Remand Accused To Custody Only If Tested Negative For COVID-19: Rajasthan HC Orders After 128 Prisoners Turn Corona Positive

Source:https://www.livelaw.in/top-stories/rajasthan-hc-orders-after-55-prisoners-turn-corona-positive-156909

In a special sitting held on Sunday on a suo moto case, the Rajasthan High Court ordered that an accused person must be remanded to custody only after getting tested negative for COVID-19.

The direction was passed in a suo moto case registered on the basis of news reports of May 16 that approximately 55 prisoners, both convicts as well as under-trials at Jaipur District Jail were detected corona positive. The Court also noted that as per the latest news reports, the numbers of positive corona cases which were reported in Jaipur District Jail itself had gone upto 128 inmates(out of 423 inmates) within past 48 hours.

A bench comprising Chief Justice Indrajit Mahanty and Justice Ashok Kumar Gaur passed the following directions:

(1) We direct the State Government to incorporate for the COVID-19 SOP for jails the requirements of having an accused being tested by local medical authorities for corona virus and if found negative, only then allow such accused person to be remanded to jail custody/police custody.

(2) After the accused is tested prior to his/her entry into the jail premises or police custody, the accused we are informed spend a period of 21 days in Isolation Ward segregated separately from the General Ward for inhabitants of the jails. The jail authorities must ensure that prior to releasing such prisoners from isolation, they

must be once again presented before the local medical authorities for check up again to verify whether that prisoner has developed any symptom of corona virus and also carry out RT-PCR test to cover also possible asymptomatic prisoner. Once such clearance is obtained from the medical authorities, the jail authority may shift such prisoner or under-trial to the General Ward.

(3) The jail authorities who are in direct contact with such prisoners in isolation also require special attention to ensure that such virus is not transmitted to them or their families and authorities will ensure test of jail staff and their family members on a regular random basis, at least fortnightly.

(4) The medical officers of each district shall inspect the Isolation Wards in the jails and suggest the jail authorities to take out whatever steps may be necessary for maintaining cleanliness and sanitization necessary for keeping such persons in the Isolation Wards.

(5) Jail doctors must be made available for checking the prisoners in Isolation Wards for their general checkup on day-today basis. The jail doctors shall ensure visit to the Isolation Wards and checkup of the prisoners in such wards everyday and record the same.

The Court also directed committees to be formed consisting of the (i) Secretary, DLSA or TLSA, (ii) CMHO and/or its representative and (iii) President or Secretary of the local Bar Association. This team shall visit each jail within their respective districts, Central Jail/District Jail/ Sub Jail and they shall check and verify the status of each jail vis-a-vis parameters set up by the Union of India, the State of Rajasthan as well as in the publication made by the RSLSA, in particular all suggestions regarding public health within the jail premises.

The bench noted that the Rajasthan State Legal Services Authority(RSLSA) have prepared a report on the jails of Rajasthan and have made certain specific suggestions regarding maintenance of cleanliness and hygiene for the purpose of maintaining public health within the jails.

In all there are 20000 prisoners in all over Rajasthan lodged in various Jails, as against capacity of 22000, the bench was told by the Advocate General, M S Singhvi.

"We hope and trust that the directions issued hereinabove, will be carried out by the State Government both in letter and spirit in order to ensure that health of inmates of jails during the present pandemic is protected to the extent possible", observed the Court, while posting the case next on May 27.

The Advocate General told the bench that there were in all 423 inmates in District Jail, Jaipur and other staff. All have been tested for Covid-19 and 119 were reported positive, 9 positive previously. One Jail Superintendent was also be reported to be positive.

To avoid overcrowding in prisons in the wake of COVID pandemic, the Supreme Court had on March 23 directed all states and Union Territories to set up high level committees to determine class of prisoners who could be released on parole for four to six weeks.

Order is given below.

