

H.P. STATE LEGAL SERVICES AUTHORITY, SHIMLA-9.

NOTIFICATION

Shimla-9 the 14th August, 2019

No. 47-LSA/L.A.C.-Scheme/2003— In exercise of the powers conferred by clause (g) of section 2 of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987), read with clause (c) of sub section (2) of Section 7 of the Legal Services Authorities Act, 1987 (Act No. 39 of 1987), the Himachal Pradesh State Legal Services Authority hereby makes the following scheme further to amend the Himachal Pradesh Legal Aid Counsel Scheme, 2003 notified vide this Authority Notification No. 47-L.A.C. Scheme/2003, published in the Rajpatra, Himachal Pradesh, dated 4th October, 2003, namely:—

1. **Short title and commencement:-** (i) This Scheme may be called the Himachal Pradesh Legal Aid Counsel (fifth amendment) Scheme, 2003.

(ii) It shall come into force with immediate effect.

2. **To amend Clause 7:-** The following amended Clause 7 of the Himachal Pradesh Legal Aid Counsel Scheme, 2003 shall be incorporated in place of the existing Clause:

7. Duties and Functions of Legal Aid Counsel: -
The Legal Aid Counsel shall discharge the following duties:-

- (i) *To remain present during remand hours at the time and place fixed by the Magistrate concerned.*
- (ii) *The Legal Aid Counsel shall render all the assistance to a person in custody, during investigation of the cases, in the matters of bail, remand and with regard to all other legal rights of an accused.*
- (iii) *To keep details of the case in which he or she has extended his/her legal services in Remand and Bail matters.*
- (iv) *To submit monthly details of the work to the Presiding Officer of the concerned court/ Secretary, District Legal Services Authority.*
- (v) *To be devoted and dedicated towards his/her duties and legal services activities.*

- (vi) *While opposing Remand, Legal Aid Counsel for Bail and Remand are expected to be vigilant about the condition of the accused produced in the custody of the police. He/she should inquire if the accused was subjected to any ill-treatment and the same should be informed to the Magistrate and request be noted down in the remand order.*
- (vii) *The legislature has provided 24 hours after the arrest to the police to carry on preliminary investigation during the presence of the accused in custody. Invariably, when produced after 24 hours, remands are sought by the police without any prior investigation. Remands are usually sought and given to effect recoveries under Section 27 of the Evidence Act. It is responsibility of Legal Aid Counsel for bail and remand to not give the police an opportunity to create evidence under the guise of section 27 of the Evidence Act. The Legal Aid Counsel for Bail and Remand should familiarize themselves with the provisions of Section 41A of Cr.PC.*
- (viii) *Remand hours are fixed on Sundays and Court Holidays. The Legal Aid Counsel for Bail and Remand appointed in court working in the given holiday should therefore be present during production hours. The designated lawyers should inform the Magistrate/Reader when they leave court for the day and ensure that their contact details are available, so that they may be called if required later in the day.*
- (ix) *When the accused is produced in front of the Magistrate after 24 hours, it is a crucial time to ensure that whether further detention is necessary or not. Remand should only to be given when detention is must.*
- (x) *To ensure that remand orders should be speaking orders. It should be reasoned and should speak for itself.*
- (xi) *It would be the duty of the Legal Aid Counsel for Bail and Remand so nominated to oppose remand,*

apply for bail and move miscellaneous applications as may be required.

- (xii) *The working of the Executive Magistrate court is different from the regular Judicial Magistrate court. It is the responsibility of the Legal Aid Counsel for Bail and Remand to inform the court about the responsibility of the Legal Aid Counsel for Bail and Remand. They should be present in the court regularly and thus ensure that the scheme can reach out to people under preventive detention cases.*
- (xiii) *Drafting bail applications should be taken very seriously. In the present scenario, set formats are used by the lawyers; just basic details are changed for each case. Bail applications are drafted very 'Casually'. Legal Aid Counsel for Bail and Remand are expected to draft each of their bail application and mention all the relevant facts and grounds in the application. Lawyers should be vigilant to move bail application after 60-90 days if the charge-sheet has not been filed. Legal Aid Counsel for Bail and Remand must read out the sections which have been alleged against the accused. He should also be able to satisfy the court with the help of legal provisions and judgments. The Practice of insisting on local sureties is not proper. If the client has sureties outside the state where the case is being tried, the lawyers should oppose insistence on local sureties.*
- (xiv) *Compliance of Section 41A of Cr.PC should be checked. Whether the arrest was made after some amount of investigation and there was some apprehension that the crime was committed by the accused.*
- (xv) *The practice of insisting on local sureties while granting bail should be discouraged.*
- (xvi) *Apart from the above the Legal Aid Counsel for Bail and Remand should also check/ ensure that the following points are complied with while granting remand.*

