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TRENDS OF UNDER-TRIAL INCARCERATION IN INDIA

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ABSTRACT

One of the most important aspects of the administration of the criminal justice system is the incarceration of under-trials.¹⁸ One of the prison population subgroups that have been recognized as a key contributor to the jails' congestion is under-trial convicts. The vast majority of convicts who are awaiting trial are uneducated and underprivileged. In the ghastly cells of our jails, there are detainees who are waiting placidly, perhaps precipitately, but in vain, for justice, a good that is tragically out of their reach and grasp. They now see law as a tool of injustice, and they are the powerless, demoralised victims of the legal and judicial systems' callousness. It is high time that the nation's conscience is awakened, and the government as well as the judiciary begin to work on this issue. Between the incarcerated and the constitution, no iron curtain can be drawn¹⁹. Human rights have been referred to as a cornerstone of progress and acknowledged as the fundamental prerequisites for the advancement of personal dignity. Everyone has the right to protection against unfair and humiliating treatment, including those who are suspected, under investigation, in custody awaiting trial, and convicted. It is therefore vital to overhaul and rebuild the legal and judicial systems in order to prevent future injustices from marring our young democracy's otherwise fair and brilliant face. This paper aims to provide the bird's-eye view of the Under-trial incarceration in India and simultaneously to analyse the effectiveness of the Section 436-A of Code of Criminal Procedure.

Keywords: Under-trial prisoners, overcrowding of prisons, prison reforms, Section 436-A of CrPC, legal aid, national legal services authority, statutory bail.

GRASP - EDUCATE - EVOLVE

¹⁸ Editorial Board, *Prison Reforms*, Clear IAS, <https://www.clearias.com/prison-reforms/> (Last Accessed on 3 June, 2023 – 9.25 PM).

¹⁹ Sunil Batra (II) v. Delhi Administration, AIR 1980 SC 1579.

I. Introduction:

“Under-Trial Prisoners” are unconvicted prisoners.²⁰ During the period of inquiry, investigation or trial of the offence they are accused to have committed, they are kept in “prisons”, which includes any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto.²¹

The overwhelming majority of people incarcerated are still awaiting trial. As of 31 December, 2021, 77.1% of the 5,54,034 inmates housed in India's various prisons were under-trial prisoners. The way incarcerated under-trial are now treated in India falls short of expectations. The most fundamental and inalienable rights that are granted to each and every person by virtue of being born as a human being are frequently violated while inmates are being held without bail. The criminal justice system's most impacted individuals are under-trial prisoners since they are living lives identical to those who are convicted, which causes them great mental anguish and emotional pain. Major issues with the current jail system in India include overcrowding, delays in legal proceedings, and convicts who are unaware of their rights.

Indian prisons in dire straits

In India, just two out of every ten prisoners have received a criminal conviction. India has the 6th highest percentage of pre-trial detainees in the world.²² The ability of prison systems to provide for inmates' fundamental necessities, such as housing, food, and medical care, is compromised by overcrowding. Additionally, this puts in jeopardy the inmates' fundamental rights, such as their right to adequate standards of living and their right to the highest attainable

standards of physical and mental health. The Supreme Court, in its landmark decision in **Ramamurthy v. State of Karnataka**²³, has identified nine major problems²⁴ which need immediate attention for implementing prison reforms. The court observed that the present prison system is affected with major problems of;

1. Overcrowding
2. Delay in trial
3. Torture and ill treatment
4. Neglect of health and hygiene
5. Insufficient food and inadequate clothing
6. Prison vices
7. Deficiency in communication
8. Streamlining of jail visits and
9. Management of open-air prisons.

A. Overcrowding of Prisons

Indian prisons have been housing more inmates than their capacity for decades.²⁵ For many years, Indian prisons have been overcrowded with inmates. There were **5,54,034** prisoners housed in various jails in India as of 31 December, 2021, despite the fact that they could only hold **4,25,609** prisoners in total. This indicates that the number of prisoners were 130.17% of the prison capacity, which was a record high since 2010. Uttarakhand has reported the highest occupancy rate (185.0%) followed by Uttar Pradesh (184.8%), Delhi (182.5%), Sikkim (166.9%) and Madhya Pradesh (164.1%)

1. Reason of Overcrowding

The congestion of jails is primarily caused by two factors: an excessive reliance on pre-trial detention and stringent sentence guidelines. Overcrowding in prisons is more frequently a result of how criminal justice is administered than it is of a spike in crime.

