



**IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA**

Cr. MP(M) No.669 of 2024

Reserved on : 01.05.2024

Decided on : 03.05.2024

Mr. [X] Petitioner

Versus

State of Himachal Pradesh Respondents

Coram

Hon'ble Mr. Justice Ranjan Sharma, Judge

¹ *Whether approved for reporting?*

For the petitioner : Mr. Servedaman Rathore,
Mr. Vipin Bhatia & Mr. Rohit
Steta, Advocates.

For the respondent : Mr. Prashant Sen, Deputy
Advocate General.

Mr Prakash Chand, Deputy
Superintendent [Jails], District
Jail, Kaithu [Shimla] and Mr.
Sanjeev Kumar, Pharmacist,
District Jail, Kaithu [Shimla],
present in person with records.

Ranjan Sharma, Judge

Even prisoners do have life, dignity and liberty. A welfare state is under bounden obligation to ensure the protection and safeguards against any attempt either to shrink, take away or curtail the

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

fundamental rights, including the right to life, which includes the right to health and health care, the right to live with human dignity as has been done by the State Authorities, in case of the bail petitioner, who is suffering from Human Immunodeficiency Virus [HIV] and other ancillary health issues.

2. The bail petitioner [X], is a co-accused along with five others, in FIR No.11, dated 19.02.2024, registered with Police Station [East] Shimla, under Sections 419, 420, 465, 467, 471 of the Indian Penal Code [*hereinafter referred to as 'IPC'*], and being in custody since 20.02.2024 has come up before this Court, seeking regular bail, under Section 439 of Code of Criminal procedure {referred to as Cr PC}, on medical grounds, as he is suffering from Human Immunodeficiency Virus [HIV].

FACTUAL MATRIX:

3. The case set up by Mr. Servedaman Rathore, learned Counsel, is that on the basis of FIR No 11,

dated 19.02.2024, six accused including the present bail petitioner [X], were proceeded against, leading to the arrest of the bail petitioner on 20.02.2024.

3(i). The case of the bail petitioner is that he has been falsely implicated and the facts in the FIR are fabricated, concocted and without basis. It is averred that the bail petitioner has good antecedents and he has no connection or concern with the alleged offence. Though, at the relevant time, after registration of FIR on 19.02.2024, the bail petitioner has moved an application for bail before the learned Trial Court but the same was rejected on 27.02.2024. Thereafter, the bail petitioner had moved another application for bail on 29.02.2024, before the Learned Additional Sessions Judge-I, Shimla, which was also dismissed on 16.03.2024. Notwithstanding the rejection of his bail requests, by the learned Trial Court and then by the learned Sessions Court, as referred to above, the case set up by Mr. Servedaman Rathore,

Learned Counsel, submits that the medical condition of the bail petitioner has compelled him to approach this Court.

3(ii). It has been specifically mentioned that the bail petitioner has developed the chronic health ailment owing to his being HIV Positive. It is further averred that in addition to this, the bail petitioner is also susceptible to many other diseases which could be fatal for his survival. It is mentioned in Paras 14 & 15 of the bail application that during his custody in the jail, from the date of his arrest on 20.02.2024 his health has rapidly and severely deteriorated and upon medical check-up, the medical records reveal that the bail petitioner has lost almost 9-10 Kgs of weight within a short span and is suffering from Diarrhea and other ancillary ailments at this stage, besides being HIV positive. It has further mentioned in the bail application that the medical specialists of Indira Gandhi Medical College & Hospital [ART

Centre], Shimla who manage the care and treatment for HIV, *has advised that the bail petitioner needs to be given ; (i) boiled/filtered drinking H₂O; (ii) protein rich diet, which should include Curd, Khichadi, Fruits, Green Leafy Vegetables; and (iii) for personal hygiene to have (a) daily bathing (b) clothing and bed-sheets, towel and blanket should be washed, after application of medication, so as to ensure proper care of the bail petitioner.*

3(iii). In the instant bail application, the bail petitioner has given the requisite undertakings that the bail petitioner shall join the investigation which is almost complete and shall participate in the trial, without fail. Moreover, it has further been stated that the bail petitioner is a respectable person of the society and there are no chances of his being fleeing away from the trial. It is further averred that the bail petitioner shall not cause any inducement, threat or promise directly or indirectly to any person

acquainted with the facts of the case. Another undertaking has been given that he shall not leave the country and shall not jump over the bail in case the bail request is granted by this Court.

In view of the extreme adversarial medical conditions, the prayer for enlargement on bail has been made, so as to enable him to seek appropriate and adequate health care which is necessary for safeguarding his life, which in the instant case, as detailed herein-below, the State Authorities are unable to provide the bail petitioner, being in custody.

PROCEEDINGS BEFORE THIS COURT:

4. The matter was listed on 04.04.2024 when, this Court directed the State Authorities to file the Status Report, besides other directions, which read as under:-

“4. Let status report be filed within ten days. While filing the status report, the State Government shall indicate:-

- i) Whether the petitioner is in fact suffering from Human Immunodeficiency Virus?
- ii) Whether in view of his being Human

Immunodeficiency Virus, certain benefits advantages, or concessions etc. are available or extended to such under trial(s) by the State?

- iii) If any benefits, advantages or concessions are to be given then, whether the same are being extended to the bail petitioner?
- iv) What steps have been taken by State to implement-enforce The Human Immuno-deficiency Virus and acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 in case of petitioner /others?"

4(i). The matter was then listed on 24.04.2024 when, the State Authorities on instructions of SHO, Police Station [East] Shimla, has furnished the *Status Report, dated 24.04.2024*, before this Court. In addition to this, the Deputy Superintendent of Jails, District Jail Kaithu, District Shimla where the bail petitioner is in facing custody has also filed the *Instructions dated 24.04.2024*, which forms part of the case records, indicating that the bail petitioner admitted to Indira Gandhi Medical College & Hospital, Shimla on 19.04.2024 and the *communication dated 23.04.2024* reveals that the bail petitioner is HIV Positive and he requires some more time for restoration of his

health as certain tests and vitals are required to be examined. In aforesaid background, the operative part of the *order passed by this Court on 24.04.2024*, reads as under:-

“2. As a sequel to the orders dated 04.04.2024, SHO, Police Station [East] Shimla, has furnished the status report dated 24.04.2024. In addition to the status report, the Deputy Superintendent [Jails], Kaithu at Shimla has also furnished instructions dated 24.04.2024 [taken on record], which indicate that from 19.04.2024, the bail petitioner has been hospitalized in ART Section of IGMC, Shimla, which is clear from communication dated 23.04.2024 addressed by the Professor/Head [Medicine], IGMC to the Medical Superintendent, IGMC, Shimla.

3. In order to satisfy as to whether the bail petitioner, is being provided adequate medical treatment in IGMC and whether any additional medical treatment is required, this Court requested the Medical Superintendent of IGMC alongwith Dr. Vimal Bharti, Associate Professor, Department of Medicine, IGMC, Shimla/Incharge of ART Centre in IGMC, Shimla to appear in the Court. After interacting with Medical Superintendent as well as Incharge ART Centre, IGMC, Shimla, this Court was informed by these medical experts that the bail petitioner is being taken care of and all medical facilities are adequately being provided to the bail petitioner, **which is likely to continue for few more days.**

In view of the above, this Court simply adjourns the matter by two weeks, so as to enable the medical experts to render requisite treatment till restoration of his health; with further directions to the State Authorities to furnish status report, indicating action taken

report as mentioned in Para-4(i) to (iv) of earlier orders dated 04.04.2024 and also to indicate the medical status of bail petitioner from IGMC, Shimla.

4. In case the bail petitioner feels that medical treatment is not being adequately provided or some additional treatment is required, then, the bail petitioner is free to move an appropriate application to this Court.”

