issued in this regard on 10.08.2023. The constitution of the Board is as follows :-

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| 1. जेल मंत्री / मुख्यमंत्री | - अध्यक्ष |
| 2. मुख्य सचिव, उत्तराखण्ड शासन | - उपाध्यक्ष |
| 3. प्रमुख सचिव / सचिव, गृह (कारागार) विभाग | - सदस्य |
| 4. प्रमुख सचिव / सचिव, वित्त विभाग | - सदस्य |
| 5. महानिरीक्षक, कारागार | - प्रबंध निदेशक |

7. The Board is required to meet at least once every six months. The mandate of the Board has also been stated in the order. A sum of Rupees One Crore has also been provided to the Board to carry out its activities. We have suggested to Ms. Raturi that she should suggest names of other public spirited persons and volunteers, who may be interested in the subject of Jail Reforms, and in the subject - for fulfilment of which the said Board has been constituted, and who may offer valuable inputs for the functioning of the Board effectively. Ms. Raturi has stated that she shall provide

a panel of such persons, some of whom may also be included in the Board. Let the panel of such persons be produced before us on the next date. A brief background of the persons, whose names are suggested, should also be disclosed.

8. The recruitment process in respect of several posts, which are lying vacant, is underway. The affidavit has disclosed that, in respect of Jail Warders, the main examination is scheduled for 15.10.2023, and the final results would be declared for the same in December, 2023. So far as the posts of Deputy Jailors are concerned, the selection process has been stayed by this Court in Writ Petition (S/S) No. 942/2023 on 27.06.2023. We have called for the record of the said file, and we have examined the orders passed therein. The said order dated 27.06.2023 has also been affirmed by us in the Special Appeal.

9. Ms. Raturi states that she shall examine the grievance raised by the writ petitioner in the aforesaid Writ Petition, and, if possible, the same shall be remedied so that the recruitment process, which stands stayed, can be resumed.

10. It is also disclosed in the affidavit that for the post of Jail Superintendent, the evaluation of answer-sheets of the main examination is ongoing, and the results would be declared in the last week of December, 2023, and the final results would be declared in the last week of March, 2024. For the post of Personal Assistant, requisition of 10 posts has been received by the Uttarakhand Public Service Commission. The said Commission has also reported that requisition for the remaining 20 posts, which has been received by it from the State is not complete, and complete information is awaited. The State should expedite the providing of information in respect of the said 20 posts, so that the process of recruitment may be proceeded with. The status report to be filed before the next date should report further progress made in respect of the aforesaid recruitments.

11. Mr. Vijay Raghavan has suggested that the State should consider premature release of convicts, who are 60 years, or older, and who have completed at least 07 years of incarceration. Ms. Raturi submits that the State has a policy in this regard, which is being

adhered to, and it has been offered by the Secretary (Law), who is also present virtually, that in the next affidavit, the details of all persons who have been released prematurely, would be provided to the Court. Let the same be done.

12. Mr. Raghavan has also raised the issue with regard to payment of wages to the prisoners. He submits that they should be paid as per the minimum wages fixed by the State. The Board, which has been constituted, should examine this issue in its first meeting itself, and take an appropriate decision. The same be also brought on record before the next date.

13. Mr. Raghavan has also suggested that e-Kiosks should be set up in all the prisons by the District Legal Services Authority, so that information could be provided to the prisoners with regard to their cases. We find this suggestion to be useful and positive. We, therefore, direct the State to take steps in this regard. The concerned DLSAs should also be involved in the process. Progress be reported before the next date.

14. Another important aspect pointed out by Mr. Raghavan, is with regard to the minor children of the

women prisoners. He submits that the interaction of the Committee with the prisoners shows that women prisoners are very concerned about the wellbeing of their children. He has suggested that in each district, the State should identify at least one NGO, which should keep an oversight on the children whose mothers are incarcerated, and wherever required, the matter should be reported to the Child Welfare Committee for taking remedial steps. Let the Department of Women and Child Development of the State undertake the exercise of identifying the NGOs in each District, who could be entrusted with the task of keeping an oversight over minor children of women prisoners. The protocol that should be followed to deal with such children, in case of need, should be worked out, and implemented by the State. The next status report should disclose the steps taken to implement this direction.

15. Mr. Murali Karnam has highlighted the issue with regard to the serious scarcity of space in the prisons. He submits that no expansion has been made since the year 2000 in the prisons, and it is the obligation of the State to provide sufficient space for setting-up of prisons. He has suggested that, in each

district, one Open Prison should be setup to decongest the existing prisons. The State is directed to address this concern. In the affidavit to be filed before the next date, the State should disclose what steps have been taken in this regard.

16. List on 01.11.2023.

VIPIN SANGHI, C.J.

RAKESH THAPLIYAL, J.

Dt: 23rd AUGUST, 2023
Rahul