

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

Prof. M. Sridhar Acharyulu (Madabhushi Sridhar)

Information Commissioner

CIC/SA/A/2015/000375

Ms. Divya Iyer Vs. Tihar Jail

(Video Conference – Bangalore)

Important Dates and time taken:

RTI/PIO:10-10/9-2-15(122)	First Appeal: 20-12-2014	Second appeal: 10-3-2015
Disposed of with directions	Hearing: 27-07-2015	Decision: 13-8-2015

Summary: It is the constitutional responsibility and statutory obligation of the Governments to review each case of under-trial prisoner and take appropriate action including release of the prisoner and inform the prisoners concerned and the concerned authorities. The apex court explained this duty to review and release in **Bhim Singh** case. The Commission would like to add another duty, the duty to inform also to the authorities, which will facilitate the release, or enable prisoner or any other person to demand release based on information made available. The Commission finds it necessary and appropriate for the Under-trial Review Committee to issue necessary instructions to provide the release-related-information to the concerned from time to time for effective implementation of Section 436A and directions of the Supreme Court. Even a single day delay in release of under-trial prisoners, who are entitled to such release as per Section 436A, will amount to serious violation of their right to life under Article 21 of Constitution. For this violation no amount of compensation would be sufficient. Hence, there is a strong need to prevent breach of Article 21 by implementing Section 436A. The Commission directs the authorities of Tihar Jail and Rohini Jail, to provide a) latest status on the implementation of the Central directive dated 17-1-2015, and b) proposed list of prisoners to be released and other possible consequences like review committee meetings, etc within 20 days from the date of receipt of this order to the appellant, which shall also be disclosed under Section 4(1) (b) of RTI Act in their official website.

The Commission also directs the Home Department to issue directives to all Jail authorities to prepare the list of under-trial prisoners supposed to be released from time to time at least for every quarter, informing the fact of their release. Any such release of under-trial prisoner cannot be delayed

for the sake of report or publication of information.

The respondent authority has to prepare FAQs on this subject and upload the same into the official website within one month from the date of receipt of this order, to facilitate the under-trial prisoners to seek release on bail as per Section 436A of CrPC and judicial orders.

Parties Present:

The appellant is not present for video conference at NIC centre, Bangalore. The Public Authority is represented by Jornar Singh, APIO and Ms. Rekha Sharma, PIO.

Facts:

2. Appellant by her RTI application had sought information regarding steps taken by the Home Department, Government of India towards the implementation of the Central Directive No. V-13013/70/2012-IS (VI) dated 17.01.2013 issued by Government of India Ministry of Home Affairs to the Home Secretaries to all States. PIO replied on 09.02.2015 providing para-wise reply. She stated to have received only part information, and there was no information from Central Jails of Tihar and District Jail of Rohini. She filed first appeal and thereafter, approached the Commission.

DECISION:

3. Information sought is concerning a very important matter of public interest, which engaged the Supreme Court, Legislature, Executive and the Law Commission since a long time. The Home Ministry requested the State Governments and Union Territories to adopt various measures to reduce overcrowding of prisons. The Parliament by Act 25 of 2005 amended Code of Criminal Procedure, 1973 providing for maximum period for which an under-trial prisoner can be detained under any law not being an offence for which the punishment of death has been specified one of the punishments. Section 436A says:

436-A. Maximum period for which an under-trial prisoner can be detained where a person has, during the period of investigation, inquiry or trial under this Code of an

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 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 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 or 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 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.]

4. This circular mentioned data collected by NCRB in 2011 that 67% of inmates are under-trials, though percentage of overcrowding was steadily going down. Invariably it has been found that only the poor and indigent who have not been able to put up the surety are those who have continued to languish as under-trials for very long periods and that too for minor offences. The lack of adequate legal aid and a general lack of awareness about rights of arrestees are principal reasons for the continued detention of individuals accused of bailable offences, where bail is a matter of right and where an order of detention is supposed to be an aberration. Thus a disproportionate amount of our prison-space and resources for prison maintenance are being invested on UTPs which is not sustainable.

5. States/UTs may hence consider taking the following actions: 1. Constitute a Review Committee in every district with the District Judge as Chairman, and the District Magistrate and District SP as members to meet every three months and review the cases. 2. Jail Superintendent should conduct a survey of all cases where the UTPs have completed more than one-fourth of the maximum sentence. He should prepare a survey list and send the same to the District Legal Service Authority (DLSA) as well as the UT Review Committee. 3. Prison authorities may educate under-trial prisoners on their rights to bail. 4. Provide legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount. 5. The list should be made available to the non-official visitors as well

as District Magistrates/Judges who conduct periodic inspections of the jails. 6. Home Department may also develop management information system to ascertain the progress made jail-wise in this regard. Action taken to implement the suggestions in all the jails may kindly be intimated within one month.

