

COMPENDIUM OF VARIOUS JUDGMENTS OF HON'BLE SUPREME COURT OF INDIA HON'BLE ALLAHABAD HIGH COURT & SOPs OF NALSA AND UPSLSA FOR THE WELFARE OF THE PRISONERS

In W.P. (C) No. 406/2013, In Re-Inhuman conditions In 1382 Prisons the Hon'ble Supreme Court of India have issued several directions for the benefit of the prisoners in which the main are mentioned below:-

1. Under Trial Review Committee is to be established in every district.
2. Under Trial Review Committees shall now consist of District Judge, Superintendent of Police, District Magistrate and Secretary, District Legal Services Authority and Jail Superintendents in the meetings of UTRC.
3. Under Trial Review Committee shall meet regularly.

In the aforesaid case, the Hon'ble Court has been also pleased to stress on the need to appoint adequate number of legal aid lawyers so that necessary steps can be taken with regards to the release of under trial prisoners in accordance with the law including those who have been granted bail but are unable to furnish the bail bond.

In compliance of the above directions, the Under Trial Review Committee have been constituted in all the districts and its Meetings are conducted on regular interval. The Panel Advocates, Legal Aid Defense Counsels and the Jail visiting PLVs visits Jail regularly to meet the UTPs who are unable to furnish the bail and are still in custody for that reason and discuss the case with them and move appropriate applications before appropriate Court for release of such prisoners unless they are required in custody for some other purposes. **NALSA** has also formulated a SOP and prescribed a format including the 14 eligibility criteria, such prisoners whose matters can be taken up by the UTRC Committee, which is as under:

- i. UTPs eligible under section 436 A of Cr.P.C.
- ii. UTPs released on bail by the court, but have not been able to furnish sureties.
- iii. UTPs accused of compoundable offences.

- iv. UTPs covered under Section 436 Cr.P.C.
- v. UTPs who may be covered under Section 3 of the Probation of Offenders Act, namely those who are accused of offence under Sections 379, 380, 381, 404, 420 IPC or alleged to be an offence not more than 2 years imprisonment.
- vi. Convicts who have undergone their sentence or are entitled to release because of remission granted to them.
- vii. UTPs become eligible to be released on bail u/s 167(2)(a) (i) & (ii) of the Code read with section 36 A of the Narcotic Drugs and Psychotropic Substances Act, 1988 (where persons accused of section 19 or section 24 or section 27 A or for offences involving commercial quantity) and where investigation is not completed in 60/90/180 days.
- viii. UTPs, who are imprisoned for offences which carry a maximum punishment of 2 years.
- ix. UTPs, who are detained under chapter VIII of the Cr.P.C. i.e. u/s 107, 108, 109 and 151 of Cr.P.C.
- x. UTPs, who are sick or infirm and require specialized medical treatment
- xi. UTPs, Women offenders (S.437 of Cr.P.C.);
- xii. UTPs, who are first time male offenders between the ages 19 and 21 years and in custody for the offence punishable with less than 7 years of imprisonment and have suffered at least 1/4th of the maximum sentence possible.
- xiii. UTPs, who are of unsound mind and must be dealt under chapter XXV of the Code.
- xiv. UTPs, who are eligible for release under section 437(6) of the Code, wherein in a case triable by a Magistrate, the trial of a person accused of any non-bailable offence has not been concluded within a period of sixty days from the first date fixed for taking evidence in the case.

The prisoners, whose cases fall under the aforesaid categories are identified and thereafter considered by the UTRC Committee for their release. In the above context, several directions have been issued repeatedly to the districts by the UPSLSA for the release of the eligible prisoners and to provide them free and competent legal aid to the under trial prisoners on priority basis.

The following steps should be taken:

- 1- Secretary DLSA shall collect the list of Under trial prisoners on daily basis and the Jail Superintendent of District Jails be directed to ensure that the list which they are sending to DLSA would first include UTPs of wh are languishing in jail from the long duration and such prisoners be also included whose bail has been granted by the Court of competent jurisdiction, but due to insufficient surety or lack of surety, they have not been released from jail. In this process, the co-operation and assistance of the Legal Aid Defense Counsels, Jail Visitor lawyers and Jail PLVs can be taken.
- 2- The interaction through video conferencing should be done with the prisoners mentioned in the list provided by the District Jail on a regular basis.
- 3- By the interaction with UTPs through Video Conferencing, Free Legal Aid Counsel should be provided to those, who are not able to appoint private advocate, by the concerned Secretary DLSA.
- 4- The daily progress report from the advocate, provided to the UTPs, should be taken by the concerned Secretary DLSA.
- 5- If, the UTPs have their own private advocate then the meeting has to be taken with those private advocate to check the progress and if the action has not been taken by the advocate then they should be motivated so that they could actively take the action in the case of UTPs. If the private advocate is not participating actively, then legal aid may be provided to that UTP through the LADCS & Panel Advocate.
- 6- During the interaction with UTPs through video conferencing, those UTPs whose bail has been granted by the Hon'ble Court, but due to the lack of the sureties, their release could have not been possible, then information should be collected regarding their relatives and the other persons who can take their surety and they should be motivated for the bail/release of prisoners.