²⁰ Law Commission of India, Congestion of under trial prisoners in jails, Report No. 78 (Feb 1979).

²¹ The Prisons Act, 1894, §3(1).

²² Helen Fair & Roy Walmsley, World Prison Population List, World Prison Brief, 13th Edition of 2023, Pg. 10.

²³ (1997) 2 SCC 642.

²⁴ Ramamurthy v. State of Karnataka, (1997) 2 SCC 642.

²⁵ Editorial Board, Overcrowded prisons amid COVID-19, Next IAS, <https://www.nextias.com/current-affairs/12-05-2021/overcrowded-prisons-amid-covid-19-> (Last Accessed on 3 June, 2023 – 10.14 PM).

Incarcerating Under-Trials

Early in the 1980s, a government panel discovered that incarcerating Under-Trials was a significant contributor to prison overpopulation and that the ratio of Under-Trials to convicts had been increasing. The main cause of the large number of Under-Trials in Indian prisons is their inability to make use of the provision for bail.

(i) Stringent conditions of bail

Additionally, there is also a delay in filing charge sheet and starting the trial. 5 of the 16 people imprisoned in relation to the Bhima Koregaon case were taken into custody more than three years ago and tried without a trial even beginning. They are detained under the Unlawful Activities (Prevention) Act (UAPA), which has very strict bail requirements, thus they are not allowed bail at the same time. According to data held by NCRB, the overall number of cases filed under the UAPA increased from 976 in 2014 to 1182 in 2018. One of the factors contributing to the rise in Under-Trials is the unprecedented expansion of the application of anti-terrorism and sedition laws with strict bail requirements.

(ii) Poor and unaware accused

Poverty of the accused persons along with lack of education is another contributing cause in the lengthy confinement of Under-Trials in jails. According to Section 436A of CrPC, The number of prisoners who are eligible for release and those who are actually released stand apart. Only 929 of the 1,557 Under-Trials that were judged to be eligible for release u/s 436A in 2016 were actually released²⁶. 40.2% of Indian undertrial prisoners have not completed matriculation, and 25.2% are illiterate.²⁷ They frequently lack the money to engage an experienced attorney and file for bail, and because they lack knowledge and awareness, they are unable to take advantage of the free

legal help accessible to the economically disadvantaged Under-Trials.

(iii) Delayed investigation

One of the main causes of the Under-Trials' apprehension is a delayed investigation. India has one of the lowest police-to-population ratios in the world (151 officers for every 100,000 people)²⁸, which causes investigations to be delayed and the quality of investigations also deteriorate. Additionally, police frequently conduct pointless arrests. This leads to a delay in the production of undertrials in court, which automatically extends incarceration and finally leads to a high undertrial population.

The Supreme Court has emphasised the need of abiding by the rules it established in **Arnesh Kumar v. State of Bihar**²⁹, wherein the police were instructed not to make unwarranted arrests, particularly in situations when the potential sentence is less than seven years in prison. The Court has already urged officials in every district across the nation to implement Section 436A of the CrPC, which allows Under-Trials who have served half of the maximum jail term prescribed for the offence to be freed on personal bond. But notwithstanding the restrictions of Section 436A of the CrPC, which was enforced in 2005, Under-Trials frequently spend years in prison. Auditing these measures effectively is necessary to ensure that they are not applied in an unreasonable manner.

2. Proposition for Prison Reforms

The Justice Amitava Roy Committee, which was established by the Supreme Court, made the following suggestions for improving overcrowding in prisons:

(i) **Speedy Trial:** One of the finest methods to address the unjustifiable occurrence of overcrowding is speedy trial.