4(ii). Though, a perusal of the communication dated 23.04.2024, addressed by the Professor & Head, Department of Medicine IGMC (ART Centre), Shimla specifically provided that the admission of the bail petitioner was necessary for some more days as some tests and vitals are to be examined. However, by acting totally *contrary to the disclosures and the assurance made to this Court by the medical experts*, the bail petitioner was discharged by the Medical Officer [On Duty] on 25.04.2024. In view of this, the Mention Memo was made before this Court and thereafter, the matter was listed, with directions to the State Authorities to file fresh instructions in the matter. On listing of the matter on 29.04.2024, this Court after interaction with the Senior Medical

Superintendent, Indira Gandhi Medical College & Hospital, Shimla and the medical experts who were present in the Court, this Court passed an order on 29.04.2024, which reads as under:-

- “4. Contrary to the interaction with the medical experts, the bail petitioner was discharged from IGMC [ART Centre] on 25.04.2024. Faced with this, Mr. Servedaman Rathore, Learned Counsel for the petitioner moved a motion memo on 26.04.2024 for listing of the matter, in view of the health condition of the petitioner. On this, Mr. Prashant Sen, Learned Deputy Advocate General, prayed for two days time, to enable him to have instructions in the matter.
5. Today [29.04.2024], Mr. Anoop Rattan, Learned Advocate General appeared in the matter. On instructions of the Medical Superintendent [Dr. Rahul Rao] IGMC, he prays for listing the matter tomorrow, so as to work out as to whether the bail petitioner, who is suffering from “HIV Syndrome” can be provided adequate medical facilities [including required diet etc.] and treatment in IGMC Shimla or needs to be referred to PGI i.e. Post Graduate Institute Chandigarh, so as to make efforts for safeguarding his right to health.
9. However, for the limited claim of the petitioner for bail [in context of Para Nos.4 and 5 above], list this matter tomorrow, so as to enable the Learned Advocate General to have an update / instructions, in context of the bail petitioner.

4(iii). The matter was then listed on 30.04.2024 when, this Court had directed the respondents i.e.

the Department of Prisons and Correctional Services and the Medical Officers of Indira Gandhi Medical College & Hospital [ART Centre], Shimla to have fresh instructions as to whether the bail petitioner was being provided with the hygienic conditions, in terms of his diet and personal hygiene and also to inform this Court as to whether in view of the medical condition, the petitioner requires further hospitalization or not ? The order dated 30.04.2024, reads as under :-

“ The case records reveal that the *medical experts of Indira Gandhi Medical College & Hospital [IGMC], Shimla, have diagnosed the bail petitioner with HIV, being is Immuno-Compromised State.*

2. Though the **Medical Specialist of IGMC, Shimla, have advised the petitioner-patient to have** (i) boiled/filtered drinking H₂O; (ii) protein rich diet, which should include Curd, Khichadi, Fruits, Green Leafy Vegetables; and (iii) for personal hygiene to have (a) daily bathing (b) clothing and bed sheets, towel and blanket should be washed, after application of medication, *but learned counsel Mr. Servedaman Rathore states that these health care facilities are not being provided to the petitioner in Sub-Jail, Kaithu, and even during his hospitalization in IGMC [ART Centre], Shimla.*
3. After hearing learned counsel for the bail

petitioner for some time and learned State Counsel and before proceeding further in the matter, this Court is of the view, that the *State Authorities i.e. Prison Authorities of Superintendent Jails, Sub-Jail, Kaithu, shall convey instructions as to whether, bail petitioner is being extended all these healthcare advisories, as referred to above, within the prison or not?*

4. Not only this, admittedly, the bail petitioner remained hospitalized from 19.04.2024 till his discharge on 25.04.2024. Subsequent thereto, he was again taken up for medical treatment to IGMC, Shimla [ART Centre] for treatment on 30.04.2024. *The repeated visits from prison to IGMC, Shimla, not only causes physical and mental stress to the bail petitioner, but at times the frequent movement, may lead to aggravating the health of the bail petitioner also.* In this view of the matter, let the State Counsel have fresh instructions from Medical Specialists of IGMC [ART Centre], Shimla, as to whether the bail petitioner is required to and can be admitted in IGMC, Shimla, for few more days.
5. Let fresh status report by Jail Authorities (Point No.3) and by IGMC (Point No.4) be filed tomorrow.
6. List the matter on 01.05.2024, at 03:00 p.m.”

4(iv). On listing of the case today [01.05.2024], the Deputy Superintendent [Jails], namely [Prakash Chand], District Jail, Kaithu [Shimla] and Mr. Sanjeev Kumar, Pharmacist, District Jail, Kaithu [Shimla], have appeared in person and *conveyed instructions, through the learned State Counsel, verbally to the*

effect that it is not practicable to provide the advised dietary requirements and the personal hygiene conditions in case of the bail petitioner as mandated in Para 2 of the order dated 30.04.2024, as referred to above. So far as the Instructions in Para 4 in the order dated 30.04.2024 as to whether the bail petitioner is required to be admitted in IGMC for few more days, the learned State Counsel was unable to respond to this query of the Court, as referred to above. In this background, the case of the present bail petitioner, needs to be examined by this Court.

5. Heard Mr. Servedaman Rathore assisted by Mr. Vipin Bhatia & Mr. Rohit Steta, Learned counsel for the petitioner and Mr. Prashant Sen, Learned Deputy Advocate General, for the respondent state.

6. A perusal of the facts, referred to above, undoubtedly and undisputedly, admit that the bail petitioner is HIV Positive. It is also not in dispute

that being HIV, the health condition of the bail petitioner has adversely and rapidly deteriorated as he has lost about 9-10 Kgs. of weight in about two weeks. The orders passed by this Court, from time to time also indicate that required medical facilities and healthcare are not available in case of the bail petitioner in District Jail Kaithu [Shimla] where he is in custody, since 20.02.2024. Even, the queries of this Court as reflected in the orders dated 30.04.2024, remain un-answered by the officials of the jail, who are present in the Court and even by the State Authorities, as referred to above.

7. In the entirety of the facts, as referred to above and keeping in view the medical condition of the bail petitioner, who is HIV Positive, coupled with the fact that there is rapid and constant deterioration in his health, during his confinement in District Jail Kaithu [District Shimla], therefore, this Court is of the considered view that the **prayer of the bail**

petitioner, for regular bail, on medical grounds, in peculiar facts of this case, needs to be granted,

for the *following reasons:-*

7(i). Once the medical records which are part of the paper-book indicate that the petitioner is HIV Positive and material on record further reveals that the bail petitioner has lost about 9-10 Kgs. of weight during the last two weeks, which is on account of his being HIV coupled with other ancillary ailments being suffered by the petitioner. Moreover, even the officials of District Jail Kaithu [Shimla], who appeared before this Court on 01.05.2024 have expressed their practical difficulty in not providing adequate medical healthcare and personal hygiene, as required in case of the bail petitioner, in terms of Para 2 of the orders dated 30.04.2024, therefore, the prayer of bail petitioner for enlargement of bail, needs to be accepted.

7(ii). Notably, the fundamental right to life, which

includes the right to health and healthcare including the right to live with dignity cannot be permitted to be either shrunk or taken away, curtailed even in case of a person who is in custody. The State Authorities are under an obligation to safeguard the right to life, be it relates to the right to health of a commoner or a prisoner. Even, a prisoner has fundamental rights in terms of Article 14, 19 & 21 of the Constitution of India. The right to life of a prisoner is more than a mere animal existence or vegetable subsistence. Even, prisoners have basic human rights, human dignity and human sympathy. Prisoners also have a right to live with dignity in humane conditions of detention, preventive or punitive and they do have the right to adequate, appropriate and required healthcare. Any kind of de-humanizing factor or any attempt to defeat the real, meaningful and healthy living cannot be permitted to sustain in case of prisoners. Failure on the part of a government

hospital to provide the timely medical treatment to a person in need of such treatment results violation of his right to life guaranteed under Article 21 of the Constitution of India, as has been done in the instant case.

A perusal of the material on record and the orders dated 30.04.2024 passed by this Court, the State Authorities have shown their inability to provide the requisite healthcare to the bail petitioner while in custody. Even, on being taken for treatment to the IGMC [ART Centre], though, the medical experts had opined that the bail petitioner is required for continuation of admission for few more days so as to examine his vitals and to make him to undergo some tests but, for reasons known to them, the bail petitioner was abruptly discharged prematurely from the Hospital, leading to depriving the bail petitioner of his requisite healthcare, being HIV Positive.

