

ITEM NO.10

COURT NO.4

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Writ Petition(s)(Civil) No(s).406/2013

IN RE-INHUMAN CONDITIONS IN 1382 PRISONS

Petitioner(s)

VERSUS

. & ORS.

Respondent(s)

([MR. GAURAV AGRAWAL, SENIOR ADVOCATE IS AMICUS CURIAE.])

Date : 19-11-2024 This petition was called on for hearing today.

CORAM :

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HON'BLE MR. JUSTICE S.V.N. BHATTI

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

1. Pursuant to the last order passed by this Court on 22.10.2024, a Note prepared by Mr. Gaurav Agrawal, learned Amicus Curiae, and Ms. Rashmi Nandakumar representing NALSA, is filed.
2. As earlier noticed, the matter pertains to Section 479 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), which provides for the release of undertrial prisoners suffering prolonged

incarceration. The benefit, of course, is not available for those charged with heinous offenses such as death sentences or life imprisonment. Section 479 of the BNSS reads as under:-

"479 Maximum period for which undertrial prisoner can be detained.-

(1)Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment 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 bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he shall 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 offence under that law:

Provided further 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 bond instead of his bond:

Provided also that no such person 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.

(2)Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court.

(3)The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail."

3. The proviso to section 479 of the BNSS specifies that for the first time offenders, who have not been convicted of any offence in the past, shall be released on bond by the Court if the person has undergone detention for a period up to one-third of the maximum period of imprisonment, specified for such offence under that law.

4. For the other category, i.e. those who are not first-time offenders, the period of detention is minimum one-half of the maximum period of imprisonment to get the benefit of the release order, under Section 479 of the BNSS.

5. As recorded earlier on 23.08.2024, the beneficial provisions of Section 479 of the BNSS shall apply to all undertrials in pending cases irrespective of whether the case was registered against them prior to 01.07.2024 i.e., the date when the new legislation has come into effect.

6. The identification of the deserving undertrials is required to be made by the Undertrial Review Committee (UTRC) present in each district, with appropriate coordination with the Jail Superintendents of all the Jails in the country. The Member

Secretaries of the District Legal Services Authority and State Legal Services Authority were directed to mobilize their panel advocates/ para legal volunteers, so that relevant information on the incarcerated undertrials, can be regularly updated. It was emphasized that this should be a continuous process since a particular undertrial may cross the threshold bar of one-half or one-third of the sentence, the very next day or soon after the information is collected. Therefore, the need for a pro-active effort for the cause of liberty of the individual prisoners was emphasized, in this Court's last order dated 22.10.2024.

7. The Note produced by Mr. Gaurav Agrawal, learned Amicus Curiae, and Ms. Rashmi Nandakumar representing NALSA indicates that responses have been received from around 27 States and Union Territories. However, no response has been filed by the State of Uttar Pradesh, Bihar, Tripura and the Union Territory of Goa. Despite the fact that the last order passed by this Court (on 22.10.2024) was communicated to the Chief Secretaries of all the State and Union Territories, the non-filing of response by the concerned States shows that perhaps the concerned States/UTs are lax in ensuring that the benefits of Section 479 of the BNSS are availed by the deserving category of undertrials. Therefore, submission on this score was heard from Ms. Garima Prasad, learned Additional Advocate General for the State of U.P., Mr. Samir Ali Khan, learned counsel for the State of Bihar, Mr. Surjendu Sankar Das, learned counsel for the UT of Goa and Mr. Shuvodeep Roy, learned Counsel for the State of Tripura. Each of them has assured the Court that the requisite response would immediately be filed.

8. From the note filed by the learned Amicus, the following key issues are discernible and are expected to be addressed by the concerned stakeholders. First, the identification of the deserving undertrials should not only be complete but must also be accurate. Second, the eligible cases must be forwarded to the concerned Court to facilitate the release of the undertrial prisoner, through the Court's order regarding Section 479 of BNSS. Equally important is the follow-up steps before the Court to obtain appropriate orders for each of the undertrials who have been identified and whose cases have been referred to the Court.

9. The Reports to the Amicus Curiae were given by respective parties in different formats. However, this does not lend clarity and makes it difficult to appreciate why release orders have not been obtained despite identifying the deserving undertrial and sending the concerned person's case to the Court. In this context, the Report furnished by the West Bengal Legal Services Authority on 18.11.2024 and also U.P. Legal Services Authority appear to address this issue well and the information should therefore henceforth be bifurcated under appropriate heads so that a clearer picture emerges on the fate of those who have been identified and whose cases have been forwarded to the concerned Courts.

10. The Report to be furnished by the States/UTs, which are yet to respond pursuant to this Court's last order dated 22.10.2024, as also the updated Reports which may be required to be furnished from time to time (this being an ongoing process), should be furnished in the following format:-

Sl. NO .	Name of Prisoner	Name of Prisoner/Name of Father/Husband (Including Challani Police Station and District)	Crime No. and Sections (including challani Police Station and District)	Date of Jail Admission	Maxim period of Sentence u/s imposed on the prisoner	Total period in prison (in all prisons in case of transfer)	Date when application was sent to the Hon'ble Court (including name)	The date of referral of the case from the prison to The Hon'ble DLSA	Date of referral of case from the Hon'ble DLSA to the Hon'ble Court (including name)	Date of release from the prison	The reason of not allowing the bail to the prisoner by the Hon'ble Court	Remarks (in any)

11. As per the exigencies, the details in the above format can be updated from time to time. The concerned authorities must also take care to avoid confusion for an undertrial, who might initially be charged with a heinous crime entailing life imprisonment or the death penalty but against whom charges have been framed subsequently, for a lesser offence. This is being flagged as there could be cases of prisoners whose jail records may not have been updated with charges being framed for lesser crimes.

12. Although the provisions of Section 479 of the BNSS are gender neutral, it is also necessary for this Court to say that special efforts should be made to identify women prisoners who are entitled to release under the beneficial provision. The concerned Jail Superintendents where the women prisoners are lodged should therefore pay personal attention to the female prisoners, who might have become eligible for the release benefits, under Section 479 of the BNSS.

13. When such a beneficial provision for release of those are incarcerated for long period in jails is made available by the legislature, all stake holders must bear in mind that justice must

extend to the last person, who might be standing unheard and unseen within the four walls of jails. Therefore those States/UTs which have not responded pursuant to this Court's last order dated 22.10.2024 should urgently file their response, within two weeks.

14. List the matter on 10.12.2024.

[DEEPAK JOSHI]
ASTT. REGISTRAR-cum-PS

[KAMLESH RAWAT]
ASSISTANT REGISTRAR