

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Crl.) NO. _____ OF 2013

(Under Article 136 of the Constitution of India)

(Arising out of impugned order and judgment dated 30.08.2013
Passed by the Hon'ble Calcutta High Court in W.P. (Crl.) No.
26112 of 2013)

Banglar Manabadhikar Suraksha Mancha (MASUM) ...Petitioner

Versus

The State of West Bengal & Ors. ...Respondent

PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

Crl. M.P. No. of 2013: Application for Deletion of
Respondent from R-2 — R-10.
Crl. M.P. No. of 3012: Application for Directions
Crl. M.P. No. of 2013: Application for Exemption from
filing Certified Copy of the
impugned Order of the High Court

ADVOCATE FOR THE PETITIONER: Ms. Jyoti Menderitta

INDEX

SL. NO.	PARTICULARS	PAGE NO.
1.	Office Report of Limitation	
2.	Listing Pro Forma	
3.	Synopsis with List of Dates	
4.	Impugned order and judgment dated 30.08.2013 of the Hon'ble Calcutta High in Writ Petition (Crl.) No. 26112 of 2013.	
5.	Special Leave Petition with Affidavit	
6.	Annexure P-1 True Copy of the List of persons who were arrested and detained in the Alipore Central Correctional Home received RTI dated 16.05.2013	
7.	Annexure P-2 True Copy of the List of persons who were arrested and detained in the Malda District Correctional Home received via RTI dated 17.05.2013	
8.	Annexure P-3 True Copy of the List of persons who were arrested and detained in the Balurghat District Correctional Home received via RTI dated 21.05.2013	

9. **Annexure P-4**
True Copy of the List of persons who were arrested and detained in the Asansol Central Prison received via RTI dated 25.05.2013
10. **Annexure P-5**
True Copy of the List of persons who were arrested and detained in the Chandanagore Subsidiary Correctional Home received via RTI dated 28.05.2013
11. **Annexure P-6 (Colly)**
True Copy of the Order Sheet in respect of an accused person, Umesh Singh,
i. Dated 25.05.2013
ii. Dated 07.06.2013
12. **Annexure P-7**
True Copy of the letter by the petitioner to the Chairman, West Bengal Human Rights Commission dated 07.08.2013
13. **Annexure P-8**
True copy of the Writ Petition No. 26112 of 2013 filed by the petitioner at the High Court of Calcutta, dated 27.08.2013
14. **CRL. M.P. NO. OF 2013**
Application for Deletion of Respondents No. R-2 to R-10
15. **CRL. M.P. NO. OF 2013**
Application for Directions
16. **CRL. M.P. NO. OF 2013**
Application for Exemption from filing Certified Copy of the Impugned Order of the Hon'ble High Court of Calcutta dated 30.08.13

SYNOPSIS

1. This Special Leave Petition impugns the order dated 30.08.2013 of 2013 of the Kolkata High Court in Writ Petition 26112 of 2013. Along with this Special Leave Appeal, an Application for Directions has also been made.

2. This petition was filed in the public interest for and on behalf of thousands of persons in the state of West Bengal who suffer illegal incarceration for varying periods of time without ever being charged with any offence on account of the police and magistrates illegally detaining such persons only under the provisions of 107, 109 and 151 Cr.P.C. These persons are in jail for days and sometimes months and then released without any criminal proceedings instituted against them. Not only are these proceedings contrary to the abovementioned sections which speak only of execution of a bond and do not permit arrest solely on the basis of these sections of the Cr.P.C., additionally these arrests are contrary to the decision of the Supreme Court in *Madhu Limaye Vs. Ved Murti* (AIR 1971 SC 2481) where the Supreme Court held as under:

“...we have seen the provisions of section 107.

That section says that action is to be taken in

the manner hereinafter provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasize the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

3. On the basis of applications filed and information received under the provisions of the Right to Information Act, 2005 (RTI), petitioner put on record before the High Court, in the first instance, a list of 99 persons who were arrested and detained in the Alipore Central Correctional Home for varying periods of time in proceedings solely under 107, 109 and 151 Cr.P.C.

4. Similarly, petitioner put on record a similar list obtained under RTI from the authorities in respect of undertrial

prisoners lodged at the Malda District Correctional Home. A similar list in respect of the Balurghat District Correctional Home has been annexed. Likewise, the list in respect of the Asansol Central Prison has been annexed. The list in respect of Chandanagore Subsidiary Correctional Home has been annexed.

5. The order sheet in respect of an accused person Umesh Singh who was arrested solely under 42/ 109 Cr.P.C. on 24.5.13, produced before the Magistrate on 25.5.13, only because, according to the police report, he could not give a satisfactory answer as to his presence during odd hours of the night. He was remanded to judicial custody upto 7.6.13 and ordered to submit a good behavior bond of Rs. 3,000. On 7.6.13 since the prosecution report was not received he was remanded to judicial custody upto 20.6.13. On 20.6.13 the order sheet reveals that the accused informed the Court that he was a daily wager on which the Court directed him to execute a good behavior and attendance bond of Rs. 10,000 and to mark his presence at the police station every Wednesday and Friday.

6. Petitioner therefore wrote a letter dated 7.8.13 to the Chairman, West Bengal Human Rights Commission stating therein "that a large number of Indian citizen are suffering imprisonment for indefinite periods in different districts and sub-divisional prisons (correctional homes) in connection with proceedings evoking the provisions of 107/109/110 Cr.P.C....that a large number of innocent people were languishing in prisons...unconstitutionally and illegally". The letter enclosed another list of persons so incarcerated.

7. In this regard, the Petitioner craves to rely on a judgment of this Hon'ble Court that was passed way back on 2 February, 1925 in the case of Sheikh Piru –Versus- King-Emperor as reported in AIR 1925 Cal 616, where this Hon'ble Court had observed as follows:

"...Of late we have been receiving an unusually large number of appeals from prisoners who have been sent to jail by the Presidency Magistrate of Calcutta on failure to furnish security under the provisions of Section 118 read with Section 109, Criminal Procedure Code and we regret to observe that we have found that many of these cases have either been inadequately enquired into or are cases in

which the provisions of the law have been altogether misapplied. We cannot but attribute this state of things to a misapprehension as to the true import of Section 109, Criminal Procedure Code and ignorance of the procedure which the amending Act of 1923 has introduced into the Code...”

8. The Petitioner most respectfully states that, admittedly, the mandatory nature of the precautions to be observed by an Executive Magistrate while exercising the powers under Section 107 Code of Criminal Procedure has been explained by the Supreme Court in *Madhu Limaye –Versus- Ved Murti* as reported in AIR 1971 SC 2481. The Constitution Bench explained that Section 107 is in aid of orderly society and seeks to nip in the bud conduct subversive of the peace and public tranquility. For this purpose the Magistrates are invested with large judicial discretionary powers for the preservation of the public peace and order.

