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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 10689/2017

AJAY VERMA ..... Petitioner

Through : Petitioner in person with Ms. Sudha Reddy, Adv.

versus

GOVT.OF NCT OF DELHI ..... Respondent

Through : Mr. Rahul Mehra, Stg. Counsel (Crl.) with Mr. Gautam Narayan, ASC-GNCTD and Ms. Mahamaya Chatterjee, Adv.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

O R D E R

% 15.12.2017

1. The instant writ petition has been filed by Mr. Ajay Verma, an advocate, who has extensively contributed to legal aid as counsel for the Delhi High Court Legal Services Committee as well.

2. Mr. Verma's petition brings to the fore an unfortunate aspect of criminal law. It has been complained by the petitioner that a large number of under-trial prisoners are languishing in jail despite bail orders having been passed in their favour. This continued incarceration is stated to be for various reasons including poverty of the under-trials; financial inability of their relatives to furnish

surety bonds or to comply with other conditions which may have been attached to the bail orders including conditions in the nature of requirement of local sureties. Mr. Ajay Verma has stated that imposition of such conditions has been deprecated by the Supreme Court of India in a plethora of judicial pronouncements wherein the court has unfavourably commented on the imposition of such conditions, which may be impossible for these persons to comply with, rendering the order of bail itself nugatory.

3. Mr. Rahul Mehra, learned Standing Counsel for the respondent has joined Mr. Ajay Verma, the petitioner, in these submissions.

4. Learned counsels have placed the following binding directives of the Supreme Court of India passed in a judgment reported at ***(1978) 4 SCC 47, Moti Ram & Ors. v. State of Madhya Pradesh*** before us. In this judgment, penned by *Krishna Iyer, J*., the Supreme Court has adversely commented not only on the unreasonableness of the monetary amount of the surety bond but also the requirement imposed by the trial court for a surety from his own district and also considered Chapter XXXIII of the Code of Criminal Procedure and stated the requirement of law thus:

> ***"24.*** *Primarily Chapter XXXIII is the nidus of the law of bail. Section 436 of the Code speaks of bail but the proviso makes a contradistinction between 'bail' and 'own bond without sureties'. Even here there is an ambiguity, because even the proviso comes in only if, as indicated in the substantive part, the accused in a bailable offence 'is prepared to give bail'. Here, 'bail' suggests 'with or without sureties'. And, 'bail bond' in Section 436(2)*

covers own bond. Section 437(2) blandly speaks of bail but speaks of release on bail of persons below 16 years of age, sick or infirm people and women. It cannot be that a small boy or sinking invalid or pardanashin should be refused release and suffer stress and distress in prison unless sureties are haled into a far-off court with obligation for frequent appearance: 'Bail' there suggests release, the accent being on undertaking to appear when directed, not on the production of sureties. But Section 437(2) distinguishes between bail and bond without sureties.

25. *Section 445 suggests, especially read with the marginal note, that deposit of money will do duty for bond 'with or without sureties'. Section 441(1) of the Code may appear to be a stumbling block in the way of the liberal interpretation of bail as covering own bond with and without sureties. Superficially viewed, it uses the words 'bail' and 'own bond' as antithetical, if the reading is literal. Incisively understood. Section 441(1) provides for both the bond of the accused and the undertaking of the surety being conditioned in the manner mentioned in the sub-section. To read 'bail' as including only cases of release with sureties will stultify the sub-section; for then, an accused released on his own bond without bail i.e. surety, cannot be conditioned to attend at the appointed place. Section 441(2) uses the word "bail" to include "own bond" loosely as meaning one or the other or both. Moreover, an accused in judicial custody, actual or potential, may be released by the court to further the ends of justice and nothing in Section 441(1) compels a contrary meaning.*

26. *Section 441(2) and (3) use the word 'bail' generically because the expression is intended to cover bond with or without sureties.*

27. *The slippery aspect is dispelled when we understand the import of Section 389(1) which reads:*

"389. (1) Pending any appeal by a convicted person the appellate court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond."

