

**IN THE SUPREME COURT OF INDIA**  
CIVIL ORIGINAL JURISDICTION  
(UNDER ARTICLE 129 OF THE CONSTITUTION OF INDIA)  
CONTEMPT PETITION (CIVIL) NO.\_\_\_\_ OF 2020  
IN  
SUO MOTU WRIT PETITION (C) NO. 1 of 2020

**IN THE MATTER OF:-**

IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

**IN THE MATTER OF :-**

1. Dilip Shankarrao Aapet

Versus

1. Mr. Shrikant Sinha,  
Additional Chief Secretary, Home Department,  
Mantralaya, Mumbai (Retd on 30.04.2020),  
Age: 60 years, R/o Amber,  
Malabar Hill, Mumbai, Maharashtra.
2. Mr. Sanjay Chahnde,  
Age: 52 years, Additional Chief Secretary,  
Home Department, Mantralaya, Mumbai-32,  
Maharashtra.
3. Mr. Surendra Pandey-  
Director General of Prisons,  
Old Central Building, 2nd Floor, \  
Maharashtra State, Pune -1, Maharashtra.

....Alleged

Contemnors

**PETITION FOR INITIATING CONTEMPT PROCEEDING  
UNDER ARTICLE 129 OF THE CONSTITUTION OF  
INDIA R/W SECTION 12 OF THE CONTEMPT OF  
COURT ACT, 1973 AGAINST ABOVE MENTIONED  
ALLEGED CONTEMNORS FOR NON COMPLIANCE OF  
JUDGMENT/ORDERS DATED 23.03.2020 in SUO  
MOTU WRIT PETITION (C) NO. 1 of 2020 IN RE :  
CONTAGION OF COVID 19 VIRUS IN PRISONS PASSED  
BY THIS HON'BLE Court**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS  
OTHER COMPANION JUDGES OF THIS HON'BLE  
SUPREME COURT OF INDIA.

THE HUMBLE CONTEMPT PETITION OF THE  
PETITIONER ABOVE NAMED :-

MOST RESPECTFULLY SHOWETH :-

1. That the petitioners have filed present Contempt  
Petition Under Article 129 Of The Constitution Of  
India R/W Section 12 Of The Contempt Of Court Act,  
1973 against Contemnors/Respondents herein for  
deliberate & willful disobedience/violation of  
judgment/orders dated 23.03.2020 in SUO MOTU  
WRIT PETITION (C) NO. 1 of 2020 IN RE :  
CONTAGION OF COVID 19 VIRUS IN PRISONS  
passed by this Hon'ble Court.
2. It is humbly submitted that, the petitioners are the  
law-abiding citizens of India. The petitioner No. 1 is  
undergoing sentence of three years imprisonment at  
Harsul Central Jail, Aurangabad for the offences  
punishable under Sections 420 read with Sections 3  
and 4 of MPID vide judgment and order dated

18.11.2019 passed by the Beed District Consumer Forum, Beed in Case Nos 16 of 2018, 02/2018 and 18 of 2018. Whereas the petitioner Nos. 2 to 4 are undertrial prisoners. A crime is registered at Naldurg police station alleging offences punishable under sections 420, 406 and 407 I.P.C. and sections 3 and 4 of the Maharashtra Protection of Interest of Depositors Act. They are currently incarcerated at Osmanabad District Jail in respect of the offences punishable under Sections 420, 406, 407 and 34 IPC in CR No. 288 of 2019.

3. The petitioners submit that, this Hon'ble Court in order to ensure that the spread of COVID19 is controlled in the prisons, directed each State/Union Territory shall constitute a High Powered Committee comprising of (i) Chairman of the State Legal Services Committee, (ii) the Principal Secretary (Home/Prison) by whatever designation is known as, (ii) Director

General of Prison(s), to determine which class of prisoners can be released on parole or an interim bail for such period as may be thought appropriate. For instance, the State/Union Territory could consider the release of prisoners who have been convicted or are undertrial for offences for which prescribed punishment is up to 7 years or less, with or without fine and the prisoner has been convicted for a lesser number of years than the maximum.

