

5

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ.
Mr. Justice Faqir Muhammad Khokhar
Mr. Justice Nasir-ul-Mulk
Mr. Justice Raja Fayyaz Ahmed

CIVIL MISC. APPEAL NO.32 OF 2007
IN CONST. PETITION NO. NIL OF 2007

Mst. Noor Bibi Versus Govt. of Pakistan thr. M/o Interior

For the appellant : Mr. Muhammad Munir Peracha, ASC

For respondents : Ms. Naheeda Mehboob Elahi, DAG

Date of hearing: 20.8.2007

ORDER

Office objection dated 28th March 2007 returning the Const. Petition being not enterinable is set aside. Let the office register the Const. Petition and list the same for hearing tomorrow i.e. 21st August 2007.

Const. Petition No. NIL of 2007.

Learned DAG states that instant case may be adjourned to seek instructions from the concerned quarters.

Request is allowed, adjourned for tomorrow i.e. 21st August 2007.

Chief Justice

Judge

Judge

Judge

Islamabad, the
20th August, 2007
MS/*

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Constitutional Petition No. 55 ~~37~~ /2007

Mst. Noor Bibi wife of Ali ashar Bangalzai,
Resident of Chakki Shawani Road,
C/O Decent Tailors, Sariab Road,
Quetta.

..... Petitioner

VERSUS

Government of Pakistan through
Ministry of Interior, Islamabad.

..... Respondent

PETITION under Article 184 of the Constitution of
Islamic Republic of Pakistan for issuance of
a writ of Habeas Corpus directing that the
detenue namely Ali Asghar son of Ghulam
Nabi be brought before the Court so that the
Court may satisfy itself that he is not being
held in custody without lawful authority.

Respectfully submitted:-

1. That the following questions of law of public importance arise for the determination of this honourable Court in this petition:-

- a). Whether Article 9 of the Constitution of Islamic Republic of Pakistan guarantees the citizen of Pakistan that they will not be deprived of life or liberty save in accordance with law?
- b). Whether a citizen of Pakistan can be kept in illegal custody without producing him before any Court for remand or without there being any order of detention passed against him?

2. That the above questions of law of public importance arose in the following facts and circumstances of the case:-

- i). That the petitioner is wife of detenué, mother of six sons and two daughters out of whom two sons and one daughter are adults (ages ranging from 22 to 19 years) whereas other four sons

and one daughter are minors of ages of 7 years, 9 years, 11 years, 13 years and 17 years.

- ii). That shortly stated, the detinue was lifted by secret agencies personnel alongwith Muhammad Iqbal on 18.12.2001 at 7 P.M. when they were standing near gate of Degree College Sariab. After few days, Muhammad Iqbal was released whereas nothing was heard about the detinue. Applications to honourable Governor Balochistan dated 20.11.2001 and to Chief Minister Balochistan dated 17.12.2001 by brother-in-law of the detinue and affidavit of Muhammad Iqbal are enclosed as Annexure - A, B & C. Later, Muhammad Iqbal also addressed Press Conference. Press clipping from Daily Jang, Quetta dated 7.8.2005 is filed as Annexure - D. It may be submitted that earlier to present incident detinue was lifted by Military Intelligence on 1.6.2000 from near his house but he was released after 15 days.
- iii). That Habeas Corpus Petition No. 33/2001 was filed in Balochistan High Court

(Annexure - DD). During pendency of the petition, on 9.1.2002, a formal application (Annexure - E) was made to Superintendent of Police, Sadder Quetta for registration of case. The petition was disposed of on 10.1.2002 (Annexure - EE) with direction to Superintendent of Police Sadder Quetta for disposal of application made for registration of case. However, neither any case was registered on application dated 9.1.2002 nor intimation was received of whereabouts of detainee.

