

mgn

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL P.I. L. NO. 12 of 2010

Commonwealth Human Rights Initiative
through Maja Daruwala Director ..Petitioner

Vs.

The State of Maharashtra ..Respondent

Ms. Maharookh Adenwala, for the Petitioner.
Mr. P.A. Pol, PP for the State.

CORAM: B. H. MARLAPALLE &
U.D.SALVI, JJ.

DATED: 25th January, 2011

P.C.

Commonwealth Human Rights Initiative addressed a letter dated 16th June, 2010 to the Acting Chief Justice of this Court highlighting the conditions prevailing in the majority of Sub Jails across the State of Maharashtra. The letter pointed out series of human rights violations in these Sub Jails which are about 172 with a capacity to accommodate 1793

prisoners. It also pointed out that in all 114 Sub Jails are functional whereas the remaining 58 have been closed down. The said letter was treated as a Public Interest Petition and orders were passed from time to time.

2. A two Member Committee consisting of Shri Bipin Bihari, Deputy Inspector General of Police (Prison) and Dr. Vijay Raghavan, Associate Professor from the Tata Institute of Social Science also visited the Gondia Sub Jail and submitted its report dated 26th July, 2010. On 3rd August, 2010 the said report was considered by this Court and the observations were noted. This Court observed that the following were some of the questions which the authorities must look into and take remedial measures;-

- (a). Are there separate cells for male and female prisoners?
- (b). Are there proper security arrangements?.
- (c). Are the buildings of the Sub Jail in good condition.
- (d). Is there proper ventilation
- (e). Are the prisoners provided good food, water, clothing and bedding?
- (f). Is there any arrangement for regular medical check up of prisoners?

(g). Do the officers pay regular visits to the Jails?

This Court also noted that the above questions were not examined and at the same time the prevailing conditions in the Sub Jails may be improved.

It also noted that the Sub Jails are under the control of the Revenue Department and not under the control of the Prison Department of the Government of Maharashtra.

3. After this order dated 3rd August, 2010 was passed Shri S.N. Gavit, Joint Secretary in the Home Department, Government of Maharashtra, filed an affidavit and pointed out that a meeting was held under the Chairmanship of the Principal Secretary (Appeals, Security & Prison) in the Department of Home, Government of Maharashtra and the issue of preparation of action plan to improve the conditions of Sub Jails was discussed and certain decisions were taken. Some proposals were also set out and this Court expected the State Government to proceed with those proposals. Reports have been filed from time to time by the Home Department. The Commonwealth Human Rights Initiative also submitted a study of Sub Jails under the heading "Maharashtra's Abandoned Prisoners". We have been taken through this report as well as the report of the two Member Committee submitted on 26th July, 2008 by the amicus curie, Ms.

Adenwala, the Counsel appearing for the petitioner Commonwealth Human Rights Initiative.

4. The reports submitted by the State of Maharashtra from September, 2010 onwards indicate that some measures have been taken to improve the conditions of Sub Jails and more particularly their repairs and maintenance. It has been pointed out that the Sub Jails would continue to remain under the charge of the Revenue Department. It is submitted that the allocation of funds for the maintenance of these Sub Jails would not be an issue and the Collectors will have sufficient funds at their disposal to ensure proper up-keep of these jails. It has also been pointed out that the Sub Jails are governed by the Sub Jail Manual and not by the Prison Manual, which is applicable to the District Prisons and Central Prisons.

5. Mr. Pol, the learned P.P., placed before us a copy of the letter dated 11th January, 2011 received by him from Mr. S.N. Gavit, Joint Secretary, Home Department, Government of Maharashtra along with the compliance report. The compliance report is prepared region-wise i.e. Western Region, Southern Region, Central Region and Eastern Region. The Vidarbha area is under the Eastern Region whereas the Marathwada area and some

districts of Northern Maharashtra like Nashik, Dhule, Nandurbar and Jalgaon are added in the Central Region, Aurangabad. It appears that the Sub Jails in the Western and Southern regions are in better conditions than the Sub Jails in the Central and Eastern Regions. We have been assured by Mr. Pol that the State Government would not allow these Sub Jails to suffer from the paucity of funds and sufficient fund allocation will be made with the Collector of the concerned district, so that the Sub Jails are maintained and are put to use. Efforts will be made to ensure that the Sub Jails do not violate any human rights.

6. We do not find any compelling need to change the control of the Sub Jails from the Revenue Department to the Prison Department and so long as the State Government has ensured sufficient funds allocation for these Sub Jails and the funds are at the disposal of the Collectors, in our view, there would not be any difficulty in the up-keep, maintenance and administration of these Sub Jails all over the State of Maharashtra. Obviously it will be the District Collector who shall be the over all incharge of the Sub Jails in each district and it would be imperative that he submits periodical reports to the Prison Department regarding the management and administration of these Sub Jails.

7. In Chapter VII of the Sub Jail Manual the Board of Visitors has been provided for under Rule 36. In our considered opinion, the Board of Visitors should be co-opted so that every Sub Jail is visited by the Board of Visitors atleast once in a month. The Sub Jail Manual makes it clear that the Tahsildar concerned must visit the Sub Jail daily and submit his report to the Collector. As of now, there is no Board of Visitors constituted.

7. Hence, till the State Government constitutes the Board of Visitors, we direct the Board of Visitors be constituted by the Collector of each District as under:-

1. The Deputy Collector/Tahsildar (Chairman)
2. The District Jail Superintendent
3. Medical Officer of the Rural Hospital at the concerned taluka places.
4. Chairman of the Panchayat Samiti.
5. Superintendent of the Court.
6. Government Pleader/Assistant Government Pleader.
7. One lady member as may be nominated by the Collector.
8. The Collector of each district will issue suitable orders for the

01-11-10
7eb 25*
constitution of the Board of Visitors on the above lines within one month from today. The Board of Visitors must visit the Sub Jail concerned atleast once in a month and submit its report to the Collector with a copy to the Principal District Judge.

9. We also direct the Director of Prosecution, State of Maharashtra to undertake the revision of Sub Jail Manual on the lines of the Prison Manual wherever required. Needless to mention that the reports referred to hereinabove shall also be taken into consideration by the Director of Prosecution, State of Maharashtra, so as to ensure that the Collector of each district take necessary steps as suggested above.

10. Ms.Adenwala has also submitted a list of N.G.Os., in different parts of the State who are willing to be associated with the Board of Visitors and thus assist the Collector of the concerned district in the proper management and administration of Sub Jails. These voluntary organizations are as under:-

1. Vidarbha Region:

Voluntary Action for Rehabilitation and Development (VARHAD)
c/o.Ravindra Vaidya, Yashodanagar No.1, Post Rukhmininagar,
Amravati-444 606.

2. Marathwada Region:

Sahyog Trust, c/o. Asim Sarode, Flat No.1, Prathamesh C.H.S.,
Lane No.5, Prabhat Road, Pune-411 004.

3. Rest of Maharashtra:

PRAYAS, Project of Tata Institute of Social Sciences,
c/o.Vijay Raghavan, 9/1 B.D.D. Chawl, Worli, Mumbai-400 018.

The Collector of the concerned district may consider co-opting a representative of these organizations on the Board of Visitors and inform the respective N.G.Os., accordingly.

The P.I.L. Petition is disposed off in the above terms.

(U.D.SALVI, J.)

(B. H. MARLAPALLE, J.)