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If the prisoners is asserting that there is relation who can arrange no one in his family or in his close coordination has to be sureties for his release, in that condition the coordination established with the Village Pradhan reputed persons/any other esteemed person of the society and such other person who can take the surety of the prisoners, can be coordinated and communicated through PLVs for their release.

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The separate list should be sent regularly by the Secretary DLSA to the respective courts, then by corresponding with the concerned courts about the case of the above nature of under trial prisoners and thereafter the concerned court should be requested to take action according to the rules.

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The list of the prisoners under consideration of the above nature should be placed before the District Judge by the Secretary, DLSA in the monthly monitoring cell meeting.

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The CJM shall convene a separate meeting in every month with the concerned Magistrates and Secretary, DLSA, so that the case of UTPs can be expeditiously dealt with.

Recently in the case of **SLP (Crl.) No. 529/2021 titled Sonadhar Vs State of Chhattisgarh and SMWP (Crl.) No. 4/2021 titled In Re Policy Strategy for grant of Bail.** The Hon'ble Supreme Court has issued certain directions for expeditious release of the Under Trial Prisoners/ Convicts from the Jail.

- "1. The Court which grants bail to an under-trial prisoners/ convict would be required to send a soft copy of the bail order by e-mail to the prisoner through the Jail Superintendent on the same day or the next day. The Jail Superintendent would be required to enter the date of grant of bail in thee-prison software (or any other software which is being used by the Prison Department).**
- 2. If the accused is not released within a period of 07 days from the date of grant of bail, it would be the duty of the Superintendent of Jail to inform the Secretary, DLSA who may depute para legal volunteer or jail visiting advocate to interact with the prisoner and assist the prisoner in all ways possible for his release.**

3. NIC would make attempts to create necessary fields in the e-prison software so that the date of grant of bail and date of release are entered by the Prison Department and In case the prisoner is not released within 7 days, then an automatic email can be sent to the Secretary, DLSA.
4. The Secretary, DLSA with a view to find out the economic condition of the accused, may take help of the Probation Officers or the Para Legal Volunteers to prepare a report on the socio-economic conditions of the inmates which may be placed before the concerned Court with a request to relax the condition (s) of bail/surety.
5. In case where the under trial or convicts requests that he can furnish bail bond or sureties once released, then in an appropriate case, the Court may consider granting temporary bail for a specified period to the accused so that he can furnish bail bond or sureties.
6. If the bail bonds are not furnished within one month from the date of grant bail, the concerned Court may suo moto take up the case and consider whether the conditions of bail require modification/relaxation.
7. One of the reasons which delays the release of the accused/ convicts is the insistence upon local surety. It is suggested that in such cases, the Courts may not impose the condition of local surety."

The DLSAs have been directed for the compliance of the aforesaid directions and the DLSAs are taking the assistance of the PLVs, Panel Lawyers and their LADCS Counsels to interact with the prisoners and assist the prisoners in all possible ways for his/ her release.

COMPLIANCE OF DIRECTIONS PASSED BY HON'S ~~THE SUPREME COURT~~
IN SLP(CRL.) No. 5191 of 2021 TITLED SATENDER KUMAR ANTIL Vs.
CBI & OTHERS.

- Compliance of Sections 41 & 41 A of Cr.P.C. in conformity with the directions issued by this court in terms of the order dated 02-05-2023.
- Steps must be taken to ensure compliance by filing applications on behalf of the under trial prisoners under Section 440 of Cr.P.C.
- The Hon'ble Supreme Court of India in the aforesaid matter vide its order dated 13-02-2024 has directed for the compliance of below mentioned SOP and guidelines for the implementation of the scheme for support to the poor prisoners.