9. The Hon'ble Court then proceeded to explain the significance of the procedural safeguards in para 36 of that judgment which reads as under:-

"...We have seen the provisions of S. 107. That section says that action is to be taken in the manner hereinafter provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasize the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public."

10. The Petitioner in this regard most respectfully states as it would transpire from the plain reading of the provisions underlying Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure that When the magistrate acting under Section 107 deems it necessary to require any person to show cause under that section, he has to make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in

force and the number, character and class of sureties, if any required.

11. The order made by the magistrate has to be read over to the person in respect of whom such order is made if that person happens to be present in court under Section 113 of the Code of Criminal Procedure. In case such person is not present in court, the magistrate has to issue summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court. Under Section 117 of the Criminal Procedure Code, when an order under Section 112 has been read over or explained to a person under Section 113 or Section 114 of the Code of Criminal Procedure, the magistrate is required to proceed to enquire into the truth, of the information upon which action was taken by him, and to take such further evidence as may appear necessary.

1. It requires that the Magistrate acting under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure, shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which

it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands. The section speaks of the substance of the information. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information.

2. These provisions of the Criminal Procedure Code thus lay down that, whenever proceedings under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure are contemplated against any person the proceedings are to be initiated by preparing a notice under Section 112 of the Code and serving it on that person under Section 113 or Section 114 of the Code.

3. In this regard the Petitioner most respectfully states that the abuse of the powers enumerated under Sections 107 to 110, of the Code has even been expressed as a concern for the Law Commission as well. The relevant abstract from the Law Commission's report is as follows:

"...There is yet another category viz., sections 107 to 110 of the Code of Criminal Procedure. These sections empower the Magistrate to call upon a person, in situations/circumstances stated therein, to execute a bond to keep peace or to be on good behaviour. These provisions do not empower a police officer to arrest such persons. Yet, the fact remains (a fact borne out by the facts and figures referred to hereinafter) that large numbers of persons are arrested under these provisions as well..."

4. The Petitioner most respectfully states that amidst these established procedures of law, it can be safely presumed in this respect that all such persons are under detention in respect of proceedings either under Section 107 or Section 109 of the Code of Criminal Procedure, due to the simple reason that

they either could not furnish the requisite bond or produce on their behalf such surety or sureties as was directed by the Learned Magistrate concerned.

5. The Petitioner most respectfully states that depriving the citizen of liberty by initiating proceedings under Section 107 to 110 of the Code, solely on the ground that no person is coming forth for giving a surety, virtually tantamount to making of unlawful effort to keep a citizen in jail for uncertain period.

6. The Petitioner craves leave to refer a judgment of the Hon'ble Delhi High Court, where the Hon'ble Court took suo-motu cognizance with regard to the plights of the inmates of the Tihar Correctional Home, being Crl. Ref. No.1/2007 and Crl. M.A. No.7030/2007 wherein the Hon'ble Court was pleased to observe as follows:

“...Pursuant to our order dated 25.7.2007, Mr. P.P. Malhotra, Additional Solicitor General for India, has made some very positive suggestions. He has pointed out to this Court that there are about 500 under-trials who are

languishing in jail because they have not been able to furnish sureties. He points out that in spite of judgment of this Court in Rotary Club International Vs. State, where it is laid down that if any person is in prison for more than two months and has been unable to furnish surety, his case shall be reviewed by the concerned court, it appears that the direction is not being followed. He submits that 65 per cent of the under-trials, i.e., 6,971 under-trials are in detention for periods upto three months. Breakup of period of incarceration of other under-trials is stated as under:-

Number of under-trials	Detention Period
i) 1,500	3-6 months
ii) 1,254	6-12 months
iii) 1,061	12-24 months
iv) 503	24-36 months
v) 277	36-48 months
vi) 194	48-60 months
vii) 138	More than 60 months

Learned Additional Solicitor General suggests that all cases where a person has been incarcerated over three months, his case must be reviewed by the

concerned court and wherever the court finds that the person is fit to be admitted to bail, he may be set at liberty on terms and conditions which conform to the law laid down in the judgment of the Supreme Court in Moti Ram and Others Vs. State of Madhya Pradesh; 1978 (4) SCC 47. He emphasizes that poverty must never stand in the way of any prisoner enjoying the fruits of liberty. He suggests that for those persons, who are not in a position to furnish sureties of large amounts, the courts should be sensitive enough to ensure that once bail is granted, the bail amount must be within the reach of the person upon whom this privilege has been bestowed. He submits that bail should not be illusory but a reality.

Learned Additional Solicitor General has also brought to our notice that about 33 per cent of under-trials are not residents of Delhi and most of them are unable to furnish local surety. He submits that in keeping with the directions laid down by the Supreme Court in the judgment referred to above, local sureties should not be insisted upon and that after the identities and actual places of residence of

the under-trials and their sureties are verified by the police from their respective States, they can be released on furnishing outstation sureties.

Learned Additional Solicitor General informs us that there are approximately twenty under-trials who are terminally sick. They are suffering from diseases such as, HIV-AIDS, Cancer, etc. He suggests that they should be admitted to bail on humanitarian grounds.

Another suggestion made by learned Solicitor General is that those involved in petty offences like small theft or under Railways Act, Excise Act, should not be sent to jail but admitted to bail as soon as possible. Learned Additional Solicitor General goes on to submit that most of the under-trials belong to the poor strata of society, who are barely able to afford a square meal, let alone legal assistance. He draws our attention to a growing trend of such persons taking shelter in jail by indulging in petty crimes to attain a square meal. This, according to the learned Additional Solicitor General has also resulted in

overcrowding. According to him, courts should be aware of such trends and facilitate such persons' release on bail.

The Additional Solicitor General has also suggested that under-trials be apprised of the provisions of 'plea bargain' so as to make them to take recourse to the same in a greater measure. For this purpose, he suggests that a court should sit once a month to take up such cases and dispose them off on the basis of 'plea bargain'.

We, while appreciating the assistance rendered to us by the Additional Solicitor General, direct that:-

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.

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.

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.
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.

12. The Petitioner most respectfully states as a final point that the Petitioner organization has come across instances where subsequent to the release of a person on his furnishing bond in a proceeding arising out of Section 109 of the Criminal Procedure Code, the concerned Executive Magistrate has directed him to appear and mark his presence before the concerned police station on a regular basis. The Petitioner most respectfully states that such an order requiring a person to attend the police station, subsequent to his furnishing the requisite bond is beyond the authority, jurisdiction and ambit of the

concerned authority acting as an Executive Magistrate while dealing with proceedings arising out of Section 107 or 109 of the Code of Criminal Procedure and as such is a sheer abuse of power and thus necessary orders are required to bring to an end, such unlawful and unauthorized practices which directly curtails a person's right to liberty without the sanction of the law of the land.

13. Section 107 Cr.P.C. is as under:

“107. Security for keeping the peace in other cases.—(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when

either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

14. Section 109 Cr.P.C. is as under:

“109. Security for Good Behaviour from Suspected Persons—When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the Magistrate thinks fit.”