4. This Hon'ble Court, however, made it clear that it shall be open for the High Powered Committee to determine the category of prisoners who should be released as aforesaid, depending upon (i) the nature of offence, (ii) the number of years to which he or she has been sentenced, (iii) the severity of the offence with which he/she is charged with and is facing trial; or (iv) any other relevant factor, which the Committee may consider appropriate. This Hon'ble Court,



however, had further directed that the High Powered Committee shall take into consideration the directions given by this Hon'ble Court in Arnesh Kumar v. the State of Bihar reported in (2014) 8 SCC 273. Annexed hereto and marked at **ANNEXURE P-1** is the copy of order dated 23.03.2020 in Suo Motu Writ Petition (C)No. 1 of 2020 passed by this Hon'ble Court. (Page No. 48 to 55).

5. It is humbly submitted that, pursuant to the directions of this Hon'ble Court, the State of Maharashtra constituted a High Powered Committee vide GR dated 24.03.2020. The High Powered Committee passed the following order on 25.03.2020:-

- i. Undertrial prisoners who have been booked/charged for such offences for which maximum punishment is 7 years or less be favourably considered for release on interim

bail on personal bond of such amount as may be determined, for a period of 45 days or till such time that the State Government withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The undertrial prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

- ii. The convicted prisoners whose maximum punishment is 7 years or less, shall, on their application be favourably considered for release on emergency parole, for a period of 45 days or till such time that the State Government

withdraws the Notification under The Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall be extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within whose jurisdiction they are residing, once every 30 days.

- iii. The convicted prisoners whose maximum sentence is above 7 years shall on their application be appropriately considered for release on emergency parole, if the convict has returned to prison on time on last 2 releases (whether on parole or furlough), for a period of 45 days or till such time that the State Government withdraws the Notification under



the Epidemics Act, 1897, whichever is earlier. The initial period of 45 days shall stand extended periodically in blocks of 30 days each, till such time that the said Notification is issued (in the event the said Notification is not issued within the first 45 days). The convicted prisoners shall report to the concerned police station within jurisdiction they are residing, once every 30 days.

- iv. The aforesaid directions shall not apply to undertrial prisoners or convicted prisoners booked for serious economic offences/bank scams and offences under Special Acts (other than IPC) like MCOC, PMLA, MPID, NDPS, UAPA, etc., (which provide for additional restrictions on grant of bail in addition to those under CrPC) AND also presently to foreign

nationals and prisoners having their place of residence out of the State of Maharashtra.

- v. This decision shall apply only to such prisoners, which in the opinion of the concerned jailor, keeping in view the overall infrastructure available at the concerned jail and the number of prisoners, it is not practically possible to maintain the required social-distance between the prisoners.
- vi. Before the temporary release of prisoners, the necessary medical protocol in relation to screening of Corona virus (COVID - 19) shall be followed by the jail authorities and action be taken accordingly.
- vii. The prisoners who fall in the 'class' or the 'category' spelt out by this decision will be entitled to be released in accordance with law.

In considering every case for such release, the “nature of the offence” and the “severity of the offence” shall be considered. The possibility of the prisoners committing offence in case of temporary release (such as habitual offenders) or likelihood his/her absconding should also be considered an important test to decline such requests for temporary release.

- viii. The decision for temporary release of the prisoner shall be taken and implemented as expeditiously as possible, enabling his/her actual release within a maximum period of one week from the date of filing of an application in this regard by the prisoner.
- ix. All the above factors shall be considered before taking a decision of the temporary release of the prisoner. The directions and spirit of the

said order of the Hon'ble Supreme Court shall however be foremost kept in mind.

- x. In as much as the Hon'ble Supreme Court is in seisin of the matter, the aforesaid decision/directions shall be subject to further orders of the Hon'ble Supreme Court.

Hereto annexed and marked as **ANNEXURE P-2** is the copy of the decision dated 25.03.2020 of the High Powered Committee, State of Maharashtra. (Page No. 56 to 63 ).

6. It is humbly submitted that, pursuant to the directions of this Hon'ble Court, the High Powered Committee had directed the State Government to release the convicts who are undergoing imprisonment for the offences punishable with imprisonment of seven years or less.