Guidelines and Standard Operating Procedure for the implementation of the Scheme for support to poor prisoners

- i) Funds to the States/UTs will be provided through the Central Nodal Agency (CNA). The National Crime Records Bureau has been designated as the CNA for this scheme.
- ii) States/UTs will draw the requisite amount from the CNA on case-to-case basis and reimburse the same to the concerned competent authority (Court) for providing relief to the prisoner.
- iii) An 'Empowered Committee may be constituted in each District of the State/UT, comprising of i) District Collector (DC)/District Magistrate (DM), ii) Secretary, District Legal Services Authority, iii) Superintendent of Police, iv) Superintendent/ Dy. Superintendent, of the concerned Prison and v) Judge in-charge of the concerned Prison, as nominee of the District Judge.

Note: This Empowered Committee will assess the requirement of financial support in each case for securing bail or for payment of fine, etc. and based on the decision taken, the DC/DM will draw money from the CNA account and take necessary action.

Note: The Committee may appoint a Nodal Officer, a society representative/social worker, District Probation Officer and take assistance of any civil process officer to assist them in processing cases of needy prisoners.

- iv) An Oversight Committee may be constituted at the State Government level, comprising of 1) Principal Secretary (Home/Jail), ii) Secretary (Law Department), iii) Secretary, State Legal Services Authority, iv) DG/IG (Prisons) and v) Registrar General of the High Court.

Note: The composition of the State level 'Empowered Committee' and 'Oversight Committee' suggestive in nature. Prisons/persons detained therein being "State-List" subject, it is proposed that the Committees may be constituted and notified by the concerned State Governments/UT Administrations.

Standard Operating Procedure

Under Trial Prisoners

1. If the under trial prisoner is not released from the jail within a period of 7 days of order of grant of bail, then the jail authority would inform Secretary, District Legal Services Authority (DLSA).
2. Secretary, DLSA would inquire and examine whether the under trial prisoner is not in a position to furnish financial surety for securing bail in terms of the bail conditions.

For this, DLSA may take the assistance of Civil Society representatives, social workers/ NGOs, District Probation officers or revenue officer. This exercise would be completed in a time bound manner within a period of 10 days.

3. Secretary, DLSA will place all such cases before the District Level Empowered Committee every 2-3 weeks.
4. After examination of such cases, if the Empowered Committee recommends that the identified poor prisoner be extended the benefit of financial benefit under "Support to poor prisoners Scheme", then the requisite amount up to Rs. 40,000/- per case for one prisoner, can be

drawn and made available to the Hon'ble Court by any other method, Which the District Court may order by way of Fixed Deposits. The Empowered Committee feels appropriate to recommend that this benefit will not be available to persons who are accused of offences under Prevention of Corruption Act, Prevention of Money Laundering Act, NDPS or Unlawful Activities (Prevention) Act or any other Act or provisions, as may be specified later.

5. This benefit will not be available to persons who are accused of offences under Prevention of Corruption Act, Prevention of Money Laundering Act, NDPS or Unlawful Activities (Prevention) Act or any other Act or provisions, as may be specified later.
6. If the prisoner is acquitted/convicted, then appropriate orders may be passed by the trial Court so that the money comes back to the Government's account as this is only for the purposes of securing bail unless the accused is entitled to the benefit of bail U/s. 389 (3) Cr.P.C. in which event the amount can be utilized for bail by Trial Court to enable the accused to approach the Appellate Court and also if the Appellate Court grants bail U/s. 389 (1) of Cr.P.C.
7. If the bail amount is higher than Rs. 40,000/-. Secretary, DLSA may exercise discretion to pay such amount and make a recommendation to the Empowered Committee, Secretary, DLSA may also engage with legal aid advocate with a plea to have the surety amount reduced. For any amount over and above Rs. 40,000/-, the proposal may be approved by the State level Oversight Committee.

Convicted Prisoners:

1. If a convicted person is unable to get released from the jail on account of non-payment of fine amount, the Superintendent of the Jail would immediately inform Secretary, DLSA (Time bound manner: 7 days).
2. Secretary, DLSA would enquire into the financial condition of the prisoner with the help of District Social Worker, NGOs, District Probation Officer, Revenue Officer who would be mandated to cooperate with the Secretary, DLSA. (Time bound manner: 7 days).
3. The Empowered Committee will sanction the release of the fine amount up to Rs. 25,000/- to be deposited in the Court for securing the release of the prisoner. For any amount over and above Rs. 25,000/-, the proposal may be approved by the State level Oversight Committee."

DIRECTIONS IN ANIL GAUR @ SONU @ SONU TOMAR VS. STATE OF
U.P., ORDER DATED 12.09.2022

In Para 72' Hon'ble Court has directed that 'The concerned State authorities and Jail authorities as well as the District Legal Services Authority and the State Legal Services Authority shall be directed to cooperate with the State Legal Services Authority and ensure effective implementation of the schemes framed by the State Legal Services Authority.'