The ***Court of appeal may release a convict on his own bond without sureties. Surely, it cannot be that an under-trial is worse off than a convict or that the power of the court to release increases when the guilt is established****. It is not the court's status but the applicant's guilt status that is germane. That a guilty man may claim judicial liberation, pro tempore without sureties while an undertrial cannot is a reductio ad absurdem.*

28. *Likewise, the* ***Supreme Court's powers to enlarge a prisoner****, as the wide words of Order 21 Rule 27 (Supreme Court Rules) show, contain no limitation based on sureties. Counsel for the State agree that this is so, which means that a murderer, concurrently found to be so, may theoretically be released on his own bond without sureties while a suspect, presumed to be innocent, cannot. Such a strange anomaly could not be, even though it is true that the Supreme Court exercises wider powers with greater circumspection.*

29. *The truth, perhaps, is that indecisive and imprecise language is unwittingly used, not knowing the draftsman's golden rule:*

"In drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand. [Lux Gentium Lex — Then and Now, 1799-1974, p. 7] "

30. *If sureties are obligatory even for Juveniles, females*

and sickly accused while they can be dispensed with, after being found guilty, if during trial when the presence to instruct lawyers is more necessary, an accused must buy release onlywith sureties while at the appellate level, suretyship is expendable, there is unreasonable restriction on personal liberty with discrimination writ on the provisions. The hornet's nest of Part III need not be provoked if we read 'bail' to mean that it popularly does, and lexically and in American Jurisprudence is stated to mean viz. a generic expression used to describe judicial release from custodia juris. Bearing in mind the need for liberal interpretation in areas of social justice, individual freedom and indigents's rights, ***we hold that bail covers both — release on one's own bond, with or without sureties. When sureties should be demanded and what sum should be insisted on are dependent on variables***.

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32. *It shocks one's conscience to ask a mason like the petitioner* ***to furnish sureties for Rs 10,000***. *The Magistrate must be given the benefit of doubt for not fully appreciating that our Constitution, enacted by 'We, the People of India', is meant for the butcher, the baker and the candlestick maker — shall we add, the bonded labour and pavement dweller.*

33. *To add insult to injury, the Magistrate has demanded* ***sureties from his own district****! (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications?* ***What law prescribes the geographical discrimination implicit in asking for sureties from the***

court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic*. Article 14 protects all Indians qua Indians within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."*

(Emphasis supplied)

After so holding, the Supreme Court directed the release of the petitioner on his own bond in the sum of Rs.1,000/-.

5. In a later judgment reported at ***(1996) 3 SCC 422, R.D. Upadhyay v. State of Andhra Pradesh,*** also a writ petition filed in public interest before the Supreme Court, the court was concerned with the aspect of speedy trials so far as criminal cases in Delhi were concerned. In para 2 of the pronouncement, the Delhi High Court was directed to nominate/designate Additional District Judges to take up exclusively the trial of 880 murder cases with a direction to complete these trials within a period of six months. For the purposes of the present consideration, it would be useful to extract the directions of the Supreme Court made in paras 3 and 4 which read as follows :

> ***"3.*** *So far as the cases regarding attempt to murder are concerned, we direct that the cases which are pending for more than 2 years, the undertrials shall be released on bail forthwith to the satisfaction of the respective trial courts. Persons facing trial for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting, Customs, under Section 326 IPC, under Section 324 IPC, Riots and under Section 354 IPC who are in jail for a period of more than one year, shall be* ***released on bail forthwith to the satisfaction of the trial courts concerned****. There may be cases where the undertrial persons may not be in a position to furnish sureties etc. In those cases, the trial courts may consider —* ***keeping in view the facts of each case especially the period spent in jail*** *— releasing them on bail by furnishing personal bonds.*
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> ***4.*** *We make it clear that* ***it shall not be necessary for any of the undertrials to move application for bail****.* ***The court shall, suo motu, on the authority of this Court's order, consider the bail cases****. This shall be done by all the courts concerned within two weeks of the receipt of this order. We give liberty to all concerned to approach this Court for further directions, if necessary."*
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> (Emphasis supplied)

6. The importance of the rights of prisoners under Article 21 of the Constitution of India, who have been accused of even serious crimes, cannot be overlooked under any circumstance. It is to be noted that the Supreme Court directed that it would *"not be necessary for any of the under-trials to move applications for bail"* and that *"the trial court shall, suo motu, on the authority"* of the orders passed by the Supreme Court, consider the bail cases.