15. Section 110 Cr.P.C. is as under:

“110. Security for good behavior from

habitual offenders—When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

- a. Is by habit a robber, house-breaker, thief, or forger, or
- b. Is by habit a receiver of stolen property knowing the same to have been stolen, or
- c. Habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
- d. Habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489-A, section 489-B, section 489-C or section 489-D of that Code, or
- e. Habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or

f. Habitually commits, or attempts to commit,
or abets the commission of—

i. Any offence under one or more of the
following Acts, namely:--

a. The Drugs and Cosmetics Act, 1940
(23 of 1940);

b. The Foreign Exchange Regulation
Act, 1973 (46 of 1973);

c. The Employees' Provident Funds
and Family Pension Fund Act, 1952
(19 of 1952);

d. The Prevention of Food
Adulteration Act, 1954 (37 of
1954);

e. The Essential Commodities Act,
1955 (10 of 1955);

f. The Untouchability (Offences) Act,
1955 (22 of 1955);

g. The Customs Act, 1962 (52 of
1962);

h. The Foreigners Act, 1946 (31 of
1946); or

- ii. Any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

- g. Is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behavior for such period, not exceeding three years, as the Magistrate thinks fit.”

16. Section 151 Cr.P.C. is as under:

“151. Arrest to prevent the commission of cognizable offences.—(1) A police officer knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that

the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.”

17. There is another disturbing practice related to the arrest and incarceration of such persons. This is the practice in the state of West Bengal of accepting only the sureties from persons who are “registered” with the CJM or the ACJM. No sureties outside this list are accepted. This list of registered sureties contains many names of lawyers and law clerks. It is the widespread experience of the under trials that without payment of money to these registered sureties, their bonds will not be accepted. This is therefore a system of huge corruption and it causes grave inconvenience to the indigent under trials.

18. Another distressing practice in the West Bengal Trial Courts is the recording of the Court orders in the order sheet of all police cases by the police personnel themselves. The order sheet at Annexure P-6 hereto abovementioned at page 111-117 is similarly written in the handwriting of police personnel in all cases.

LIST OF DATES AND EVENTS

DATE	EVENTS
2012-2013	The petitioner organization came to know that many persons were under detention in prison for days and months though there were no substantive charges against them apart from proceedings drawn up either under section 107 or section 109 of the Criminal Procedure Code.
16.05.2013	Petitioner organization received a list of persons as a reply to RTI application from the Alipore Central Correctional Home which contains a list of persons presently under detention in their custody
17.05.2013	Petitioner organization received a list of persons as a reply to RTI application from the Malda District Correctional Home which contains a list of persons presently under detention in their custody
21.05.2013	Petitioner organization received a list of persons as a reply to RTI application from the Balurghat

District Correctional Home which contains a list of persons presently under detention in their custody

25.05.2013 Petitioner organization received a list of persons as a reply to RTI application from the Asansol Central Prison which contains a list of persons presently under detention in their custody

28.05.2013 Petitioner organization received a list of persons as a reply to RTI application from the Chandanagore Subsidiary Correctional Home which contains a list of persons presently under detention in their custody

07.08.2013 The petitioner wrote a letter to the Chairman, West Bengal Human Rights Commission stating that a large number of Indian Citizens are languishing in various Prisons and Correctional homes in the state of West Bengal.

30.08.2013 The Hon'ble High Court of Calcutta at Kolkatta dismissed the Writ Petition filed by the Petitioner Organization being Writ Petition No. 26112 of 2013

Hence the present petition.

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CrI.) No.2013

(Arising out of the impugned judgment and final order dated 30.08.2013 passed by the Hon'ble High Court of Calcutta in Writ Petition (CrI.) No. 26112 of 2013)

BETWEEN:

STATUS OF PARTIES

	<u>IN THE HIGH COURT</u>	<u>IN THIS HON'BLE COURTS</u>
1. Banglar Manabdhikar Suraksha Mancha (MASUM), through its secretary Shri Kirity Roy, having its office at Balaji Place (4 th Floor), 40A Barabagan Lane, Srirampore, District Hooghly, West Bengal—712203	PETITIONER	CONTESTING PETITIONER
Versus		
1. The State of West Bengal, through the Chief Secretary, having its office at Writers' Buildings, Kolkata—700001	RESPONDENT	CONTESTING RESPONDENT NO. 1
2. The State of West Bengal, through the Secretary, Department of Home Affairs, having its office at Writer's Buildings, Kolkotta-700001	RESPONDENT	CONTESTING RESPONDENT NO. 2

- | | | |
|--|------------|-----------------------------|
| 3. The State of West Bengal, through the Secretary, Department of Judicial, having its office at Writer's Buildings, Kolkotta-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 3 |
| 4. The State of West Bengal, through the Secretary, Department of Law, having its office at Writer's Buildings, Kolkotta-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 4 |
| 5. The State of West Bengal, through the Secretary, Department of Correctional Administration, having its officer at Writer's Buildings, Kolkotta-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 5 |
| 6. The West Bengal State Legal Services Authority, through the Registrar cum Deputy Secretary, having its office at City Civil Court Building, 1 st Floor, 2 & 3, Kiron Sankar Ray Road, Kolkata-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 6 |
| 7. The Registrar General, Appellate Side, Hon'ble Court at Calcutta, Kolkata-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 7 |
| 8. The Director General of Police West Bengal Police, having its office at Writer's Buildings, Kolkata-700001 | RESPONDENT | CONTESTING RESPONDENT NO. 8 |
| 9. The Commissioner of | RESPONDENT | CONTESTING |

Police, Kolkata Police,
having its office at 18,
Lalbazar Street, Kolkata-
700001

RESPONDENT
NO. 9

10. The Inspector General
of Correctional Services,
having its office at
Writers' Buildings,
Kolkata-700001

RESPONDENT

CONTESTING
RESPONDENT
NO. 10

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND

HIS COMPANION JUSTICES OF

THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. This Special Leave Petition impugns the order dated 30.08.2013 of 2013 of the Kolkata High Court in Writ Petition 26112 of 2013. Along with this Special Leave Appeal, an Application for Directions has also been made.

This petition was filed in the public interest for and on behalf of thousands of persons in the state of West Bengal who suffer illegal incarceration for varying periods of time without ever being charged with any offence on account of the police and magistrates illegally detaining such persons only under the provisions of 107, 109 and 151 Cr.P.C. These persons are in jail for days and sometimes months and then released without any criminal proceedings instituted against them. Not only are these proceedings contrary to the abovementioned sections which speak only of execution of a bond and do not permit arrest solely on the basis of these sections of the Cr.P.C., additionally these arrests are contrary to the decision of the Supreme Court in *Madhu Limaye Vs. Ved Murti* (AIR 1971 SC 2481) where the Supreme Court held as under:

“...we have seen the provisions of section 107.

