

ITEM NO.2

COURT NO.9

SECTION PIL-W

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 (CIVIL) NO. 406/2013

IN RE-INHUMAN CONDITIONS IN 1382 PRISONS

[MR. GAURAV AGRAWAL, SENIOR ADVOCATE, AMICUS CURIAE.]

Date : 23-08-2024 This petition was called on for hearing today.

CORAM :

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SANDEEP MEHTA

By Post

Mr. Gaurav Agrawal, Sr. Adv. (*Amicus Curiae*)

For Respondent(s)

Mrs. Aishwariya Bahti, A.S.G.
Mr. R Bala, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mrs. Suhasini Sen, Adv.
Mr. Ishaan Sharma, Adv.
Mrs. Shagun Thakur, Adv.
Mr. Kamendra Mishra, Adv.
Mrs. Neelakshi Bhadouria, Adv.

Ms. Aishwarya Bhati, A.S.G.
Mr. R Bala, Sr. Adv.
Mrs. Suhashini Sen, Adv.
Mr. Ashok Panigrahi, Adv.
Mr. B K Satija, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Kartikay Agrawal, Adv.
Mr. Abhishek Kumar Pandey, Adv.
Mr. Chitvan Singhal, Adv.
Mr. Raman Yadav, Adv.
Mr. Mukesh Kumar Singh, Adv.
Mrs. Ameya Vikrama Thanvi, Adv.
Mr. Arvind Kumar Sharma, AOR

	Mr. Mahfooz Ahsan Nazki, AOR
	Mr. Shuvodeep Roy, AOR Mr. Saurabh Tripathi, Adv.
Arunachal Pradesh	Mr. Abhimanyu Tewari, AOR Ms. Eliza Bar, Adv.
R-5	Ms. Pragati Neekhara, AOR
Gujarat	Ms. Swati Ghildiyal, AOR Ms. Deepanwita Priyanka, Adv. Ms. Devyani Bhatt, Adv. Ms. Neha Singh, Adv.
Goa	Mr. Surjendu Sankar Das, AOR Mr. Anand Murthi Rao, Adv.
Haryana	Mr. B.K. Satija, A.A.G. Mr. Samar Vijay Singh, AOR Mr. Keshav Mittal, Adv. Ms. Sabarni Som, Adv. Mr. Fateh Singh, Adv. Mr. T. N. Surendranath, Adv. Mr. Atul Arvind, Adv. Mr. Ritesh Kumar Gupta, Adv. Mr. Prakhar Garg, Adv.
R-9	Mr. Parth Awasthi, Adv. Mr. Pashupathi Nath Razdan, AOR Ms. Maitreyee Jagat Joshi, Adv. Mr. Astik Gupta, Adv.
Himachal Pradesh	Ms. Inderdeep Kaur Raina, Adv. Mr. Kartikeya Rastogi, Adv. Mr. Rishi Malhotra, AOR
Karnataka	Mr. V. N. Raghupathy, AOR
Kerala	Mr. C. K. Sasi, AOR Ms. Meena K Poullose, Adv. Ms. Anupriya, Adv.
R-14	Ms. Mrinal Gopal Elker, AOR Mr. Bittu Kumar Singh, Adv. Ms. Chhavi Verma, Adv.
Maharashtra	Mr. Bharat Bagla, Adv. Mr. Siddharth Dharmadhikari, Adv.

