

PETITIONER:
HUSSAINARA KHATOON & OTHERS

Vs.

RESPONDENT:
HOME SECRETARY, BIHAR & OTHERS W I T H W R I T P E T I T I O N (C R I M I N A L

DATE OF JUDGMENT 04/08/1995

BENCH:
AHMADI A.M. (CJ)
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AHMADI A.M. (CJ)
HANSARIA B.L. (J)
SEN, S.C. (J)

CITATION:
1995 SCC (5) 326 1995 SCALE (4)633

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

A large number of criminal writ petitions, many of them based on letters, were grouped together as petitions by under-trial prisoners and certain orders were passed from time to time for the release of certain prisoners on bail on their executing personal bonds for appearance without any monetary obligations. A detailed order was passed on February 12, 1979 by a Division Bench of this Court on a habeas corpus petition filed in regard to the state of affairs in Bihar. This was followed by orders passed from time to time which have been reported as "Re: Hussainara Khatoon & Ors." Guidelines have been laid down in these orders in regard to the release of under-trials who are found to be languishing in jails for want of expeditious disposal of pending cases. Now Criminal Miscellaneous Petition No.5660 of 1993 has been filed seeking certain general orders on the basis of guidelines culled out from the said orders, namely, for undertaking an inquiry in regard to the question of setting up of additional courts in every State, providing investigating agencies with more experts, simplifying the procedure for sanction of prosecution, strict compliance with the provision of Section 167 of the Code of Criminal Procedure, circulation of guidelines to the Courts in States and revision of categories of under-trials in various jails in the State of Bihar.

Since this Court has already laid down the guidelines by orders passed from time to time in this writ petition and in subsequent orders passed in different cases since then, we do not consider it necessary to restate the guidelines periodically because the enforcement of the guidelines by the subordinate courts functioning in different States should now be the responsibility of the different High Courts to which they are subordinate. General orders for release of under-trials without reference to specific fact-

situations in different cases may prove to be hazardous. While there can be no doubt that under-trial prisoners should not languish in jails on account of refusal to enlarge them on bail for want of their capacity to furnish bail with monetary obligations, these are matters which have to be dealt with on case to case basis keeping in mind the guidelines laid down by this Court in the orders passed in this writ petition and in subsequent cases from time to time. Sympathy for the under-trials who are in jail for long terms on account of the pendency of cases has to be balanced having regard to the impact of crime, more particularly, serious crime, on society and these considerations have to be weighed having regard to the fact-situations in pending cases. While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge-strength of subordinate judiciary in each State must be attended to, and its functioning overseen, by the High Court of the concerned State. We share the sympathetic concern of the learned counsel for the petitioners that under-trials should not languish in jails for long spells merely on account of their inability to meet monetary obligations. We are, however, of the view that such monitoring can be done more effectively by the High Courts since it would be easy for that Court to collect and collate the statistical information in that behalf, apply the broad guidelines already issued and deal with the situation as it emerges from the status reports presented to it. The role of the High Court is to ensure that the guidelines issued by this Court are implemented in letter and spirit. We think it would suffice if we request the Chief Justices of the High Courts to undertake a review of such cases in their States and give appropriate directions where needed to ensure proper and effective implementation of the guidelines. Instead of repeating the general directions already issued, it would be sufficient to remind the High Courts to ensure expeditious disposal of cases. Withdrawal of cases from time to time may not always be an appropriate and acceptable remedy, but what is required is to evolve a mechanism which would enable early disposal of cases. The High Court being on the spot would be able to diagnose the ailment rather than merely deal with the symptoms. We are, therefore, of the view that these petitions have served their purposes and should stand disposed of leaving the further implementation to the High Courts.