That section says that action is to be taken in the manner hereinafter provided and this clearly indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according

to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasize the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

2. Question of Law:

- i. Whether or not a large number of persons are made to suffer imprisonment, for indefinite periods, throughout the State, in abuse of the provisions of section 107 to 110 of the Criminal Procedure Code and whether the Respondents authority ought to ensure that no persons are denied of their right to liberty to be curtailed in such manner;
- ii. Whether or not due to the abuse of the powers and provisions as enshrined under section 107, 109 and 151 of the Code of Criminal Procedure and arbitrary arrest and detention resulting thereto consequently becomes an additional burden for the correctional homes, which are already overburdened with the huge efflux of under-trial prisoners;

- iii. Whether or not the object of sections 107 and 151 of the Code of Criminal Procedure are of preventive justice and not punitive;
- iv. Whether or not the jurisdiction vested in a Magistrate to act under section 107 CrPC is to be exercised only in emergent situation and not arbitrarily as is happening in the state;
- v. Whether or not Section 151 of the Code be invoked only when there is imminent danger to peace or likelihood of breach of peace under section 107 of CrPC;
- vi. Whether or not the action of the concerned Executive Magistrate is in clear violation of the directions of the Hon'ble Supreme Court;
- vii. Whether or not wherein the liberty of the person is involved and the law is rightly solicitous that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned;
- viii. Whether or not the Respondent authorities must ensure that no persons is detailed in prisons in connection with a proceeding under section 107/109 or 110 of the CrPC only because they could not

furnish the requisite bond or produce on their behalf such surety or sureties as was directed by the Learned Magistrates concerned;

- ix. Whether or not persons against whom a proceeding is initiated under section 107/109/110 of the CrPC ought to be released on his personal bond;
- x. Whether or not there has been a gross violation of the most cherished fundamental right as flowing from article 21 of the Constitution of India;
- xi. Whether or not the Respondents are acting in violation of the principles underlying the convention against Torture and Other Cruel, inhuman or Degradation Treatment or Punishment;
- xii. Whether or not the Respondents are acting in violation of the principles underlying the International Covenant on Civil and Political Rights;
- xiii. Whether or not the Respondents are acting in violation of the principles underlying the Universal Declaration of Human Rights;
- xiv. Whether or not the Respondents have acted in violation of the Code of Conduct for Law Enforcement Officials as adopted by the United Nations General Assembly;

xv. Whether or not the persons detained in connection with proceedings initiated under section 107/109/110 of the CrPC should immediately be referred to the concerned District Legal Services Authority and/ or Sub-Divisional Legal Services Authority and/or any other volunteer legal aid authorities for their immediate release;

xvi. Whether or not the Respondents ought to substantially compensate the persons who are presently under detention at various correctional homes in the state, in connection with proceedings arising out of section 107 and/or 109 of the CrPC.

3. The facts succinctly stated leading to and culminating in the present Petition for Special Leave to Appeal are as under:

b. On the basis of applications filed and information received under the provisions of the Right to Information Act, 2005 (RTI), petitioner put on record before the High Court, in the first instance, a list of 99 persons who were arrested and detained in the Alipore Central Correctional Home for varying periods of time in proceedings solely under 107, 109 and 151

Cr.P.C. This list is at **Annexure P-1 (Page No. _____ to _____)** hereto. Petitioner has deleted from the original list received under RTI the names of those persons arrested under various sections of IPC.

c. Similarly, petitioner put on record a similar list obtained under RTI from the authorities in respect of undertrial prisoners lodged at the Malda District Correctional Home. This is at **Annexure P-2 (Page No. _____ to _____)**. A similar list in respect of the Balurghat District Correctional Home is at **Annexure P-3 (Page No _____ to _____)** hereto. Likewise, the list in respect of the Asansol Central Prison is at **Annexure P-4 (Page No. _____ to _____)**. The list in respect of Chandanagore Subsidiary Correctional Home is at **Annexure P-5 (Page No. _____ to _____)**.

d. At **Annexure P-6 (Colly) (Page No. _____ to _____)** hereto is the order sheet in respect of an accused person Umesh Singh who was arrested solely under 42/ 109 Cr.P.C. on 24.5.13, produced before the Magistrate on 25.5.13, only because, according to the police report, he could not give a satisfactory answer as to his presence during odd

hours of the night. He was remanded to judicial custody upto 7.6.13 and ordered to submit a good behavior bond of Rs. 3,000. On 7.6.13 since the prosecution report was not received he was remanded to judicial custody upto 20.6.13. On 20.6.13 the order sheet reveals that the accused informed the Court that he was a daily wager on which the Court directed him to execute a good behavior and attendance bond of Rs. 10,000 and to mark his presence at the police station every Wednesday and Friday.

e. Petitioner therefore wrote a letter dated 7.8.13 to the Chairman, West Bengal Human Rights Commission stating therein "that a large number of Indian citizen are suffering imprisonment for indefinite periods in different districts and sub-divisional prisons (correctional homes) in connection with proceedings evoking the provisions of 107/109/110 Cr.P.C....that a large number of innocent people were languishing in prisons...unconstitutionally and illegally". This letter is at **Annexure P-7 (Page No. ____ to ____)**. The

letter enclosed another list of persons so incarcerated.

- f. In this regard, The Petitioner craves to rely on a judgment of this Hon'ble Court that was passed way back on 2 February, 1925 in the case of Sheikh Piru –Versus- King-Emperor as reported in AIR 1925 Cal 616, where this Hon'ble Court had observed as follows:

“...Of late we have been receiving an unusually large number of appeals from prisoners who have been sent to jail by the Presidency Magistrate of Calcutta on failure to furnish security under the provisions of Section 118 read with Section 109, Criminal Procedure Code and we regret to observe that we have found that many of these cases have either been inadequately enquired into or are cases in which the provisions of the law have been altogether misapplied. We cannot but attribute this state of things to a misapprehension as to the true import of Section 109, Criminal Procedure Code and ignorance of the

procedure which the amending Act of 1923 has introduced into the Code...”

g. The Petitioner most respectfully states that, admittedly, the mandatory nature of the precautions to be observed by an Executive Magistrate while exercising the powers under Section 107 Code of Criminal Procedure has been explained by the Supreme Court in Madhu Limaye –Versus- Ved Murti as reported in AIR 1971 SC 2481. The Constitution Bench explained that Section 107 is in aid of orderly society and seeks to nib in the bud conduct subversive of the peace and public tranquility. For this purpose the Magistrates are invested with large judicial discretionary powers for the preservation of the public peace and order.

h. The Hon’ble Court then proceeded to explain the significance of the procedural safeguards in para 36 of that judgment which reads as under:-

“...We have seen the provisions of S. 107. That section says that action is to be taken in the manner hereinafter provided and this clearly

indicates that it is not open to a Magistrate in such a case to depart from the procedure to any substantial extent. This is very salutary because the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned. It behoves us, therefore, to emphasize the safeguards built into the procedure because from there will arise the consideration of the reasonableness of the restrictions in the interest of public order or in the interest of the general public.”

