

From:

Addl. Director General of Prisons,
Punjab, Chandigarh.

To:

1. All District & Sessions Judges in Punjab.
2. All Deputy Commissioners of Districts in Punjab.
3. All CPs/SSPs of Punjab.
4. All CMOs in Punjab.
5. All Superintendents of Jails in Punjab.

No: **G1/A-8/10185-10301**

Date: 18-08-2021

Sub: Minutes-of-meeting of the 9th meeting of High Powered Committee held under the Chairmanship of Hon'ble Justice Mr. Ajay Tewari, Judge, Punjab and Haryana High Court, Chandigarh and Executive Chairman, Punjab State Legal Services Authority, Chandigarh, at 1230 hrs on 16.08.2021.

Memo:

Kindly refer to Minutes of eight (8) meetings circulated vide letters dated 26-3-2020, 02-05-2020, 07-08-2020, 20-11-2020, 27-11-2020, 10-02-2021, 27-4-2021 and 11-5-2021.

2. A meeting of the High Powered Committee constituted in pursuance of the directions of the Hon'ble Supreme Court of India in SMWP (C) no. 1/2020 (RE: Contagion of COVID-19), was held on 16.08.2021. The objective of this meeting was to examine the Orders of the Hon'ble Supreme Court dated 16.07.2021.

3. The minutes of the meeting are hereby forwarded to the all concerned for strict compliance of the recommendations contained therein.

Encls: As above.



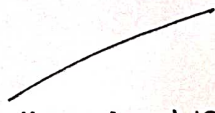
(Roop Kumar Arora), IG Prisons
For: Addl. Director General of Police,
Prisons, Punjab

Endst No.

Date-

A copy of the Minutes-of-Meeting is forwarded to the following for information.

1. Chief Secretary, Govt. of Punjab.
2. Addl. Chief Secretary, Home, Govt. of Punjab.
3. Principal Secretary, Jails, Govt. of Punjab
4. Principal Secretary, Health & Family Welfare, Punjab.
5. Director General of Police, Punjab.
6. Registrar General, Punjab & Haryana, High Court, Chandigarh.
7. Member Secretary, PULSA for information of Hon'ble Executive Chairperson, PULSA.
8. DIG Prisons (Hqrs., Ptl, Asr, Fzr Circles), Punjab
9. DSP, Prisons Hqrs., Punjab
10. PA to Addl. Director General of Police, Prisons, Punjab.



(Roop Kumar Arora), IG Prisons
For: Addl. Director General of Police,
Prisons, Punjab

Minutes-of-meeting of the 9th meeting of High Powered Committee held under the Chairmanship of Hon'ble Justice Mr. Ajay Tewari, Judge, Punjab and Haryana High Court, Chandigarh and Executive Chairman, Punjab State Legal Services Authority, Chandigarh, at 1230 hrs on 16.08.2021.

The meeting was attended by the following officers/members of the High Powered Committee:

1. Mr. D. K. Tiwari, IAS, Principal Secretary to Government of Punjab, Department of Jails, Punjab.
 2. Mr. Praveen K. Sinha, IPS, Additional Director General of Police, Prisons, Punjab.
 3. Mr. R. K. Arora, Inspector General of Prisons, Punjab.
 4. Mr. Arun Gupta, Member Secretary, PULSA.
2. PS, Jails and ADGP, Prisons apprised the Chair regarding the actions taken in compliance of the recommendations of the High Powered Committee meetings held earlier, and also discussed the prevailing COVID situation in the State.

PROCEEDINGS OF THE HIGH POWERED COMMITTEE:

3. The issues discussed in the 9th meeting of the HPC and the decisions taken are detailed in the following paras.

4. **Interpretation of directions of the Hon'ble Supreme Court of India dt. 16-07-2021:** Hon'ble Supreme Court of India passed directions (on 16.07.2021) regarding deferment of return of prisoners released from jails in wake of second wave of COVID, the relevant part of which is reproduced below:

"So far as those prisoners who have already been released on bail from the prison by virtue of Orders passed by this Court from time to time and on the basis of recommendations of High Powered Committees constituted for the purpose are concerned, they shall not be asked to surrender to the prison, until further orders."