²⁶ Mrinal Sharma, *The state of Indian prisons*, The Hindu, <https://www.thehindu.com/opinion/op-ed/the-state-of-indian-prisons/article62109586.ece> (Last Accessed on 4 June, 2023 – 4.29 AM).

²⁷ Ministry of Home Affairs, National Crime Records Bureau, Indian Penal Code, Prison Statistics India 2021.

²⁸ Vrinda Bhandari, *On trial, the criminal justice system*, Indian Express, <https://indianexpress.com/article/opinion/columns/on-trial-the-criminal-justice-system/> (Last Accessed on 4 June, 2023 – 3.23 AM).

²⁹ (2014) 8 SCC 273.

(ii) **Lawyer to Prisoner Ratio:** Currently, there is not at least one lawyer for every 30 detainees, which is unacceptable³⁰.

(iii) **Special Courts:** Establishing specialised fast-track courts to handle just minor cases that have been outstanding for longer than five years is necessary. A Personal Recognisance (PR) Bond should be used to release people who have been charged with minor offences, have been granted bail, but cannot provide security.

(iv) **Avoid Adjournment:** In situations when witnesses are present, adjournments shouldn't be permitted, and the idea of plea bargaining, in which the accused concedes guilt in exchange for a less punishment, should be advocated.

B. Ineffectiveness of Section 436-A CrPC

1. With effect from 23 June, 2005, by virtue of an Ordinance duly promulgated by the President of India brought Section 436-A CrPC into force. **Section 436-A of CrPC** provides that if the offender has served half of the maximum period allowed for the offence for which death is not one of the stipulated punishments, the Criminal Procedure Code allows for his release on bail on his own surety. The court should also hear from the prosecution before deciding whether to continue holding the defendant for more than half of the specified maximum sentence or to free him. Furthermore, it is stated that during the course of an inquiry, investigation, or trial, no such individual shall ever be imprisoned for a longer period of time than the maximum term prescribed by law for the relevant offence. It is a beneficial measure that allays the long-standing complaints of the convicts awaiting trial who are held in custody even longer than the maximum term allowed for the offence.

2. Under Section 436-A of the CrPC, there is a discrepancy between the number of inmates

eligible for release and those who are actually released. Only 929 of the 1,557 Under-Trials that were judged to be eligible for release under Section 436-A were released in 2016³¹. A large number of under-trial prisoners, who due to poverty, cannot afford to engage lawyers to defend them, feel handicapped in their defence, and thus are kept behind bars for prolonged periods of time. If they had received adequate legal representation, some of them would have undoubtedly been exonerated, consequently the percentage of the Under-Trials would be much lower. However, because of their ignorance and lack of education, they are unable to take advantage of the free legal representation offered to economically disadvantaged Under-Trials, which results in the incomplete execution of Section 436-A CrPC and underscores the critical need for legal assistance for Under-Trial Prisoners.

Anatomy of the rights provided to the under-trial prisoners

A. Fair Trial

Both the prosecution and the accused must receive a fair trial. Every criminal trial begins with the presentation of the accused's presumption of innocence. Unless his guilt is proven beyond a reasonable doubt, the accused is deemed innocent. The statute also calls for the speedy resolution of all matters. Any delay subjects the accused to ongoing psychological anguish and terror. **Justice V.R. Krishna Iyer** established the legal notion that "Bail is a rule jail is an exception" in **State of Rajasthan, Jaipur vs. Balchand** on the basis of the Fundamental Right guaranteed by the Indian Constitution. However, this doctrine's applicability in a court of law completely departs from its tenets.

B. Legal Aid and Right to be defended by pleader

Both Section 303 of the Criminal Procedure Code, 1973 and Article 21 of the Indian Constitution grant the accused the right to

³⁰ Editorial Board, *SC Panel Recommendations on Prison Reforms*, Drishti IAS, <https://www.drishtiias.com/current-affairs-news-analysis-editorials/news-analysis/06-02-2020/print/manual> (Last Accessed on 3 June, 2023 – 5.34 PM).