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HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 5618/2020

Suo Motu

----Petitioner

Versus

State Of Rajasthan

----Respondent

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For Petitioner(s) : Suo Motu

For Respondent(s) : Mr. M.S. Singhvi, Advocate General assisted by Mr. Siddhant Jain
Mr. Rajeeva Swarup, ACS(Home)
Mr. N.R.K. Reddy, DG(Prisons), Rajasthan present in person.

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ASHOK KUMAR GAUR

Order

17/05/2020

Present Suo Motu PIL was registered on the basis of news reported in various news channels of Rajasthan on 16.05.2020 in the evening that a huge number of approximately 55 prisoners, both convicts as well as under-trials at Jaipur District Jail were detected corona positive and the largest number out of them 48 infected persons were lodged in Central/District Jail, Jaipur.

On the registration of this PIL on 16.05.2020, the learned Advocate General as well as Additional Chief Secretary (Home) and Director General (Prisons) were informed that this matter would be taken up at 11.30 AM on 17.05.2020.

Accordingly, we have heard Mr. M.S. Singhvi, learned Advocate General assisted by Mr. Siddhant Jain for the State through Video Conferencing and Mr. Rajeeva Swarup, Additional

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Chief Secretary(Home), Government of Rajasthan and Mr. N.R.K. Reddy, Director General (Prisons), Rajasthan in person. We have also perused certain newspaper article published in the Times of India dated 17.05.2020 indicating that the numbers of positive corona cases which were reported on 16.05.2020 in Jaipur District Jail itself had gone upto 128 inmates within past 48 hours.

Learned Advocate General submitted a note relating to District Jail, Jaipur dated 17.05.2020, which reads as under:-

1. In District Jail Jaipur, Kallu Ram was arrested and remanded to send district Jail on 13.4.2020. He was charged inter alia for offence under Rajasthan Excise Act.

2. That as per the protocol he was put to isolation ward on 13.4.2020 till 2.5.2020. On being found to be normal, he was shifted to ward No.5 on 3.5.2020.

3. On 9.5.2020, he had loose motion and low BP.

4. He was referred to hospital and on test being conducted he was found to be positive.

5. During the period from 3rd May to 9th May he had come into contact with other inmates with huge problem.

6. There were in all 423 inmates in District Jail, Jaipur and other staff. All have been tested for Covid-19 and 119 were reported positive, 9 positive previously. One Jail Superintendent was also be reported to be positive.

7. That ward No.5 was declared to be Covid Care Centre then shifting 10 inmates above 55 years of age and morbidity to SMS hospital.

8. That the Director General, Prisons have issued various instructions. In all there are 20000 prisoners in all over Rajasthan lodged in various Jails, as against capacity of 22000. After the present incident instructions have been issued for not admitting any fresh prisoners in the Jails where inmates are already lodged and for new prisoners separate Jails have got vacated at different places and they are lodged there.

9. Immediately after this incident, the Additional Chief Secretary (Home) and Director Prisons have taken stock of the situation and have taken all remedial measures to prevent recurrence of any such eventual incidents."

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The Additional Chief Secretary (Home) stated that the Government of Rajasthan has created Standard Operating Procedure (SOP) dealing with the process of admission of an accused to the jails and the manner in which they are to be tested at the time of entry. He brought to our notice that District Jails and Central Jails in particular have been identified and special Isolation Wards have been created where on first admission of an accused/prisoner to the jail, they are required to spend 21 days in the said Isolation Ward and if they are found to have no symptoms of corona virus, they are ready to go into the General Ward within the prisons system.

The Director General (Prisons), Rajasthan, submitted that a report of jail conditions in Rajasthan printed by the Rajasthan State Legal Services Authority (RSLSA) and authored by Ms. Smita Chakraborty has been given to him and he, in turn, has sent copies thereof to all the jails within the State of Rajasthan. In particular he sought to highlight that the jail authorities have taken special care for prevention and substantial work is being done towards cleanliness, which has resulted in substantial drop in Respiratory Tract Infections and skin diseases of inmates of jails in Rajasthan.