MANDATE OF LAW- RIGHTS OF PRISONERS:

7(iii). Discrimination and denial of the requisite healthcare, is contrary to the mandate of the Hon'ble Supreme Court in case of **T.V. Vatheeswaran versus State of Tamil Nadu, (1983) 2 Supreme Court Cases 68**, as under:-

“20. So, what do we have now? **Articles 14, 19 and 21 are not mutually exclusive. They sustain, strengthen and nourish each other. They are available to prisoners as well as free men. Prison walls do not keep out Fundamental Rights. A person under sentence of death may also claim Fundamental Rights.** The fiat of Article 21, as explained, is that any procedure which deprives a person of his life or liberty must be just, fair and reasonable. Just, fair and reasonable procedure implies a right to free legal services where he cannot avail them. It implies a right to a speedy trial. **It implies humane conditions of detention, preventive or punitive.** 'Procedure established by law' does not end with the pronouncement of sentence; it includes the carrying out of sentence. That is as far as we have gone so far. It seems to us but a short step, but a step in the right direction, to hold that prolonged detention to await the execution of a sentence of death is an unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. In the United States of America where the right to a speedy trial is a Constitutionally guaranteed right, the denial of a speedy trial has been held to entitle an accused person to the dismissal of the indictment or the vacation of the sentence. Analogy of American law is not permissible, but interpreting our

Constitution sui generis, as we are bound to do, we find no impediment in holding that the dehumanising factor of prolonged delay in the execution of sentence of death has the Constitutional implication of depriving a person of his life in an unjust, unfair and unreasonable way as to offend the Constitutional guarantee that and person shall be deprived of his life or personal liberty except according to procedure established by law. The appropriate relief in such a case is to vacate the sentence of death.”

7(iv). Likewise, stressing upon right of inmates to live in human and good conditions, the Hon’ble Apex Court in **Dr. Upendra Baxi (I) versus State of Uttar Pradesh & Another, (1983) 2 Supreme Court Cases 308**, has held:-

“1. When this writ petition came up for hearing before us on May 8, 1981 we made an order giving various directions **in order to ensure that the inmates of the Protective Home at Agra do not continue to live inhuman and degrading conditions and that the right to live with dignity enshrined in Article 21 of the Constitution is made real and meaningful for them.** We gave to the State Government which is running the Home, the entire period of vacation for carrying out these directions. Miss Srivastava, Superintendent of the Home, has filed an affidavit before us setting out the action taken by the State Government with a view to complying with these directions.”

7(v). While mandating the obligation of the

medical professionals to provide the treatment and healthcare to a commoner and also to an under trial or a convict the Hon'ble Apex Court, has held in **Parmanand Katara versus Union of India, AIR 1989 Supreme Court 2039**, as under:-

“7. There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. **The patient whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life** so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.”

7(vi). Besides the above, while dealing with the ambit and scope of right to life and right to personal liberty of a person, which is mandatorily to be safeguarded and preserved, the Hon'ble Apex Court has held in **Paschim Banga Khet Mazdoor Samity and Others versus State of W.B. and Another, (1996) 4 Supreme Court Cases 37**, as under:-

“9. The Constitution envisages the establishment

of a welfare State at the federal level as well as at the State Level. In a welfare State the primary duty of the Government is to secure the welfare of the people. Providing adequate medical facilities for the people is an essential part of the obligations undertaken by the Government in a welfare State. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail of those facilities. **Article 21 imposes an obligation on the State to safeguard the right to life of every person. Preservation of human life is thus of paramount importance. The government hospitals run by the State and the medical officers employed therein are duty-bound to extend medical assistance for preserving human life.** Failure on the part of a government hospital to provide timely medical **treatment to a person in need of such treatment results in violation of his right to life guaranteed under Article 21.** In the present case there was breach of the said right of Hakim Seikh guaranteed under Article 21 when he was denied treatment at the various government hospitals which were approached even though his condition was very serious at that time and he was in need of immediate medical attention. Since the said denial of the right of Hakim Seikh guaranteed under Article 21 was by officers of the State, in hospitals run by the State, the State cannot avoid its responsibility for such denial of the constitutional right of Hakim Seikh. In respect of deprivation of the constitutional rights guaranteed under Part III of the Constitution the position is well settled that adequate compensation can be awarded by the court for such violation by way of redress in proceedings under Articles 32 and 226 of the Constitution. Hakim Seikh should, therefore, be suitably compensated for the breach of his right guaranteed under Article 21 of the Constitution. Having regard to the

facts and circumstances of the case, we fix the amount of such compensation at Rs 25,000. A sum of Rs 15,000 was directed to be paid to Hakim Seikh as interim compensation under the orders of this Court dated 22-4-1994. The balance amount should be paid by Respondent 1 to Hakim Seikh within one month.

16. It is no doubt true that financial resources are needed for providing these facilities. But at the same time it cannot be ignored that **it is the constitutional obligation of the State to provide adequate medical services to the people. Whatever is necessary for this purpose has to be done.** In the context of the constitutional obligation to provide free legal aid to a poor accused this Court has held that the State cannot avoid its constitutional obligation in that regard on account of financial constraints. The said observations would apply with equal, if not greater, force in the matter of discharge of constitutional obligation of the State to provide medical aid to preserve human life. **In the matter of allocation of funds for medical services the said constitutional obligation of the State has to be kept in view.** It is necessary that a time-bound plan for providing these services should be chalked out keeping in view the recommendations of the Committee as well as the requirements for ensuring availability of proper medical services in this regard as indicated by us and steps should be taken to implement the same. The State of West Bengal alone is a party to these proceedings. Other States, though not parties, should also take necessary steps in the light of the recommendations made by the Committee, the directions contained in the memorandum of the Government of West Bengal dated 22-8-1995 and the further directions given herein.”

7(vii). In the context of the fundamental rights

of a prisoner, the Hon'ble Apex Court has held in case of **State of A.P. versus Challa Ramkrishna Reddy and Others, (2000) 5 Supreme Court Cases 712**, that even the prisoners do have fundamental rights, human rights and human dignity, which cannot be permitted to be shrunked or taken away, curtailed except in accordance with law, which reads as under:-

“22. **Right to life is one of the basic human rights.** It is guaranteed to every person by Article 21 of the Constitution and not even the State has the authority to violate that right. **A prisoner, be he a convict or undertrial or a detenu, does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his fundamental rights including the right to life guaranteed to him under the Constitution.** On being convicted of crime and deprived of their liberty in accordance with the procedure established by law, prisoners still retain the residue of constitutional rights.

24. Thus, according to the definition under the Prisoners Act, there is a convict, there is an undertrial and there is a civil prisoner who may be a detenu under preventive detention law. **None of the three categories of prisoners lose their fundamental rights on being placed**

inside a prison. The restriction placed on their right to movement is the result of their conviction or involvement in crime. Thus, a person (prisoner) is deprived of his personal liberty in accordance with the procedure established by law which, as pointed out in *Maneka Gandhi v. Union of India* must be reasonable, fair and just.

28. Thus, **fundamental rights, which also include basic human rights, continue to be available to a prisoner** and those rights cannot be defeated by pleading the old and archaic defence of immunity in respect of sovereign acts which has been rejected several times by this Court.”

7(viii). The ambit and scope of the fundamental rights including human rights and right to life and personal liberty, in the case of prisoners has been spelt out by the Hon'ble Apex Court, in **Inhuman Conditions In 1382 Prisons, (2016) 3 Supreme Court Cases 700**, as under:-

“Prison reforms have been the subject-matter of discussion and decisions rendered by this Court from time to time over the last 35 years. Unfortunately, even though **Article 21 of the Constitution requires a life of dignity for all persons**, little appears to have changed on the ground as far as prisoners are concerned and we are once again required to deal with issues relating to prisons in the country and their

reform.

7. Justice R.C. Lahoti also pointed out that the **State cannot disown its liability to the life and safety of a prisoner once in custody** and that there were hardly any schemes for reformation for first-time offenders and prisoners in their youth and to save them from coming into contact with hardened prisoners.