6. Appellant wanted to know

- a) whether Review Committee has been set up in the District? If so, names, contact numbers and designations of all members of the committee, if not constituted, reasons for the same.
- b) Whether jail superintendent has completed the survey of cases where the UTPs have completed more than one-fourth of the maximum sentence and sent it to District Legal Services Authority and UT Review Committee, details thereof,
- c) Whether UT prisoners were duly informed about their rights to bail, details thereof,
- d) Whether Legal Aid was provided to them for getting released on bail and reduction of bail amount,
- e) Whether list was made available to the non-official visitors as well as District Magistrates/Judges
- f) Whether Management Information System has been developed?

7. PIO stated on 9.2.2015 that RTI request has been forwarded to PIO Central Jail Tihar and District Jail Rohini. Information pertaining to Prison Head Quarters was as under:

"A (1&2). A proposal for constitution of a District under trial prisoner review committee has been sent to Dy.Secretary(Home) GNCTD vide letter 23-12-14 and response in this regard is still awaited.

E. Board of Visitors has already been notified but the same is challenged before Delhi High Court and is not fully functioning.

F. (1) Prisoner Management System and Visitor Management System developed by National Informatics Centre run in Central Jail Tihar in all the jails for keeping prisoners information and their visitors record respectively.

(2) The said Management Information system is used to store all details of prisoners and their visitors. This is web based software run on internet.

(3) As per information received from all jails, two UTPs were found eligible under section 436 A of CR.PC during 1-10-2014 to 30-11-14 and out of them one UTP was released and other UTP was released in this case but detained in other multiple cases
(4) N/A”

8. Superintendent from Jail No. 5 said that, being a convict jail, their jail does not have the information about under trial prisoners.

9. The Hon'ble Supreme Court in **Vijay Aggarwal v. Union of India & Ors.** W.P. (Crl) No. 32/2013 on 05 September, 2014 issued several directions relating to under-trial prisoners vis-a-vis. Section 436-A of the Code of Criminal Procedure, 1973.

(i) Jurisdictional Magistrate/Chief judicial Magistrates/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure.

(ii) In its sitting in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and

(iii) After complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436-A for their release immediately.

(iv) Such jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and

(v) At the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate the compliance of the above order, we direct the jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. 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.

10. Supreme Court also directed that jurisdictional Magistrate/Chief judicial Magistrates/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1st October, 2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sitting in jail, the above judicial officers shall identify the under-trial prisoners who have completed half period of the maximum period or maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/ Sessions Judge shall submit the report of each of such sitting to the Registrar General of the High Court and at the end of two months, the Registrar General of each High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate the compliance of the above order, we direct the jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. 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.”

11. In ***Bhim Singh v Union of India***, Write Petition (Crl) No. 310 of 2005 a bench of Supreme Court comprising Chief Justice R M Lodha, Justice Kurian Joseph and Justice RF Nariman held on 5th September 2014 that “the judicial officers (magistrate/sessions judge/chief judicial magistrate) shall identify prisoners who have completed half of the maximum period of imprisonment provided for the offences they are charged with. After complying with the procedure under Section 436A of Criminal Procedure Code, they shall pass appropriate order in jail itself for the release of such prisoners.”

12. This order was given on two different PILs seeking court's order for constitution of fast track court so that their cases can be expeditiously disposed of or releases the prisoners on bail as they have been languishing in jail for several years for petty offences.

13. The bench referred to Section 436A of Cr.P.C. which speaks about maximum period for which an under-trial prisoner can be detained and it stipulates that such prisoners can be

released by the court on a personal bond with or without sureties if he/she has spent half of the maximum period of imprisonment in jail. The Court was informed that there are about **3.81 lakh** prisoners across the country out of which about **2.54 lakh** are under-trials. It was hoped that this order will bring relief to lakhs of prisoners who are poor and languishing in the jail in petty cases as they are not able to pay sureties and bail bonds to get out of jail. The bench was told that in many cases the accused have spent more time in jail than the actual sentence which might be awarded to him or her in case of conviction.

14. The Supreme Court also made it clear that there is no need for lawyers to be present while judicial officers take decision for release of prisoners and asked the judicial officers to file compliance report with the Registrar General of concerned high court after finishing the assignment. Thereafter the registrar general of high courts shall file report with the secretary general of the Supreme Court.

15. The Supreme Court on 18th May 2015 directed the National Legal Services Authority to coordinate with the Union Home Ministry to ensure urgent review of their cases for granting them bail. A Social Justice Bench of Justices Madan B. Lokur and U.U. Lalit noted that **67 per cent** of those lodged in the prisons in the country are **under-trials** who are too poor to get bail, the Supreme Court has. It has given one month to ensure the functioning of the **Under-trial Review Committee** in every district in the country. The objective of the Under-trial Review Committee in every district in the country is to implement Section 436A of the Code of Criminal Procedure, which allows this concession. The idea of forming the committees, each comprising the District Judge, the Superintendent of Police and the District Magistrate, came in an advisory issued by the Home Ministry on January 17, 2013. Quoting figures supplied by the Home Ministry, the Bench noted in its recent order:

“We find there are a large number of prisoners who are continuing in custody only because of their poverty. This is certainly not in the spirit of the law and poverty cannot be a ground for incarcerating a person.” The court referred to the prisoners’ management system used in the Tihar Central Jail here, and asked the Union Home

Ministry to “study” this application software and suggest modifications for its deployment in prisons throughout the country.

