

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.6610 of 2006

Krushna Prasad Sahoo ***Petitioner***

Mr. Gautam Misra, Senior Advocate (Amicus Curiae)

-versus-

State of Orissa and others ***Opposite Parties***

Mr. Debakanta Mohanty, Additional Government Advocate,

Mr. S. N. Das, Additional Standing Counsel and

Mr. Biswajit Mohanty, Member Secretary,

Odisha State Legal Services Authority (OSLSA) and

Mr. Manoj Chhabra, Director General of Prisons, Odisha

**CORAM:
THE CHIEF JUSTICE
JUSTICE R. K. PATTANAİK**

**ORDER
21.05.2022**

Order No.

Athamalik sub-jail matter

40. 1. Pursuant to the directions issued by this Court on 5th May 2022, the District and Sessions Judge, Angul has submitted a report dated 18th May, 2022 enclosing original statements of 12 inmates and 2 staff of the Athamalik Sub-Jail. The sealed cover containing the report was opened and the report has been perused by the Court. Copies of the report be made available to Mr. Debakanata Mohanty, learned Additional Government Advocate (AGA) and Mr. Gautam Misra, learned Amicus Curiae (AC).
2. Mr. Manoj Chhabra, DG, Prisons, Odisha, who is present in virtual mode, states that he will immediately act on the said report by taking an appropriate action against the person involved in the incident of the assault on a convict as mentioned in that report.

After copies of the report have been provided to them, the said report will again be placed in the sealed cover and kept with Registrar (Judicial) of this Court.

3. Affidavits dated 20th May, 2022 have been filed by the Deputy Inspector General of Prisons and the Member Secretary, Odisha State Legal Services Authority (OSLSA) regarding status of compliance with the earlier directions issued by this Court. The learned AC has also prepared a detailed convenience note for consideration of this Court.

Overcrowding

4. At today's hearing, the Court first considered the issue of overcrowding of prisons. The note of the AC, refers to two Sub-Jails, viz., the Balliguda Sub-Jail and the Jajpur Sub-Jail, where even now the prison population is more than 100% of the carrying capacity of the said Sub-Jails. Mr. Chhabra, the DG, Prisons is conscious of this position and has offered a temporary solution of shifting the prisoners to neighbouring jails. He has also undertaken to re-examine the earlier suggestion whether pending the actual increase in the additional capacity of the jails and sub-jails, there can be a temporary solution found for accommodating prisoners in other state-owned buildings.

5. In the course of the discussion, a concern was raised about the resistance faced when applications are filed before the concerned Courts for shifting of an inmate from one Jail to another. Considering that the problem of overcrowding of jails in Odisha is a real and serious one, and it is going to take some time before the additional capacity in jails can be constructed, if a request is made

for shifting of an inmate from a jail to a jail in a neighbouring district at the nearest possible location then such request should be considered in its proper perspective keeping in view the serious problems faced by inmates in an overcrowded Jail. It is emphasized that this is only a temporary solution pending the creation of the additional capacity in the Jails.

6. Apart from the above two sub-jails, there are four jails viz., the Phulbani District Jail, Bhadrak Special Sub-Jail, Kamakhyanagar Sub-Jail and the Malkanagiri Sub-Jail, where the prison population between 50 to 100% in excess of the carrying capacity of those jails even as of today. That apart, fifteen District Jails, Special Jails and Sub-Jails face the situation of prison population being in excess to the extent of 20 to 50%. Mr. Chhabra assures the Court that each of these situations is receiving the highest attention of the prison authorities and wherever possible, applications will be filed before the concerned Courts for shifting of the excess population to the nearest possible jails to tide over the critical situation.

Prisoners with Mental Illness

7. The issue of prisoners with mental illness was highlighted during today's hearing. As per the figures collated by the Secretary, Odisha State Legal Services Authority (OSLSA), from the reports of visit undertaken by the District Magistrates (DMs) there are at least 286 prisoners with mental illnesses in the various jails and sub-jails. Mr. Chhabra anticipates that this number may be even higher and would be in the range of around 500 prisoners.

