

ITEM NO.25

COURT NO.1

SECTION X

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition(s) (Criminal) No(s). 310 of 2005

BHIM SINGH

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(with appln. (s) for directions, impleadment and office report)

WITH

W.P.(C) No. 341/2004

(With appln.(s) for directions, prayer for interim relief and Office Report)

W.P.(CrI.) No. 175/2005

(With Office Report)

Date : 05/09/2014 These petitions were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KURIAN JOSEPH
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s)

Prof. Bhim Singh, Sr. Adv.
In person

Mr. P. V. Yogeswaran, Adv.

Mr. Prashant Bhushan, Adv.
Mr. Rohit Kumar Singh, Adv.
Mr. Govind Jee, Adv.

For Respondent(s)
UOI

Mr. Mukul Rohatgi, Attorney General
Mr. Ranjit Kumar, Solicitor General
Mr. N.K. Kaul, ASG
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Mr. Chetan Chawla, Adv.
Ms. Charul Sarin, Adv.
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Mr. D.S. Mahra, Adv.

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Mr. V. Madhukar, AAG
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State of Haryana

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State of Manipur

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Mr. Rituraj Biswas, Adv.

State of Rajasthan Ms. Archana Pathak Dave, Adv.
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For Ms. Jyoti Mendiratta, Adv.

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Mr. Ardhendumauli Kumar Prasad, Adv.

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Mr. Pradeep Misra, Adv.

Mr. Praveen Swarup, Adv.

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Mr. Satish Vig, Adv.
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Mr. Vipin Kumar Jai, Adv.
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Mr. Anuvrat Sharma, Adv.
Mr. Ashok Kumar Singh, Adv.
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Mr. Balaji Srinivasan, Adv.
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Mr. Sibho Sankar Mishra, Adv.
Ms. Bina Madhavan, Adv.
Mr. Kamendra Mishra, adv.
Mr. Ratan Kuamr Choudhuri, Adv.

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

On 01.08.2014, whereby we wanted to know from the learned Attorney General about Government of India's plan in fast-tracking criminal justice in the country, learned Attorney General on that day took time to have a comprehensive look at the problem and come out with a concrete proposal in this regard within four weeks.

Mr. Mukul Rohatgi, learned Attorney General submits that process of consultation with the State Governments for fast-tracking criminal justice has been commenced by the Central Government but the blueprint/road-map for fast-tracking of criminal cases shall take some time. He prays for time to place the same by way of an affidavit within three months.

We reiterate that it is high time, positive steps are taken by the Central Government in consultation with the State Governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously.

Learned Attorney General informs us that more than 50% of the prisoners in various jails are under-trial prisoners. Even many of them may have served maximum sentence prescribed under the law for the offences they have been charged with. 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 as one of the punishments. Section 436A reads as follows :-

"436A. Maximum period for which an undertrial 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.]"

Having given our thoughtful consideration to the legislative policy engrafted in Section 436A and large number of under-trial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the under-trial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436A.

We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/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 436A of the Code of Criminal Procedure. In its sittings 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 436A pass an appropriate order in jail itself for release of such under-trial prisoners who fulfill the requirement of Section

436A 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.

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Mr. Mukul Rohtagi, learned Attorney General placed before us status of 25 foreign nationals

covered under the order dated 10.11.2008 passed by this Court.

As regards the status of the detenu-Hamid Numain Bhat s/o Mohd Iqbal Bhat (mentioned at serial No.1), it appears that he is lodged in Central Jail, Srinagar. He has been discharged in the case in which he was arrested by the Additional Sessions Judge, Srinagar. It is stated that having regard to legal and factual position, Government of Jammu and Kashmir is now processing his case of deportation, but so far 'No Objection' from the State has not been received, although, his nationality has been confirmed by Pakistan High Commission.

In light of the above, we direct the Home Secretary, Government of Jammu and Kashmir to take immediate steps in respect of forwarding 'No Objection' by the State Government to the Central Government for deportation of the prisoner-Hamid Numain Bhat, if it has decided not to challenge the discharge order. In that event, the 'No Objection' shall be positively sent within four weeks. On receipt of 'No Objection', if any, from the

Government of Jammu and Kashmir, the Central Government shall take steps for his deportation as early as possible and in no case not later than four weeks from the date of receipt of the 'No Objection.

Professor Bhim Singh, petitioner-in-person, invited our attention to the affidavit dated 16th July, 2013 filed on behalf of the Government of India by Mr. Vikas Srivastava in compliance of Order dated 08.05.2013.

Learned Attorney General prays for time to look into that affidavit and put forward the Central Government's view in that regard.

Mr. Divya Jyoti Jaipuriar, learned counsel has placed before us status of Pakistani fishermen detainees in Indian jails/prisons, which is taken on record. A copy thereof has been given to the learned Attorney General.

He prays for time to seek instructions in this regard and respond appropriately on the next date.

List all the matters on 08th December, 2014.

(Neetu Khajuria)
Sr.P.A.

(Renu Diwan)
Court Master