- i. The Petitioner in this regard most respectfully states as it would transpire from the plain reading of the provisions underlying Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure that When the magistrate acting under Section 107 deems it necessary to require any person to show cause under that section, he has to make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the

number, character and class of sureties, if any required.

- j. The order made by the magistrate has to be read over to the person in respect of whom such order is made if that person happens to be present in court under Section 113 of the Code of Criminal Procedure. In case such person is not present in court, the magistrate has to issue summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court. Under Section 117 of the Criminal Procedure Code, when an order under Section 112 has been read over or explained to a person under Section 113 or Section 114 of the Code of Criminal Procedure, the magistrate is required to proceed to enquire into the truth, of the information upon which action was taken by him, and to take such further evidence as may appear necessary.
1. It requires that the Magistrate acting under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure, shall make an order in writing, setting forth the substance of the information received, the amount of the

bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands. The section speaks of the substance of the information. It may not repeat the information bodily but it must give proper notice of what has moved the Magistrate to take the action. This order is the foundation of the jurisdiction and the word 'substance' means the essence of the most important parts of the information.

2. These provisions of the Criminal Procedure Code thus lay down that, whenever proceedings under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure are contemplated against any person the proceedings are to be initiated by preparing a notice under Section 112 of the Code and serving it on that person under Section 113 or Section 114 of the Code.

3. In this regard the Petitioner most respectfully states that the abuse of the powers enumerated under Sections 107 to 110, of the Code has even been expressed as a concern for the Law Commission as well. The relevant abstract from the Law Commission's report is as follows:

"...There is yet another category viz., sections 107 to 110 of the Code of Criminal Procedure. These sections empower the Magistrate to call upon a person, in situations/circumstances stated therein, to execute a bond to keep peace or to be on good behaviour. These provisions do not empower a police officer to arrest such persons. Yet, the fact remains (a fact borne out by the facts and figures referred to hereinafter) that large numbers of persons are arrested under these provisions as well..."

k. The Petitioner most respectfully states that amidst these established procedures of law, it can be safely presumed in this respect that all such persons are under detention in respect of proceedings either under Section 107 or Section 109 of the Code of

Criminal Procedure, due to the simple reason that they either could not furnish the requisite bond or produce on their behalf such surety or sureties as was directed by the Learned Magistrate concerned.

l. The Petitioner most respectfully states that depriving the citizen of liberty by initiating proceedings under Section 107 to 110 of the Code, solely on the ground that no person is coming forth for giving a surety, virtually tantamount to making of unlawful effort to keep a citizen in jail for uncertain period.

m. The Petitioner craves leave to refer a judgment of the Hon'ble Delhi High Court, where the Hon'ble Court took suo-motu cognizance with regard to the plights of the inmates of the Tihar Correctional Home, being CrI. Ref. No.1/2007 and CrI. M.A. No.7030/2007 wherein the Hon'ble Court was pleased to observe as follows:

"...Pursuant to our order dated 25.7.2007, Mr. P.P. Malhotra, Additional Solicitor General for India, has made some very positive suggestions. He has pointed out to this Court that there are about 500 under-trials who are languishing in jail because they have not been able to furnish sureties. He points out that in

spite of judgment of this Court in Rotary Club International Vs. State, where it is laid down that if any person is in prison for more than two months and has been unable to furnish surety, his case shall be reviewed by the concerned court, it appears that the direction is not being followed. He submits that 65 per cent of the under-trials, i.e., 6,971 under-trials are in detention for periods upto three months. Breakup of period of incarceration of other under-trials is stated as under:-

Number	of under-trials	Detention	Period
i) 1,500		3-6	months
ii) 1,254		6-12	months
iii) 1,061		12-24	months
iv) 503		24-36	months
v) 277		36-48	months
vi) 194		48-60	months
vii) 138		More than 60	months

Learned Additional Solicitor General suggests that all cases where a person has been incarcerated over three months, his case must be reviewed by the concerned court and wherever the court finds that the person is fit

to be admitted to bail, he may be set at liberty on terms and conditions which conform to the law laid down in the judgment of the Supreme Court in Moti Ram and Others Vs. State of Madhya Pradesh; 1978 (4) SCC 47. He emphasizes that poverty must never stand in the way of any prisoner enjoying the fruits of liberty. He suggests that for those persons, who are not in a position to furnish sureties of large amounts, the courts should be sensitive enough to ensure that once bail is granted, the bail amount must be within the reach of the person upon whom this privilege has been bestowed. He submits that bail should not be illusory but a reality.

Learned Additional Solicitor General has also brought to our notice that about 33 per cent of under-trials are not residents of Delhi and most of them are unable to furnish local surety. He submits that in keeping with the directions laid down by the Supreme Court in the judgment referred to above, local sureties should not be insisted upon and that after the identities and

actual places of residence of the under-trials and their sureties are verified by the police from their respective States, they can be released on furnishing outstation sureties.

Learned Additional Solicitor General informs us that there are approximately twenty under-trials who are terminally sick. They are suffering from diseases such as, HIV-AIDS, Cancer, etc. He suggests that they should be admitted to bail on humanitarian grounds.

Another suggestion made by learned Solicitor General is that those involved in petty offences like small theft or under Railways Act, Excise Act, should not be sent to jail but admitted to bail as soon as possible. Learned Additional Solicitor General goes on to submit that most of the under-trials belong to the poor strata of society, who are barely able to afford a square meal, let alone legal assistance. He draws our attention to a growing trend of such persons taking shelter in jail by indulging in petty

crimes to attain a square meal. This, according to the learned Additional Solicitor General has also resulted in overcrowding. According to him, courts should be aware of such trends and facilitate such persons' release on bail.

The Additional Solicitor General has also suggested that under-trials be appraised of the provisions of 'plea bargain' so as to make them to take recourse to the same in a greater measure. For this purpose, he suggests that a court should sit once a month to take up such cases and dispose them off on the basis of 'plea bargain'. We, while appreciating the assistance rendered to us by the Additional Solicitor General, direct that:-

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.
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.

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.

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.

n. The Petitioner most respectfully states as a final point that the Petitioner organization has come across instances where subsequent to the release of a person on his furnishing bond in a proceeding arising out of Section 109 of the Criminal Procedure Code, the concerned Executive Magistrate has directed him to appear and mark his presence before the concerned police station on a regular basis. The

Petitioner most respectfully states that such an order requiring a person to attend the police station, subsequent to his furnishing the requisite bond is beyond the authority, jurisdiction and ambit of the concerned authority acting as an Executive Magistrate while dealing with proceedings arising out of Section 107 or 109 of the Code of Criminal Procedure and as such is a sheer abuse of power and thus necessary orders are required to bring to an end, such unlawful and unauthorized practices which directly curtails a person's right to liberty without the sanction of the law of the land.

o. Section 107 Cr.P.C. is as under:

“107. Security for keeping the peace in other cases.—(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquility and is of opinion that there is sufficient ground for proceeding, he may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the

peace for such period, not exceeding one year, as the Magistrate thinks fit.