7. The issue of under-trial prisoners languishing unnecessarily

in jail has engaged the attention of this court as well. In a judgment reported at ***ILR (1996) 1 Delhi 274, Shankara & Ors. v. State (Delhi Administration)***, the court had occasion to consider categorisation of under-trial prisoners in a list submitted by the Inspector General (Prisons) under orders of the court. The impact of unreasonable bail conditions on a large group of under-trial prisoners was noted by the court in para 12 of the judgment in the following terms :

> *"12. We have two categories of undertrial prisoners—the poor and the non-poor. The experience has shown that a non-poor undertrial prisoners perhaps do not stay in a jail even for a few hours after he/she is directed to be released on bail, irrespective of the conditions attached to the bail orders. Personal bonds of several lakhs and multiple sureties of several lakhs are furnished within hours of passing of the release orders whereas there are also very large number of undertrial prisoners who are compelled to languish in jail for months and years for not even able to furnish even one surety of Rs. 500/- to Rs. 1000/-. These are clear instances of depriving the undertrials of their freedom and liberty solely on the ground of poverty.*
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> *xxx xxx xxx*
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> *15. Shankar's case was really an eye opener. This Court visualized that because of the poverty, ignorance and illiteracy in our country, there may be many more such unfortunate undertrial prisoners who may be languishing in jails despite bail orders. In this background,* ***this Court*** *thought it appropriate and consequently* ***directed the Inspector General (Prisons), Delhi to submit a complete list of all undertrial prisoners lodged in jails of Delhi State who could not be released on bail despite bail orders having been passed in their favour****."*

8. In paras 20 to 22 of the judgment, the court thereafter made the following directions:

> *"20 I have heard Mr. R.D. Jolly and Ms. Mukta Gupta, the learned Counsel for the State. In the* ***interest of justice, I deem it appropriate to relaxe and reduce the conditions attached to the bail orders****. The office of the Inspector General (Prisons) has provided* ***two lists****. The undertrial prisoners in* ***Category 'A' are facing trial for relatively minor offences. All the undertrial prisoners in this category are released on furnishing personal bonds****.*
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> *21. The* ***Category 'B'*** *reflects the* ***cases of those undertrial prisoners who have been charged with major offences. This Court deems it appropriate even to vary the terms and conditions of undertrial prisoners in that category. Therefore, all undertrial prisoners in this category are released on furnishing a personal bond as well as one surety*** *in the amount of Rs. 1000/- to the satisfaction of the concerned Court.*
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> *22. In case* ***even after relaxing and reducing the conditions of bail bond, still in case any undertrial prisoner is finding it difficult to furnish any surety, then he will be at liberty to move this court****. I also deem it appropriate to direct the Inspector General (Prisons), to file a comprehensive affidavit within 4 weeks from today indicating the names of those undertrial prisoners who could not be released despite orders of this court. The affidavit must indicate the reasons for not securing their release from jails. List this matter for further directions at 2 P.M. on 3rd July, 1995."*
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> (Emphasis supplied)

9. It would appear that this court had *suo motu* exercised the power to vary the terms and conditions attached to the bail order in both minor and major offences.

10. The petitioner, Mr. Ajay Verma, has placed yet another intervention of this court on 22nd August, 2007 which was registered as ***Crl.Ref.1/2007*** in ***Court on Its Own Motion Re : Various Irregularities at Tihar*** (**page 198**). This intervention noted the court's concern about 500 under-trial prisoners who were languishing in jail because they were not being able to furnish sureties. The order of the court dated 22nd August, 2007 made the following directions :

> *"We, while appreciating the assistance rendered to us by the Additional Solicitor General, direct that:-*
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> *1. Those* ***under-trials*** *who have been* ***admitted to bail*** *but have been* ***unable to furnish sureties for more than two months, shall be released on their furnishing a personal bond*** *to the satisfaction of the trial court.*
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> *2. As regards the* ***twenty under-trials, who are reported to be terminally ill and suffering from what is commonly termed as 'incurable diseases', the Jail Authorities to move the appropriate court*** *which court shall consider their case for release on bail on humanitarian grounds.*
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> *3. In the case of* ***under-trials who are from States other than Delhi, if admitted to bail, local surety shall not be insisted upon*** *and it shall be sufficient on* ***verification of the identities and actual places of residence outside Delhi of the under-trials and their sureties to release them on personal bonds****, or with or without sureties, as the case may be.*
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> *4. In case of* ***under-trials who are senior citizens****, the* ***courts to take up their cases on day to day basis as far as possible, if they are found not fit to be admitted to bail****.*

*5. The **cases where the maximum punishment prescribed for the offence committed is upto seven years**, the case of **such under-trials shall be put up by the Jail Authorities before the Visiting Judge every three months** for review of their cases for release on bail.*

*6. The **Jail Authorities shall sensitize and inform all jail inmates of the provision of 'plea bargain'** and also the benefits thereof.*

*7. The **Jail Authorities shall also take special care to place these cases before the Special Court/Judge who, we are informed, visits the jail every month**. This, of course, goes without saying that 'plea bargain' should be encouraged by all courts in the normal course of trials as well."*

(Emphasis by us)

Thus, the court has dispensed with the requirement of surety bonds as well as the requirement of a local surety. Most important is the role of the jail visiting judges.