16. The Home Ministry was asked to direct the Bureau of Police Research and Development to review within three months a model prison manual which was circulated in 2003, keeping in mind the “huge change in circumstances and availability of technology”.

17. Sankar Sen *former Director General of National Human Rights Commission and former Director of National Police Academy* has opined (in *Pioneer* on 5th June 2015) that lodging under-trial prisoners with the convicted prisoners leads to ‘**contamination of crime**’. **Many callow and inexperienced young men coming in contact with hard-boiled criminals get coarsened and criminalized.** It is known that many of the gangsters recruit members of the criminal gangs out of these borderline yet redeemable offenders admitted in jails.

18. Further, constant movements of prisoners in and out of prisons facilitate **smuggling of narcotics and other contraband articles**. Again, most of the under-trials go without any work or training and spend time in depressing idleness. This fact was one of the substantial points in second appeal before this Commission in *OP Gandhi v PIO Tihar Jail* CIC/SA/A/2015/000964 wherein the Commission directed the officials of Tihar Jail to explain measures to prevent the smuggling the tobacco into the Jail through the entry and exit of under-trial prisoners for different days of trial. (http://www.rti.india.gov.in/cic_decisions/CIC_SA_A_2015_000964_M_161038.pdf)

19. The All India Jail Committee, known as the Mullah Committee, had strongly recommended that there should be separate institutions for accommodating under-trial prisoners and they should be located near the court premises to reduce the problems and hazards of transporting the prisoners.

20. In *Hussainara Khatoon & Ors vs Home Secretary, State of Bihar* (AIR 1979 SC1819), the Supreme Court it was held “Ordinarily when a person is accused of more than

one offence, the sentences of imprisonment imposed are directed to run concurrently but assuming the sentences of imprisonment be consecutive, the under-trial prisoners here have suffered incarceration for the maximum period for which they could be sent to jail on conviction for multiple offences. There is absolutely no reason why the under trials be allowed to continue in jail for a moment longer since such continuance of detention would be violative not only of human dignity but also of their fundamental right under Art.21. The Supreme Court had interpreted that the right to life and personal liberty under Article 21 of the Constitution of India includes the right to speedy justice, which includes the right to free legal aid. The NHRC has drawn the attention of the Chief Justices of the High Courts to the delays in the grant of bails to under-trial prisoners and has suggested a number of remedial measures. One of them is that, as the prisoners are in judicial custody, the district judges should regularly visit the prisons within their jurisdiction and identify cases of long-staying under-trials that need special attention.

21. This Commission in **Venkatesh Nayak v Tihar Jail**, CIC/SS/A/2013/ 001155 SA directed the Tihar Jail officials to place all details of persons authorized to be released from prisons under its custody as per the Supreme Court order in **Bhim Singh v Union of India** directing implementation of Section 436 A of CrPC.

22. After hearing the submissions of the respondent authority, the Commission observes that it is the constitutional responsibility and statutory obligation of the Governments to review each case of under-trial prisoner and take appropriate action including release of the prisoners and inform the prisoners concerned and the concerned authorities. The apex court explained this duty to review and release further in above referred **Bhim Singh** case.

23. The Commission would like to add another duty, the duty to inform also to the authorities, which will facilitate the release, or enable prisoner or any other person to demand release based on the information made available. The Commission finds it necessary and appropriate for the Under-trial Review Committee to issue necessary instructions to provide the release-

related-information to the concerned from time to time for effective implementation of Section 436A and directions of the Supreme Court.

24. Even a single day delay in release of under-trial prisoners, who are entitled to that release as per Section 436A, will amount to serious violation of their right to life under Article 21 of Constitution. For this violation no amount of compensation would be sufficient. Hence the authorities must prevent the breach of Article 21 by implementation of Section 436A.

25. The Commission directs the authorities of Tihar Jail and Rohini Jail, to provide a) latest status on the implementation of the Central directive dated 17-1-2015, and b) proposed list of prisoners to be released and other possible consequences like review committee meetings, etc within 20 days from the date of receipt of this order to the appellant, which shall also be disclosed under Section 4(1)(b) of RTI Act in their official website.

26. The Commission also directs the Home Department to issue directives to all Jail authorities to prepare the list of under-trials supposed to be released from time to time at least for every quarter informing the fact of their release. Any such release of under-trial prisoner cannot be delayed for the sake of report or publication of information.

27. The respondent authority has to prepare FAQs on this subject and upload the same into the official website within one month from the date of receipt of this order, to facilitate the under-trial prisoners to seek release on bail as per Section 436A of CrPC and judicial orders referred above.

(M. Sridhar Acharyulu)
Information Commissioner

Authenticated true copy

(Babu Lal)
Deputy Registrar.

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