(2) Proceedings under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquility or to do any wrongful act as aforesaid beyond such jurisdiction.”

p. Section 109 Cr.P.C. is as under:

“109. Security for Good Behaviour from Suspected Persons—When an Executive Magistrate receives information that there is within his local jurisdiction a person taking precautions to conceal his presence and that there is reason to believe that he is doing so with a view to committing a cognizable offence, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a

bond, with or without sureties, for his good behavior for such period, not exceeding one year, as the Magistrate thinks fit.”

q. Section 110 Cr.P.C. is as under:

“110. Security for good behavior from habitual offenders—When an Executive Magistrate receives information that there is within his local jurisdiction a person who—

1. Is by habit a robber, house-breaker, thief, or forger, or
2. Is by habit a receiver of stolen property knowing the same to have been stolen, or
3. Habitually protects or harbours thieves, or aids in the concealment or disposal of stolen property, or
4. Habitually commits, or attempts to commit, or abets the commission of, the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Chapter XII of the Indian Penal Code (45 of 1860), or under section 489-A, section 489-B, section 489-C or section 489-D of that Code, or

5. Habitually commits, or attempts to commit, or abets the commission of, offences, involving a breach of the peace, or
6. Habitually commits, or attempts to commit, or abets the commission of—
 - i. Any offence under one or more of the following Acts, namely:--
 - a. The Drugs and Cosmetics Act, 1940 (23 of 1940);
 - b. The Foreign Exchange Regulation Act, 1973 (46 of 1973);
 - c. The Employees' Provident Funds and Family Pension Fund Act, 1952 (19 of 1952);
 - d. The Prevention of Food Adulteration Act, 1954 (37 of 1954);
 - e. The Essential Commodities Act, 1955 (10 of 1955);
 - f. The Untouchability (Offences) Act, 1955 (22 of 1955);

g. The Customs Act, 1962 (52 of 1962);

h. The Foreigners Act, 1946 (31 of 1946); or

ii. Any offence punishable under any other law providing for the prevention of hoarding or profiteering or of adulteration of food or drugs or of corruption, or

7. Is so desperate and dangerous as to render his being at large without security hazardous to the community,

such Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with sureties, for his good behavior for such period, not exceeding three years, as the Magistrate thinks fit.”

r. Section 151 Cr.P.C. is as under:

“151. Arrest to prevent the commission of cognizable offences.—(1) A police officer

knowing of a design to commit any cognizable offence may arrest, without orders from a Magistrate and without a warrant, the person so designing, if it appears to such officer that the commission of the offence cannot be otherwise prevented.

(2) No person arrested under sub-section (1) shall be detained in custody for a period exceeding twenty-four hours from the time of his arrest unless his further detention is required or authorized under any other provisions of this Code or of any other law for the time being in force.

s. There is another disturbing practice related to the arrest and incarceration of such persons. This is the practice in the state of West Bengal of accepting only the sureties from persons who are "registered" with the CJM or the ACJM. No sureties outside this list are accepted. This list of registered sureties contains many names of lawyers and law clerks. It is the widespread experience of the under trials that without payment of money to these registered sureties, their bonds will not be accepted. This is

therefore a system of huge corruption and it causes grave inconvenience to the indigent under trials.

t. Another distressing practice in the West Bengal Trial Courts is the recording of the Court orders in the order sheet of all police cases by the police personnel themselves. The order sheet at Annexure P-6 hereto abovementioned at page 111-117 is similarly written in the handwriting of police personnel in all cases.

4. Being aggrieved by the impugned judgment and final order dated 30.08.2013 passed by the High Court of Calcutta at Kolkata in Writ Petition No. 26112 of 2013, the Petitioner herein is approaching this Hon'ble Court by way of the present petition under Article 136 of the Constitution of India seeking Special Leave to Appeal there against on the following amongst other grounds:

5. GROUNDS

I. For that a large number of persons are made to suffer imprisonment, for indefinite periods, throughout the State, in connection with proceedings arising out of and/or invoking the provisions of Section 107 to 110 of the Criminal

Procedure Code and without any other substantive charges against them, which is beyond the scope and ambit of the said provisions and thus all such detentions are thus illegal and the Respondents authority ought to ensure that no persons are denied of their right to liberty to be curtailed in such manner;

II. For that from the records available from the correctional homes it transpires that persons are made to suffer detention in prisons for days and months though there were no substantive charges against them apart from a proceeding drawn up either under Section 107 or Section 109 of the Criminal Procedure Code, 1973 as against these persons, which is illegal, unlawful and in violation of the fundamental rights of such persons;

III. For that due to the abuse of the powers and provisions as enshrined under Section 107, 109 and 151 of the Code of Criminal Procedure and arbitrary arrest and detention resulting thereto consequently becomes an additional burden for the correctional

homes, which are, admittedly, already overburdened with the huge efflux of under-trial prisoners;

- IV. For that the object of the Sections 107 and 151 of the Code of Criminal Procedure are of preventive justice and not punitive.

- V. For that the jurisdiction vested in a Magistrate to act under Section 107 of the Code of Criminal Procedure is to be exercised only in emergent situation and not arbitrarily as is happening in the State;

- VI. Section 151 of the Code of Criminal Procedure should only be invoked when there is imminent danger to peace or likelihood of breach of peace under Section 107 Code of Criminal Procedure. An arrest under Section 151 can be only be supported when the person to be arrested designs to commit a cognizable offence;

VII. For that the action of the concerned Executive Magistrate is in clear violation of the directions of the Hon'ble Supreme Court in Madhu Limaye – Versus- Ved Murti wherein the Hon'ble Court has observed inter alia, that Section 107 is in aid of orderly society and seeks to nib in the bud conduct subversive of the peace and public tranquility. For this purpose the Magistrates are invested with large judicial discretionary powers for the preservation of the public peace and order;

VIII. For that wherein the liberty of the person is involved and the law is rightly solicitous, that this liberty should only be curtailed according to its own procedure and not according to the whim of the Magistrate concerned;

IX. For that it has been categorically observed by the Hon'ble Supreme Court in the landmark judgment of Joginder Kumar –versus- The State of Uttar Pradesh that no arrest can be made because it is lawful for the Police Officer to do so. The existence of the power to arrest is one thing. The justification

for the exercise of it is quite another. The police Officer must be able to justify the arrest apart from his power to do so. Arrest and detention in police lock-up of a person can cause incalculable harm to the reputation and self esteem of a person. No arrest can be made in a routine manner on a mere allegation of commission of an offence made against a person. It would be prudent for a Police Officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bona fides of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest. Denying a person of his liberty is a serious matter;

- X. For that a person is thus not liable to arrest merely on the suspicion of complicity in an offence. There must be some reasonable justification in the opinion of the Officer affecting the arrest that such arrest is necessary and justified. Except in heinous offences, an arrest must be avoided if a police

officer issues notice to a person to attend the Station House and not to leave Station without permission would do;