11. The importance as well as seriousness of the issues flagged by the petitioner were placed before this court by way of a writ petition being W.P.(C) 3465/2010, filed in public interest. In the decision dated 2nd February, 2011 reported at ***2011 SCC OnLine Del 543, D.M. Bhalla v. State***, following suggestions made before the court which were accepted, have been noted in para 4 which reads thus :

*"4. However, the **purported beneficiary** of the bail order is often **unable to enjoy the benefit of the same** as he/she*

is unable to meet the terms set out in the bail order and/or is also often ***unaware of the procedure for relaxation/modification of the bail terms****. This inability and some reasons therefore have been mentioned in the Rotary Club case. Therefore, it was proposed that:*

i. The ***Jail Paralegal Workers*** *would gather instances and* ***ascertain the reasons for the inability*** *to meet the bail conditions and* ***furnish it to the jail authorities and/or to the visiting lawyers of DLSA*** *who, in turn, would* ***prepare an appropriate application for modification/relaxation of the bail conditions****. In cases where the undertrial-prisoner/convicted-prisoner have their own private counsel similar/appropriate suggestions would be offered to them by the visiting lawyers; and if so instructed the latter would draft and file requisite applications on behalf of such prisoners also;*

ii. The ***bail order*** *would be* ***communicated by the Jail Authorities to the family of the undertrial-prisoner/convicted prisoner****, with the latter's consent, so that the family could take steps to meet the bail conditions;*

iii. To ***facilitate the release on relaxed bail*** *terms or personal bond or acceptance of surety of land, the* ***Gram Pradhan's/SDM's certificate*** *that the* ***prisoner is a permanent resident of the village/subdivision*** *or is the owner of such and such parcel of land would suffice;*

iv. The ***Bail Granted Register****, in which the* ***list of the bails granted by the court concerned is maintained****, would be* ***examined by the judge concerned to ascertain which undertrial-prisoner/convicted-prisoner has not been released from jail. Reasons*** *for the same would be* ***ascertained through video-conferencing and appropriate orders regarding relaxation/modification of the bail terms would be passed within ten days****;*

*v. The **bail application would** be **expedited** and **disposed off** as soon as possible regard being had to the objective of release of the prisoner expeditiously and **reasons for the delay as may be ascertained through video conferencing with the undertrial-prisoner/convicted-prisoner**;*

*vi. In **case of non-disposal** of the cases within the above proposed timeframe the **reasons for the same would be incorporated in the "Monthly Workdone Statement/ Report"** sent to the Supervising Judge/High Court."*

(Emphasis supplied)

12. We find that the Law Commission of India in its 268th Report proposed amendments to the Criminal Procedure Code, 1973 in the provisions relating to bail practices in Chapter XI. So far as conditions that may be imposed are concerned, keeping in view the experience in trial courts, the Law Commission of India has made extensive recommendations in Section C of Chapter XI of the Report.

13. Mr. Ajay Verma has drawn our attention to the suggestions made by the Law Commission regarding the assessment which is required to be undertaken with regard to the qualitative value of risk related to a pre-trial defendant and specific circumstances. In this regard, the following observations of the Law Commission are being placed before us :

"11.30 Pre-trial risk assessment is the determination of qualitative value of risk related to a pretrial defendant and his specific circumstances (C. Macmalian C., State of The Science of Pretrial Risk Assessment (Pretrial Justice

Institute, 2011)). Risk management means balancing the constitutional rights of the defendant with the risk the defendant poses, using effective supervision and strategic interventions288. In the risk assessment process the arrested accused is brought to the station where, after identification, booking, search, questioning, and fingerprinting, community ties are investigated along with a set of pre-determined factors. If the defendant is found to be a good risk, the officer is authorized to release him with on a personal bond with or without sureties. Additionally, this procedure saves substantial police, investigating authorities and Court time and economises the operation of detention facilities."