	Mr. Aaditya Aniruddha Pande, AOR Mr. Sourav Singh, Adv. Mr. Aditya Krishna, Adv. Ms. Preet S. Phanse, Adv. Mr. Adarsh Dubey, Adv.
Manipur	Mr. Pukhrambam Ramesh Kumar, AOR Mr. Karun Sharma, Adv. Ms. Anupama Ngangom, Adv. Ms. Rajkumari Divyasana, Adv. Mr. R. Rajaselvan, Adv.
Meghalaya	Mr. Amit Kumar, Adv. General, Sr. Adv. Mr. Avijit Mani Tripathi, AOR Mr. T.K. Nayak, Adv. Ms. Rekha Bakshi, Adv. Ms. Marbiang Khongwir, Adv. Mr. Upendra Mishra, Adv.* Mr. P.S. Negi, Adv.*
R-18	Mr. Siddhesh Shirish Kotwal, AOR
Nagaland	Ms. K. Enatoli Sema, AOR Ms. Limayinla Jamir, Adv. Mr. Amit Kumar Singh, Adv. Ms. Chubalemla Chang, Adv. Mr. Prang Newmai, Adv.
Odisha	Ms. Anindita Pujari, AOR
Punjab	Mr. Mohd Irshad, A.A.G. Mr. Karan Sharma, AOR
Rajasthan	Mr. Sandeep Kumar Jha, AOR
Sikkim	Mr. Raghvendra Kumar, AOR Mr. Anand Kumar Dubey, Adv. Mr. Simanta Kumar, Adv. Mr. Devvrat Singh, Adv. Mr. Maneesh Pathak, Adv. Mr. Jainendra Kumar, Adv.
Tamil Nadu	Mr. Amit Anand Tiwari, Sr. A.A.G. Mr. Sabarish Subramanian, AOR Ms. Devyani Gupta, Adv. Mr. Vishnu Unnikrishnan, Adv. Mr. Naman Dwivedi, Adv. Mr. C Kranthi Kumar, Adv. Ms. Tanvi Anand, Adv. Ms. Saushria Havelia, Adv.

Mr. Danish Saifi, Adv.

R-26 Mr. Siddharth Sangal, AOR

U.P. Ms. Garima Prashad, Sr. A.A.G.
Mr. Pradeep Misra, AOR
Mr. Daleep Dhyani, Adv.
Mr. Suraj Singh, Adv.
Mr. Manoj Kumar Sharma, Adv.

West Bengal Mr. Srisatya Mohanty, Adv.
Ms. Astha Sharma, AOR
Mr. Shreyas Awasthi, Adv.
Ms. Muskan Surana, Adv.

INT Ms. Pallavi Langar, AOR

INT Ms. Namita Choudhary, AOR
Mr. Ashutosh Kumar Sharma, Adv.

Mr. Sandeep Kumar Jha, AOR

Bihar Mr. Samir Ali Khan, AOR
Mr. Pranjal Sharma, Adv.
Mr. Kashif Irshad Khan, Adv.
Mr. Abhimanyu Jhamba, Adv.

IMPL Ms. Rashmi Nandakumar, AOR
Ms. Yashmita Pandey, Adv.

IMPL Mr. Rajendra Sahu, AOR
Ms. Hema Sahu, Adv.
Mr. Rishabh Sahu, Adv.
Mr. C L Sahu, Adv.
Dr. Vikas Pahal, Adv.

IMPL Mr. Gurmeet Singh Makker, AOR

Mizoram Mr. Anando Mukherjee, AOR
Mr. Shwetank Singh, Adv.
Ms. Akshata Chhabra, Adv.

INT Mr. Chandra Prakash, AOR

Jharkhand Mr. Tapesk Kumar Singh, Sr. Adv, A.A.G.
Mr. Shantanu Sagar, AOR
Mr. Prabhat Ranjan Raj, Adv.
Mr. Anil Kumar, Adv.
Mr. Gunjesh Ranjan, Adv.
Mr. Manoneet Dwivedi, Adv.

IMPL

Mr. Salvador Santosh Rebello, AOR
Mr. Raghav Sharma, Adv.
Ms. Kritika, Adv.
Mr. Prateek Tanmay, Adv.
Ms. Pooja Gill, Adv.

Mr. Gaurav Agrawal, AOR

Mr. Sameer Abhyankar, AOR
Mr. Aakash Thakur, Adv.
Mr. Rahul Kumar, Adv.
Mr. Kushagra Aman, Adv.
Ms. Ayushi Bansal, Adv.

Mrs. Aishwarya Bhati, A.S.G.
Mr. Amrish Kumar, AOR
Mrs. Suhasini Sen, Adv.
Mr. Kamendra Mishra, Adv.
Mr. Ishaan Sharma, Adv.
Mr. Sarthak Karol, Adv.
Mr. Ameyvikrama Thanvi, Adv.

Mr. Guntur Pramod Kumar, AOR
Ms. Prerna Singh, Adv.
Mr. Dhruv Yadav, Adv.
Mr. Keshav Singh, Adv.