7. Immediately after the decision of the High Powered Committee, the Hon'ble Home Minister of Maharashtra issued a press release on 26.03.2020 and announced that 11,000 prisoners shall be released on emergency parole. Hereto annexed and marked as **ANNEXURE P-3** is the copy of the press release dated 26.03.2020 issued by the Hon'ble Minister for Home Department, MS, Mumbai. (Page No. 64 to 64 ).
8. The petitioners submit that persons namely Nitin Shelke and Madhukar Suryawanshi had filed a writ petition challenging the said exclusion in the direction of High Power Committee with regards to 'offences punishable under Special Acts', on grounds of arbitrary classification and contempt of Supreme Court directions, by filing Criminal Writ Petition being 483/2020. Notices came to be issued on 03.04.2020 whereas time was sought by the counsel



appearing for the High Power Committee to file an affidavit in reply on 08.04.2020. Hereto annexed and marked at **ANNEXURES P-4** is the copy of order dated 03.04.2020 in Criminal WP No. 483 of 2020 passed by Hon'ble High Court of Judicature at Bombay bench at Aurangabad. (Page No. 65 to 65).

Hereto annexed and marked at **ANNEXURES P-5** is the copy of order dated 08.04.2020 in Criminal WP No. 483 of 2020 passed by Hon'ble High Court of Judicature at Bombay bench at Aurangabad. (Page No. 66 to 66).

9. Meanwhile, this Hon'ble Court vide order dated 13.04.2020 in Suo Motu Writ Petition (C) No. 1 of 2020 once again reiterated that its earlier order dated 23.03.2020 is intended to be implemented fully in letter and spirits. Hereto annexed and marked as **ANNEXURE P-6** is the copy of the order

dated 13.04.2020 in Suo Motu (C) No. 1 of 2020 passed by this Hon'ble Court. (Page No. 67 to 74 ).

10. However, while hearing the petition filed by persons namely Nitin Shelke and Madhukar Suryawanshi, finally on 15.04.2020, the Hon'ble High Court observed that since the Chief Justice has taken judicial note of the representation submitted in this regard by an advocate, and treated the same as a suo-motu petition, the issue may be considered holistically in that petition, whereas granted liberty to the petitioner to file representation before the High Power Committee and seek expeditious decision thereon. Hereto annexed and marked at **ANNEXURES P-7** is the copy of order dated 15.04.2020 in Criminal WP No. 483 of 2020 passed by Hon'ble High Court of Judicature at Bombay bench at Aurangabad. (Page No. 75 to 76 ).

11. Meanwhile, the Hon'ble High Court of Bombay took cognizance of a letter written by a senior advocate regarding release of the prisoners. A statement was made before the Hon'ble High Court of Bombay that the State is taking measures to release the prisoners as per the statement of the Hon'ble Minister which is evident from the order dated 23.04.2020 in Cri. Suo Motu PIL SMP No. 1 of 2020 passed by the High Court of Bombay. Hereto annexed and marked as **ANNEXURE P-8** is the copy of the order dated 23.04.2020 in Suo Motu Criminal PIL SMP No. 1 of 2020 passed by the Hon'ble High Court of Bombay. (Page No. 77 to 83).
12. It is humbly submitted that, despite an elapse of more than 1 and ½ months from the decision of the High Powered Committee, the State of Maharashtra has not released a single prisoner till date by granting emergency parole.

13. It is humbly submitted that, despite making an express statement before the Hon'ble High Court of Bombay, the State of Maharashtra has failed to release the prisoners by granting emergency parole, thereby frustrating the very object and purpose of the directions of this Hon'ble Court.
  
14. The petitioners submit that this Hon'ble Court had directed the High Powered Committee to frame guidelines so as to ensure that the prisoners are released and the prisons are decongested, that too by considering the guidelines laid down by this Hon'ble in the case of Arnesh Kumar v. the State of Bihar reported in (2014) 8 SCC 273. This Hon'ble Court had directed in the said case that the authorities shall ensure that no person who is accused of an offence punishable with imprisonment of 7 years or less shall be incarcerated without cogent reasons. This Hon'ble Court while issuing the said directions

did not make any distinction between the offences punishable under IPC and the economic offences or the offences punishable under the Special Acts.