55. In a similar vein, it has been said, with a view to transform prisons and prison culture:

“Treating prisoners not as objects, but as the human beings they are, no matter how despicable their prior actions, will demonstrate an unflagging commitment to human dignity. It is that **commitment to human dignity that will, in the end, be the essential underpinning of any endeavour to transform prison cultures.**”

56.5 The Director General of Police/Inspector General of Police in charge of prisons should ensure that there is **proper and effective utilization of available funds so that the living conditions of the prisoners is commensurate with human dignity. This also includes the issue of their health, hygiene, food, clothing, rehabilitation, etc.**

57. A word about the **Model Prison Manual** is necessary. It is a detailed document consisting of as many as 32 chapters that deal with a variety of issues including custodial management, medical care, education of prisoners, vocational training

and skill development programmes, legal aid, welfare of prisoners, after-care and rehabilitation, Board of Visitors, prison computerization and so on forth. **It is a composite document that needs to be implemented with due seriousness and dispatch.**

7(ix). In continuation of the mandate in **Inhuman Conditions in 1382 Prisons**, as referred to above, the matter again came up before the Hon'ble Apex Court, when, the Court, passed an order on 25.09.2018, as under:-

“10. To examine violence in prisons and correctional homes and recommend measures to prevent unnatural deaths **and assess the availability of medical facilities in prisons** and correctional homes and make recommendations in this regard.

11. To **assess the availability and inadequacy of staff in prisons** and correctional homes and recommend remedial measures.”

7(x). Besides this, the **Prisons Act, 1894** also mandates the fundamental right and the human rights and the human dignity of the prisoners by mandating that the prisoners are to be provided with adequate fooding, clothing, bedding and other necessaries

including requisite healthcare, which has to be ensured by Jail-State Authorities. Relevant statutory provisions, read as under:-

Section 33. Supply of clothing and bedding to civil and unconvicted criminal prisoners:-

(1) Every civil prisoner and unconvicted prisoner unable to provide himself with *sufficient clothing and bedding shall be supplied by the Superintendent with such clothing and bedding* as may be necessary.

(2)xxx.....

Section 37. Sick prisoners:-

(1) The names of prisoners desiring to see the Medical Subordinate or *appearing out of health in mind or body shall, without delay*, by reported by the officer in immediate charge of such prisoners to the Jailor.

(2) The Jailer shall, *without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention*, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

Section 39: Hospital:-

In every prison an hospital or proper place for the reception of sick prisoners shall be provided.

7(xi). Needless to say that the State Authorities

have issued the **Himachal Pradesh Prison Manual, 2021**, mandating various obligations on the persons who entrusted with supervision, management and care of the prison inmates. For the instant case, it would be in the interests of justice to have a recap of the provisions in Chapter VII and XVII, which casts ***certain obligations on the State Authorities for ensuring the fundamental rights, human rights and right to live with dignity even in case of a prisoner***, as under:-

Chapter VII
Medical Care

Medical Administration

7.01 Medical administration is one of the most important concerns of prison management. ***The Medical Officer of a prison has to give careful attention not only to the treatment of sick prisoners but also to every matter connected with the health of prisoners and overall hygiene of the prison.*** Nothing will count more to the credit of the Medical Officers of prisons than their success in maintaining best health standards in the prisons under their charge.

7.02 The Prison medical administration may form part of the State Health Services/Medical Department instead of the prison administration.

Prison Hospitals

7.03 10 bedded hospital shall be provided in the Central Jails at Nahan, Kanda, Open Air Jail Bilaspur and Distt Jail at Dharmshala.

Note: One ambulance shall be provided in each prison hospital.

Appointment of Medical Officer (In Charge)

7.04 The Government shall appoint a Medical Officer (In Charge) for the above prisons. For the remaining prisons the local *Chief Medical Officer/Block Medical Officer* shall depute one Medical Officer **in forenoon on daily basis**.

7.05 The Medical Officer, shall be entitled for rent 'free staff quarters'.

Channel of Communication

7.06 The **Medical Officer (in charge)** shall **submit** indents for medicines to the Director General through the Superintendent of prison. In all administrative matters he will correspond with the Director/ Inspector General through the Superintendent of Prison. He may, however, correspond directly with the Director/Inspector General, *on matters relating to sanitation, sick prisoners' food and clothing and discipline in the prison hospital*. He may also do so if he notices on the person of any prisoner injuries which are alleged to have been caused by prison officials. He shall accompany the Director/Inspector General during his inspection of the prison.

General Duties

7.07 The general duties of the Medical Officer (In Charge) shall cover **every matter connected with the health** of the prisoners, *their treatment when sick, and the sanitation and hygiene of the prison*.

Daily visits to prison

- 7.08 Medical Officer (In Charge) shall visit the prison and *shall examine sick prisoners every day*. He shall visit the prison on Sundays and holidays as well, whenever necessary.
- 7.09 He shall ***inspect every part of the prison and check all prisoners at least once in a week*** and record his observations in his report to be sent to the Superintendent of Prisons and Director/ Inspector General of Prisons periodically.
- 7.10 He shall also make a full medical inspection of all the prisoners once a month.
- 7.11 If any epidemic or unusual sickness prevails, *or any serious case of illness occurs, he shall visit the prison as often as may be necessary*.
- 7.12 If he is unable to himself undertake these inspections for any reason, he shall record the fact and the reason for it in his journal. At the same time he shall ***depute an Assistant Civil Surgeon to conduct such inspections***.

Special Needs of Aged Prisoners:

- 7.13 The Medical Officer shall ensure that the medical needs of aged prisoners in terms of ophthalmological care, dental care, physiotherapy, and clinical testing for diabetics are regularly attended to.

Treatment of Drug Addicts

- 7.14 The Medical Officer shall ***organise de-addiction programmes for such prisoners who are known to be drug-addicts***. He shall also organise training in Transcendental Meditation and Yoga for them.

Attendance at Weekly Inspection

- 7.15 The Medical Officer (In Charge) shall be present during the Superintendent's ***weekly***

inspection and shall oversee the general health and hygienic conditions prevailing in the prison. He shall pay special attention to any signs of a scorbutic or anaemic tendency, any deterioration in health conditions, and skin diseases. He shall also examine the prisoner's clothing and bedding to see that they are adequate and clean. He will examine the drainage, ventilation, drinking water and conservancy arrangements of the prison.

- 7.16 He shall, at the same time, examine the record of prisoners' weights, to satisfy himself that the weight test is being properly done. **He shall thoroughly examine all prisoners who have lost their weight substantially** and give necessary instructions to the Assistant Civil Surgeon of the prison regarding the action to be taken in such cases.

Duties of Medical Officer

- 7.20 He shall inspect the **medicines kept in store once in every six months** and satisfy himself that their weights and quantities are entered correctly in the stock register. He shall also ensure that the medicines are used before their date of expiry. He shall also inspect the instruments and equipment to see that these are being maintained properly and sufficient stock is kept in reserve.

- 7.21 All indents shall be scrutinized and countersigned by the Medical Officer.

- 7.25 It shall also be the duty of Medical Officer;

- (i) to be available to attend to any prisoner *who complains of illness or who appears to be ill, and have him removed to the hospital or the place for medical examination by Chief Medical Officer, as the case may be;*
- (ii) *to attend to sick prisoners and out-patients visiting the hospital and*

supervise the preparation and issue of medicines, food and extra diet;

- (iii) to make a **daily round of the prison cells** and report to the Superintendent of Prisons the conditions in the prison which have any **bearing on the health of the inmates** and every such complaint made to him;
- (iv) to see that sick prisoners are clean and tidy;
- (v) to see that the hospital clothing and bedding are marked in a distinctive manner;
- (vi) to see that all articles in use in the hospital are safely stored and kept clean;
- (vii) to ensure that the **pharmacist attends to the clerical work connected with the hospital**, such as the upkeep of registers, the preparation of returns and the punctual submission of indents;
- (viii) to satisfy himself that the food for the sick is properly prepared and distributed;
- (ix) to **ensure that order, cleanliness and discipline is maintained** in and around the hospital;
- (x) to ensure that the **staff nurses and others employed** in the hospital perform their duties properly;
- (xi) to **visit the prison kitchen every day, inspect the food supplied, both raw and cooked** (both in bulk and after distribution) and see that the salt, oil and condiments are added and thoroughly mixed, **satisfy himself that the food is of good quality and that the quantity of each article is according to the sanctioned scale.** He shall also see that the kitchen and

its surroundings are maintained in a sanitary condition, that the drains are flushed and free from refuse, that the water stored in the tanks for cooking and washing utensils is changed frequently, and that the utensils in use are clean and in good condition;

