

Discrimination amongst the prisoners in same category and similarly placed

Bail - Covid 19 - Temporary release of prisoners - *Suo Moto Writ Petition (Civil) No. 1/2020, 2020 SCeJ 1713* - Interim bail - Discrimination - Where there is any individual discrimination amongst the prisoners in same category and similarly placed, it would be open for the competent Court to examine the same to that limited extent when grievance is raised by the person who is denied the benefit if he/she is entitled to such benefit. #2020 SCeJ 1722

Is not in the nature of a statutory right for bail based on other legal consideration but is in the nature of human right to safeguard the health

Bail - Covid 19 - Temporary release of prisoners - *Suo Moto Writ Petition (Civil) No. 1/2020, 2020 SCeJ 1713* - Interim bail - Is not in the nature of a statutory right for bail based on other legal consideration but is in the nature of human right to safeguard the health - Cannot lose sight of the fact that the entire right to claim such interim bail has arisen in the unprecedented circumstance of the pandemic and the consideration for interim bail is not in the nature of a statutory right for bail based on other legal consideration but is more in the nature of human right to safeguard the health. #2020 SCeJ 1722

Grant of interim bail/parole/furlough due to the unforeseen circumstance of the pandemic, namely, Novel Coronavirus (Covid-19) which requires decongesting of prisons with the intention of social distancing to be maintained so as to prevent the spread of virus

Bail - Covid 19 - Temporary release of prisoners - *Suo Moto Writ Petition (Civil) No. 1/2020, 2020 SCeJ 1713* - Interim bail - Grant of interim bail/parole/furlough due to the unforeseen circumstance of the pandemic, namely, Novel Coronavirus (Covid-19) which requires decongesting of prisons with the intention of social distancing to be maintained so as to prevent the spread of virus - Court while registering a *Suo Moto Writ Petition (Civil) No. 1/2020 (2020 SCeJ 1713)* had taken note of the pandemic and in that context also referred to the decision taken by the Government of India to issue an advisory regarding social distancing - High Powered Committee constituted in terms of the order passed on 23.03.2020 in respect of the prisons in the State of Maharashtra issued guidelines and classified the inmates of the prisons, on the consideration of the 'nature of the offence' and the 'severity of offence', broadly into three categories, viz (i) undertrial prisoners/convicted persons who are facing trial or convicted to the maximum punishment of 7 years or less, (ii) the convicted persons whose sentence is above 7 years and (iii) the undertrial prisoners or convicted persons who are booked for serious economic offences/bank scams and offences under Special Acts such as MCOC, PMLA, MPID, NDPS, UAPA etc. (*Para 6*) - Challenge to the said guidelines on basis of alleged discrimination in the categorisation and also unreasonableness in imposing the condition of earlier release in respect of the convicted persons for the sentence of more than 7 years - Equality before the law or the equal

protection of laws does not mean identity or abstract symmetry of treatment and that reasonable classification is permitted (*Para 8*) - The genesis for the present claim being the order passed by this Court in *Suo Moto Writ Petition (Civil) No. 1/2020, 2020 SCeJ 1713*, a balance was struck - As such, as noticed from the order dated 23.03.2020, this Court had directed the constitution of the HPC consisting of a senior High Court Judge and highly placed officials so that an appropriate categorisation be made in each State dependant on the circumstance arising therein Further, the intention of this Court was not that every undertrial or convicted prisoner is to be released irrespective of the nature of offence or severity thereof - The consideration was for the purpose of decongesting the prisons so that social distancing could be maintained to avoid the spread of virus - In that circumstance the consideration would certainly be different in each State/Union Territory depending on the occupancy in the prison, the spread of virus, the infrastructure available and the need, if any, to release certain number of prisoners so as to decongest (*Para 9*) - The Committee has thought it fit to separately classify the undertrials/convicted persons who are charged under the Special Enactments irrespective of the duration of imprisonment notwithstanding the fact that the punishment imposed could be less than 7 years - In that regard, what has weighed with the HPC is that such enactments provide for additional restrictions on grant of bail in addition to those under the Criminal Procedure Code - The said categorisation in our view cannot be considered as unreasonable since at the first instance, based on the categorisation made a consideration is required by the Court for grant of interim bail if such undertrial/convicted person is seeking bail purely on taking benefit of the notification issued pursuant to such decision taken by the HPC - The exclusion made has a reasonable basis and cannot be termed arbitrary (*Para 11*) - We are of the opinion that when such factual consideration to achieve the object alone is necessary and the HPC is constituted for the very purpose to void overcrowding, interference in a judicial proceeding of the present nature to alter the criteria would not arise unless it is shown to be so arbitrary that no reasonable person can accept (*Para 15*) - Constitution of India, Article 14. # **2020 SCeJ 1722**