

ITEM NO.36

COURT NO.1

SECTION PIL

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(s)(Criminal) No(s). 32/2013

VIJAY AGGARWAL

Petitioner(s)

VERSUS

UNION OF INDIA AND ORS.

Respondent(s)

(with appln. (s) for exemption from filing O.T. and office report)

Date : 05/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE  
HON'BLE MR. JUSTICE KURIAN JOSEPH  
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

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Mr. Nirnimesh Dube, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Today in Writ Petition (Criminal) No. 310 of

2005, Bhim Singh Vs. Union of India & Ors., inter

alia, we have passed an order relating to under-trial

prisoners vis.-a-vis. Section 436A of the Code of

Criminal Procedure, 1973. The relevant portion of the  
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order reads as under :-

"...Learned Attorney General informs us that more than 50% of the prisoners in various jails are under-trial prisoners. Even many of them may have served maximum sentence prescribed under the law for the offences they have been charged with. The Parliament by Act 25 of 2005 amended Code of Criminal Procedure, 1973 providing for maximum period for which an under-trial prisoner can be detained under any law not being an offence for which the punishment of death has been specified as one of the punishments. Section 436A reads as follows :-

"436A. Maximum period for which an undertrial prisoner can be detained - Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death 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 his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail

instead of the personal bond with or without sureties:

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Provided further that no such person

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shall in any case be detained during the period of investigation inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.- In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded.]"

Having given our thoughtful consideration to the legislative policy engrafted in Section 436A and large number of under-trial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the under-trial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436A.

We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of Section 436A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay.

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To facilitate the compliance of the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers.

A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary

compliance."

The above order may be treated as having been passed in the present case as well with regard to consideration of under-trial prisoners.

Connect this Writ Petition with Writ Petition

(Criminal) No. 310 of 2005, Bhim Singh

Vs. Union of

India & Ors.

(RAJESH DHAM)  
COURT MASTER

(RENU DIWAN)  
COURT MASTER