- (xii) to **supervise the supply of milk to the hospital**, to test the milk in the prescribed manner, to see that it is properly boiled before issue;
- (xiii) *to inspect the food supplied to civil and un-convicted criminal prisoners by their friends;*
- (xiv) to keep a watch on prisoners suspected of malingering and to report the result of his observations;
- (xv) to be present at various parades and separate for examination and treatment any prisoner who appears to be in need of attention or who is known or suspected of leaving part of his food uneaten;
- (xvi) to bring to the notice of any female whom he may suspect to be pregnant;
- (xvii) to see the bathing of prisoners suffering from skin infections;
- (xviii) to examine all newly admitted prisoners and to record in the admission register and medical sheets particulars regarding their health, and the kind of labour and they can perform in view of their health conditions;
- (xix) to satisfy himself that the *person, and private clothing, of newly admitted prisoners are properly cleaned, and that the clothing is, if necessary, disinfected before keeping in the store rooms;*
- (xx) to vaccinate newly admitted prisoners,

and (if so directed) infants admitted with their mothers or born in prison;

- (xxi) to bring promptly to the notice of the Superintendent and Chief Medical Officer any case of suspected cholera or other contagious or infectious diseases that may appear amongst the staff or inmates of the prison;
- (xxii) to examine the wells and other sources of water supply, to bring to notice any defects with regard to the quantity or quality of water supplied, to examine every day all tanks and vessels in which water is stored or conveyed, and to prepare samples of water for analysis as and when required;
- (xxiii) *to inspect the surroundings of the prison at least once a week. He shall pay particular attention to manner in which filth is trenched or otherwise disposed of; and*
- (xxiv) to attend to the ventilation, with due regard to the season, of the hospital, sleeping wards and workshops and to satisfy himself that prisoners are not unnecessarily exposed to drought or rain;

Maintenance of Journals

7.27 The Medical Officer shall keep a *journal in which he shall record every visit he pays to the prison, time of entering and leaving the prison, the parts of the prison or classes of prisoners visited, the number of sick persons in prison and any other point which he considers should be brought to the notice of the Superintendent. While doing so he shall make specific note of the following:-*

7.28 *Any defects in the food, clothing or bedding of prisoners or in the cleanliness, drainage, ventilation, water supply or other arrangements*

of the prison which he considers likely to be injurious to the health of prisoners, together with suggestions for removing such defects.

- 7.29 Any occurrence of importance connected with the hospital administration.
- 7.30 Any marked increase in the number of in or out door patients and its apparent causes.
- 7.31 After each visit this journal shall be sent immediately to the Superintendent for his perusal. Thereupon the Superintendent may issue any orders he thinks fit. When the Medical Officer himself is the Superintendent of the Prison the points required to be referred to in his journal shall be recorded in the journal maintained by the Superintendent of Prison.

Submission of Returns

- 7.32 The Medical Officer shall punctually submit the prescribed returns and shall furnish any other information regarding the medical administration of the prison, which the Director/ Inspector General may call for. A report regarding the sanitary condition prevailing in prison shall also be furnished to the Director General along with the annual returns.

Clinics and Labs for Prison Hospitals

- 7.34 The following equipment shall be made available to **prison hospitals**:-
- (i) Minor operation theatre with all surgical equipment
 - (ii) Clinical laboratory with required equipment.

The weighing of Prisoners

- 7.35 The Medical Officer shall be present during the **fortnightly weighing of prisoners**. He shall record each prisoner's weight in his weight chart.

Examination of Prisoners Complaining of Illness

- 7.36 **Every prisoner complaining of illness, or appearing to be ill, shall be sent to the prison hospital for immediate examination and further treatment by the Medical Officer.** The facility of consulting medical officers over the telephone may also be encouraged, where necessary.
- 7.37 On the advice of the Medical Officer, the Superintendent may transfer any sick prisoner to the local government hospital. For transfer which is required on medical grounds to any specialised hospital outside the jurisdiction of the prison, the approval of the Director General/Inspector General should be obtained. If the Medical Officer is of opinion that prior approval of the Director General/ Inspector General of Prisons will take such time as will endanger the life of a sick prisoner, the transfer may be made in anticipation of sanction of the Director General/ Inspector General of Prisons. No prisoner should be allowed to stay in an outside hospital except on ground of dire medical needs. In deserving cases, the opinion of Medical Board constituted by the Chief Medical Officer of the district shall be obtained while sending prisoners outside the prison on medical grounds.

Diet of a Prisoner Control of Hospital Diets

- 7.38 The **diet of prisoners in hospital shall be entirely under the control of the Medical Officer who may either keep the prisoner on the ordinary prison diet, or may place him on one of the regular hospital diets, or may order any modifications of the prison or hospital diet, or may prescribe extra diet** he may think necessary, according to the scales of diet prescribed, if any, under the rules.

Special Diet for Prisoners not in Hospital

- 7.39 The *Medical Officer may recommend special*

diet for any prisoner in the invalid group after recording reasons for recommending that in his register. Such recommendations shall not be made as a matter of routine. The Medical Subordinate can recommend the issue of special diet to a prisoner in the absence of the Medical Officer, but he shall report this to him and obtain his approval. Issue of special diet shall always be in lieu of the regular diet to which a prisoner is otherwise eligible. If it is continued for more than a fortnight, it shall be reported to the Director General/Inspector General. The Medical Officer owns the responsibility to economise the expenditure on this account and shall exercise utmost care in recommending special diet to the prisoners.

Indent for Hospital Diets

7.40 An indent showing the number of hospital diets and extras required, shall be sent not later than by 9 AM every day to the officer in charge of ration and care shall be taken that diets and extras reach the prisoners promptly. Emergent indents, in cases of urgency, may be sent at any hour of the day. This shall be generally avoided except in cases of extreme urgency.

Detention of a Prisoner for Observation

7.41 A prisoner may be detained for observation in the hospital for 24 hours without his name being noted down in any register if his disease has not been diagnosed. After the expiry of that period, whether or not his disease is diagnosed, his name shall be entered in the proper register. The number of prisoners detained under observation shall be recorded in the Hospital Roll and the treatment prescribed for them in the prescription book. If the Medical Officer finds a prisoner to be malingering, he shall at once report the fact to the Superintendent for punishment.

7.42 *Prisoners who require mental health care should be attended to by an authorised medical attendant.*

Medical Treatment of Sick Prisoners

7.43 Every prisoner suffering from any active disease shall be brought under medical treatment, either as an out-patient or an in-door patient, and his name shall be recorded in the register of out-patients in a prescribed form (Appendix-3) or in the register of in-patients in a prescribed form (Appendix - 4).

Maintenance of Case Book

7.44 The number of sick in hospital shall be daily recorded in the Hospital Roll of sick in a prescribed form (Appendix-5). ***Their treatment and diet shall be recorded in the Case Sheet in a prescribed form (Appendix - 6).***

7.45 In addition to these records, there shall be maintained in every hospital a case book in a prescribed form (Appendix - 7) in which the history of every case admitted into hospital shall be recorded.

7.46 *The case book is intended to be a contemporaneous record or diary of each prisoner's symptoms, treatment and diet. All entries in it shall, therefore, be immediate and direct. The practice of keeping notes, to be afterwards copied into the case-book, is prohibited.*

7.47 The entries in the case-book will usually be made by the Medical Subordinate, as symptoms appear or treatment is applied. The Medical Officer will add notes of his own observations and orders as and when he examines the patient. The Medical Officer shall see the case-book every day and initial the entries regarding each case in token of him having seen them.

Bathing of Patients

7.49 Prisoners who are not too ill shall be required to bathe daily, at a time the Medical Officer may direct.

Proper Place of Washing

7.50 A proper place for washing and boiling dirty clothing and sheets shall be provided. **Blankets and work clothings too shall be frequently washed in boiling water.**

Cleanliness of the Hospital

7.51 Every hospital shall be kept clean and well ventilated. The walls of the hospital shall be scraped and white washed once in six months, or more often necessary.

Disinfections of Wards

7.52 A ward or a cell in which a case of infectious disease has occurred or been treated shall be immediately cleared thoroughly using disinfectants as prescribed.

Allotment of Labour on Medical Opinion

7.53 When the Medical Officer is of the opinion that the health of any prisoner suffers from employment of any kind or class of labour, he shall record such opinion in the prisoner's sheet and the prisoner shall not be employed on that labour. But he shall be placed on another kind or class of labour as the Medical Officer may consider suitable for him.

Medical Aid to Prison Officers

7.55 The Medical Officer *shall accord medical aid* to all members of the prison establishment and others living on the prison premises.

