

C.K. ABDUL REHIM, J.
C.T. RAVIKUMAR, J.
&
RAJA VIJAYARAGHAVAN V., J.

W.P (C) No. 9400 OF 2020 (Suo Motu)

DATED THIS THE 30th DAY OF MARCH, 2020

ORDER

Abdul Rehim, J:

In the wake of outbreak of the pandemic Corona Virus, COVID-19, the country has gone into complete lock down. The Ministry of Home Affairs, Government of India had issued Notification No.40-3/2020 dated 24-03-2020 prescribing guidelines on the measures to be taken by the Ministries / Departments of the Union Government, State Governments and Governments of Union Territories, for containment of COVID-19 epidemic in the country. By virtue of the said guidelines, offices of the Government of India, its autonomous / subordinate offices and public corporations, as well as the offices of the State / Union Territory Governments, their autonomous bodies, Corporations etc., were ordered to be closed, enabling only essential services specifically mentioned therein to function. Having regard to the fact that the lock down had

resulted in immobilisation of public at large and total stoppage of public transport, it was brought to the notice of this court that the litigants are finding it difficult to approach the courts to vindicate their grievances. Therefore the above suo motu writ petition was registered and a Full Bench of this court issued a detailed order on 25-03-2020.

2. By virtue of the above said order this court directed extension of all interim orders passed by all the courts including this court and Tribunals within the State, which are due to expire within the lock down period of 21 days, by a period of one month from the date of the said order. With respect to the coercive steps of recovery, assurance made on behalf of the state that no recovery would be initiated or pending recovery proceedings would not be proceeded further until 30-04-2020, was recorded. With respect to recoveries under the Central Government and its offices, this court expressed the hope that until the Government of India evolve a mechanism, as submitted before the Hon'ble Suprem Court in SLP (C) Diary

No.10669/2020, no coercive action would be taken. The Full Bench expressed the view that it is sincerely expected that due to the out break of COVID-19, the State Government, Local Self Government Institutions, the Govt. of India and the Pubic Sector Undertakings owned and controlled by the State and Central Governments, shall not take any coercive action since no opportunity to the persons to approach the court are available at present.

3. By virtue of the above said order of the Full Bench dated 25-03-2020, all interim orders of bails granted by the High Court / Sessions Court, both anticipatory and regular, were also extended for a period of one month from 25-03-2020. The Magistrates / Judges within the State, before whom the accused are produced in the event of their arrest, were directed to consider as to whether ordering of judicial / police custody is required or not, depending upon the nature of the offences. This court cautioned that, "bail is the rule and jail is an exemption". However, while issuing such directions, this court made it clear that, subjects

relating to public order/ law and order and also with respect to actions taken by the State Government to combat the outbreak of the epidemic, shall stand excluded from the purview of those directions

4. In the order passed on 25-03-2020, this court noticed the directions contained in the order of the Hon'ble Supreme Court mentioned above, dated 23-03-2020, to constitute a 'High Powered Committee' to determine the class of prisoners who can be released on parole and on interim-bail. Consequently the Government of Kerala has already issued G.O (Rt) No.970/2020/Home, dated 25-03-2020. Hence this court observed that, the bail applications which are pending consideration before this court need not be taken up for hearing, and it will be left to the 'High Powered Committee' to decide on those matters. Such an order was issued especially on the basis of the letter received by the Registry from the office of the Advocate General pointing out the concerns of the staff and law officers to attend the office and the courts. This court

had also taken note of the submissions made by the President of the High Court Advocates' Association as well as the lawyer representing the Bar Council of India and the Bar Council of Kerala, with respect to similar difficulties experienced by the litigants, lawyers, staff attached to the lawyers' office etc. It is also noticed that the courts in the subordinate judiciary are not functioning due to the lock down imposed.

5. It is brought to notice of this court that, in compliance with the direction of the Hon'ble Supreme Court the State Government through its Director General of Prisons and Correctional services has already taken steps and released about 450 convicted prisoners on special parole, in order to de-congest the jails. Since the matter of granting bail is solely within the jurisdiction of the court and taking note of the spirit of the directions of the Hon'ble Supreme Court, in order to avoid delay in the matter, we felt that a modification of the order passed on 25-03-2020 is essential This court is of the view that the personal liberty

of persons incarcerated in jail on the accusation of various offences, as well as persons entitled for statutory bail under Section 167 (2) of the Code of Criminal Procedure, cannot in any manner be curtailed. Therefore it is felt appropriate and necessary to make provisions for the jurisdictional courts to function on a limited basis for considering bail applications. We also heard Shri. Renjith Thampan, Additional Advocate General, Shri. P. Vijayakumar, Assistant Solicitor General of India, Shri. Suman Chackravathy, Senior Public Prosecutor of the State Government and Shri. R. Lekshmy Narayanan, President of the Kerala High Court Advocates' Association, in this regard. Based on the deliberations and submissions made across the Bar, it is decided to issue specific orders in this regard as follows;