15. The petitioners submit that the High Powered Committee was bound by the directions laid down by this Hon'ble Court in the Suo Motu Writ Petition (C) No. 1 of 2020, as also Arnesh Kumar.
16. The petitioners submit that the entire thrust of constituting the High Powered Committee was to curb the spread of COVID19 in the prisons by maintaining social distancing.
17. However, the decision of the High Powered Committee that the directions issued by this Hon'ble Court shall not apply to prisoners who are accused of economic offences and the offences punishable under the Special Acts is in defiance of the order



dated 23.03.2020 in Suo Motu Writ Petition (C) No. 1 of 2020 passed by this Hon'ble Court.

18. Accordingly, Nitin Shelke and Madhukar Suryanvanshi preferred representations to the High Powered Committee on 18.04.2020. However, the High Powered Committee has not decided the representation so far and in the meanwhile, one of the members of the High Powered Committee retired on 30.04.2020. The High Powered Committee may not decide their representation or reconsider its earlier decision till its reconstituted. As a result, the direction of this Hon'ble Court in respect of release of prisoners would remain to be complied with in its letter and spirit.
19. Though the initial press note issued by the Hon'ble Minister, Maharashtra State had mentioned that nearly 11,000 prisoners shall be released on emergency parole relying on the directions of this

Hon'ble Court. However, even after a lapse of more than 1 and ½ months from the directions issued by this Hon'ble Court, not a single person is released on parole whereas the prisons in the State of Maharashtra remain overcrowded.

20. After more than a month now the situation has become so grave that 4 persons who were transferred from Yerwada Central Jail, Pune to Satara District Jail are tested positive. None of the prisons is subjected to testing for COVID19 owing to which the real situation of risk of contagion is not brought to light. It, has, therefore, become utmost necessary, if not mass testing at least random testing of COVID19 has to be done by the Government.
21. The petitioner Nos. 2 to 4 are undertrial prisoners, A crime is registered at Naldurg police station alleging offences punishable under sections 420, 406 and 407 I.P.C. and sections 3 and 4 of the Maharashtra

Protection of Interest of Depositors Act. They are currently incarcerated at Osmanabad District Jail in respect of the offences punishable under Sections 420, 406, 407 and 34 IPC in CR No. 288 of 2019.

22. As per decision of the high powered committee the petitioner nos. 2,3 and 4 are entitled to be released on interim bail in respect of offences punishable under sections 420, 406, 407 and 34 IPC. but for offences under sections 3&4 of Maharashtra Protection of Interest of Depositors Act.
23. No doubt, this hon'ble court had conferred a discretion to determine the category of prisoners such discretion was neither absolute nor unguided nor unfettered. Such discretion was required to be exercised as per the parameters laid down by this hon'ble court in it's order dated 23.03.2020.

24. The high powered committee has determined the category of prisoners contrary to the broad parameters laid down by this hon'ble court and, therefore knowingly and willfully disobeyed the directions of this hon'ble court and, therefore the respondent nos. 12&3 are/were members of the high powered committee are in contempt of this hon'ble court.
25. Meanwhile, the petitioner Nos. 2 to 4 through the District Legal Services Authority, Osmnabad preferred an application before the Ld. JMFC, Tuljapur, Osmanabad, seeking temporary bail in the light of the directions of this Hon'ble Court. The applications for temporary bail filed by the petitioner Nos. 2 to 4 were duly recommended for grant of temporary bail in the light of the directions of this Hon'ble Court by the District Legal Services Authority, Osmanabad.

26. The petitioners although were squarely covered under the directions of this Hon'ble Court, the Ld. JMFC rejected the applications stating that the High Powered Committee had excluded economic offences from the scope of the directions of this Hon'ble Court vide an order dated 28.03.2020. The order passed by the JMFC is not only cryptic but did not specify a single reason as to how the petitioners were accused of "serious economic offences".
27. The petitioners submit that meanwhile, several representations came to be filed before the High Powered Committee seeking modification of its earlier decision dated 25.03.2020 so as to implement the directions dated 23.03.2020 issued by this Hon'ble Court. However, the High Powered Committee did not decide those decisions nor has modified its earlier order dated 23.03.2020 in the light of this Hon'ble Court.



