

**No. V-13013/70/2012-IS(VI)**  
**Government of India**  
**Ministry of Home Affairs**  
**(CS Division)**  
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5<sup>th</sup> Floor, NDCC-II Building  
Jai Singh Road, New Delhi  
the 17<sup>th</sup> January 2013

To

**The Home Secretaries**  
of all States/UTs

**Sub: Use of Section 436A of the Cr.P.C to reduce overcrowding of prisons.**

Sir/Ma'am,

The State Governments and Union Territories have been requested to adopt various measures related to reduction in overcrowding an advisory dated 9<sup>th</sup> May 2011<sup>1</sup> of the Ministry of Home Affairs. One of the initiatives taken by the Government of India has been the amendment of section 436 in the Cr.P.C. through the Criminal Procedure Code Amendment Act 2005 and the insertion of a new section 436A. The section 436A is reproduced below:

***“436A. Maximum period for which an undertrial prisoner can be detained – Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:***

*Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:*

*Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.*

*Explanation. – In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded”.*

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<sup>1</sup> <http://mha.nic.in/pdfs/PrisonAdvisories-1011.pdf>

Thus u/s 436A an under trial prisoner (UTP) has the right to seek bail on serving more than one half of the maximum possible sentence on their personal bond. No person can be detained in prison as an undertrial for a period exceeding the maximum possible sentence. This provision is, however, not applicable for those who are charged with offences punishable with the death sentence.

Although the percentage overcrowding in jails is steadily going down but even now in our prisons 67% of the inmates are undertrials as per 2011 data collected by NCRB.

Invariably it has been found that only the poor and indigent who have not been able to put up the surety are those who have continued to languish as under-trials for very long periods and that too for minor offences. The lack of adequate legal aid and a general lack of awareness about rights of arrestees are principal reasons for the continued detention of individuals accused of bailable offences, where bail is a matter of right and where an order of detention is supposed to be an aberration. Thus a disproportionate amount of our prison-space and resources for prison maintenance are being invested on UTPs which is not sustainable.

States/UTs may hence consider taking the following actions:

1. Constitute a Review Committee in every district with the District Judge as Chairman, and the District Magistrate and District SP as members to meet every three months and review the cases.
2. Jail Superintendent should conduct a survey of all cases where the UTPs have completed more than one-fourth of the maximum sentence. He should prepare a survey list and send the same to the District Legal Service Authority (DLSA) as well as the UT Review Committee.
3. Prison authorities may educate undertrial prisoners on their rights to bail.
4. Provide legal aid - may be provided through empanelled lawyers of DLSA to cases presented for release on bail and reduction of bail amount.
5. The list should be made available to the non-official visitors as well as District Magistrates/Judges who conduct periodic inspections of the jails.
6. Home Department may also develop management information system to ascertain the progress made jail-wise in this regard.

Action taken to implement the suggestions in all the jails may kindly be intimated within one month. The receipt of this letter may please be acknowledged.

Yours sincerely

Sd/-

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