

BRIEFING PAPER:

Bhim Singh vs. Union of India and Ors.

[W.P. (Criminal.) No. 310/2005]

Order on: 04.09.2014

Corum: Hon'ble Chief Justice R.M. Lodha, Hon'ble Justice Kurian Joseph, Hon'ble Justice Rohinton Fali Nariman

Written By: Aphune K. Kezo

Edited By: Madhurima Dhanuka



COMMONWEALTH HUMAN RIGHTS INITIATIVE
55 A, Third Floor, Siddhartha Chambers-1, Kalu Sarai
New Delhi - 110016 T +91 11 43180200, F + 91 11 43180217
info@humanrightsinitiative.org
www.humanrightsinitiative.org

INTRODUCTION

Criminal Procedure Code, 1973

Section 436 A- Maximum period for which an undertrial can be detained -

Where a person has, during the period of investigation, inquiry or trial under this code of 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 up to a period of one-half of the maximum sentence 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 of release him on bail instead of the personal bond with or without sureties:

Provided further 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 the 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.

The judgment addresses the need for timely release of the large numbers of undertrials detained in prisons that causes overcrowding, throughout the country. The Court decided an interim order based on fast-tracking the criminal justice system by quick release of undertrial prisoners (UTPs) within the jails. The interim order also acknowledged the problems of foreign national prisoners (FNPs) in attaining 'No Objection' certificate and directed State Governments to facilitate their deportation to avoid overstay inside prison walls as well.

This judgment has been long awaited as the national statistics depicts glaring figures to demonstrate in undertrial jail population. The National Crime Records Bureau, Prison Statistics in India 2012, shows that undertrials total an amount of 2,54,857, whereas, the number of convicts shows only 1,27,789 population.

FACTS OF THE CASE

- The petition has been filed by Jinendra Jain on behalf of the civil society organisation called "Fight for Human Rights" bringing to fore the issue of 31,000 Scheduled Tribe (ST) and Scheduled Caste (SC) under trial prisoners held in various Naxal affected States.
- In an earlier hearing of the petition on 01.08.2014, the Supreme Court inquired the Attorney General, Mr. Mukul Rohatgi, on the Indian Government's plan in fast-tracking criminal justice system and to come out with a proposal in four weeks. The Attorney General responded that fast-tracking criminal cases were initiated by the Central Government; however, the

blueprint would require three months' time to have an affidavit placed.

- The Attorney General informed the Supreme Court that more than 50% of prisoners are undertrials and many may have served their maximum sentence for the offences they have been charged with.

ISSUE BEFORE THE COURT

- The need for implementation under Section 436 A of Criminal Procedure Code and fast tracking of courts, to ensure that no undertrial remains in prison beyond half of their maximum sentence.

DECISION OF THE COURT

- i. Eligibility of Bail*– The 2005 Amendment Act on Criminal Procedure Code inserted Section 436 A to reduce undue delay of justice and overcrowding in prisons. It states that undertrial prisoners (UTPs) serving for more than half of their maximum sentence have the right to bail on personal bond. It is imperative that undertrials do not languish in jails longer than their maximum sentences under Section 436 A of CrPC. This provision, however, does not address those undertrials facing death sentence.
- ii. Review Mechanism* - The UTP review mechanism proposed by this court shall have the following composition and functions:-
 - *Composition* - It shall be composed of the Magistrate, Chief Judicial Magistrate and Sessions Judge.
 - *Function* - They shall hold one sitting every week in jails/prisons for two months, commencing from 1st October 2014. In the meetings, the judicial officers will identify undertrial prisoners who have spent half of their maximum sentences in jail and will also provide an order for release in the jail.
 - *Reports of Meetings to Registrar General* – The report of each sitting will be forwarded to the Registrar General of the High Court, and at the end of two months, the Registrar General will submit the report to the Secretary

General of the Court without delay. 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.

➤ *Obligation of the Jail Superintendent* – The Jail Superintendent is directed to provide all necessary facilities for holding the court sittings.

iii. *Nature of Order* - This order is an interim one to ensure the the status quo and that the directives will continue to be followed till such time as is deemed necessary.

CONCLUSION

In summary of the aforementioned, the following can be deduced:-

- i. *Undertrial Prisoners* – The large numbers of UTPs throughout the country gave the judges the rationale that the criminal justice system needed to be hastened. It is seen from the statistical facts produced, that an active judiciary has to get involved in timely release, so that no UTP gets detained for an unnecessary length of time.
- ii. *Undertrial Review Mechanism* – It has been observed that identifying the UTPs and their length of stay, by the selected judicial officers in a review committee, is critically required. The court has directed each State in India to set up such review mechanisms to further give the undertrials their access towards deserved justice.
- iii. *Applicability in All States* – The Court’s directions were addressed to all States, whereby, implementation is irrespective of existing or non-existing provisions of review committees in jail manuals, or absence of jail manuals.
- iv. *Foreign Nationals* – The primary reason for undertrial FNPs languishing in jails in India is seen to be the delay in receiving ‘No-Objective’ certificates. State Governments are to correspond with the Central Government and both with immediate effect towards deportation within the time frame of four weeks from the date of receipt of the ‘No Objection’ certificate.