14. It is to be noted that the Supreme Court has repeatedly noted with anguish, the aspect of under-trial prisoners being lodged in Indian prisons who were unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. In the oft-cited decision reported at ***(1980) 1 SCC 81, Hussainara Khatoon v. Home Secretary, State of Bihar, Patna*** this issue is noted in the following terms:

"11. While concluding, it seems desirable to draw attention to the absence of an explicit provision in the Code of Criminal Procedure enabling the release, in appropriate cases, of an undertrial prisoner on his bond without sureties and without any monetary obligation. There is urgent need for a clear provision. Undeniably, the thousands of undertrial prisoners lodged in Indian prisons today include many who are unable to secure their release before trial because of their inability to produce sufficient financial guarantee for their appearance. Where that is the only reason for their continued incarceration, there may be ground for complaining of invidious discrimination. The more so under a constitutional system

which promises social equality and social justice to all of its citizens. The deprivation of liberty for the reason of financial poverty only is an incongruous element in a society aspiring to the achievement of these constitutional objectives. There are sufficient guarantees for appearance in the host of considerations to which reference has been made earlier and, it seems to me, our law-makers would take an important step in defence of individual liberty if appropriate provision was made in the statute for non-financial releases."

15. A reasoned decision by a ld. Single Judge of the Madras High Court reported at ***2017 (3) MLJ (Crl) 134, Sagayam v. State*** was brought to our notice. This decision was rendered on a petition filed by the petitioner seeking modification of certain conditions of bail imposed on the petitioner. The question which was placed for consideration before the court was as to whether a specific circumstance or condition of surety was mandatory in filing the surety bond. In this case, the trial court had required the petitioner to execute a bond of Rs.15,000/- with two sureties who shall be blood related, each in the like amount, to the satisfaction of the court. Some of the objections placed before the court by the petitioner would be arising in the trial courts in Delhi as well and deserve to be noted and read as follows:

> ***"4.*** *The learned counsel for the petitioner also submitted that persons who were granted bail, anticipatory bail, even statutory default bail are* ***not in a position to execute the bail bond and the sureties are also not in a position to execute the surety bonds****, because of certain practices being followed by the Courts. The learned counsel also added that these* ***practices are wide prevalent in the***

criminal Courts. *These practices did not have the sanction of law.*

5. *The learned counsel for the petitioner submitted that* ***even for a bail bond or surety bond*** *for Rs. 5,000/, Rs. 10,000/-, Rs. 15,000/-* ***Courts insists production of property documents***. *Because of present property value, it is very difficult to get property documents for such amount. Sometimes, in lieu of the same,* ***Courts demand production of RC books of two-wheelers, four-wheelers****, etc.*

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7. *The learned counsel for the petitioner further submitted that in* ***some cases, Courts require 'blood relatives', 'family members', 'Government servants', 'public servants' 'permanent employees', 'local residents as sureties***. *The accused could not get such sureties. Consequently, it leads to many malpractices.*

8. *The learned counsel for the petitioner further submitted that though the accused obtained bail order from the superior Court, yet he* ***could not execute the bail bond and the surety could not execute the surety bond because of the onerous requirements insisted upon by the Courts***. *Those conditions could not be complied with by the accused.* ***Consequently, the accused are languishing in jail***.

9. *The learned counsel for the petitioner further submitted that Courts are* ***also insisting upon production of VAO certificate, sometimes counter signed by Tahsildar or Deputy Tahsildar, Residential/Nativity certificate, Solvency certificate, etc***. *It is a matter of common knowledge that* ***getting these certificates from the Revenue Department involves delay and also certain untold miseries***. *Consequently, the accused and sureties could not execute the bonds."*

(Emphasis by us)

16. Placing reliance on the protection, constitutionally granted

under Article 21 of the Constitution in India, it was urged before the learned Single Judge in the above case, that a simple procedure not involving complications, complexities, illegalities ensuring genuineness of bail bonds and surety bonds would be sufficient and that imposition of such conditions was actually curbing the person's right to be released on bail; amounts to indirect denial of bail and that the matter involved safeguarding human rights and rights of the accused. After an elaborate discussion of the provisions of Sections 397, 439, 482 of the CrPC as well as Sections 440 to 450 of the Cr.P.C. dealing with furnishing of bail bonds, the observations made by the court on the fitness of the surety as well as the conditions deserve to be extracted *in extenso* and read as follows:

