

**(2015) 13 Supreme Court Cases 605 : (2016) 1 Supreme Court Cases (Cri) 663 :
2014 SCC OnLine SC 682**

In the Supreme Court of India

(BEFORE R.M. LODHA, C.J. AND KURIAN JOSEPH AND R.F. NARIMAN, JJ.)

BHIM SINGH . . Petitioner;

Versus

UNION OF INDIA AND OTHERS . . Respondents.

Writ Petition (Crl.) No. 310 of 2005 with WP (C) No. 341 of 2004, WP (Crl.) No. 175 of 2005, decided on September 5, 2014

A. Criminal Procedure Code, 1973 — S. 436-A — Release of undertrial prisoners after expiry of time prescriptions under — Directions issued — Jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge directed to hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 — To identify undertrial prisoners who completed either half or full term of imprisonment for their alleged offence and pass appropriate order in jail itself for their release — Directions also issued for submission of status report of such sittings to Secretary General of Supreme Court (via Registrar General of each High Court) — To facilitate compliance, Jail Superintendents directed to provide all necessary facilities — Order communicated to all High Courts

(Paras 1 to 6)

B. Criminal Procedure Code, 1973 — Ss. 436-A and 227 — Release directions relating to foreign nationals — Release order of Pakistani nationals

(Paras 7 and 8)

C. Criminal Procedure Code, 1973 — Ss. 436-A and 227 — Pakistani fishermen in Indian jails — Central Government seeking time to respond, allowed

(Paras 10 and 11)

Bhim Singh v. Union of India, (2015) 13 SCC 603; *Bhim Singh v. Union of India*, (2011) 14 SCC 257 : (2012) 3 SCC (Cri) 1304; *Bhim Singh v. Union of India*, 2013 SCC OnLine SC 1305, referred to

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| 3. (2011) 14 SCC 257 : (2012) 3 SCC (Cri) 1304, <i>Bhim Singh v. Union of India</i> | 607c |

ORDER

1. On 1-8-2014¹, whereby we wanted to know from the learned Attorney General about Government of India's plan in fast-tracking criminal justice in the country, the learned Attorney General on that day took time to have a comprehensive look at the problem and come out with a concrete proposal in this regard within four weeks.

2. Mr Mukul Rohatgi, learned Attorney General submits that the process of consultation with the State Governments for fast-tracking criminal justice has been commenced by the Central Government but the blueprint/roadmap for fast-tracking of criminal cases shall take some time. He prays for time to place the same by way of an affidavit within three months. We reiterate that it is high time, positive steps are taken by the Central Government in consultation with the State Governments in fast-tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously.

3. The learned Attorney General informs us that more than 50% of the prisoners in various jails are undertrial prisoners. Even many of them may have served maximum sentence prescribed under the law for the offences they have been charged with. Parliament by Act 25 of 2005 amended the Code of Criminal Procedure, 1973 providing for maximum period for which an undertrial prisoner can be detained under any law not being an offence for which the punishment of death has been specified as one of the punishments.

4. Section 436-A reads as follows:

“436-A. Maximum period for which an undertrial prisoner can be detained.—

Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

*Explanation.—*In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.”

5. Having given our thoughtful consideration to the legislative policy engrafted in Section 436-A and large number of undertrial prisoners housed in the prisons, we are of the considered view that some order deserves to be passed by us so that the undertrial prisoners do not continue to be detained in prison beyond the maximum period provided under Section 436-A.

6. We, accordingly, direct that jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall hold one sitting in a week in each jail/prison for two months commencing from 1-10-2014 for the purposes of effective implementation of Section 436-A of the Code of Criminal Procedure. In its sittings in jail, the above judicial officers shall identify the undertrial prisoners who have completed half period of the maximum period or



maximum period of imprisonment provided for the said offence under the law and after complying with the procedure prescribed under Section 436-A pass an appropriate order in jail itself for release of such undertrial prisoners who fulfil the requirement of Section 436-A for their release immediately. Such jurisdictional Magistrate/Chief Judicial Magistrate/Sessions Judge shall submit the report of each of such sittings to the Registrar General of the High Court and at the end of two months, the Registrar General of each

High Court shall submit the report to the Secretary General of this Court without any delay. To facilitate compliance with the above order, we direct the Jail Superintendent of each jail/prison to provide all necessary facilities for holding the court sitting by the above judicial officers. A copy of this order shall be sent to the Registrar General of each High Court, who in turn will communicate the copy of the order to all Sessions Judges within his State for necessary compliance.

WP (Crl.) No. 310 of 2005

7. Mr Mukul Rohatgi, learned Attorney General placed before us status of twenty-five foreign nationals covered under the order dated 10-11-2008² passed by this Court. As regards the status of the detainee Hamid Numain Bhat s/o Mohd Iqbal Bhat (mentioned at Sl. No. 1), it appears that he is lodged in Central Jail, Srinagar. He has been discharged in the case in which he was arrested by the Additional Sessions Judge, Srinagar. It is stated that having regard to legal and factual position, the Government of Jammu and Kashmir is now processing his case of deportation, but so far "no-objection" from the State has not been received, although, his nationality has been confirmed by Pakistan High Commission.

8. In light of the above, we direct the Home Secretary, Government of Jammu and Kashmir to take immediate steps in respect of forwarding "no-objection" by the State Government to the Central Government for deportation of the prisoner Hamid Numain Bhat, if it has decided not to challenge the discharge order. In that event, the "no-objection" shall be positively sent within four weeks. On receipt of "no-objection", if any, from the Government of Jammu and Kashmir, the Central Government shall take steps for his deportation as early as possible and in no case not later than four weeks from the date of receipt of the "no-objection".

9. Professor Bhim Singh, petitioner-in-person, invited our attention to the affidavit dated 16-7-2013 filed on behalf of the Government of India by Mr Vikas Srivastava in compliance with order dated 8-5-2013³. The learned



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Attorney General prays for time to look into that affidavit and put forward the Central Government's view in that regard.

10. Mr Divya Jyoti Jaipuriar, learned counsel has placed before us status of Pakistani fishermen detainees in Indian jails/prisons, which is taken on record. A copy thereof has been given to the learned Attorney General. He prays for time to seek instructions in this regard and respond appropriately on the next date.

11. List all the matters on 8-12-2014.

Court Masters

¹ *Bhim Singh v. Union of India*, (2015) 13 SCC 603

² *Bhim Singh v. Union of India*, (2011) 14 SCC 257 : (2012) 3 SCC (Cri) 1304

³ *Bhim Singh v. Union of India*, 2013 SCC OnLine SC 1305, wherein it was directed:

Crl. MP No. 10821 of 2013 in Writ Petition (Criminal) No. 310 of 2005

"1. Issue notice on Crl. MP No. 10821 of 2013 returnable on 16-7-2013. In the reply that may be filed to the above Crl. MP, Respondent 1 Union of India and Respondent 3 State of Jammu and Kashmir may explain as to why adequate

Footnote 3 (contd.)

steps were not taken in advance to avoid the physical assault which is said to have taken place on 3-5-2013 on the prisoner Sanaulah Ranjay s/o Ishaq Hussain, who was lodged in Kot Bhalwal Jail, Jammu. In the affidavit, the said respondent shall also indicate the action taken against the erring officials for that incident and the steps, the said respondents have now taken to ensure that such incidents do not recur.

WPs (Crl.) Nos. 210, 233, 236 of 2011 and WP (Crl.) No. 82 of 2010

2. List these writ petitions along with Writ Petition (Criminal) No. 310 of 2005 on 16-7-2013.”

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