³¹ Mrinal Sharma, *The state of Indian prisons*, The Hindu, <https://www.thehindu.com/opinion/op-ed/the-state-of-indian-prisons/article62109586.ece> (Last Accessed on 4 June, 2023 – 4.29 AM).

consult with a lawyer of his choice and be represented by him. The Session Court will assign a pleader to represent the accused at the expense of the state if the accused lacks the financial resources to do so because of poverty or other destitute circumstances.

1. Necessity and Importance of Legal Aid for Under-Trial prisoners

According to **Justice P.N. Bhagwati**, *"The legal aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who need to resort to it for enforcement i.e., the illiterate, poor should be able to approach the courts, and their poverty and ignorance should not be an encumbrance in the way of their obtaining justice from the court"*³².

(i) Necessity of Legal Aid for Under-Trial Prisoners

Under Section 436A of the Code of Criminal Procedure, there is a discrepancy between the number of inmates who are eligible for release and those who are actually freed. Only 929 of the 1,557 Under-Trials that were judged to be eligible for release under Section 436A in 2016 were actually released³³. Many inmates awaiting trial who, due to poverty, cannot afford to hire lawyers to defend them, perceive limitations in their defence, and thus are kept behind bars for protracted periods of time. Legal aid is then essential necessary to ensure that justice is done and that no one is left unrepresented during remand hour. A proper person, in the proper location, at the proper time, and carrying out the proper action must be designated in order to ensure legal aid.

³² Speaking through the Legal Aid Committee formed in 1971 by the State of Gujarat on Legal Aid with its Chairman, Mr. P.N. Bhagwati along with its members, Mr. J.M. Thakore, A.G., Mr. V.V. Mehta, Deputy Speaker, Gujarat Vidhan Sabha, Mr. Madhavsinh F. Solanki, M.L.A, Mr. Girishbhai C. Patel, Principal, New Lal College, Ahmedabad. His Lordship answered to the question of inequality in the administration of justice between the rich and the poor.

³³ Mrinal Sharma, *The state of Indian prisons*, The Hindu, <https://www.thehindu.com/opinion/op-ed/the-state-of-indian-prisons/article62109586.ece> (Last Accessed on 4 June, 2023 – 4.29 AM).

(ii) Importance of Legal Aid for Under-Trial Prisoners

In order to ensure that no citizen is denied the opportunity to get justice due to financial or other barriers, Article 39A of the Constitution mandates that the State provide free legal aid through appropriate laws, programmes, or other means. The Constitution guarantees the fundamental right to free legal assistance. Article 21 of the Indian Constitution, which states that "No person shall be deprived of his life or personal liberty except in accordance with the procedure established by law," serves as the foundation for reasonable, fair, and just liberty.

Legal Services Authorities are responsible for providing legal aid. After evaluating an applicant's eligibility and whether a prima facie case exists in his favour, they appoint him a lawyer at the expense of the State, pay the applicable court fee, and incur all incidental costs related to the case.

Legal aid changes lives by defending the sceptre of justice, especially for those who need it the most. It does this by securing the fundamental right of convicts to a fair and fast trial and bringing reform to the overcrowded Indian prisons.

Even while everyone has the fundamental right to legal representation, in practise, inmates are denied it while they are incarcerated since it is not readily available. Under-trials being 77.1% of the total incarcerated prisoners demonstrates how inadequately the law is being applied in India with regard to the provision of legal aid. According to Section 436A of the Code of Criminal Procedure, the difference between the number of inmates who are eligible for release and those who are actually freed keeps widening. If they had received adequate legal representation, some of them would have undoubtedly been exonerated, which would have resulted in a much lower number of undertrials. So, the utmost importance and pressing need of Legal Aid for Under-Trial Prisoners cannot be denied.

Legal assistance is critical for inmates who are awaiting trial since it is necessary for them to argue their cases since their guilt has not yet been established. The 2011 research by the Government of India and UNDP also made mention of the value of legal assistance clinics in prison.