28. It is humbly submitted that, a similar grievance was made before the Hon'ble High Court of Bombay in the Suo Motu PIL No. 1 of 2020 (supra) that the classification undertaken by the High Powered Committee is arbitrary, and, therefore, needs to be interfered with. However, the Hon'ble High Court of Bombay felt it proper that since the representations were pending before the High Powered Committee, it shall be appropriate that the High Powered Committee shall consider the said representations. The Hon'ble High Court of Bombay vide an order dated 23.04.2020, therefore, directed the High Powered Committee to decide the representations as early as possible.
29. The petitioners submit that the High Powered Committee did not decide the representations till date and meanwhile, one of the members of the High Powered Committee stood retired on 03.04.2020. The

Government is yet to reconstitute the High Powered Committee and as such, there is no possibility that High Powered Committee would modify its earlier decision.

30. Meanwhile, the petitioner Nos. 2 to 4 challenged the order passed by the Ld. JMFC, Tuljapur rejecting grant of temporary bail and para 8 of the decision of High Powered Committee by filing writ petition before the Hon'ble High Court of Bombay. The Writ Petition was tagged with Suo Motu Criminal PIL SMP No. 1 of 2020 passed by the Hon'ble High Court of Bombay.
31. The petitioner Nos. 2 to 4 also preferred a representation to the High Powered Committee seeking modification of its order dated 25.03.2020. Therefore, the Hon'ble High Court stand over the matters to 11th May, 2020, in order to enable the High Power Committee to decide the representations. However, there has been no response much less

action on the same by the High Powered Committee till date. Hereto annexed and marked as **ANNEXURE P-9** is the copy of the order dated 30.04.2020 in Suo Motu Criminal PIL SMP No. 1 of 2020 passed by the Hon'ble High Court of Bombay. (Page No. 84 to 86 ).

32. The petitioners submit that all the 9 Central Prisons in Maharashtra are overcrowded and, therefore, it is not possible to maintain social distancing. The central jails are so congested that the distance between the sleeping place between 2 prisoners is hardly a foot. The Bureau of Police Research and Development has prepared model prison manual pursuant to the directions of this Hon'ble Court in the case of Ram Murthy v. State of Karnataka. It is provided in the report that there shall be separate cells for segregation of prisoners for the purpose of security and contagious diseases. However, the

accommodation provided in the dormitory, sleeping barracks, or cells or cottages in the prisons in the State of Maharashtra more particularly, in the Central Prisons is much less than prescribed in the Maharashtra Prisons Manual as well as the model prison manual.

33. The petitioners submit that the Controller and Auditor General of India conducted an audit of the prisons in Maharashtra and has observed in its report that the prisons in Maharashtra were overcrowded than its sanctioned strength and were deprived of adequate space for sleeping as was provided in the norms while conducting social audit. Hereto annexed and marked at **ANNEXURE P-10** is the relevant extract of the report dated nil of the Comptroller and Auditor General of India on General and Social Sector for the year ended in March 2018. (Page No. 87 to 124).

34. Therefore, the petitioners are constrained to file present Contempt Petition against contemnors herein on following amongst several other grounds, which are without prejudice to each other :-

**GROUND FOR CONTEMPT PETITION**

- (A) Because, even though the High Powered Committee took a decision and directed the State Government to release the convicts who are undergoing imprisonment for the offences punishable with imprisonment of seven years or less, the State of Maharashtra has not released a single prisoner till date by granting emergency parole.
- (B) Immediately after the decision of the High Powered Committee, the Hon'ble Home Minister of Maharashtra issued a press release on 26.03.2020 and announced that 11,000 prisoners shall be released on emergency parole.



- (C) Even the Hon'ble High Court of Bombay took cognizance of a letter written by a senior advocate regarding release of the prisoners. A statement was made by the advocate for the State before the Hon'ble High Court of Bombay that the State is taking measures to release the prisoners as per the statement of the Hon'ble Minister which is evident from the order dated 23.04.2020 in Cri. Suo Motu PIL SMP No. 1 of 2020 passed by the High Court of Bombay. It is humbly submitted that, despite an elapse of more than 1 and ½ months from the decision of the High Powered Committee, the State of Maharashtra has not released a single prisoner till date by granting emergency parole.
- (D) Because, the State of Maharashtra has failed to release the prisoners by granting emergency parole, thereby frustrating the very object and purpose of the directions of this Hon'ble Court.