ADGP, Prisons stated that while the wording of the judgement seems to indicate only towards the return of prisoners released on interim bail, some states have interpreted it to cover both, those released on parole as per HPC criteria as well as those released on interim bail as per HPC criteria. Hence, the HPC may examine the matter and decide whether benefit of extension is to be given to under-trials released on interim bail, or also to convict prisoners who have been released on parole as per criteria fixed by HPC.

Decision: The directions of Hon'ble Supreme Court were considered by the HPC. It was felt that in the Order dt. 16.07.2021, the Apex Court has referred only to those prisoners who have been released on Interim bail, i.e. under-trial prisoners released on interim bail. Hence, all the convict prisoners released on parole in wake of COVID, shall surrender

back as per their schedule of return. Those who are on interim bail to continue as such till further orders of Hon'ble Supreme Court of India.

(Action: ADGP, Prisons and Concerned Jail Superintendent)

5. **Interview with Lawyers:** ADGP, Prisons apprised the Chair that in wake of resumption of physical court hearings, prisoners across the prisons of Punjab have been requesting to meet their lawyers to pursue their cases. The Committee examined the matter, and decided that the demand is genuine, however keeping in view the indications of 3rd wave, limited interview may be resumed for each under-trial prisoner who shall be allowed only one (1) interview with his/her lawyer before each court hearing subject to following conditions:

- (a) Interview shall be allowed in a room inside the deori only if the lawyer is double vaccinated at least 15 days prior to the interview; or has RT-PCR COVID negative report (within 72 hrs. of *mulakaat*).
- (b) In all other cases of *mulakaat* with lawyers (when double vaccination certificate or negative RT-PCR report is not there), the interview shall take place in the *mulakaat* hall, with both sides of partition covered with appropriate partition/ sheets, to maintain proper segregation to avoid infection.

(Action: Concerned Jail Superintendent)

6. **Resumption of physical *mulakaat* with family/friends:** The Committee examined the matter regarding resumption of interview/physical *mulakaat* of prisoners with family members/friends, and felt that though there is a genuine need to resume *mulakaat* of prisoners for their mental health, there are indications of a 3rd wave of COVID in some parts of the country, which includes Punjab also. Hence, only limited *mulakaat* may be resumed till further orders subject to the following conditions:

- (i) One (1) interview per month per prisoner shall be allowed, whether convict or under-trial;
- (ii) Maximum of two persons can meet the prisoner per *mulakaat* /interview;
- (iii) Interview shall be allowed only if the interviewee(s)/*mulakaati* is/are fully vaccinated at least 15 days prior to the interview; or has/have RT-PCR negative report (within 72 hrs. of *mulakaat*);
- (iv) Concerned Superintendents of Jails shall ensure that all necessary precautions and protocols are followed during conduct of such interviews/*mulakaats*. They may use innovative means towards this end, including the use of appropriate partition/sheets to maintain proper segregation to avoid infection in the *mulakaat* hall.

(Action: Concerned Jail Superintendent)

7. **Corrigendum in criteria decided in 8th meeting for release of under-trial prisoners on interim bail:** The Member-Secretary, PULSA apprised the HPC that in the

recommendations made by the HPC in its 8th meeting held on 10.05.2021, the criteria for release of prisoners on interim bail was ambiguous with regard to whether under-trial prisoners arrested for commercial quantities under NDPS Act should be released on health/co-morbidity or age grounds. The recommendations of the 8th meeting of HPC were examined by the HPC and it was felt that a clarification is required.

Decision: The following was recommended by the HPC in this regard:

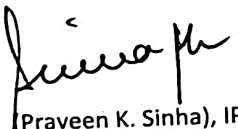
- (i) In the criteria for release of under-trials on interim bail, in the Negative List, prisoners arrested for recovery of commercial quantity under NDPS Act may also be added.
- (ii) Without revisiting those already released on interim bail, henceforth, interim bail to under-trial prisoners may only be considered under the revised criteria attached along with (Annexure-A).