The Code of Criminal Procedure, 1973 also discusses the availability of legal aid to the accused in Sections 303 and 304. In instances governed by this Act, the accused has the right to be represented by the pleader of his choosing under Section 303. While Section 304 requires that, in cases where the accused is not represented by a pleader during the trial before the court and lacks the financial means to do so, the court must appoint a pleader for the accused's defence at the state's expense.

(iii) National Legal Services Authority (NALSA)

Justice Dipak Misra, the former executive chairman of NALSA and former Chief Justice of India, unveiled a plan in 2017 that included a comprehensive mapping of the inmates in jails across India through the digitization of the data that would eventually help identify all those who had not been able to engage a lawyer.

As part of the project, NALSA has set up video conferencing between the jails and the legal aid organisation in each state legal services authority, allowing paralegal volunteers and solicitors to stay in touch with the inmates who are awaiting trial on their cases. Additionally, NALSA has been conducting awareness programmes across the nation to disseminate important knowledge regarding the legal rights of inmates. Each State has established a State Legal Services Authority to carry out the NALSA's objectives and regulations, offer free legal aid to the populace, and host Lok Adalats there.

These institutes with their interminable efforts keep striving to protect the prisoners' fundamental rights while bringing reforms to the overcrowded Indian jail system.

Judicial viewpoints concerning the Legal Aid to Prisoners

In **D.K. Basu vs. State of West Bengal**³⁴, the Supreme court had increased the purview of Article 21 of the Constitution of India by saying that it includes the right to get free legal aid at the state expenses.

In **Sheela Barse v. Union of India**³⁵, The petitioner was a journalist who interviewed about 15 female detainees, who revealed that they had been abused while in police custody and had received insufficient legal representation. The Supreme Court noted that it is against constitutional protections to deny the poor and the underprivileged access to legal representation in this case. The State is required under Article 39-A (Directive Principle of State Policy) to ensure the smooth operation of a judicial system that advances justice based on equal opportunity. According to Articles 14 and 21 of the Indian Constitution, the right to legal assistance is also a basic right.

In **Ramakant v. State of M. P.**³⁶, Seven people were found guilty of the crime of gang rape; five of them were freed after filing an appeal with the court, but two of them were not. The Supreme Court ruled that all low-income people must be provided with free legal representation at all stages of the justice delivery system, including the trial and appellate levels, regardless of the seriousness of the offence that has been charged against them.

C. Bail to under-trial prisoners

Section 436A provides that if the offender has served half of the maximum period allowed for the offence for which death is not one of the stipulated punishments, the Criminal Procedure Code allows for his release on bail on his own surety. The court should also hear from the prosecution before deciding whether to continue holding the defendant for more than

³⁴ AIR 1997 SC 610.

³⁵ (1986) 3 SCC 596.

³⁶ (2012) 8 SCC 553.

half of the specified maximum sentence or to free him. Furthermore, it is stated that during the course of an inquiry, investigation, or trial, no such individual shall ever be imprisoned for a longer period of time than the maximum term prescribed by law for the relevant offence. It is a beneficial measure that allays the long-standing complaints of the convicts awaiting trial who are held in custody even longer than the maximum term allowed for the offence.

1. Implementation of Section 436A of CrPC, 1973

With effect from June 23, 2005, an Ordinance properly published by the President of India brought Section 436-A CrPC into force. The provision of Section 436A of CrPC is applicable only for Under-Trial prisoners and not to convicts.

(i) Bail u/s 436A is not an absolute right

The Supreme Court and High Courts in a spate of judgments have indicated that speedy trial is a fundamental right of an accused under Article 21 and the repercussion of denying such right is bail. Although the first clause of Section 436-A gives the Court the authority to refuse such relief if it believes that further detention is essential, the right to bail under the provision of section 436A is not an absolute right.

(ii) Implementation of Section 436A

In its 2015 ruling, the Supreme Court gave instructions for the establishment of an Under Trial Review Committee (UTRC) in each district, which is responsible for reviewing all cases of under prisoners who are qualified to receive the benefits of Section 436A CrPC.