- iv). That the petitioner was constrained to file another Habeas corpus Petition No. 7/2005. In their letter to Standing Counsel, Sector Commander Inter Services Intelligence (ISI), Balochistan denied any role by ISI. Copy of letter is annexed as Annexure - F. By order dated 11.8.2005 (Annexure - G), second Habeas Corpus petition was disposed of with direction to Superintendent of Police Sariab to inquire into the matter and to cause registration of case

with Police Station Sariab Quetta in the light of inquiry proceedings.

- v). That matter was also raised in Senate. Letter from Senate Secretariat to Secretary Ministry of Interior dated 8.9.2005 is filed as Annexure - H.
- vi). That nothing was heard about registration of case. However, Superintendent of Police Sariab was approached who informed that inquiry report was submitted to High Court but that no case was registered. Detenue's nephew Nasrullah approached to Registrar Balochistan High Court through application dated 31.10.2006 for copy of police report, if any. Application was returned with oral remarks that no inquiry report was received in the High Court. Copy of the application is filed as Annexure -J.
- vii). That family members of the detenue had set up temporary protest camp which was visited among others by MNA Hafiz Hussain Ahmed

who informed that head of ISI in Quetta Cantt had admitted that detinue was in their custody but later resiled. Clipping from Daily Mashriq, Quetta dated 14.3.2006 reporting statement of Hafiz Hussain Ahmed, MNA is filed as Annexure - K.

viii). That Superintendent of Police Operations Quetta vide his letter dated 31.7.2006 forwarded report of Station House Officer Sariab to Capital City Police Officer. Among others, it was stated in the report that no case was registered nor there was any eye witness. But contrary to record it was submitted that if any person made a report or any order was received from police department, action shall be taken as per rules. Copy of letter with report are filed as Annexures - L & L/1. It may be submitted that Balochistan High Court had also made direction to Advocate General to take up the matter of Missing Persons with Provincial Government (Press Clipping is filed as Annexure - M).

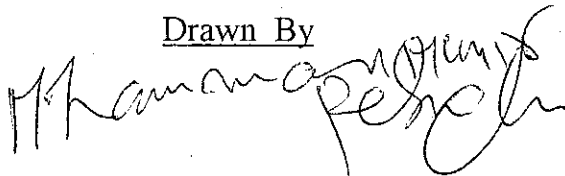
- ix). That from above resume, it is clear that detenue continues to be in the custody of Inter Services Intelligence or any other secret agency to which his custody may have been transferred. Under Article 9 of the Constitution, no person shall be deprived of life and liberty save in accordance with law. Other safeguards as to arrest and detention of a person as a fundamental right are incorporated in Article 10 of the constitution. Detenue is in illegal detention and above fundamental rights are being infringed.
- x). That successive Habeas Corpus Petitions were filed in Balochistan High Court without any positive outcome. Indeed police is unable to do anything and they orally informed that they cannot do anything against personnel of ISI or other secret agencies and further that registration of the case shall be futile. The petitioner and other members of detenue's family have lost their patience in pursuing the case since 18.10.2001. Besides filing two Habeas Corpus petitions, they have approached

Governor (Annexure - A) and Chief Minister (Annexure - B), Superintendent of Police Saddar Quetta (Annexure - E), M.N.A. Hafiz Hussain Ahmed of M.M.A. (Annexure - J).
 Petitioner has no other remedy except to approach this honourable Court.

- xi). That matter involves questions of public importance with reference to enforcement of fundamental rights in Article 9 and 10 of the Constitution.

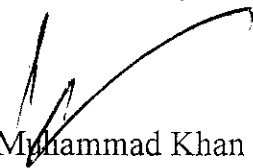
It is, therefore, respectfully prayed that an appropriate writ may kindly be issued directing the respondent to bring the detinue before the Court so that the Court may satisfy itself as to whether the detinue is not being kept in illegal custody.

Drawn By



(Muhammad Munir Peracha)
 Advocate
 Supreme Court of Pakistan
 101/14 Bank Road
 Rawalpindi Cantt

Filed By



(Ejaz Muhammad Khan)
 Advocate-on-Record
 Supreme Court of Pakistan
 Islamabad

Dated: 28-2-2007