XI. For that it is the right of every person to be granted bail if not charged of a non-bailable offence;

XII. For that when the concerned Magistrate acting under Section 107 deems it necessary to require any person to show cause under that section, he has to make an order in writing setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force and the number, character and class of sureties, if any required;

XIII. For that such an order as made by the Magistrate has to be read over to the person in respect of whom such order is made if that person happens to be present in court under Section 113 of the Code of Criminal Procedure. In case such person is not present in court, the Magistrate has to issue summons requiring him to appear, or, when such

person is in custody, a warrant directing the officer in whose custody he is, to bring him before the Court;

XIV. For that under Section 117 of the Criminal Procedure Code, when an order under Section 112 has been read over or explained to a person under Section 113 or Section 114 of the Code of Criminal Procedure, the Magistrate is required to proceed to enquire into the truth, of the information upon which action was taken by him, and to take such further evidence as may appear necessary;

XV. For that sub-section 3 of Section 117 provides for circumstances which empowers the Magistrate, if he considers that immediate measures are necessary for prevention of a breach of the peace or disturbance of the public tranquility or the commission of any offence or for the public safety, for reasons to be recorded in writing, to direct the person in respect of whom the order under Section 112 has been made to execute a bond with or without sureties for keeping the peace or maintaining good behaviour until the conclusion of

the enquiry and to detain him in custody until such bond is executed or, in default of execution, until the inquiry is concluded;

XVI. For that it requires that the Magistrate acting under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure, shall make an order in writing, setting forth the substance of the information received, the amount of the bond, the term for which it is to be in force and the number, character and class of sureties (if any) required. Since the person to be proceeded against has to show cause, it is but natural that he must know the grounds for apprehending a breach of the peace or disturbance of the public tranquility at his hands;

XVII. For that the said provisions of the Criminal Procedure Code thus lay down that, whenever proceedings under Section 107 or Section 109 or Section 110 of the Code of Criminal Procedure are contemplated against any person the proceedings are to be initiated by preparing a notice under Section 112 of the Code and serving it on that

person under Section 113 or Section 114 of the Code.

XVIII. For that the Respondent authorities must ensure that no person is detailed in prisons in connection with a proceeding under Section 107 an/or 109 and/or 110 of the Criminal Procedure Code only because they could not furnish the requisite bond or produce on their behalf such surety or sureties as was directed by the Learned Magistrates concerned;

XIX. For that persons against whom a proceeding is initiated under Section 107 an/or 109 and/or 110 of the Criminal Procedure Code, ought to be released on his personal bond;

XX. For that it is an well established principle that depriving the citizen of liberty by initiating proceedings under Section 107 to 110 of the Code, solely on the ground that no person is coming forth for giving a surety, virtually tantamount to making of unlawful effort to keep a citizen in jail for uncertain period;

XXI. For that an order requiring a person to attend the police station, subsequent to his furnishing the requisite bond is beyond the authority, jurisdiction and ambit of the concerned authority acting as an Executive Magistrate while dealing with proceedings arising out of Section 107 or 109 of the Code of Criminal Procedure and as such is a sheer abuse of power;

XXII. For there has been a gross violation of the most cherished fundamental right as flowing from Article 21 of the Constitution of India, which guarantees to every person the right to life and liberty and the Respondents ought to take necessary steps forthwith to ensure that no person is required to suffer detention in proceedings arising out of Section 107 or 109 of the Code of Criminal Procedure in the absence of any further substantial charges;

XXIII. For that the Respondents are acting in violation of the principles underlying the Convention against Torture and Other Cruel, Inhuman or Degrading

Treatment or Punishment as was adopted by the United Nations General Assembly on 10 December 1984 to which India is a signatory;

XXIV. For that the Respondents are acting in violation of the principles underlying the International Covenant on Civil and Political Rights, morefully and more particularly the action of the Respondents are in absolute violation of Article 9 of the Covenant which guarantees to all, the right to liberty and security and forbids the State Parties from resenting to arbitrary arrest or detention. It is further enshrined therein that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful, and that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation;

XXV. For that the Respondents are acting in violation of the principles underlying Article 3 of the Universal Declaration of Human Rights it is enumerated wherein that everyone has the right to life, liberty and security of person;

XXVI. For that the Respondents are acting in violation of the principles underlying Article 5 of the Universal Declaration of Human Rights it is enumerated wherein that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment;

XXVII. For that the Respondents are acting in violation of the principles underlying Article 9 of the Universal Declaration of Human Rights it is enumerated wherein that no one shall be subjected to arbitrary arrest, detention or exile;

XXVIII. For that the Respondents have acted in violation of the Code of Conduct for Law Enforcement Officials as adopted by resolution being 34/169 of 17 December, 1979 by the United Nations General

Assembly, morefully and especially the provisions of Article 5 of the Code which lays that no law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment. The

XXIX. For that the Respondents ought to bring into place an arrangement whereby and wherein a person sent to any correctional home in the State, in connection with proceedings arising out of Section 107 and/or 109 of the Code of Criminal Procedure, is immediately referred to the concerned District Legal Services Authority and/or the Sub-divisional Legal Services Authority and/or any other volunteer legal aid authorities for their immediate release;

XXX. For that the Respondents ought to substantially compensate the persons who are presently under detention at various correctional homes in the State, in connection with proceedings arising out of Section 107 and/or 109 of the Code of Criminal Procedure;

6. The petitioner states that no other petition seeking Special Leave to Appeal has been filed by the Petitioner and pending challenging the impugned judgment and final order dated 30.08.2013 passed by the Calcutta High Court at Calcutta in Writ Petition No. 26112 of 2013.

7. The Annexures produced along with the present petition are true and correct copies of the pleadings/documents which form part of records in the court below.

8. MAIN PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may graciously pleased to:-

- a. Grant to the Petitioner Special Leave to Appeal against the impugned judgment and final order dated 30.08.2013 passed by the Hon'ble High Court

of Calcutta at Kolkata in Writ Petition (Crl.) No.
26112 of 2013; and

- b. Such further order or orders as Your Lordships may
seem fit and proper for the ends of justice;

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN
DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

Filed by

FILED ON:

JYOTI MENDIRATTA
(ADVOCATE FOR PETITIONER)

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Cri.) NO. _____ OF 2013

Banglar Manabadhikar Suraksha Mancha (MASUM) ...Petitioner

Versus

The State of West Bengal & Ors.

...Respondent

CERTIFICATE

Certified that the petitioner herein was a party to the proceedings before the High Court wherein the impugned order has been passed, the Special Leave Petition is not confined only to the pleadings before the High Court whose order is challenged and the other documents relied upon in those proceedings. Additional facts, document/ grounds have been taken therein or relied upon in this Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the question of law raised in the petition or to make out grounds urged in the Special Leave Petition for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/person authorized by the Petitioner whose affidavit is filed in support of the Special Leave Petition.