Appointment of Staff Nurse and Pharmacist

7.56 **Staff nurses and pharmacists should be appointed** as per the norms of the State Health Services/Medical Department.

Duties of the Staff Nurse and the Pharmacists

- 7.57 The Staff nurses and the pharmacists shall obey the lawful orders of the Medical Officer in all matters connected with the medical work of the prison and of the Superintendent, Additional Superintendent and Dy. Supdt. in other matters.
- 7.58 Their duties shall be to help the Medical Officer in the maintenance of the health of the staff and prisoners by compounding and distributing medicines, vaccinating and weighing prisoners, performing clerical work, maintaining order and discipline in the hospital and by carrying out such other duties as may be allocated to them by the Medical Officer.

Segregation of Infectious Cases

- 7.59 Every case, or suspected case, of infectious diseases shall immediately be segregated and the strictest isolation shall be maintained until the Medical Officer considers it safe to discontinue the precautions. *The Medical Officer shall give written instructions as to the clearing, disinfecting or destroying of any infected clothing or bedding, and shall satisfy himself that the same are carried out.*

Segregation of Prisoners in the Prison Hospital

- 7.60 Cases of dysentery and diarrhoea shall be treated in a separate ward, if possible. Loose stool of such patients shall be disinfected and destroyed by fire. **All wards, beds, bedding, clothes and latrine vessels used by them shall be thoroughly disinfected.**
- 7.61 Prisoners suffering from venereal diseases shall be segregated.
- 7.62 All cases of pulmonary tuberculosis shall be segregated in special wards. All necessary precautions shall be taken to guard against

the spread of infection to other prisoners.

7.63 All cases with abnormally enlarged spleen shall have boundaries marked on the skin and shall be provided with some distinctive clothing. Care shall be taken that the spleen is not hurt.

7.64 Minor infectious diseases such as scabies, mumps, measles, etc., must on no account be neglected. Segregation for the full period must be enforced. Cases of scabies need not, as a rule be admitted into hospital, but segregated from other prisoners.

7.65 Prisoners showing signs of lunacy shall not, if they are dangerous, noisy or filthy, be kept in the hospital but shall be kept in a separate cell.

7.66 In some cases, it may be considered for prisoners in hospital to be given some employment. Light work shall, therefore, be provided for them.

7.67 *Wherever necessary, cases of inmates shall be referred to specialized medical institution with the prior sanction of the competent authority.*

Treatment of Prisoners discharged from Hospital

7.69 Every prisoner on discharge from hospital shall either be put to labour or placed in the 'Invalid Group', as the Medical Officer may direct.

Composition of the Invalid Group

7.70 *The invalid group shall consist of:*

- (i) Those who are permanently incapacitated from performing hard or medium labour because of age, or bodily infirmity. They will be the permanent members of the group,
- (ii) Those who have been discharged from hospital as convalescents, but are temporarily unfit to perform hard or medium labour,

- (iii) *Men who are generally out of health even if not falling under the above two categories. This category shall include prisoners passed as fit for light labour only, prisoners exhibiting scorbutic or malaric scorbutic gums, **prisoners found to be steadily failing in weight**, and prisoners who are anaemic.*

Appointment of Attendants and Training of Nursing Orderlies

7.97 For the **purpose of attending to sick prisoner a few educated convicts of good conduct and undergoing long sentences shall be selected by the Superintendents in consultation with the Medical Officer and trained as nursing orderlies.** A brief syllabus for their training shall be prepared as a guide to the Assistant Surgeons who, under the direction of the Medical Officer, shall be responsible for conducting such training. The number of convicts employed as nursing orderlies shall ordinarily be in the ratio of one for every ten patients. In times of epidemics and *other emergencies this proportion may be increased and special orderlies may be allowed for very serious cases or for bed-ridden patients. **Convict nursing orderlies, who perform their duties satisfactorily, shall be allowed extra remission and gratuity at the same rate and scale as prescribed for a convict night watchman.***

Fortnightly Weighing

7.103 Care shall be taken that the fortnightly weighings, under Section 35(2) of the Prisons Act, 1894, are done at approximately the same time of day to avoid as far as possible, the variations that naturally take place throughout the day.

7.104 Since no labour is done on Sundays, Sundays will be most suitable for taking

weights. When the number of labouring prisoners is large, they can be divided into two groups, with each group being weighed on alternate Sundays. Assistance of the pharmacist and a member of the executive staff detailed by the Superintendent may be taken for the purpose.

7.105 Explanation:

The body weight varies to a certain extent from time to time under normal conditions. Therefore, small differences of weight up to 1 kg would not necessarily indicate that the weights were taken carelessly.

Treatment of Prisoners Losing Weight

7.108 **All prisoners who have lost more than 1.5 kg since the last fortnightly weighing, or more than 3.0 kg since admission to prison, shall be paraded with their weight charts for the inspection of the Superintendent and the Medical Officer on the day following the day the weighing is done.**

7.109 **Special care shall be taken in case of prisoners with a poor physique on admission, for whom even small loss of weight may be of serious concern.**

Check by Chief Medical officer

The Chief Medical Officer shall, as soon as possible after the fortnightly weighing, check the weights of a dozen or more prisoners picked randomly to satisfy of their accuracy and shall record in his journal any remarks he may consider necessary.

Chapter XVII

WELFARE OF PRISONERS

Object:

17.01 The *objectives of welfare programmes in prisons* should be to:

- (i) Develop a relaxed, positive and constructive atmosphere in the institution,
- (ii) Ensure good personnel-inmate relationship based on mutual trust and confidence,
- (iii) Ensure *care and welfare of inmates*,
- (iv) Ensure voluntary and positive discipline,
- (v) Attend to immediate and urgent needs and problems of inmates,
- (vi) Attending to long term needs of prisoners,
- (vii) Help the inmates maintain regular contact with their families, and communities in the outside world,
- (viii) Ensure a good system of incentives for self-discipline such as remission, leave transfer to semi-open and open institutions, and premature release,
- (ix) Provide individual guidance and counseling,
- (x) Encourage group activities, group guidance, group work,
- (xi) Implant proper habits, attitudes and approaches and prepare them for a normal social life,
- (xiii).Provide supportive therapy including Psychotherapy,

17.02 The starting point of all welfare programmes shall be the initial classification of the prisoner and the study of individual inmates. The welfare programme should include periodical review of progress and re-classification of prisoners, review of sentence and pre-mature release, planning for release, pre-release preparation and after-care. Positive influence of institutional personnel will play an important role in

this process. Community participation will be an important feature of welfare programmes.

Counseling

17.03 Counseling facilities should be extended to the prisoners as follows:

- (i) *The mental health status of a prisoner should be studied before his classification at the time of admission in the prison. Prisoners certified as mentally ill should not be confined in prisons and instead appropriate measures should be taken for their transfer to special institutions.*
- (ii) **Professionally qualified counselors should be engaged by the prison dept. to provide counseling** to the needy prisoners, particularly those suffering from substance related addictive disorders and victims of abuse.
- (iii) Proper and regular evaluation of prisoner's mental health should be done to enable the requisite psycho social support services by the prison department.
- (v) Severe mental disorders would require appropriate psychiatric treatment and dealt under the provisions of Mental Health Act, 1986.

Psychotherapy

17.05 Psychotherapy and cognitive behavior therapies may also be used in prisons as they have been recognized as effective for the treatment of prisoners suffering from mental disorders.

Recreation, Sports, Cultural Activities, Films, Library

17.09 **Cultural and recreational activities should be organized in all institutions**

for maintaining the mental and physical health of prisoners. These activities are the basic elements of rehabilitation programmes for prisoners. These should form the integral part of an institutional regime.

17.10 Recreational and cultural activities should be organized depending upon various conditions such as availability of space, the climate and weather, composition of inmates and arrangements for security.

17.12 **Yoga and meditation should be practised daily for which the hours should be fixed. Meditation centres may be opened** and NGO support may be availed for this purpose. It should be ensured that discourses during meditation sessions are secular in nature.

17.14 There shall be a play ground for outdoor games and a community hall for cultural programmes in every prison.

Celebration of Festivals

17.22 Independence Day, Republic Day, Himachal Day and Mahatma Gandhi's birthday should be celebrated in each prison to inculcate a feeling of the patriotism among the prisoners. **Cultural programmes could also be organized on such occasions and special food can be served to the prisoners.**

17.23 The main festivals of all religions should be celebrated. In these every prisoner should be encouraged to participate. Any special treatment to a group of prisoners belonging to a particular caste or religion is strictly prohibited.