In **Bhim Singh v. Union of India**³⁷, a three-judge Bench of the Supreme Court directed the Jurisdictional Magistrates/Sessions Judges to hold at least one sitting per week in each jail for 2 months to determine how many under-trial prisoners have completed half period of the maximum term prescribed for the alleged offence; or maximum term of imprisonment stipulated for the offence – and pass an

appropriate order to release them on bail. The bench also issued directions to all the High Courts to ensure the compliance of the said order and made it obligatory to send a report to the Supreme Court secretary without unjustified delay.

In **Hussainara Khatoon v. Home Secretary, State of Bihar**³⁸, Justice Bhagwati acknowledged that an accused person has a basic right to a "speedy trial" and anxiously ordered the State to take action to effectively enforce this right.

In **Supreme Court Legal Aid Committee v. Union of India**³⁹, the Supreme Court, relying on **Hussainara Khatoon v. Home Secretary, State of Bihar**⁴⁰, directed that inmates facing charges under the Narcotic Drugs and Psychotropic Act be released after serving half of the maximum term prescribed by the Act.

The Bombay High Court in **Rashesh Mukesh Shah v. State**⁴¹, without getting into the merits of the case, expanded the accused on bail under Section 436-A CrPC after serving half of the maximum period allowed.

Just as right to speedy investigation is a facet of Article 21 of the Constitution of India, the right to speedy trial, too, is a facet of Article 21⁴². A valid approach to deny the benefit under Section 436-A CrPC, would only occur if the accused is mischievously and purposely delaying the trial and the same is solely attributable to his/her credit. So, the denial of relief under the provision, in any other case, could be a subterfuge, an infringement of a valuable fundamental right guaranteed under the Constitution of India.

If the maximum penalty for an offence committed by an Under-Trial prisoner is life in prison, then under Section 57 of the IPC, life in prison should be interpreted as 20 years in jail,

³⁷ (2015) 13 SCC 605.

³⁸ (1980) 1 SCC 98.

³⁹ (1994) 6 SCC 731.

⁴⁰ 1979 SCR (3) 532.

⁴¹ 2018 SCC OnLine Bom 17551.

⁴² Hussainara Khatoon v. Home Secretary, State of Bihar, 1979 SCR (3) 532.

with a half-life of 10 years under Section 436-A of the CrPC.

2. Recent Judgements on 436-A of Cr.PC

(i) **Maksud Sheikh Gaffur Sheikh v. State of Maharashtra, 2020 SCC OnLine Bom 878**

Facts:

The petitioner was charged with five other individuals for offences that were punishable under Sections 326, 366, 354-A, 354-B, 354-C, 376-B, 506-II, 450, 452, 426, 307, 394, 201, 212 read with Sections 149 and 343 of the Indian Penal Code 1860 and Sections 67 and 67-A of the Information Technology Act, 2000 read with Sections 109 and 114 of the Indian Penal Code, 1860. The judgement dated 01.08.2016 found the applicant guilty of the offences punishable under Sections 506-II, 450, 326, 452, and 354, read with Sections 34, 149, 109, and 114 of the Penal Code, as well as Section 66E of the Information Technology Act, 2000, at the conclusion of the applicant's trial for these offences. Various terms of imprisonments, ranging from three years to ten years came to be awarded to him. The petitioner has served a term of time in prison equal to half of the maximum sentence imposed upon him since being imprisoned on November 7, 2014. The applicant submitted a Section 436-A application in order to get his release on bail while the appeal was pending.

Issue

Is Section 436 A of the Code applicable to a convict who has challenged his conviction under Section 374 of the Cr.PC, 1973?

Arguments

The applicant's attorney claimed that Section 436-A of the Code's provision is beneficial in nature and therefore it deserves liberal interpretation. The convicts whose appeals under Section 374 of the Code have been waiting for many years would feel a great deal of relief if the provision were liberally construed.

Additional Public Prosecutor submitted that language of Section 436-A of the Code is clear and unequivocal admitting of no two interpretations and therefore the rule of liberal construction has no application here.