Having heard the learned Advocate General and the statements of Additional Chief Secretary (Home) and the Director General (Prisons) and keeping in view the necessity to maintain high standards of care for the jail inmates, the following directions are being issued:-

(1) We direct the State Government to incorporate for the COVID-19 SOP for jails the requirements of having an accused being tested by local medical authorities for corona virus and if

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found negative, only then allow such accused person to be remanded to jail custody/police custody.

(2) After the accused is tested prior to his/her entry into the jail premises or police custody, the accused we are informed spend a period of 21 days in Isolation Ward segregated separately from the General Ward for inhabitants of the jails. The jail authorities must ensure that prior to releasing such prisoners from isolation, they must be once again presented before the local medical authorities for check up again to verify whether that prisoner has developed any symptom of corona virus and also carry out RT-PCR test to cover also possible asymptomatic prisoner. Once such clearance is obtained from the medical authorities, the jail authority may shift such prisoner or under-trial to the General Ward.

(3) The jail authorities who are in direct contact with such prisoners in isolation also require special attention to ensure that such virus is not transmitted to them or their families and authorities will ensure test of jail staff and their family members on a regular random basis, at least fortnightly.

(4) The medical officers of each district shall inspect the Isolation Wards in the jails and suggest the jail authorities to take out whatever steps may be necessary for maintaining cleanliness and sanitization necessary for keeping such persons in the Isolation Wards.

(5) Jail doctors must be made available for checking the prisoners in Isolation Wards for their general checkup on day-to-day basis. The jail doctors shall ensure visit to the Isolation Wards and checkup of the prisoners in such wards everyday and record the same.

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The aforesaid directions are being made to the State of Rajasthan in order to incorporate these directions in their SOP for jails for the purpose of the present COVID pandemic.

It is also brought to our notice that the Union of India and the State of Rajasthan have also issued certain guidelines to jail authorities to maintain such procedures and standards during the course of present COVID pandemic. The RSLSA have also prepared a report on the jails of Rajasthan and have made certain specific suggestions regarding maintenance of cleanliness and hygiene for the purpose of maintaining public health within the jails.

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For ascertaining whether the directions/suggestions as noted above, are being complied with or not and to what extent, we direct the committees to be formed consisting of the (i) Secretary, DLSA or TLSA, (ii) CMHO and/or its representative and (iii) President or Secretary of the local Bar Association. This team shall visit each jail within their respective districts, Central Jail/District Jail/ Sub Jail and they shall check and verify the status of each jail vis-a-vis parameters set up by the Union of India, the State of Rajasthan as well as in the publication made by the RSLSA, in particular all suggestions regarding public health within the jail premises. Such committees formed for each jail i.e. Central Jail, District Jail and/or Sub Jail, shall visit in their respective districts/Sub Division and reports by them regarding status, shall be submitted before the Member Secretary, RSLSA on or before 22.05.2020.

The Member Secretary, RSLSA and Ms. Smita Chakraborty are requested to collate all such reports and present the same in a concise manner with their suggestions, if any,

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before this Court by 26.05.2020 with copies to the learned Advocate General, Additional Chief Secretary (Home) and Director General (Prisons), Rajasthan.

A notice may also be issued to the Secretary, Medical and Health, Government of Rajasthan.

The matter shall be next listed on 27.05.2020. We hope and trust that the directions issued hereinabove, will be carried out by the State Government both in letter and spirit in order to ensure that health of inmates of jails during the present pandemic is protected to the extent possible.

A copy of this order, under the seal and signature of the Court Master, be given to learned Advocate General, Additional Chief Secretary (Home), Director General (Prisons), Rajasthan and the Member Secretary, RSLSA for information and necessary compliance.

(ASHOK KUMAR GAUR),J (INDRAJIT MAHANTY),CJ

KAMLESH KUMAR /s-1

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