Further' in Para 74' Hon 'ble Court has directed for following suggestions for effective implementation for the said scheme may be considered :

- A. To create a comprehensive programme with SOPs for legal aid to prisoners accused of various crimes including heinous offences who have not filed bail applications before the High Court within a period of one year after rejection of bail by the trial court. The said period of one year is only suggestive. The said period has to be determined by the State Legal Services Authority.
- B. To create a comprehensive programme with SOPs for giving legal aid to prisoners accused of committing various crimes including heinous offences who have not been able to move bail applications before the trial court six months after imprisonment. The said period of six months is only suggestive. The said period has to be determined by the State Legal Services Authority.
- C. The State Legal Services Authority may suggest to the High Court to decide an appropriate procedure for filing of bail applications on behalf of the under trial prisoners, and particularly those who do not have any pairokars.
- D. Legal aid counsels may be given appropriate directions to take measures for listing and early hearing of bail applications.
- E. Filing of subsequent bail applications in case the first bail application is rejected by the High Court.

F. The jail authorities and District Legal Services Authority shall maintain a list of all prisoners which shall contain these details i.e. Date of imprisonment, date of filing of bail application before the competent court, date of grant/rejection of bail application by the trial court, the date of grant/rejection of bail application by the High Court, date of conviction and latest status of pending bail applications. Efforts should be made to update sheets of courts, likely dates of listing available online in Jails.

G. Regular intimation of the status of the case to the prisoners. Take regular feedback from prisoners including those who have been given legal aid.

Compliance by the District Legal Services Authority

- U.P. State Legal Service Authority has prepared a Standard Operating Procedure (**SOP**) to provide legal aid to the Under Trial Prisoners, accused of various crimes who have not filed bail applications before the Trial Court/High Court in the timely manner because of penury and inability to access legal aid. The Hon'ble Executive Chairman, UPSLSA has approved the aforesaid SOPs on 21.02.2023 and the same has been circulated vide letter no. 665/SLSA-11/2023 dated 01.03.2023 to all the District Judges/Chairperson, DLSAs & the Secretaries, High Court Legal Services Committee, Allahabad and High Court Legal Services Sub-Committee, Lucknow to adhere the procedure mentioned in it, in case of UTPs who have not filed bail applications before the competent Courts.
- District Legal Services Authority and the Jail Authorities have been directed to maintain the list of all prisoners which shall contain these details i.e. Date of imprisonment, date of filing of bail application before the competent court, date of grant/rejection of bail application by the trial court, the date of grant/rejection of bail application by the High Court, date of conviction and latest status of pending bail applications.

- DLSA Secretary has been directed to regularly visit and organize various awareness camps in the jails so that the prisoners may be aware about their legal rights within the boundaries of prison and necessary requirement of prisoners can be fulfilled.
- Secretary HCLSC have also been directed to ensure that the bail applications are properly filed and heard expeditiously as per the SOP of UPSLSA. Filing of subsequent bail applications in case the first bail application is rejected by the High Court.
- Para Legal Volunteers have been deputed in Legal Aid Clinics established in jail for the purpose of spreading awareness regarding rights of prisoners and identification of such prisoners who needs legal aid and assistance for filing any requisite application.
- PLVs have also been directed to maintain the records of prisoners in jail.
- Legal Aid Counsels i.e. Panel Lawyers and the Legal Aid Defense Counsels are being directed by the DLSA Secretaries to identify the prisoners, who needs legal aid and assistance for filing any requisite application and to take measures for listing and early hearings of bail applications.
- The Secretaries, District Legal Services Authorities to regularly visit and organize various awareness camps in the jail for the purpose of spreading awareness regarding rights of prisoners and identification of such prisoners who need legal and assistance for filing any requisite application. Member Secretary have also directed to maintain the list of all prisoners which shall contain the details like:- Date of imprisonment, date of filing of bail application before the competent court, date of grant/rejection of bail application by the trial court, the date of grant/rejection of bail application by the High Court, date of conviction and latest status of pending bail applications.



IN THE MATTER OF PRE-MATURE RELEASE
RASHIDUL JAFAR@ CHHOTA VS. STATE OF U.P.

Hon'ble the Supreme Court of India in W.P (Crl.) No. 336 of 2019 Rashidul Jafar @ Chhota Vs. State of U.P. while dealing with the matter of pre-mature release of the prisoners has issued certain directions on 06-09-2022, to the State Govt., Prison Authorities and UPSLSA.