Judgement

The bench disregarded the convict's claim that section 436A is a beneficial provision that needs to be liberally interpreted and applied to prisoners as well on the grounds that appeal is viewed as an extension of trial. Thus, the request for a stay of execution made by the applicant is denied.

A convict who has challenged his conviction under Section 374 of the Code is not eligible for the benefits of Section 436-A of the Code. Only under-trial prisoners were intended to receive benefits under section 436-A. Only those who have been detained during an investigation, inquiry, or trial for a period of time equal to or greater than half the maximum imposed sentence are eligible for release on bail.

Dipankar Datta, C.J, Hon'ble Bombay High Court, opined that Section 436-A CrPC is restricted to grant bail to an undertrial prisoner 'during the period of investigation, inquiry or trial' and does not, ex proprio vigore, apply at the stage of appeal.

(ii) **Deepak Gupta vs State of Orissa (2016) 03 OHC CK 0029**

Facts

Deepak Gupta is the prime accused who is facing trial in the alleged Rs 1,500-crore Uliburu mining scam involving iron ore mines in the Keonjhar region. He is being tried for, among other things, a charge of criminal breach of trust under Section 409 of the IPC. He was imprisoned beginning in September 2013. The maximum penalty allowed by law for the crime of criminal breach of trust is life in prison. He submitted a section 436-A of the criminal procedure code bail application.

Issue

Whether bail can be granted under Section 436-A of CrPC in life term offences.

Judgement

For the purpose of providing bail to an accused person who is awaiting trial for an offence for which the maximum legal punishment is life in prison, the benevolent provision under Section 436-A of the Criminal Procedure Code is inapplicable. As a result, the judge declined to release Deepak Gupta on a standard bail.

A person who has been imprisoned for a time that has exceeded more than half of the maximum sentence prescribed by the law, is subject to the provisions under Section 436-A of the CrPC.

According to the Supreme Court, a sentence of life in prison entails confinement for the entirety of the offender's remaining natural life. According to Justice Sahoo, there is no provision in the IPC or CrPC that would allow a life sentence to be reduced to either 14 or 20 years without a formal remission by the appropriate Government.

(iii) **Bhim Singh v. Union of India & Others, 2014 (4) RCR (CRIMINAL) 234**

Facts

The petition has been filed by Jinendra Jain on behalf of the civil society organisation called "Fight for Human Rights" bringing to force the issue of 31,000 Scheduled Tribe (ST) and Scheduled Caste (SC) under trial prisoners held in various Naxal affected States. The Supreme Court beseeched the Attorney General, Mr. Mukul Rohatgi, during an earlier hearing of the case on August 1, 2014, about the Indian Government's plan to expedite the criminal justice system and to submit a proposal within four weeks. The Attorney General retorted that the Central Government started the process of expediting criminal cases, but that the blueprint would need three months to have an affidavit filed. The Attorney General informed the Supreme Court that more than 50% of prisoners

are undertrials and many may have served their maximum sentence for the offences they are charged with.

Issue

A fast-tracked judicial system and execution of Section 436-A of the Criminal Procedure Code is the need of the hour to ensure that no defendant awaiting trial serves more than half of the maximum term.

Judgement

Eligibility of Bail- To prevent unjustified delays in justice and prison overpopulation, Section 436-A was included by the 2005 Amendment Act to the Criminal Procedure Code. It indicates that inmates awaiting trial who have already served more than half of their maximum sentence are eligible for bail on personal bond. It is imperative that undertrials do not languish in jails longer than their maximum sentences under Section 436-A of CrPC. However, this clause does not apply to under-trials who are accused of an offence where maximum sentence is death punishment.

Review Mechanism- As suggested by the court, the Under-trial Prisoners (UTP) Review Mechanism shall consist of and perform the following tasks.:

A. **Composition-** It shall be comprised of the Sessions Judge, Chief Judicial Magistrate and other Magistrates.

B. **Function-** Commencing from 1st October, 2014, they will have a weekly sitting in prisons. The court authorities will identify under-trial prisoners who have served half of their maximum prison terms at the hearings and will also issue an order for release from custody.