FILED BY:

FILED ON:

JYOTI MENDIRATTA
ADVOCATE FOR THE PETITIONER

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRL. M.P. NO. _____ OF 2013

IN

SPECIAL LEAVE PETITION (Cri.) NO. _____ OF 2013

Banglar Manabadhikar Suraksha Mancha (MASUM) ...Petitioner

Versus

The State of West Bengal & Ors. ...Respondent

APPLICATION FOR DELETION OF RESPONDENTS NO. 2—

10

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF

THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE PETITIONER ABOVENAMED.

MOST RESPECTFULLY SHOWETH:

1. The petitioner have filed this accompanying petition under article 136 of the Constitution of India for grant of Special Leave to Appeal directed against the impugned judgment and final order dated 30.08.2013 passed by the Hon'ble

High Court of the Calcutta High Court at Kolkata. Petitioner has set out the facts and legal submissions in the body of the petition and, for the sake of brevity these are not being set out herein in extensor.

2. That the petitioner submits that the present Special Leave Appeal needs to be addressed only to the State of West Bengal (R-1) and that there is no need of involvement of the other respondents (R-2 to R-10) as in the Writ Petition filed before the Hon'ble High Court of Calcutta.
3. The petitioner therefore seeks for the deletion of R-2 to R-10 from being parties to the present Special Leave Appeal.

PRAYER

The petitioner therefore seeks to pray as under:

- a. Pass an order for the deletion of the Respondents No. 2—10 from being party to the present Special Leave Appeal;
- b. Pass any other order or direction as the Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

DRAWN BY:

Filed by

FILED ON:

JYOTI MENDIRATTA
(ADVOCATE FOR PETITIONER)

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRL. M.P. NO. _____ OF 2013

IN

SPECIAL LEAVE PETITION (CrI.) NO. _____ OF 2013

Banglar Manabadhikar Suraksha Mancha (MASUM) ...Petitioner

Versus

The State of West Bengal & Ors. ...Respondent

APPLICATION FOR DIRECTIONS

TO

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS COMPANION JUDGES OF

THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF
THE PETITIONER ABOVENAMED.

MOST RESPECTFULLY SHOWETH:

1. The petitioner have filed this accompanying petition under article 136 of the Constitution of India for grant of Special Leave to Appeal directed against the impugned judgment and final order dated 30.08.2013 passed by the Hon'ble High Court of the Calcutta High Court at Kolkata. Petitioner has set

out the fact and legal submissions in the body of the petition and, for the sake of brevity these are not being set out herein in extensor.

2. That many persons are languishing in the prison booked under sections 107/110 of the CrPC, many for days.
3. That the Hon'ble High Court of Calcutta at Kolkata dismissed the Petitioner's Writ Petition on 30.08.2013. Thereby leaving the petitioner with no other choice but to appeal through this Special Leave Appeal.
4. The petitioner therefore prays for the following direction.

PRAYER

The petitioner would like to make the following prayers for Directions:

- a. Issue a Direction upon the Respondent (R-1), their men, agents and subordinates to immediately identify persons detained in the correctional homes of the State in connection with proceedings arising out of Section 107 and/or Section 109 Criminal Procedure Code, 1973 and forthwith release them and/or set them at liberty;

- b. Issue a Direction upon the Respondent (R-1), their men, agents and subordinates to ensure that no person is made to suffer imprisonment in connection with proceedings arising out of and/or invoking the provisions of Section 107 and/or Section 109 and/or Section 110 of the Criminal Procedure Code, 1973 in the absence of any further substantive charges against them, and thus to ensure that no person is denied of his right to liberty;
- c. For an order directing an enquiry by an independent person into the prevailing system of registered sureties in the state of West Bengal and thereafter to dismantle the system of registered sureties;
- d. For an order directing all the Criminal Courts in the state of West Bengal to ensure that the Court orders are written only by authorized Court staff/judicial officers and that in no circumstance should personnel be associated with the writing of court orders;
- e. Issue a direction directing the Sub-divisional Magistrates and/or the Executive Magistrates in the State of West Bengal to release persons upon furnishing personal bonds who are incapable to bring or produce sureties in proceedings arising out of

Section 107 and/or Section 109 Criminal Procedure Code, 1973;

f. Issue a Direction directing the Sub-divisional Magistrates and/or the Executive Magistrates in the State of West Bengal prohibiting them from passing directions requiring attendance of a person at the police station subsequent to his furnishing the requisite bond in proceedings arising out of Section 107 and/or Section 109 Criminal Procedure Code, 1973;

g. Issue a Direction upon the Respondent (R-1), their men, agents and subordinates to suitably compensate persons detained in the correctional homes of the State in connection with proceedings arising out of Section 107 and/or Section 109 Criminal Procedure Code, 1973;

h. Issue a Direction upon the Respondent (R-1), their men, agents and subordinates to ensure, by way of continuous monitoring and regular check in all the correctional homes that whenever a person is brought into any correctional home in the State, in connection with proceedings arising out of Section

107 and/or 109 of the Code of Criminal Procedure, is immediately referred to the concerned District Legal Services Authority and/or the Sub-divisional Legal Services Authority and/or any other voluntary and non-governmental legal aid authorities for their immediate release;

- i. Issue a Direction upon the Respondent (R-1) to ensure that persons detained by the police in connection with proceedings arising out of Section 107 and/or 109 of the Code of Criminal Procedure are immediately expressly informed about their right to legal aid and to forthwith notify the concerned District Legal Services Authority and/or the Sub-divisional Legal Services Authority for rendering free legal services;
- j. Issue a direction directing the Sub-divisional Magistrates and/or the Executive Magistrates in the State of West Bengal to expressly inform all persons, brought before the authority in connection with proceedings arising out of Section 107 and/or 109 and/or 110 of the Code of Criminal Procedure, about their right to legal aid and to consult and be defended by a legal practitioner and to forthwith notify the concerned District Legal Services Authority

and/or the Sub-divisional Legal Services Authority for engaging a Lawyer;

k. Issue a Direction upon the Respondent (R-1) to ensure that all the District Legal Services Authorities and the Sub-divisional Legal Services Authorities take immediate steps for engagement of a Lawyer whenever such request is made either by the concerned Executive Magistrates and/or by the Police to represent a person detained in proceedings arising out of Section 107 and/or 109 and/or 110 of the Code of Criminal Procedure;

l. Issue a Direction upon the Respondent (R-1) to ensure that all persons arrested or detained in connection with proceedings arising out of Section 107 and/or 109 and/or 110 of the Code of Criminal Procedure are mandatorily produced before the concerned Executive Magistrate in person;

m. Such further order or orders as Your Lordships may seem fit and proper for the ends of justice;

AND FOR THIS ACT OF KINDNESS, THE PETITIONERS AS IN DUTY BOUND SHALL EVER BE GRATEFUL.

Date:

Filed by

Place: New Delhi

JYOTI MENDIRATTA
(ADVOCATE FOR PETITIONER)