> ***"66.*** *As per section 441(4) of Cr.P.C. a* ***surety should be a fit person****. Who is a* ***fit person has not been defined or explained anywhere in the Code****. Generally, a surety must be a genuine person. He should not be a bogus person. A surety comes to the Court and gives undertaking to the Court that he will ensure the appearance of the accused. If the accused fails to appear before the Court, the surety bond executed by the surety will be forfeited.*
>
> ***67. Court can ascertain the genuineness of the sureties****. A surety should have a* ***genuine address****. He may be asked to* ***produce residential proof****. He should* ***not be a vagabond****. He should* ***establish his identity****.* ***A poor man can be a voter****. Likewise,* ***a poor man can be a surety****. A surety can be a person without having own house. He can be a tenant. Even a person living in a platform, living in a slum having an acceptable address proof can also stand as a surety.*

68. *It cannot be denied that a* ***bogus person should not be accepted as a surety****. A person who is offering surety must have acceptable residential proof. He may be a tenant, licensee. A beggar can also stand as surety provided he should have some acceptable residential proof.*

69. *Sometimes,* ***one person may come forward to stand as surety for more than one accused****. For example, if two sons or two brothers stand as sureties to an accused, his father, brother, mother, sister etc. may come forward to stand as surety. In such circumstances, question may arise whether the father can chose any one of his son and stand as surety and exclude his other son.*

70. *In this connection, Section 441-A Cr.P.C. contains guidance. It runs as under:*

> *"Declaration by sureties-Every person standing surety to an accused person for his release on bail, shall make a declaration before the Court as to the number of persons to whom he has stood surety including the accused, giving therein all the relevant particulars."*
>
> *[emphasis supplied by me]*

71. *This court and other Courts while granting bail, directs the accused to execute bail bond for Rs. 5000/-, Rs. 10,000/- Rs. 15,000/-, Rs. 20,000/- etc. and also produce sureties who should also execute a bond for similar amount. In view of the present value of the properties, it is very difficult to get property document for such value.*

72. *When superior Courts grants bail directs the accused to execute bail bond by himself as well as by the sureties. Unless otherwise stated, in the bail or anticipatory bail order, as the case may be, 'bond' means personal bond. In such circumstances, the Courts directing the sureties to produce property documents is beyond the scope of the bail order of the superior court.*

73. Court should be satisfied as to the genuineness, identity of the surety and his residential address. It is

equally applies to the accused. For this purpose, the Court can accept copy of anyone of the following documents after verification.

1. Passport
2.Ration Card
3.PAN card
4.Driving license
5.Voter's ID
6.Aadhaar Card
7.Photo ID issued by a recognised Educational Institution
8.Photo credit card
9.Kissan Photo Passbook
10.Pensioner's Photo card
11.Freedom fighter photo card
12.Identity Certificate with photo issued by a Gazetted officer or Tahsildar
13.Address card with photo issued by the Postal Department
14.Disability ID card or handicapped medical certificate issued by the Government
15. NREGS Job Card
16.CGHS/ECHS/State Government/ESIC Medical Card
17.Marriage Certificate issued by the Government 18 Post Office Statement or Passbook
18. Water Bill
19. Electricity Bill
20. Property Tax Receipt
21. Landline Telephone Bill
22. Credit Card Statement
23. Income-tax assessment order
24. Arms License
25.Certificate of Address issued by the head, Village Panchayat or an equivalent authority
26.Registered Lease/Sale/Rent Agreement
27.Caste and Domicile Certificate that has photo issued by the State Government
28.Gas Connection Bill 30 Insurance Policy

74. *From the above analysis, we come to the conclusion that when the accused executes bail bond, when the surety executes surety bond, Court cannot insist production of property documents, surety need not be a Government servant or a blood relative or a local surety.*

75. *In view of the foregoing analysis, the following directions and orders are issued:*

(i) In para 6(4) of the anticipatory bail order, it is made clear that the word bond means 'personal bond'.

(ii) The word 'blood surety' shall be deleted.

(iii) Within 15 days from the date of receipt of a copy of this order, the petitioner shall execute the bail bond as per the terms and conditions of this Court order in Crl.O.P. No. 2891 of 2017, dated 21.2.2017 and as per the directions of this order.

(iv) The amount of bail bond, surety bond shall not be excessive and it should be reasonable.

(v) It is made clear that production of property documents or V.A.O. Certificate, Tahsildar Certificate, Solvency Certificate, R.C. book shall not be insisted upon from the accused or from the sureties.

(vi) Copies of anyone of the documents mentioned in para 73 in this order can be accepted.

(vii) Sureties need not be a Government servant or a public servant or a permanent employee or related by blood to the accused or a member of the family but he should be a genuine person.

(viii) One person can be a surety for more than one accused.