8. The statistics provided to this Court show that there are as many as 42 prisoners in Circle Jail, Koraput, 33 in Circle Jail, Sambalpur,

29 in District Jail, Keonjhar, 22 in District Jail, Bhawanipatna, 19 in Special Sub-Jail, Bonaigarh, 14 in District Jail, Angul, 14 in Sub-Jail, Nayagada and 15 in Special Jail, Rourkela, who have been diagnosed with mental illnesses that require urgent attention. It is a matter of deep concern, and a concern that is shared by Mr. Chhabra, that there is just one psychiatrist in Choudwar Circle Jail, who is expected to cater to the needs of all prisoners with mental illnesses throughout the State. This situation is clearly unsustainable considering that it is physically impossible for just one psychiatrist to attend to all prisoners with mental illnesses.

9. A suggestion that has come forth from the learned AC and which the Court is willing to accept is to have the OSLSA to step in to arrange for visits by psychiatrists to each of the jails where there are prisoners with mental illnesses to have an assessment done of their present condition and what urgent measures need to be taken to alleviate their distress. The Member Secretary, OSLSA, who is present in virtual mode, has undertaken to arrange for such visit by specialist psychiatrist not just from Public Health Facilities but even from Private Health Facilities, the expenses for which will be defrayed by OSLSA. The OSLSA will then follow up on such reports of individual assessment by filing appropriate applications before the concerned Courts on behalf of the prisoners enclosing such assessments and praying for appropriate orders from the Court concerned, particularly for interim or regular bail. Each such prisoner with mental illness will be assigned with an individual lawyer from the panel of the OSLSA.

Prisoners' Panchayat Council

10. The Court's attention was drawn to Rule 802 of the Odisha Model Jail Manual, 2020 (2020 Manual), which provides for constitution of Prisoners' Panchayat Council (PPC). Mr. Chhabra has undertaken to examine the position of the constitution of such PPC in the jails since that would address a large number of problems faced by inmates within jails, which can be then brought to the notice of the jail administration for remedial action. The Court emphasises that since this is a statutory requirement, it has to be complied both in letter and spirit and on the next date of hearing, the Court will be informed of the constitution of such PPCs in every circle jail, district jail, special jail, special sub-jail or sub-jail as mandated under Rule 802 of 2020 Manual.

Prison Development Board

11. As regards the Prison Development Board (PDB), Mr. Chhabra informs the Court that in view of the draft agenda proposed by his predecessor having to be revised, a meeting has not yet been held. However, he expects it will happen very soon and definitely before the end of June, 2022. The Court expects the PDB to take up in its agenda the issue of the budgetary allocations per prisoner, which requires revision among the other issues including infrastructure, overcrowding, medical facilities, skill development of the prison inmates and the like. The deliberations of the meeting of the PDB be placed before the Court on the next date.

Information about prisoners' cases

12. On the issue of information being provided to prisoners about their cases, Mr. Chhabra states that during his visit to the Circle

Jail, Choudwar and District Jails in Angul and Puri, he did notice such e-kiosk and his information is that there are around 20 jails in Odisha that have such e-kiosks. He states that he will be visiting the jails in other States to ascertain the best practice in this area and ensure that those are made available in the jails in Odisha. Basically, a prisoner must have easy and ready access to latest updated information regarding his own case as well as orders of the concerned Court in his case.

Vacant posts of Medical Staff

13. On the issue of vacant post of Medical Staff, the position of 3 psychiatrists is still lying vacant and 31 sanctioned posts of Medical Officers are also still vacant. It is stated that since the D.G. of Prisons has made a request to the State Government in this regard, a direction is issued to the Home Department as well as the Health and Family Welfare Department, Government of Odisha to immediately act upon the above requests of the D.G., Prisons and expedite the process of filling up of the vacant posts of Medical Officers and Psychiatrists.

14. Mr. Chhabra states that although directions have been issued by the Health Department and Home Department for increasing the frequency of the visits by the Medical personnel to the jails, that is not happening as was directed. This aspect must be immediately examined by both the Health and Family Welfare Department and the Home Department to ensure that the instructions are strictly carried out. The responsibility should be fixed on the concerned Chief District Medical Officer (CDMO) in each of the districts in

this regard. A further circular/order be issued to that effect forthwith.