- (E) It is humbly submitted that, despite an elapse of more than 1 and ½ months from the decision of the High Powered Committee, the State of Maharashtra has not released a single prisoner till date by granting emergency parole and despite making an express statement before the Hon'ble High Court of Bombay, the State of Maharashtra has failed to release the prisoners by granting emergency parole, thereby frustrating the very object and purpose of the directions of this Hon'ble Court.
- (F) Because, this Hon'ble Court had directed the High Powered Committee to frame guidelines so as to ensure that the prisoners are released and the prisons are decongested, that too by considering the guidelines laid down by this Hon'ble in the case of *Arnesh Kumar v. the State of Bihar* reported in (2014) 8 SCC 273. This Hon'ble Court had directed in the said case that the authorities shall ensure that no

person who is accused of an offence punishable with imprisonment of 7 years or less shall be incarcerated without cogent reasons. This Hon'ble Court while issuing the said directions did not make any distinction between the offences punishable under IPC and the economic offences or the offences punishable under the Special Acts.

- (G) Because, the High Powered Committee was bound by the directions laid down by this Hon'ble Court in the *Suo Motu Writ Petition (C) No. 1 of 2020*, as also *Arnesh Kumar*.
- (H) Because, the entire thrust of constituting the High Powered Committee was to curb the spread of COVID19 in the prisons by maintaining social distancing. However, the decision of the High Powered Committee that the directions issued by this Hon'ble Court shall not apply to prisoners who are accused of economic offences and the offences punishable under

the Special Acts is in defiance of the order dated 23.03.2020 in Suo Motu Writ Petition (C) No. 1 of 2020 passed by this Hon'ble Court.

- (I) Because, Nitin Shelke and Madhukar Suryanvanshi preferred representations to the High Powered Committee on 18.04.2020. However, the High Powered Committee has not decided the representation so far and in the meanwhile, one of the members of the High Powered Committee retired on 30.04.2020. The High Powered Committee may not decide their representation or reconsider its earlier decision till its reconstituted. As a result, the direction of this Hon'ble Court in respect of release of prisoners would remain to be complied with in its letter and spirit.
- (J) Because, though the initial press note issued by the Hon'ble Minister, Maharashtra State had mentioned that nearly 11,000 prisoners shall be released on emergency parole relying on the directions of this



Hon'ble Court. However, even after a lapse of more than 1 and ½ months from the directions issued by this Hon'ble Court, not a single person is released on parole whereas the prisons in the State of Maharashtra remain overcrowded.

- (K) After more than a month now the situation has become so grave that 4 persons who were transferred from Yerwada Central Jail, Pune to Satara District Jail are tested positive. None of the prisons is subjected to testing for COVID19 owing to which the real situation of risk of contagion is not brought to light. It, has, therefore, become utmost necessary, if not mass testing at least random testing of COVID19 has to be done by the Government.
- (L) The petitioner Nos. 2 to 4 are undertrial prisoners, A crime is registered at Naldurg police station alleging offences punishable under sections 420, 406 and 407 I.P.C. and sections 3 and 4 of the Maharashtra



Protection of Interest of Depositors Act. They are currently incarcerated at Osmanabad District Jail in respect of the offences punishable under Sections 420, 406, 407 and 34 IPC in CR No. 288 of 2019.

- (M) Because, as per decision of the high powered committee the petitioner nos. 2,3 and 4 are entitled to be released on interim bail in respect of offences punishable under sections 420, 406, 407 and 34 IPC. but for offences under sections 3&4 of Maharashtra Protection of Interest of Depositors Act. No doubt, this hon'ble court had conferred a discretion to determine the category of prisoners such discretion was neither absolute nor unguided nor unfettered. Such discretion was required to be exercised as per the parameters laid down by this hon'ble court in it's order dated 23.03.2020.
- (N) Because, the high powered committee has determined the category of prisoners contrary to the broad

parameters laid down by this hon'ble court and, therefore knowingly and willfully disobeyed the directions of this hon'ble court and, therefore the respondent nos. 12&3 are/were members of the high powered committee are in contempt of this hon'ble court.