C. **Reports of Meetings to Registrar General** – Each sitting's report will be transmitted to the High Court's Registrar General, who will promptly send it to the Secretary General of the Court at the conclusion of two months. Each High Court's Registrar

General will receive a copy of this order, and they will then distribute copies to all the Sessions Judges in their respective States for any necessary compliance.

D. Obligation of the Jail Superintendent-

The Jail Superintendent is directed to provide all necessary facilities for holding the court sittings.

(iv) Rashesh Mukesh Shah vs The State Of Maharashtra, 2018 SCC OnLine Bom 17551

Facts:

The applicant was arrested on 4th March 2015 and has been in custody for 3½ years for the offences punishable under Sections 420, 406 read with Section 34, Indian Penal Code. The applicant has committed similar offences not only in the state of Maharashtra but in the state of Gujarat also and has been charge-sheeted in the said offences. The applicant applied for bail under Section 436-A Cr.PC.

Judgement

The offence punishable under Section 420, IPC contemplates imprisonment up to seven years and the applicant has been in custody for 3½ years. Hence, it is evident that the applicant has completed more than half of the sentences as a result.

The applications under Section 439 of the Criminal Procedure Code were denied due to the seriousness of the offence, but the application under Section 436-A of the same Code was granted. Without delving into the merits of the case, the Hon'ble Court stated that the accused was granted bail under/s 436-A of the CrPC after furnishing a P.R. bond in the sum of Rs. 1,00,000 with two or more solvent sureties in the same amount.

D. Bail under default clause

This right to bail develops when the police fail to conclude their investigation in respect of a person in judicial custody within a specific period of time. This bail is also known by the

name of statutory bail. This is stipulated in Section 167(2) of CrPC.

The suspect is brought before a magistrate when the police are unable to complete the investigation within 24 hours, and the magistrate decides whether the suspect should be detained in police custody or judicial custody. The magistrate may order the accused individual to be held in police custody for up to 15 days in accordance with Section 167(2) of the Criminal Procedure Code. If further time is required, the magistrate may permit the accused's detention in judicial custody. The accused, however, may not be detained for longer than:

- (i) If the agency conducting the investigation is looking into an offence that is subject to the death penalty, life in prison, or a minimum of 10 years in jail, then 90 days.
- (ii) if the investigating agency is looking into another crime, then sixty days.

1. Exceptional Cases

- (i) The inquiry term may alter under some particular statutes, such as the Narcotic Drugs and Psychotropic Substances Act, and may be as long as 180 days.
- (ii) The default time frame under the Unlawful Activities (Prevention) Act of 1967 is just 90 days, however this can be increased by an additional 90 days.
- (iii) Only when the Public Prosecutor submits a report outlining the findings of the inquiry and outlining the justifications for continuing to hold the accused in custody can an extension be granted.
- (iv) These clauses demonstrate that a court order is necessary in order to extend the deadline; it is not automatic.

Conclusion:

The prison is a morbid place where sunlight and light are forbidden, crime has neurotic dimensions, and liberty is of the utmost value. All criminal justice system agencies should cooperate to ensure that everyone who is

imprisoned has their legal rights effectively realised and to prevent prolonged detention and overstay. With the assistance of various organisations, such as the Under Trial Prisoners Forum Charter, Under-Trial Review Committee who are working to bring about legal reforms and provide legal aid clinics for the assistance and support of a significant number of Under-Trials in judicial custody, the situation can be improved. Finally, and probably most importantly, the prison administrations should train a group of social workers who will work with inmates, their families, and those who have been freed to advance their legal rights and rehabilitation. These actions will go a long way towards resolving the problem of convicts awaiting trial who have been languishing in our nation's jails for the past ten years. Given the aforementioned facts, it can be inferred that it is the duty of the administrators of the criminal justice system to put into effect the current laws as well as any future directives the judiciary may issue to ensure the safety of those who are awaiting trial. The Judgments and guidelines of the Supreme Court and High Courts really bring a glimmer of hope to improve the longstanding grievances of the under-trial prisoners confined in the Indian prisons.

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