(ix) In the first instance, cash surety cannot be insisted upon.

(x) When the accused is not in a position to produce personal surety and offers cash surety, it can be accepted."

(Emphasis supplied)

17. So far as the conditions made in ***Sagayam,*** amongst others, in para 75, the learned Single Judge of the Madras High Court, *inter alia*, clarified as follows :

> ***"75.*** *In view of the foregoing analysis, the following directions and orders are issued:*
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> *xxx* *xxx* *xxx*
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> *(vii) Sureties need not be a Government servant or a public servant or a permanent employee or related by blood to the accused or a member of the family but he should be a genuine person.*
>
> *(viii) One person can be a surety for more than one accused.*
>
> *(ix) In the first instance, cash surety cannot be insisted upon.*
>
> *(x) When the accused is not in a position to produce personal surety and offers cash surety, it can be accepted."*

18. We see no reason why these very observations would not apply to under-trials in the courts in Delhi as well.

19. The above narration would show that so far as the jails and prisoners in Delhi are concerned, there is a procedure and practice prescribed for jail visiting judges who regularly visit the jails. The under-trail review committees are also in place in all the districts in

Delhi which are required to regularly review all cases of prisoners who would be covered under Section 436A of the Cr.P.C. and submit their report. The recommendations of these under-trial review committees are placed before the trial courts for consideration.

20. Mr. Rahul Mehra, learned Standing Counsel (Criminal) for the Government of NCT of Delhi has placed a district-wise list of under-trials who have not been released on bail despite orders of bail passed in their favour.

21. It is truly unfortunate that despite an elaborate system including jail visits by Judges; legal aid lawyers of DSLSA and DHCLSC as well as para legal volunteers interacting with prisoners and jail authorities as also extensive guidelines on the issue of bail conditions, not much has changed. The present intervention is still called for.

Clearly, the directions of the Supreme court and this court are not being complied with.

22. We are extremely pained to note that despite the clear law having been laid on the subject, not only the authoritative directions of the Supreme Court of India as well as the repeated judicial pronouncements of this court and the clear statutory provisions, 253 prisoners are still languishing in jail which has necessitated recording of the present order reiterating the well settled principles.

23. Inasmuch as we are concerned with inability of an under-trial prisoner to comply with the conditions of the bail, we see no

reason as to why the trial courts do not *suo motu* examine the cases of such persons and to conduct an inquiry into the reasons thereof. The trial courts should be not only sensitive but extremely vigilant in cases where they are recording orders of bail to ascertain the compliance thereof. In case of inability of a prisoner to seek release despite an order of bail, in our view it is the judicial duty of all trial courts to undertake a review for the reasons thereof. We specifically direct that every bail order shall be marked on the file. It shall be the responsibility of every judge issuing an order of bail to monitor its execution and enforcement. In case a judge stands transferred before the execution, it shall be the responsibility of the successor judge to ensure execution. This shall be reported in the Statements sent by the judges.

24. It stands authoritatively settled that the trial court is required to conduct a risk assessment. Several suggestions regarding factors which would go into the making of such an assessment have been pointed out in the judicial precedents as well as by the Law Commission of India in its 268th report. After undertaking the risk assessment, the trial court is judicially bound to examine modification of the conditions of bail. The judicial discretion in this regard has to be exercised on sound principles clearly spelt out in the series of judicial precedents.

25. In the context of the present consideration, it is also apposite to note that as recently as on the 12th of December, 2017 in ***W.P.(Crl) 1352/2015 Court on its own motion v. State & Ors*** while considering the aspect of working of Section 436A of the

CrPC, this bench has issued guidelines in the best interests of prisoners in the following terms:

> *"8. On a consideration of the suggestions received from the Committee and the guidelines suggested, the following immediate guidelines are issued notifying steps that are required to be taken by trial courts, jail authorities and District Legal Services Authorities in the best interests of the prisoners:*
>
> ***Guidelines:***
>
> ***(i) Updation of custody warrants by trial courts:***
>
> *While preparing the custody warrants of an Under Trial Prisoner (UTP), the courts should ensure that in addition to the details/information already mentioned in the custody warrant, it should also contain the following details/information:*
> *(a) At the time of the first remand, the section(s)/offence(s) under which the UTP is being sent to judicial custody.*
> *(b) Any change(s) in the section(s)/offence(s) during the course of investigation.*
>
> *(c) Section(s)/offence(s) under which the final report (charge-sheet) has been filed.*
>
> *(d) Section(s)/offence(s) of which the Court is taking cognizance.*
>
> *(e) On the date cognizance is taken, the Court shall indicate the date on which the right under Section 436A Cr.P.C. will accrue for the UTP. [While mentioning this date, in case of multiple offences, the Court should also separately write the date on which half of the maximum sentence of graver offence will expire and the date on which half of maximum sentence of lesser offence will expire].*

(f) Section(s)/offence(s) under which the UTP has been charged by the Court.