- (O) Because, several representations came to be filed before the High Powered Committee seeking modification of its earlier decision dated 25.03.2020 so as to implement the directions dated 23.03.2020 issued by this Hon'ble Court. However, the High Powered Committee did not decide those decisions nor has modified its earlier order dated 23.03.2020 in the light of this Hon'ble Court.
- (P) Because, the petitioners submit that the High Powered Committee did not decide the representations till date and meanwhile, one of the members of the High Powered Committee stood retired on 03.04.2020.

The Government is yet to reconstitute the High Powered Committee and as such, there is no possibility that High Powered Committee would modify its earlier decision.

- (Q) The respondent State as well as the High Powered Committee rather than complying with the directions of this Hon'ble Court in its true spirit, had been deferring to implement the directions of this Hon'ble Court.
- (R) Because, the very purpose of directions issued by this Hon'ble Court to constitute the High Powered Committee was to ensure decongestion of prisoners in the jail so as to curb the spread of COVID19, stands defeated.
- (S) Because, all the 9 Central Prisons in Maharashtra are overcrowded and, therefore, it is not possible to maintain social distancing. The central jails are so

congested that the distance between the sleeping place between 2 prisoners is hardly a foot. The Bureau of Police Research and Development has prepared model prison manual pursuant to the directions of this Hon'ble Court in the case of Ram Murthy v. State of Karnataka. It is provided in the report that there shall be separate cells for segregation of prisoners for the purpose of security and contagious diseases. However, the accommodation provided in the dormitory, sleeping barracks, or cells or cottages in the prisons in the State of Maharashtra more particularly, in the Central Prisons is much less than prescribed in the Maharashtra Prisons Manual as well as the model prison manual.

- (T) Because, the Controller and Auditor General of India conducted an audit of the prisons in Maharashtra and has observed in its report that the prisons in

Maharashtra were overcrowded than its sanctioned strength and were deprived of adequate space for sleeping as was provided in the norms while conducting social audit.

- (U) It is clear from the glimpses of overcrowding in Central Prison, Mumbai taken on 10.05.2018 at p. 48 of the chapter II- performance audits, that the distance between sleeping space between two prisoners is not even an inch. Things have not changed since then.
- (V) Because, the prisoners are released on temporary bail pursuant to the directions of the High Powered Committee during the period between 26.03.2020 and 31.03.2020 and even after release of those prisoners on temporary bail, the Central Jails in Maharashtra are overcrowded which is evident from the details given on the official website of the Maharashtra Prisons Department. The prison wise capacity and



actual number of the prisoners incarcerated in the Central Prisons in the State of Maharashtra as on 31.03.2020 is as under:

<b>Sr. No</b>	<b>Prison name</b>	<b>Sanctioned capacity of the prisons</b>	<b>Actual strength of prisoners</b>
1	Amravati Central Prison	943	1350
2	Nagpur Central Prison	1810	2345
3	Aurangabad Central Prison	539	1753
4	Nashik Road Central Prison	3018	3056
5	Kolhapur Central Prison	1699	2254
6	Yerwada Central Prison	2449	5693
7	Mumbai Central Prison	804	2941
8	Thane Central Prison	1105	3718
9	Taloja Central Prison	2124	2635
	<b>Total</b>	<b>14491</b>	<b>25745</b>

(W) Thus, 11,254 prisoners more than sanctioned strength are incarcerated in the 9 Central Prisons in the State of Maharashtra. As a matter of fact, the

same required for accommodation including the sleeping space in all the 9 Central Prisons in the State of Maharashtra is less than 10 percent of the space prescribed in the model prison manual prepared by the Bureau of Police Research and Development pursuant to the directions of this Hon'ble Court. The prisoners are living in the most abject and inhumane conditions whereas their plight is pitiable. It is, therefore, very much necessary to decongest the prisons before it spreads like a wildfire.