- a) *Efforts must be made by the Investigating Officer to complete the investigation within 24 hours as fixed by Section 57 of the Cr.PC.*
- b) *If such completion is not possible and there are grounds for believing that the accusation/information is well founded the officer must forthwith forward the accused to the nearest Judicial Magistrate with a copy of the relevant entries.*
- c) *The Magistrate, who receives such information, may authorize the detention of the accused for a maximum period of 15 days to police custody.*
- d) *If within the said period of 90 days or 60 days the final report is not filed, the accused has an indefeasible right to be released from custody.*
- e) *Thereafter, he can be remanded to custody by the Magistrate only if he is not in a position to offer bail.*
- f) *When the accused is so released under the proviso to Section 167(2) of the Cr.PC, it shall be deemed that such release is under Chapter 33 of the Cr.PC.*
- g) *Such bail is also liable to be cancelled under Section 437(5) or Sec. 439(2) of the Cr.PC as the case may be.*
- h) *If the final report was filed after 60 or 90 days as the case may and the accused has not availed such indefeasible right to be released on bail before the final report is filed, he cannot claim such right to be released on bail.*
- i) *It is duty of Magistrate to inform accused his right of bail by default even in serious cases i.e. when charge sheet is not filed within prescribed period.*
- j) *The period of detention if ordered by the Executive Magistrate is to be counted.*
- k) *The word custody includes surveillance, restriction and not necessarily in hand.*
- l) *The object of remand is to avoid possible abuse by police and to facilitate investigation and not to coerce the accused.*

- m) *The Magistrate must ensure that the arrest is justified.*
- n) *To ensure that in normal circumstances Magistrate must assist the production of accused before court while giving remand.*
- o) *The object of remand is to enable the Magistrate to see if remand is necessary and to enable the accused to make representation and Magistrate has to pass a judicial order.*
- p) *If during the course of custody, commission of different crime is brought to light, accused can be detained for different offence.*
- q) *Should check the time of arrest as required under article 22 (2) of the Constitution of India to ensure that accused is produced within 24 hours.*
- r) *If accused makes an allegation of torture, an inquiry has to be conducted and ask for medical examination of the accused, if required.*
- s) *Total period of 60 days or 90 days has to be calculated according to law laid down in various judicial judgments.*
- t) *To ensure that when accused is produced under Special Statute the court has jurisdiction to grant remand.*
- u) *To ensure that it is duty of Court to provide legal aid to accused.*

By order,

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(Prém Pal Ranta)
 Member Secretary

Endst.No: As above.

2683-2714

Dated

Shimla-9

14th August, 2019

Copy forwarded to:-

1. The Principal Private Secretary to Hon'ble the Chief Justice, High Court of Himachal Pradesh and Patron-in-Chief, Himachal Pradesh State Legal Services Authority, Shimla with a request for placing the same before His Lordship for kind perusal, please.
2. The Secretary to Hon'ble the Executive Chairman, H.P. State Legal Services Authority, Shimla with a request for placing the same before His Lordship for kind perusal, please.
3. The Secretary to Hon'ble Chairman, H.P. High Court Legal Services Committee, Shimla with a request for placing the same before His Lordship for kind perusal, please.

4. The Advocate General, Government of Himachal Pradesh.
5. The Chairman, Himachal Pradesh Bar Council, Shimla.
6. The Registrar General, High Court of Himachal Pradesh, Shimla.
7. The Registrar (Vigilance), High Court of Himachal Pradesh, Shimla.
8. The Secretary, H.P. High Court Legal Services Committee, Shimla.
9. The Registrar (Judicial), High Court of Himachal Pradesh, Shimla.
10. The Registrar (Rules), High Court of Himachal Pradesh, Shimla.
11. The Registrar (Establishment), High Court of Himachal Pradesh, Shimla.
12. The Addl. Chief Secretary (Finance) to the Government of Himachal Pradesh.
13. All the Chairpersons (District Judges), District Legal Services Authorities in Himachal Pradesh.
14. The District & Sessions Judge (Forest), Shimla.
15. The Presiding Officers, H.P. Industrial Tribunal-cum-Labour Court Shimla/ Dharamshala, H.P.
16. All the Presidents, District Consumer Disputes Redressal Fora in Himachal Pradesh.
17. The L.R.-cum-Secretary (Law) to the Government of Himachal Pradesh, Shimla-2.
18. The Principal Secretary (Welfare), to the Government of Himachal Pradesh.
19. The Director General of Police, Himachal Pradesh.
20. The Member Secretary, National Legal Services Authority, 12/11, Jamnagar House, New Delhi-110 011.
21. The Secretary, Vidhan Sabha, Government of Himachal Pradesh, Shimla-3.
22. The Director, H. P. State Judicial Academy Shimla.
23. The Additional Director General, Prisons Department, Shimla.
24. All the Member Secretaries, State Legal Services Authorities in India.
25. All the Judicial Officers in the State of Himachal Pradesh.
26. All the Chairpersons (Senior Civil Judges/ Civil Judges), Sub Divisional Legal Services Committees in Himachal Pradesh.
27. All the Deputy Commissioners in Himachal Pradesh.
28. All the Superintendents of Police in Himachal Pradesh
29. All the Sub Divisional Officers (Civil) in Himachal Pradesh
30. All the Presidents, District/ Sub Divisional Bar Associations in Himachal Pradesh.
31. All the Secretaries, District Legal Services Authorities in the State of Himachal Pradesh.
32. The Controller, Printing & Stationery Department, Government of Himachal Pradesh, Shimla-5 for publication in Rajpatra, H.P.

 **Member Secretary**