Segregation of UTPs from convicted inmates, Segregation of Young Offenders from Adults and Separate Enclosures for Women Prisoners

15. A concern has been expressed that at least in six sub-jails in Champua, Kamakshyanagar, Banki, Jajpur, Dharamagarh and Jeypore, under trials were not segregated from convicted inmates. Further, young offenders in the age group of 18 to 21 are not separated from adults in jails of several districts including Bargarh, Malkanagiri, Keonjhar, Bhadrak, Cuttack, Jajpur, Kalahandi, Koraput and Nuapada. A third aspect here is that the reports collated by the Member Secretary, OSLSA reveal that there are no separate enclosures for women prisoners in the District Jail in Bhawanipatna and even the report from the visit of the DLSA to Jharsuguda reveals that the women's ward is in a pathetic condition. As regards the jail in Jharsuguda is concerned, Mr. Chhabra states that the Additional I.G. has visited the said jail and corrective measures have already been taken. As regards the issue regarding segregation in the jail in Bhawanipatna, he states that steps will immediately be taken to rectify the situation and that he will be issuing instructions in that regard.

Biju Patnaik Open Air Prison

16. This Court had in its order dated 23rd December 2021, pointed out that the Biju Patnaik Open Air Prison, which has a capacity of 125, has remained largely underutilized. The position as of 30th April, 2022 is that the said prison has only 33 prisoners. Mr. Chhabra stated that once the COVID-19 situation totally eases and

convicts return to the jails, the prison population in the open-air prison would increase. The Court urges that this issue receive the highest and most urgent attention of the prison department and on the next date, the Court must be informed of a substantial increase in the prisoner population in the open air prison.

Duty Lawyers

17. This Court had issued detailed directions regarding the duty-lawyers being to be attached to every Police Station and of the directions issued by the Supreme Court in ***Arnesh Kumar v. State of Bihar (2014) 8 SCC 273***, having to be followed in letter and spirit. The Court is informed by Mr. Biswajit Mohanty, Secretary, OSLSA that in 418 Police Stations in Odisha, the Duty-Lawyer system has already been implemented. The names and the mobile numbers of the Duty-Lawyers are stated to be displayed on boards in a prominent place in each of these Police Stations. He expects the Duty-Lawyer system to be implemented in all the remaining Police Stations by the 10th June, 2022. The Duty-Lawyers will be given an orientation through the DLSAs, emphasizing the need to ensure compliance with the directions issued by the Supreme Court in ***Arnesh Kumar (supra)***. The orientation will also be for effective interaction with the persons brought into Police Stations and proper advice as to their options.

18. Mr. Chhabra states that the efforts would be made to earmark some space in every jail and sub-jail for library books and reading materials to be kept for prisoners.

19. The learned AC points out that despite the directions issued by this Court in its order dated 23rd December, 2021 in Para-48 about

the Police authorities having to strictly comply with the directions issued by the Supreme Court in *Joginder Kumar v. State of U.P.* AIR 1994 SC 1349 and the subsequent amendments by which Sections 41-A to 41-D were introduced in the Cr.P.C., those provisions are not yet being strictly implemented. The direction to the Police to publish every month on its website the relevant information of persons arrested is reiterated.

20. In modification of the direction issued by this Court in Para-7 of its Order dated 23rd December 2021, it is directed that the Member Secretary, OSLSA will facilitate the release of prisoners, who were unable to be released on bail despite being granted bail on account of their inability to furnish bail bonds, by filing applications before the Court of Sessions or the High Court under Section 440 (2) of the Cr.P.C. for modifying the conditions and the terms of both the Judgments of the Supreme Court as well as the guidelines issued by the NALSA in this regard.

21. A suggestion has been received from the D.G. Prisons to the DLSAs, who organize the visits by Panel Counsel or themselves visit the prisons should compile a list of Under Trial Prisoners (UTPs), who may be informed sick or aged or in need of urgent medical attention including pregnant women and on that basis, advise moving the Court for bail on medical grounds. This suggestion will also be acted upon by the Secretary, OSLSA, who will instruct the DLSAs accordingly.

22. The Court also notes its satisfaction on the various measures that have been taken in the jails in Odisha pursuant to the orders passed by this Court, which has resulted in a considerable

improvement in the conditions in the prisons in Odisha, as is reflected in the reports submitted to the Court by the District Magistrates, the DLSAs and even the District Judges, who have undertaken visits, all of which has been collated and presented in this Court at today's hearing. Nevertheless, much more needs to be done. Hopefully, the further directions issued by this Court today should help in that direction.

23. List on 28th July, 2022 at 2 pm.

M. Panda



(Dr. S. Muralidhar)
Chief Justice

(R. K. Pattanaik)
Judge