- (X) Because, the State Government has failed to release 11,000 prisoners on emergency parole pursuant to the decision of the High Powered Committee and thereby sitting tight over the directions of this Hon'ble Court as well as the decision of the High Powered Committee. Similarly, the decision of the High Powered Committee is not in consonance with

the directions of this Hon'ble Court. The High Powered Committee has thus, failed to follow and comply with the directions of this Hon'ble Court.

(Y) Because, the contemnors have knowingly, intentionally, purposefully and deliberately flouted the directions of this Hon'ble Court to release the prisoners either on emergency parole or interim bail as per the criteria laid down by this Hon'ble Court. Both the Government and the High Powered Committee undermined the authority, dignity and majesty of this Hon'ble Court and, thereby lowered the majesty of this Hon'ble Court and the esteem of the general public.

(Z) Because, the respondent No. 1 was under an obligation to follow the directions of this Hon'ble Court and also to implement the decision of the High Powered Committee. The decision of the High Powered Committee although was accepted by the

Hon'ble Home Minister, implementation of the same is withheld by the respondent No. 1 for the reasons best known to him. The respondent No. 1 was working as Additional Chief Secretary, Home Department since prior to 23.03.2020 till his retirement on 30.04.2020. Although it was obligatory on his part to implement the decision of the High Powered Committee, he failed to do so till his retirement till 30.04.2020. The respondent No. 1 cannot be absolved of the liability for contempt merely because he stood retired on 30.04.2020. The respondent No. 1 was additionally the member of the High Powered Committee and, therefore, was bound to follow the directions of the Supreme Court in its letter and spirit.

(AA) Because, the respondent No. 2 took charge of the post of the Additional Chief Secretary (Home) on 30.04.2020 (A.N.) and is acting as such. The



respondent No. 2 cannot escape the liability merely because he was not holding the charge of the post of Additional Chief Secretary (Home) during the period between 23.03.2020 and 30.04.2020.

(BB) Because, the respondent No. 2 was under an obligation to follow the directions of this Court and comply the decision of the High Powered Committee immediately after he took oath as Additional Chief Secretary (Home) in the evening of 30.04.2020.

(CC) Because, the respondent No. 3 has over all control over the prisons in Maharashtra and at the same time responsible for following the directions of the Supreme Court and implementing the decisions of the High Powered Committee, of which he has been a member Secretary. The respondent No. 3 owes an obligation to follow the directions of the Supreme Court and implement the decision of the High Powered Committee in dual capacity i.e. as the



Controlling Authority and the Member Secretary of the High Powered Committee.

(DD) That petitioner craves leave and liberty to add, amend any of the contentions of the present petition. Petitioners reserves their right to file additional affidavit, if need arises at later stage in the present subject matter with the kind permission of this Hon'ble Court.

**35. PRAYERS :**

It is therefore, most respectfully prayed that Hon'ble Court my gracefully be pleased to :-

- a) initiate proceeding for Contempt of Court against contemnors under Article 129 of the Constitution of India r/w Section 12 of the Contempt of Court Act, 1973 for deliberate & willfull disobedience of judgment/orders dated 23.03.2020 in SUO MOTU WRIT PETITION (C) NO. 1 of 2020 IN RE : CONTAGION OF COVID 19 VIRUS IN PRISONS

passed by this Hon'ble Court.]and punish them with severest of punishment for contempt of court in accordance with law;

- b) issue interim direction to the alleged contemnors to release the petitioner no.1 on emergency parole and petitioner nos. 2 to 4 on interim bail ;
- c) issue ad-interim ex-parte reliefs in terms of prayer clause b) and confirm the same after notices to the respondents;
- d) Pass any other order or directions as this Hon'ble Court deems fit and proper.

AND FOR THIS ACT OF KINDNESS AND JUSTICE,  
PETITIONER AS IN DUTY BOUND SHALL EVER  
PRAYED FOR.

Drawn by :

Filed by :

[SATISH B. TALEKAR]  
Advocate

[ATUL BABASAHEB DAKH]  
Advocate for the Petitioners

Drawn on : 02.05.2020  
Filed on : 06.05.2020  
Place : New Delhi.