The main portion of the above said order is quoted herein:-

„ the application for premature release shall be considered expeditiously. Those cases which have already been processed and in respect of which reports have been submitted shall be concluded and final decisions intimated to the convict no later than within a period of one month from the date of this order. Cases of eligible life convicts who are (i) above the age of seventy years; or (ii) suffering from terminal ailments shall be taken up on priority and would be disposed of within a period of two months. The Uttar Pradesh State Legal Services Authority shall, within a period of two weeks, lay down the priorities according to which all other pending cases shall be disposed of all other cases shall, in any event, be disposed of within a period of four months from the date of this order¹¹

Hon'ble the Supreme Court of India has also directed that:

- 1- All cases for premature release of convicts undergoing imprisonment for life in the present batch of cases shall be considered in terms of the policy of the State Government, dated 01-08-2018, as amended subject to the observation which is contained herein. The restriction that a life convict is not eligible for premature release until attaining the age of sixty years, which was introduced by the policy of 28-07-2021, stands deleted by the amendment dated 27-05-2022. Hence, no case for premature release shall be rejected on that ground;

- 2- In the event that any convict is entitled to more liberal benefits by any of the amendments which have been brought about subsequent to the policy

dated 01-08-2018, the case for the grant of premature release would be considered by granting benefit in terms of more liberal amended clause of the policies. All decisions so far of premature release of convicts including those, beyond the present batch of cases would be entitled to such a beneficial reading of the policy;

- 3- In terms of para 4 of the policy dated 01-08-2018, no application is required to be submitted by a convict undergoing life imprisonment for premature release. Further, through amendment dated 28-07-2021, para-3 (i), which included convicts undergoing life imprisonment who have not filed application for pre-mature release in the prohibited category, has specifically been deleted. Accordingly, all cases of convicts undergoing life sentence in the State of Uttar Pradesh who are eligible for being considered for premature release in terms of policy, including but not confined to the five hundred and twelve prisoners involved in the present batch of cases, shall be considered in terms of the procedure for premature release stipulated in the policy;
- 4- The District Legal Services Authorities in the State of Uttar Pradesh shall take necessary steps in coordination with the jail authorities to ensure that all eligible cases of prisoners who would be entitled to premature release in terms of the applicable policies, as noticed above, would be duly considered and no prisoner; who is otherwise eligible for being considered, shall be excluded from consideration.
- 5- These steps to be taken by the DLSAs would, include but not be limited to. Secretaries of DLSAs seeking status report on all prisoners undergoing life imprisonment in the prisons falling under their jurisdiction in terms of the format, covering the details mentioned in Para 13 of this judgment and ensuring its submission by relevant authorities within eight weeks of this order as well as on an annual basis. Further, DLSAs would utilize this status report to monitor and engage with respective authorities to ensure the implementation of our directions to ensure premature release in terms fo

applicable policies in all eligible cases of convicts under continuous life sentence on a continuous basis;

6- The applications for premature release shall be considered expeditiously. Those cases which have already been processed and in respect of which reports have been submitted shall be concluded and final decisions intimate to the convict no later than within a period of one month from the date of this order. Cases of eligible life convicts who are (i) above the age of seventy years; or (ii) suffering from terminal ailments shall be taken up on priority and would be disposal of within a period of two months. The Uttar Pradesh State Legal Services Authority shall, within a period of two weeks, lay down the priorities according to which all other pending cases shall be disposed of. All other cases shall, in any event, be disposed of within a period of four months from the date of this order; and

7- Where any convict undergoing life imprisonment has already been released on bail by the orders of this Court, the order granting interim bail shall continue to remain in operation until the disposal of the application for premature release.

In the light of the above judgment of the Hon'ble Supreme Court of India, the UPSLSA has prepared a **SOP** containing guidelines for the DLSAs to deal with the matter of pre-mature release of the prisoners within the time limit prescribed by the Hon'ble Supreme Court of India. The SOP has been circulated to all the DLSAs for the compliance in letter and spirit.

In the Matter of Filing Jail Appeals

The UPSLSA has prepared a **SOP** to streamline the pathetic state of affairs regarding non-filing or inordinate delay in filing of jail appeals by or on behalf of detained convicts primarily due to lack of means, legal acknowledge or poverty etc. The SOP has been circulated vide letter no. 384/SLSA-LA- 166/2019(AK/Ri), dated 17-02-2021 to all the districts and the jail superintendents for the convenient filing of the jail appeals.