Chhattisgarh

Mr. Abhishek Pandey, Adv.
Mr. Prashant Kumar Umrao, AOR

Mrs. Aishwariya Bahti, A.S.G.
Mr. R Bala, Sr. Adv.
Mr. Mukesh Kumar Maroria, AOR
Mrs. Suhasini Sen, Adv.
Mr. Ishaan Sharma, Adv.
Mrs. Shagun Thakur, Adv.
Mr. Kamendra Mishra, Adv.
Mrs. Neelakshi Bhadouria, Adv.

UT OF A&N

Mr. K. M. Nataraj, A.S.G.(NP)
Mrs. Indira Bhakar, Adv.
Mrs. Mrinal Elkar Mazumdar, Adv.
Mr. Rajesh Singh Chauhan, Adv.
Mr. Piyush Beriwal, Adv.
Mr. Harish Pandey, Adv.
Mr. Shashwat Parihar, Adv.
Mr. Kanu Agrawal, Adv.
Mr. Varun Chugh, Adv.
Mr. Bhuvan Kapoor, Adv.

Mr. Krishna Kant Dubey, Adv.
Mr. Shreekant Neelappa Terdal, AOR
Mr. Vineet Singh, Adv.*

INT

Mr. Ajay Verma, Adv.
Mr. Vaishnav Kirti Singh, Adv.
Mr. Krishna Sharma, Adv.
Mr. Durgesh Ramchandra Gupta, AOR

Mr. Prashant Singh, AOR

Ms. Devina Sehgal, AOR
Mr. Dhananjay Yadav, Adv.

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

1. This order is in continuation of the order passed on 13th August, 2024. On the last date of hearing, Mr. Gaurav Agrawal, learned *Amicus Curiae* had submitted that the Bharatiya Nagarik Suraksha Sanhita, 2023¹, which has replaced the Code of Criminal Procedure, 1973 w.e.f. 01st July, 2024, contains a provision under Section 479 relating to the 'Maximum period for which an undertrial prisoner can be detained'. The attention of this Court was drawn to the first proviso to Section 479 to urge that a first-time offender (who has never been convicted for any offence in the past) is required to be released on bond by the Court, if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such an offence under a particular law.
2. Having regard to the fact that the substituted provision under the BNSS is more beneficial *vis-a-vis* Section 436A of the Code of Criminal

1 For short 'the BNSS'

Procedure, 1973, wherein the period undergone by the first time offender was prescribed as up to half of the maximum period of imprisonment specified for such an offence, this Court had called upon the learned Additional Solicitor General to obtain instructions from the Department and submit a clarification regarding application of the said provision to all undertrials across the country.

3. Today, Ms. Aishwarya Bhati, learned Additional Solicitor General, submits that pursuant to the aforesaid order, instructions have been obtained from the Department to the effect that the aforesaid provision under the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them before 01st July, 2024, the date when the newly minted legislation has come into effect.

4. In that view of the matter, it is deemed appropriate to direct immediate implementation of Section 479 of the BNSS by calling upon Superintendents of Jails across the country wherever accused persons are detained as undertrials, to process their applications to the concerned Courts upon their completion of one-half/one-third, as the case may be, of the period mentioned in sub-section (1) of the said provision, for their release on bail. This step will go a long way in easing overcrowding in jails which is the primary focus of this Court in the present petition.

5. The aforesaid steps shall be taken as expeditiously as possible, preferably within two months from today. Reports shall be submitted by the

Superintendent Jails to their respective Heads of the Department within the same time line for a comprehensive affidavit to be filed by each State Government/Union Territory through their respective Chief Secretaries. The affidavits shall furnish the details of the number of undertrials who would be entitled to extension of the benefit of Section 479 of the BNSS, the number of applications moved before the concerned Courts for their release and the number of undertrials actually released by the date of filing of the affidavits.

6. Compliance of the aforesaid provisions shall be made by the concerned District & Session Judges in all States/UTs who are in-Charge of the Under Trial Review Committees so that there is no laxity in implementation of the aforesaid beneficial provision.

7. List on the date already fixed, i.e. 22nd October, 2024, at the top of the Board.

(POOJA SHARMA)
COURT MASTER (SH)

(NAND KISHOR)
COURT MASTER (NSH)