(g) If on a later date there is an amendment in the charge, then the same should be updated in the custody warrant.

(h) The date on which the UTP is granted bail by the Trial Court or the Superior Court. The said order should be conveyed on each date of hearing when the UTP is produced for remand.

(i) The aforementioned details/information will have to updated at following stages of a case, i.e. from the stage of first remand to filing of chargesheet to taking of cognizance to framing of charge. The Court must ensure that the custody warrant is updated/modified in the manner stated above.

(ii) <u>Role of jail authorities:</u>

In addition to the duty cast on the Courts to maintain and update the Custody Warrants of UTPs, the Jail Authorities will also have to play an active role in the effective implementation of the aforesaid suggestions.

(a) The Jail Authorities will have to constantly update their records and in line with any change in the details mentioned in the Custody Warrant of a UTP.

(b) The Jail Authorities should also inform the UTP and the concerned Court when the UTP becomes entitled to receive benefit of Section 436A Cr.P.C.

(c) The Jail Authorities must inform the UTP of any change in the section(s) he/she is charged with

by the Court.

(iii) <u>Role of District State Legal Services Authority:</u>

(a) Legal Literacy Camps should be organized by DSLSA regularly in jails to make the UTPs aware about their rights under Section 436A Cr.P.C. and they should also apprised about the period by which half of the sentence for the common offences is going to be completed.

(b) The remand advocates/ Legal Aid Counsels appointed in the Criminal Courts by the concerned DLSA may be asked to give a monthly report in respect of the UTPs for whom an application under Section 436A Cr.P.C. may be moved. The remand advocate/ appointed legal aid counsel may be directed to move these applications promptly in the concerned court.

(c) The legal aid counsels may be instructed that in those cases which are dealt with by them, they should themselves remain alert as to when a person becomes eligible for the benefit under Section 436A Cr.P.C. and take appropriate steps."

26. In view of the above, we direct as follows :

(i) The Registry is directed to forward a copy of the list submitted by Mr. Rahul Mehra, ld. Standing Counsel to the District Judges concerned as well as copy of this order to all the District Judges who shall ensure that the cases detailed in the list are immediately brought to the notice of the trial

courts concerned.

(ii) The District Judges shall also undertake an exercise of verification of the list submitted by the Govt. of NCT of Delhi before us and also to undertake a review of the pending cases to ascertain as to whether there is any other under-trial prisoner who has been unable to secure release from prison despite an order of bail in his/her favour.

(iii) The trial courts shall undertake the exercise of risk assessment with regard to the persons enumerated in the list forwarded to the trial courts i.e. the District Judges who shall submit a report to this court of the outcome of such consideration by the trial courts within four weeks from today.

(iv) Copy of this order shall also be sent to the Directorate of Prosecution, Tis Hazari Courts, Delhi to ensure that a copy of this order is brought to the notice of all prosecutors and a sensitisation programme on the subject is undertaken.

(v) Copy of this order be also sent to the Director General of Prisons, Central Jail, Tihar.

(vi) We direct the prison authorities to promptly bring in to the notice of the trial court as well as the concerned Secretary of the District Legal Services Authority about any incidence of a prisoner being unable to secure release from prison despite an order of bail.

(vii) The Director General of Prisons may consider the possibility of incorporating software which would raise a

notification or an alarm in cases where under-trial prisoners in whose cases bail orders have been passed, are still lodged in custody, to enable action thereon.

(viii) Copy of this order shall also be brought to the notice of every judge in the District Courts in Delhi, irrespective of whether they exercise civil or criminal jurisdictions.

(ix) Copy of this order be also sent to the Member Secretary of the Delhi State Legal Services Authority as well as the Secretary, Delhi High Court Legal Services Committee to ensure sensitisation of all the legal aid lawyers on the aspect noted by us.

(x) Copy of this order shall also be made available to the Delhi Judicial Academy to ensure that a proper sensitisation programme of the District Judiciary on the subject is undertaken.

26. List this matter on 31st January, 2018.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

DECEMBER 15, 2017/kr