Spiritual Development

17.24 Well known personalities from **all religions should be invited to deliver lectures to prisoners for their moral upliftment.**

Assistance from approved N.G.Os. and welfare agencies may be sought in this regard. It should be ensured beforehand that the content and tenor of such lectures is not such as would cause resentment among people of other religions.

17.25 Every prisoner should be allowed to perform his devotions in a quiet and orderly manner.

Implementation of Welfare Activities

17.26 The Superintendent shall be responsible for the smooth and orderly **implementation of welfare activities in the prison.**

17.27 The Superintendent shall submit quarterly reports of welfare activities being conducted in his prison to the Director General/ Inspector General of Prisons.

17.28 Prison administration shall endeavour to access funds available under Corporate Social Responsibility for conducting various welfare activities for inmates and prison staff.”

7(xii). Now, coming to the legislation dealing with the rights and concessions and welfare measures in case of HIV persons, it is relevant to take note of **The Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017**, notified on 21.04.2017. A perusal of Section 3(c) and Section 3(i) of the HIV Act of 2017, provides that no person who is suffering from

HIV Syndrome can be denied or discontinued or given unfair treatment in Healthcare Services, in the Government or Private Establishments, in whose care or custody an HIV patient is there. In this context, the statutory provisions of Section 3(c) and Section 3(i), read as under:-

Section 3(c):

the denial or discontinuation of, or unfair treatment in, educational, establishments and services thereof;

Section 3(i):

the denial of access to, removal from, or unfair treatment in, **Government or private establishment in whose care or custody a person may be;**"

In addition to this, notably the Sections 13, 14 & 15 of the Act of 2017, enables the State Government including the Government and private establishments, who are taking care or custody of HIV persons to take all measures, including requisite Medical Care and also to ensure that the *welfare measures-schemes are framed and benefit of these*

schemes are extended to persons suffering from HIV, which read as under:-

“13. The Central Government and every **State Government, as the case may be, shall take all such measures** as it deems necessary and expedient for the *prevention of spread of HIV or AIDS*, in accordance with the guidelines.

14.(1).The **measures to be taken** by the Central Government or the State Government under Section 13 **shall include the measures for providing, as far as possible, diagnostic facilities relating to HIV or AIDS, anti-retroviral Therapy and Opportunistic Infection Management** to people living with HIV or AIDS.

(2). The Central Government shall issue necessary *guidelines in respect of protocols for HIV and AIDS relating to diagnostic facilities, Anti-retroviral Therapy and Opportunistic Infection Management* which shall be applicable to all persons and **shall ensure their wide dissemination.**

15.(1).The Central Government and every **State Government shall take measures to facilitate better access to welfare schemes** to persons infected or affected by HIV or AIDS.

(2). Without prejudice to the provisions of sub-section (1), the Central Government and **State Governments shall frame schemes to address the needs of all protected persons.”**

8. In the background of the mandate of

law and statutory provisions, as referred to above, the inaction of the State Authorities i.e. Department of Prisons and Correctional Home Services in failing in its bounden obligation to provide the advised and needed health-care and medical facilities, including dietary advisories and personal hygiene to the bail petitioner, which are of utmost priority not only for restoration of his health but also for preservation the health of the bail petitioner is certainly an attempt for shrinking the fundamental rights, human rights as well as human dignity of the bail petitioner. Despite the fact that the Statute and State Prison Manual 2021, provide safeguards for extending medical facilities but the State Jail Authorities have failed to implement the Himachal Prison Manual, 2021, is writ large, in the instant case, as **no regular Medical Officer is posted in District Jail Kaithu [Shimla]**. Surprisingly, a visiting doctor is deployed to visit the jail, twice

a week, which schedule is also by and large at mercy of higher authorities. During the course of hearing of this petition, on 1.5.2024, the officials of District Jail Kaithu [Shimla], who were present in the Court, informed through the Learned State Counsel that against the **Inmate Capacity of 183, in District Jail Kaithu [Shimla], 254 Prisoners-Inmates exist as on day.** Not only this, the medical assistance of a prisoner is being addressed by one Pharmacist, who is also present in Court, which of course may have adversarial effect, in case of any untoward incident. Though, hats off to the said Pharmacist, but, at this Court, refrains itself from commenting upon the pathetic conditions of District Jail Kaithu [Shimla], as referred to above, where the bail petitioner is lodged.

9. In the above backdrop, since the Jail Authorities, in the instant case, on facts, have failed to provide the required medical treatment and health

care and have also failed to meet out and extend required advisories given by medical experts of one of the premier health Institute i.e. IGMC (ARC Centre), Shimla, which are indispensable not only for the purpose of restoration of the health of the bail petitioner, who is suffering from HIV Syndrome and other ancillary ailments, {as per medical records} and are of utmost priority for preserving the human dignity by permitting the bail petitioner to live in an environment which is congenial to him and therefore, this Court is of the considered view, that the bail petitioner needs to be enlarged on bail, on extreme adversial medical grounds.

10. A similar plea, for enlargement of a HIV Prisoner, on bail, came up before the Hon'ble Supreme Court in **Bhawani Singh versus State of Rajasthan, Special Leave to Appeal (Crl.) No(s) 2225/ 2022**, decided on 11.04.2022, which reads as under:-

“ Pursuant to the direction issued on last occasion, the State filed counter affidavit enclosing copy

of the report by the Medical Board which examined the petitioner.

The medical report inter alia states as follows:

“Patient have severe dyspnoea at rest and unable to walk without support. Due to immune compromise he is at risk of having repeated infection unhygienic condition. Patient requires regular treatment and follow up.”

Having regard to the peculiar circumstances of the case given that the **petitioner is suffering from HIV and appears to be immune compromised, this Court is of the opinion that a case for grant of bail is made out.**

In the circumstances, the petitioner shall be enlarged on bail subject to such terms and conditions imposed by the Trial Court.

In addition to the usual conditions, the concerned court shall also impose appropriate conditions with regard to the periodic reporting by the concerned petitioner at the concerned Police Station, since several cases are pending against him.

The petitioner is entitled to be given the benefit under Section 34(2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 of expeditious disposal of his appeal. The provision reads as follows:

“34

2. In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on

priority basis.”

The High Court shall take appropriate steps to bear and dispose of the petitioner’s appeal at its earliest convenience. Further, the petitioner is at liberty to claim anonymization of the records, to suppress his identity in accordance with law.

The SLP is disposed of accordingly.

Pending applications, if any, shall stand disposed of.”

10(i). Likewise, the High Court of Meghalaya at Shillong, in case of **Lalrintluanga Sailo versus State of Meghalaya and Another 2023 SCC Online Megh 562**, has held as under:-

“5. As observed herein above, the **accused person is indeed suffering from HIV irrespective of the fact that the treatment given by the State may be adequate or not as the case may be**, this Court is of the considered opinion that special consideration be given to the accused to get proper treatment or to recuperate from her suffering in an environment congenial to her. Needless to say, grant of bail is not the end of the matter, it is only to ensure that the accused shall not abscond. If the accused person would cooperate with the investigation and the trial, the purpose of the criminal proceedings would be served.”

10(ii). Recently, the High Court of Orissa in “**B**”

versus State of Odisha, BLAPL No.434 of 2024, decided on 29.02.2024, has extended concession of bail to an HIV Positive Inmate.

10(iii). The Cordinate Bench of this Court, has extended the concession of bail, to a similar HIV prisoner in the case of **(Y) versus State of Himachal Pradesh, Cr MP(M) No 2539 of 2023, decided on 19.10.2023, as under:**

4. The relief of bail has been sought on the ground that the applicant is suffering from HIV/AIDS, for which, he is under treatment from ART Center GMC, Patiala and due to his custody, his treatment is not going well.

5. The applicant is stated to be the sole bread earner of his family ad having no previous criminal history.

8. To buttress his contention, learned counsel appearing for the applicant has relied upon the decision of Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No. 2225 of 2022, titled as, "Bhawani Singh versus State of Rajasthan", and a decision of a co-ordinate Bench of this Court in Cr.MP(M) No. 2623 of 2022, titled as, 'Anchal versus State of Himachal Pradesh'.

