

Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

LD-VC-CRI-105-2020

IN

LD-VC-CRI-73-2020

Ryan Fernandes Applicant
Versus
The State & Others Respondents

Mr. T. George John, Advocate for the Applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

LD-VC-CRI-106-2020

IN

LD-VC-CRI-74-2020

Suresh Azgaonkar Applicant
Versus
The State of Goa & Others Respondents

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes, Advocates for the Applicant.

Mr. Mahesh Amonkar, Additional Public Prosecutor for the Respondents.

LD-VC-CRI-107-2020

IN

LD-VC-CRI-75-2020

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

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
Advocates for the Applicant.

Mr. Sagar Dhargalkar, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-104-2020

IN

LD-VC-CRI-77-2020

AK Jayakumar	Applicant
Versus		
The State & Others	Respondents

Mr. T. George John, Advocate for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-108-2020

IN

LD-VC-CRI-78-2020

Norman Fernandes	Applicant
Versus		
The State of Goa & Others	Respondents

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-109-2020

IN

LD-VC-CRI-79-2020

Rohan Pai Dhungat	Applicant
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Versus
The State of Goa & Others Respondents

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-110-2020

IN

LD-VC-CRI-80-2020

Shaikh Nafiyaz Mamlekar Applicant

Versus

The State of Goa & Others Respondents

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-103-2020

IN

LD-VC-CRI-81-2020

Shankar Lalta Tiwari Applicant

Versus

The State of Goa & Others Respondents

Mr. T. George John, Advocate for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
Respondents.

LD-VC-CRI-111-2020

IN

LD-VC-CRI-82-2020

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

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
 Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
 Respondents.

LD-VC-CRI-112-2020

IN

LD-VC-CRI-83-2020

Babi Fale & Another Applicant
 Versus
 The State of Goa & Others Respondents

Mr. Ryan Menezes with Ms. Gina Almeida and Mr. Nigel Fernandes,
 Advocates for the Applicant.

Mr. Pravin Faldessai, Additional Public Prosecutor for the
 Respondents.

**Coram:- DIPANKAR DATTA, CJ. &
 G.S. KULKARNI, J.**

Date :- December 23, 2020

P.C.:

A batch of 10 (ten) writ petitions was disposed of by a
 coordinate bench of this Court by a common judgment and order
 dated December 17, 2020. The common thread running through all

the writ petitions was that the petitioners, who are convicts serving sentences imposed on them, were released on parole in view of the ongoing pandemic and had subsequently suffered orders for return to the correctional home(s) on a review undertaken by the High-Powered Committee constituted by the State of Goa. For the reasons assigned in the judgment and order dated December 17, 2020, the coordinate Bench felt disinclined to interfere with the recommendations of the High-Powered Committee and observed that the parole extended to the petitioners must come to an end. This was followed by a direction upon the petitioners to surrender by 6.00 p.m. of December 23, 2020, i.e., today, to serve the remainder of their sentences.

2. Aggrieved by the said judgment and order of the coordinate Bench, all the petitioners claim to have approached the Supreme Court of India by presenting separate Special Leave Petitions. According to the petitioners, the winter vacation for the Supreme Court having commenced, December 24, 2020 is the first available day when the petitioners might get the opportunity of having their special leave petitions listed before the relevant vacation Bench and that, if prior to consideration of such petitions they are compelled to surrender, the same would be rendered infructuous.

3. By presenting this set of 10 (ten) applications, the 10 (ten) applicants (the unsuccessful petitioners) have prayed for

extension of 14 (fourteen) days' time to surrender in terms of the judgment and order dated December 17, 2020 to enable them urge their cases before the Supreme Court.

4. The applications are very strongly resisted by Mr. Mahesh Amonkar, Mr. Pravin Faldessai and Mr. Sagar Dhargalkar, the learned Additional Public Prosecutors. According to them, the applicants may not be shown any leniency. After considering all the relevant statutory provisions and taking note of the current situation in the correctional home(s) amid the pandemic, the High-Powered Committee had recommended that the applicants as well as other convicts, who were released on parole, may return to the correctional home(s) and the coordinate Bench also did not find any reason to interfere with such recommendations; and only because the applicants have sufficient resources to move the High Court as well as the Supreme Court, mere pendency of the special leave petitions ought not to be considered as a valid ground for extending to them benefits which have not been extended to other similarly placed convicts. It is also submitted that should the prayer for extension of time to surrender be refused, the same would not change the complexion of the matters before the Supreme Court, for, in the event the applicants are successful in persuading the Court to interfere, they could still be released on such terms as the Court may deem fit and proper to impose. They have, accordingly, prayed for

dismissal of the applications.

5. We have heard the learned advocates for the parties.

6. In our view, having regard to the peculiar facts and circumstances, the applicants are entitled to extension of time as prayed for. It is no doubt true that liberty of an individual must yield to the common good. However, the circumstance of the applicants' pursuit to have their liberty protected bearing in mind the principle of *ubi jus ibi remedium*, cannot be simply brushed aside. The Supreme Court has observed that in a rights'-based approach to Constitutional legitimacy, the right to life and liberty must be considered paramount. When liberty of an individual is threatened and loss of it is imminent despite such individual having taken all steps that are available to him to protect his liberty, the Courts have to take a pragmatic view and we prefer to err on the side of liberty. We do not propose to make any observation regarding the submission that asking the applicants to abide by the judgment and order dated December 17, 2020 and to surrender by 6.00 pm today would not affect the merits of the special leave petitions. Since the principle of *ubi jus ibi remedium* is well recognized by the courts of law in India and once it is informed to us that the special leave petitions carried from the judgment and order dated December 17, 2020 have been provisionally registered and that the applicants are making all out

efforts to have the same heard on December 24, 2020, it would be inappropriate if the applicants are made to lose their liberty prior to consideration of such petitions.

7. For the reasons aforesaid, we make the following directions:-

(i) Time for the applicants to surrender in terms of the judgment and order dated December 17, 2020 is extended till noon of December 24, 2020, unconditionally;

(ii) Should each of the applicants submit separate undertakings on affidavits with the Registrar (Judicial) of this Court by noon of December 24, 2020 that they shall surrender by 6.00 pm of January 01, 2021, the time to surrender shall stand extended till 6.00 p.m. of January 01, 2021; and

(iii) If the applicants breach the undertakings given by them and fail to surrender, as per direction (ii) supra, the respondents shall be at liberty to take steps against the applicants in accordance with law forthwith.

9. With the aforesaid directions and subject to the decision on the special leave petitions, these applications stand allowed to the extent mentioned above.

10. There shall be no order as to costs.

G.S. KULKARNI, J

CHIEF JUSTICE