

**IN THE HIGH COURT OF BOMBAY AT GOA****LD-VC-CRI-73 to 75 & 77 to 83-2020****LD-VC-CRI-73-2020**

Ryan Fernandes ..... Petitioner  
 Versus  
 The State & Others ..... Respondents

Petitioner in person.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

**WITH****LD-VC-CRI-74-2020**

Suresh Azgaonkar ..... Petitioner  
 Versus  
 The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes,  
 Advocates for the Petitioner.

Shri Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

**WITH****LD-VC-CRI-75-2020**

Ramashree R. Yadav & Others ..... Petitioners  
 Versus  
 The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes,  
 Advocates for the Petitioner.

Shri Sagar Dhargalkar, Additional Public Prosecutor for the Respondents.

**WITH****LD-VC-CRI-77-2020**

AK Jayakumar ..... Petitioner  
 Versus

The State & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes,  
 Advocate holding for Shri T. George John, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH****LD-VC-CRI-78-2020**

Norman Fernandes ..... Petitioner  
 Versus  
 The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes, Advocates, holding for Shri T. George John, Advocate for the Petitioner.  
Mr Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH**

**LD-VC-CRI-79-2020**

Rohan Pai Dhungat ..... Petitioner  
Versus  
The State of Goa & Others ..... Respondents

Ms Caroline Collasso holding for Shri T. George John, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH**

**LD-VC-CRI-80-2020**

Shaikh Nafiyaz Mamlekar ..... Petitioner  
Versus  
The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes, Advocate holding for Shri T. George John, Advocate for the Petitioner.

Mr Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH**

**LD-VC-CRI-81-2020**

Shankar Lalta Tiwari ..... Petitioner  
Versus  
The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms Gina Almeida and Shri Nigel Fernandes, Advocate holding for Shri T. George John, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH**

**LD-VC-CRI-82-2020**

Jovita Ryan Dos Remdios Pinto ..... Petitioner  
Versus  
The State of Goa & Others ..... Respondents

Ms. Caroline Collasso, Advocate holding for Shri T. George John, Advocate for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondents.

**WITH**

**LD-VC-CRI-83-2020**

Babi Fale & Another ..... Petitioner  
Versus  
The State of Goa & Others ..... Respondents

Shri Ryan Menezes I/b Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Petitioner.

Shri Pravin Faldessai, Additional Public Prosecutor for the Respondent.

**Coram: DAMA SESHADRI NAIDU, &  
M. S. JAWALKAR, JJ.**

**Date:- 17 December 2020.**

**ORAL ORDER:**

To contextualize the controversy, we will take the first case—Criminal Writ Petition in LD-VC-CRI-73-2020—to set out the facts. In that case, in June 2007 the petitioner was convicted and sentenced to life imprisonment. As he had been serving a sentence, in March 2020, the Supreme Court took *suo motu* cognizance of the conditions in the Indian prisons in the wake of the spreading pandemic—COVID-2019. Later, on 23/03/2020, to contain the spreading contagion in the closed confines of jails, the apex court issued specific directions to all the states and union territories in the country. As a part of those directions, the Supreme Court, if we confine our discussion to the State of Goa, constituted a High-Powered Committee. This Committee was tasked with determining which class of prisoners could be released on parole or interim bail for periods as may be appropriate.

2. In the meanwhile, on 01/04/2020, the petitioner was released on parole for 15 days on the grounds that his mother had been ill. Soon thereafter, the authorities extended this parole coterminous with the lockdown the nation had been put under. This extension was based on the recommendation made by the High-Powered Committee.

3. When the petitioner was on the extended parole, on 16/11/2020, the authorities asked him to return to the prison. It was, again, based on the review undertaken by the High-Powered Committee. Aggrieved, the petitioner has filed this petition. So have the other petitioners, too.

4. Heard, the learned counsel for the petitioners and the learned Additional Public Prosecutors for the prosecution.

5. To begin with, Ms. Collasso, the learned advocate, wanted the matter adjourned because Shri T. George John, the learned counsel on

record for the petitioners in a couple of matters, has been ill. According to her, though she is ready with the matter, she does not have access to the case papers. Then, we have pointed out that earlier on a few occasions, we adjourned the matter essentially based on the plea that the counsel had been unwell. We have also told her that on the last occasion there was a specific direction from the Court that by the next adjournment, the counsel must be ready or else parties may have to make alternative arrangements, and that no further adjournment would be granted. Then, Ms Collasso, to her credit, advanced her arguments.

6. Though represented by his counsel (Shri George John), the first petitioner appeared in person and insisted that he should be heard. It is because his counsel has been unwell. He too wanted the matter adjourned. In fact, once a party has been represented by a counsel, it is impermissible for the party to address the Court. Given the fact that the petitioner's liberty is at stake, we have allowed him to make his submissions.

7. The petitioner in LD-VC-CRI-73-2020 has essentially stressed on one factor: he had already served 16 years of his sentence, and he has an unblemished record. His case must be considered sympathetically—at least until the pandemic subsides. He has also pointed out that the jail authorities have not put in place the necessary safeguards to ensure that those who return from parole are not exposed to another round of infection.