11. In this case, the applicant is ***seeking relief of bail on the ground that he is suffering from HIV/AIDS.*** He has annexed photo copies of prescription

slip, issued by IGMC, Shimla, as Annexure A-2, as well as, by Regional Hospital, Bilaspur.

12. Applicant, in the present case, is seeking benefit of Section 34 (2) of the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017, which is reproduced as under:

“34 (2) :- In any legal proceeding concerning or relating to an HIV-positive person, the court shall take up and dispose of the proceeding on priority basis”.

13. The Hon'ble Supreme Court in Bhawani Singh's case (supra) has granted the relief of bail, as well as, of disposal of the appeal. Relevant portion of the judgment is reproduced as under:

“Having regard to the peculiar circumstances of the case given that the petitioner is suffering from HIV and appears to be immune compromised, this Court is of the opinion that a case for grant of bail is made out.”

14. A Coordinate Bench of this Court in *Anchal's case (supra)* has also granted the relief of bail to the applicant, on the ground that applicant was suffering from HIV /AIDS.

17. Considering all these facts, this Court is of the view that the bail application is liable to be allowed and is accordingly allowed.

18. The applicant is ordered to be released on bail in case FIR No. 3 of 2023, dated 10.1.2023, registered with Police Station, Swarghat, District Bilaspur, under Section 20 of the NDPS Act, on his furnishing personal bail bond, in the sum of ₹50,000 /-, with two sureties, in the like amount, out of which one surety should be local, to the satisfaction of learned Chief Judicial Magistrate/Additional

Chief Judicial Magistrate, Bilaspur.”

11. Besides the above, the status report filed by the State does not points out any adversial or objectionable plea for not extending the concession of bail, to the bail petitioner.

12. Even, the bail petitioner has furnished the undertakings that he shall appear in the trial without fail. The Status Report reveals that investigation in is complete and it does not points that bail petitioner has not participated in investigation or his custodial interrogation is required.

13. The apprehensions, of the State Authorities that he may flee away from trial under the pretext of medical grounds or he may indulge himself in similar or other offence can be taken care of by imposing stringent conditions against the present bail petitioner. Further, any such apprehension cannot ipso facto be made the sole basis for dehumanizing the bail petitioner at this stage, on mere accusation

and that top by ignoring his extreme adversial medical conditions, being an HIV positive and when, he is suffering from ancillary ailment(s), which are borne out from medical records, as referred to above. Therefore, in these peculiar circumstances, {where the Jail Authorities have totally failed to cope up and meet out the required health care advisories and the State Authorities have failed to respond as to whether the petitioner needs to be and can be admitted in Indira Gandhi Medical College and Hospital, (ART Centre) Shimla or can be referred for treatment to the Post Graduate Institute, Chandigarh} in order to safeguard and preserve his right to life and to enable him to make efforts for restoration of his right to health/health care and to enable him to live with human dignity in an environment which is congenial to his health, in facts of this case, lest the continued incarceration may prove fatal and therefore, prayer of the petitioner for bail, on extreme

medical grounds needs to be accepted.

14. In view of the above discussion and in peculiar facts and circumstances and the Statutory provisions and norms, and the mandate of law, as referred to above, this Court accepts the plea of the bail petitioner and directs the State Authorities to enlarge the bail petitioner, on bail, subject to the following conditions:-

- (i) Petitioner, shall be enlarged on bail, subject to furnishing a personal bond in sum of Rs 30,000/-, with one surety, in like amount, to the satisfaction of Station House Officer Police Station, Shimla (East), (HP)/Investigating Officer or Learned Trial Court of jurisdiction concerned;
- (ii) Petitioner shall report at Police Station [East] Shimla, as and when called by Investigating Agencies ;
- (iii) Petitioner shall disclose his functional E-Mail IDs/Whatsapp Number and that of his Surety to SHO/ IO concerned;
- (iv) In case the bail petitioner [X], needs to **visit any medical Institution i.e. Indira Gandhi Medical College & Hospital, Shimla** the Bail petitioner himself or through his surety furnish the details of his whereabouts to SHO/IO concerned through Email / Whatsapp ;
- (v) In case the bail petitioner [X], **needs to visit any medical Institution outside Shimla**, then the bail petitioner himself or surety shall furnish following details to the SHO/IO,

Police Station [East] Shimla through Email /Whatsapp :-

Shall daily transmit on Email/Whatsapp :-

- (a) Date, time, place of stay and institution where he intends or seeks treatment ;
 - (b) Furnish copy of OPD or IPD Slips where he seeks treatment ;
 - (c) Shall keep his mobile/Whatsapp number, with Live GPS location ;
 - (d) Shall inform SHO of Police Station of area concerned, where he visits for treatment outside Shimla but within State of HP;
- (vi) In case the bail petitioner [X], **needs to visit any medical Institution outside State of Himachal Pradesh**, then the bail petitioner himself or surety shall furnish the following details to SHO/IO Police Station [East] Shimla and to the SHO of Police Station of area concerned where he visits for treatment outside State of HP ; and

Shall daily transmit on Email/Whatsapp :-

- (a) Date, time, place of stay and institution where he intends or seeks treatment ;
 - (b) Furnish copy of OPD or IPD Slips where he seeks treatment ;
 - (c) Shall keep his mobile/Whatsapp number, with Live GPS location ;
- (vii) Bail Petitioner shall not hinder the smooth flow of the investigation and shall join the investigation, on each and every date, as and when called, by the Investigating Agency;
- (viii) The petitioner shall not communicate, directly or indirectly, in any manner telephonically/ mobile with any co-accused in FIR No 11 of 2014 ;

- (ix) The petitioner shall not jump over the bail and also shall not leave the country without prior information of the Court;
- (x) That the petitioner shall not tamper with the witnesses or the evidence in any manner;
- (xi) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case or the witnesses;
- (xii) The petitioner shall neither involve himself in any offence nor shall be abet commission of any offence. Involvement or abetting of any offence, shall entail cancellation of bail, automatically;
- (xiii) It is clarified that violation of any condition, hereinabove shall entail cancellation of bail automatically; and
- (xiv) The respondent is at liberty to move this Court for modification or cancellation of bail, if circumstances, so necessitate or in case of violation of any of the conditions mandated herein.

15. As a sequel to Para 14, the Registry is directed to furnish a copy of this order to the Director General of Police Punjab, the Director General of Police Punjab Haryana and the Station House Officer Police Station [East] Shimla, and also to Station House Officer, Police Station [PGIMER], Chandigarh, for information.

16. Petitioner is permitted to produce/use copy

of this order, downloaded from the web-page of the High Court of Himachal Pradesh, before the authorities concerned, and the said authorities shall not insist for production of a certified copy, but if required, may verify passing of order from website of the High Court.

17. Before parting with the case, and with a view to ensure implementation of prison reforms and to safeguard and preserve the fundamental right of life in terms of Article 21 of the Constitution of India, including health/health care, and to enable the prisoners to live a life with dignity, this Court, requests the registry to place the matter at the pleasure of Hon'ble The Chief Justice, for considering it to be taken up as "Public Interest litigation" on various aspects as referred to in the orders dated 29th April 2024 and thereafter in this part of the order/judgement, so that the mandate of Law and The Prison's Act and the Himachal Pradesh Prison

Manual, 2021, practically sees the light of the day, instead of allowing it merely to remain a mere paper document ; primarily for ensuring **(a)** required medical care facilities, including workable hospitals in prisons as provided in the Prison Manual; **(b)** required healthcare facilities **(c)** a right to life, which includes right to live with human dignity by providing a standardized quality food, better clothing, hygiene, sanitization and better living conditions; **(d)** separate cells for sick prisoners with trained attendants from amongst convicts as in manual **(e)** to appoint/engage adequate dedicated Medical Officers and Para-medical Staff in all jails in the State ; **(f)** to take steps for eradicate overcrowding in all jails, as in this case ; **(g)** to ensure that deficiency or shortcomings regarding living space, barracks etc and any other provisions of the Act and Himachal Pradesh Prison Manual is regularly monitored and shortcomings are remedied by Additional Chief Secretary (Home) in a coordinated

effort with all other stakeholders in the department of (Health), (PWD) and others.

17. In aforesaid terms, the instant petition and all the pending miscellaneous application (s), if any, shall also stands disposed of, accordingly.

(Ranjan Sharma)
Judge

May 03, 2024
(Shivender)

High Court of H.P.