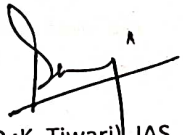
(Action: Concerned Judicial Officers)


8. **Request of Mr. Kishori Lal s/o Sh. Babu Lal for grant of parole:** Sh. Arun Gupta, Member Secretary, PULSA presented a representation of Mr. Kishori Lal s/o Sh. Babu Lal undergoing imprisonment at Central Jail Ludhiana through his counsel, Sh. Harinder Pal Singh Ishar. Regarding considering his case for parole under the recommendations of HPC, the HPC desired that ADGP, Prisons may examine this application as per Rules and take appropriate decision within a period of 2 weeks.

(Action: ADGP, Prisons)

The meeting ended with thanks to the Chair.


(Praveen K. Sinha), IPS
Addl. Director General of Police,
Prisons, Punjab, Chandigarh.


(D.K. Tiwari), IAS
Principal Secretary,
Jails, Punjab, Chandigarh.


(Justice Ajay Tewari)
Chairperson,
State legal Services Authority

UNDER-TRIALS: Criteria for release of under-trial prisoners

Negative List:

No under-trial prisoner in custody for an offence under POCSO Act, under section 376, 379-B IPC, acid attack cases, UAP Act, Explosives Substances Act, recovery of commercial quantity under NDPS Act and under-trials who are foreign nationals may be considered for release on interim bail.

Criteria for grant of interim bail:

- (i) All under-trial prisoners in custody with upto two (2) under-trial cases pending, in which maximum prescribed punishment in both cases is 7 years or less.
- (ii) For under-trial prisoners in custody of 65 years and above in age, all those having upto two (2) under-trial cases pending in which maximum prescribed punishment in both cases is 10 years or less, may be considered.
- (iii) All under-trial prisoners in custody suffering from the following chronic diseases or pre-existing conditions, and under treatment for the same for at least one year prior to the date of release:
 - Chronic diabetes;
 - HIV;
 - Serious neurological issues (not simple depression);
 - Chronic lungs disease;
 - Severe asthma;
 - Serious heart conditions;
 - Pregnant women may also be considered.
 - Cancer of any kind for which the patient is under treatment;
 - Any other disease which is life threatening and requires immediate medical attention.

Whether the under-trial falls under the above category or not may be as per the report of the jail Medical Officer and further certified by an SMO or the CMO.

- (iv) All prisoners in custody under section 107/151 CrPC may be considered for release on bail by the concerned Executive Magistrate immediately.
- (v) Cases u/s 326 IPC and 307 IPC which are not of serious nature – to be dealt on a case-to-case basis by the concerned Judicial Magistrate; with the additional condition that the accused should be in custody in only one case, i.e., he should be on bail in all other cases, if any.

- (vi) All cases under sections 354 IPC may be considered for release except those where the victim is below 15 years of age or any section of POCSO Act has been applied.
- (vii) Under trial prisoners in the following cases may be considered for release on interim bail on a case-to-case basis:

Sr. No.	Act / Section	Remarks
1.	307 IPC 304 IPC	<u>Except in the following cases:</u> <ul style="list-style-type: none"> • where a fire-arm has been used by the accused. • involves attempt on life of a govt. servant while on duty. • cases associated with criminal gangs, extortion, terrorist or organized crime. • where the injured victim is still in hospital.
2.	379 IPC	All cases
3.	406, 420 IPC	-do-
4.	452 IPC	-do-
5.	323 or 324 or 325 IPC	-do-
6.	188 IPC	-do-
7.	336 IPC	-do-
8.	NI Act	-do-
9.	DM Act	-do-
10.	316 IPC	-do-
11.	279, 337, 338, 427 IPC	-do-
12.	170 IPC	-do-
13.	315 IPC	-do-
14.	498-A IPC	-do-
15.	Excise Act	-do-

- (viii) All cases under 457, 380 IPC may be considered on a case-to-case basis where the accused is not a habitual offender and the amount involved is not very high.
- (ix) **NDPS Act:** All under-trial prisoners other than those under custody in commercial quantity cases may be considered for release on interim bail, except the following:
- Under-trial has more than three (3) NDPS cases registered against him/her;
 - Under-trial prisoner is also accused for offences under section 302 IPC, 307 IPC, Arms Act, kidnapping for ransom, assault on public servant or for intimidation of informers/witnesses in any of the cases registered against him.
 - Under-trial is a foreign national.