8. Thereafter, Shri Ryan Menezes, the learned counsel for the remaining petitioners, has advanced very elaborate arguments. We will summarise the submissions advanced by both the counsel and the petitioner in person, as well.

9. To begin with, they have all stressed that the Supreme Court has issued elaborate guidelines, but the State has not complied with them. To be specific, they pointed out that there ought to have been a specific scheme in consultation with the health expert of the State to ensure that the inmates are safe from the contagion. To elaborate, they have

submitted that the jail has already been overcrowded and it is virtually impossible for the jail authorities to maintain social distancing among the inmates. Besides, they have also stressed that unless, as directed by the Supreme Court, they have a specific plan in consultation with health experts, it is unsafe for the petitioners to go back to the jail. In this context, they have submitted that none of the petitioners has abused the parole and, in fact, they are willing to go back to serve the remainder of their sentences, but they should not be exposed to the potential threat of another outbreak, given the inadequate facilities the jail has. Therefore, they wanted some more time for them to surrender, especially; that is, only after the jail authorities have taken all steps in consonance with the Supreme Court directions about the health hazards the inmates may face.

10. On the other hand all the three learned Additional Public Prosecutors—Shri Mahesh Amonkar, Shri Pravin Faldessai, and Sagar Dhargalkar—have submitted that, in fact, before the Supreme Court the State of Goa has filed its reply and set out the steps it has already taken and the steps it has proposed to take. According to them, the State of Goa has already apprised the Apex Court of the safeguards the State has taken and has, later, taken all the steps as directed by the Court. In this context, they assured the Court that the State of Goa as well as the jail authorities have been conscious of the risks, and they have already taken enough remedial measures in this regard. To support their contentions, they have drawn our attention to the reply the State has filed in these matters.

11. Indeed, the petitioners have earned their parole when the pandemic was in its initial phase. Later, as it spread, the authorities have decided to extend the parole to all the petitioners. Indisputably, a convict could have the parole for 30 days, extendable up to 90 days. In this case, all the petitioners have been on parole for more than the statutorily permissible period.

12. That said, it is not in dispute that none of the petitioners has violated the parole conditions when they have been on parole. But the

question is, should we substitute the authorities' discretion with ours. If we may, what should be the criterion?

13. Indeed, the petitioners outran their parole period. Though it is for their asking, the authorities, essentially based on the Apex Court's directions, extended the parole period coterminous with the lockdown. The lockdown has been lifted. Indeed, the Supreme Court did want the States to take concrete steps to ensure that the jail inmates are not exposed to the contagion. For instance, the State Goa filed its counter affidavit before the Supreme Court setting out the steps it has taken to mitigate the crisis. Even before this Court, now, the State has filed its counter, elaborating on the steps it has taken.

14. That apart, the High-Powered Committee—comprising top judicial and administrative, including the police, members—has reviewed the situation and opined that sufficient safeguards have been put in place and that the petitioner, nor on parole, must return to the prison. It is an exercise of administrative discretion which does not suffer from any legal infirmities.

15. In this context, we may have to refer to the individual case of the second petitioner, who has filed medical certificates before the Court. With the help of those medical certificates, he underlines the severe health problems he has been suffering from. Shri Ryan Menezes, the learned counsel for that petitioner, has taken us through the record and insisted that his case be considered as a special one, given the health hazards he has already been facing.

16. We accept that the petitioners have been on parole without ever abusing it. That said, under the changed circumstances, a High-Powered Committee appointed by the Supreme Court has consulted the stakeholders and eventually decided that the parole cannot be extended. Even statutorily speaking, indefinite extension even in the name of a pandemic is impermissible. At best, this Court is concerned with the health and safety of all jail inmates, including the petitioners. For that, it

may as well require the authorities concerned, both the jail and the Government officials, to follow scrupulously the guidelines concerning COVID protocol and ensure that neither the inmates nor the petitioners now surrendering are exposed to any danger.

17. Of course, in the reply the State has filed, it has set out in detail the measures it has already taken and the measures they propose to take.

18. Nevertheless, on the petitioners' part, the persistent plea is that most of the petitioners have served substantial periods in jail without any blemish and that their cases must be treated sympathetically, especially, during the pandemic, which has not yet completely disappeared. We have our sympathies. We underline that once the petitioners surrender if they have any legally permissible ground available for them, they can as well apply to the jail authorities and seek remedial steps. And after their taking such steps as indicated above, if they still have any grievance, they have their legal recourse unobstructed.

19. With these observations, we hold that the parole will have to come to an end, as recommended by the High-Powered Committee. As the petitioners have, in the end, pleaded for some reasonable time to surrender, their parole will end by 23.12.2020. On that day, before 6 pm, the petitioners shall surrender to serve the remainder of their sentences.

All the petitions, thus, stand disposed of.

**M. S. JAWALKAR, J.**

**DAMA SESHADRI NAIDU, J.**

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