- (i) This court hereby grant interim bail to all under-trial / remanded prisoners incarcerated in the jails within the State, who face accusation of having committed offences punishable upto 7

years or less, with or without fine. The above order will not apply to prisoners having any criminal antecedents, previous convictions or in the case of habitual offenders; and also with respect to persons undergoing trial or remanded custody in more than one cases.

(ii) The Superintendent of the jails concerned shall release the category of prisoners with respect to whom the interim bail is granted as mentioned above, on their furnishing a declaration showing their intended place of residence, with their telephone number and the telephone number of any of their family member or other relatives, and on executing a self bond, without sureties, ensuring that they will appear either before the court concerned or before the Superintendent of jail as and when required.

(iii) The prisoners released on interim bail as above shall report to the local police station

within their place of residence, immediately on reaching its jurisdiction. The jail authorities shall also give due intimation to such police stations with respect to release of the prisoners. The declaration executed by the prisoners shall also contain an undertaking to the effect that they will strictly abide by the guidelines issued with respect to keeping of social distancing, in the wake of the declared lock down. They shall also undertake that they will remain in their declared place of residence, totally avoiding any type of travel or exposure to public.

(iv) The interim bail granted as above shall be limited upto 30-04-2020 or till the end of the lock down period by the Government, whichever is earlier. In case the lock down period is extended beyond 30-04-2020, the interim bail granted will continue till such extended period. On expiry of the period of interim bail as mentioned above,

person released prisoner shall appear before the jurisdictional court within 3 days thereof. On such appearance, the court concerned shall consider his application for bail and shall pass appropriate order, taking note of all circumstances and attendant factors.

(v) We also make it clear that, the person released on interim bail as above shall be liable to be arrested and produced before the jurisdictional court, in case of violation of any of the conditions stipulated as above or in case they are found indulging in any activity endangering law and order or breach of public order and tranquility, or in any manner intimidating or influencing the witnesses.

6. We take note of the fact that for the consideration of extremely urgent cases already filed or to be filed before this court, including bail applications, the Hon'ble Chief Justice had constituted a Division Bench comprising of two

Hon'ble Judges of this court. Necessary instructions have been issued by the Registry for dealing with such cases through e-filing and through Video-conferencing. The sitting of the Division Bench in this court for considering such matters will continue during the period of lock down on the basis of those instructions.

7. We further make it clear that for the purpose of considering bail applications of under-trial / remanded prisoners, who will not fall within the category for which interim bail is granted through this order, as well as for moving for statutory bail under Section 167 (2) Cr.P.C, the Sessions Judges in the State are hereby authorised to consider such bail applications submitted through e-mail and to dispose of such applications through Video-conferencing, after hearing the Advocate concerned as well as the public prosecutor. The modalities with respect to consideration of such bail application and its disposal will be prescribed by the Registry of this court and will be circulated through Office Memorandum to all the courts.

Instructions in this regard will also be uploaded in the website of this court. The Principal Sessions Judge or any Additional Sessions Judge authorised in this behalf or to whom such bail applications are made over, shall deal with such bail applications in accordance with the above said directions and on the basis of the modalities which will be prescribed. those instructions.

8. Before parting with, it is made clear that the extension granted to the interim orders, through order of this court dated 25-03-2020 will stand further extended upto 18-05-2020, the date of re-opening of the courts after mid-summer vacation. However the aggrieved party will be at liberty to move for vacating such orders, before the appropriate court. All other directions contained in the order of this court dated 25-03-2020, will continue to be in force.

The Registry of this court shall forward a copy of this order to the Director General of Prisons and Correctional Services for issuing necessary directions for immediate

compliance. The copy of this order shall also be uploaded in the official website of the High Court and shall be sent to all the subordinate courts through e-mail. The order be communicated to the media, both print and visual for intimation of the public.

(Sd/-)

C.K. ABDUL REHIM, JUDGE.

(Sd/-)

C.T. RAVIKUMAR, JUDGE.

(Sd/-)

RAJA VIJAYARAGHAVAN V., JUDGE

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