

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Gulzar Ahmed, CJ
Mr. Justice Umar Ata Bandial
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Sajjad Ali Shah
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.299 of 2020

[Against the order dated 20.03.2020, passed by the Islamabad High Court, Islamabad in Crl.Misc.No.214/2020]

Raja Muhammad Nadeem. *...Petitioner(s)*
The State and another. *...Respondent(s)*
Versus

For the petitioner(s) : Syed Nayab Hussain Gardezi, ASC
Syed Rifaqat Hussain Shah, AOR a/w
Petitioner.

For the applicant(s) : Mr. Ajmal Raza Bhatti, ASC
in Crl.M.A.399/19

For the Federation : Mr. Khalid Javed, Attorney General for
Pakistan
Mr. Sohail Ahmed, DAG
Mr. Tariq Mehmood Khokhar, Addl.
Attorney General (on Court's notice)

Amicus Curiae : Sh. Zameer Hussain, ASC

For M/o Interior : Shahid Nawaz, Joint Secretary
Nisar Ahmed, S.O.

M/o National Health : Asif Sohail, Director Legal
Services G.M. Jakhrani, Dy. Dir. Legal

For NAB : Syed Asghar Haider, PG
Muhammad Hassan Akbar, Addl. P.G.

For ICT : Mr. Niazullah Khan Niazi, A.G.
Amer Ali Ahmed, Chief Commissioner
Hamza Shafqaat, Dy. Commissioner
Waseem Khan, Asstt. Dy.
Commissioner
Waqar ud Din Syed, DIG (Operations)
Ibd.
Azhar Hussain Shah, DSP (Legal) Ibd.

- For Govt. of Punjab : Mr. Shan Gul, A.G. Pb.
Mr. Faisal Fareed, Addl. A.G. Pb.
Mr. Arif Kamal Noor, P.G. Pb.
Mr. Ahmed Raza Gillani, Addl. P.G. Pb.
Mirza Shahid Saleem Baig, I.G. (Prisons) Pb.
Malik Shaukat Feroze, DIG (Prisons) Rwp. Region.
Rana Zeeshan, Addl. Secy. Prisons
Saqib Nazir, Supdt. Adyala Jail
Tahir Siddique, Asstt. Supdt. Adyala Jail
Adnan Yousaf, Sr. Law Officer
- For the Lahore High Court : Mr. Khalid Mehmood, Dy. Registrar, LHC
- For Punjab Bar Council : Mr. Zulfiqar Abbas Naqvi, ASC/ Member
- For Govt. of Sindh : Mr. Salman Talibuddin, A.G. Sindh
Mr. Shabbir Shah, Addl. A.G. Sindh
Mr. Faiz ul Hassan Shah, P.G. Sindh
Mr. Hussain Bux Baloch, Addl. P.G. Sindh
Nusrat Hussain Mangan, I.G. Prisons, Sindh
Mr. Sibtain Mehmood, Addl. A.G. (through video link)
- For Govt. of KP : Mr. Shumail Butt, A.G. KP
Mr. Khalid Rehman, ASC
Mr. Imitaz Ali AIG (Legal) Police
Ikramullah Khan, Secretary Home, KPK
Umar Nawaz, Dy. Secy. Judicial, Home Deptt. (through video link)
- For Govt. of Balochistan : Mr. Arbab Tahir, A.G. Balochistan
Mr. Amir Hamza Mengal, P.G. Balochistan (through video link)
Mr. Muhammad Ayaz Swati, Addl. A.G. Balochistan.
Mr. Baqar Shah, State Counsel.
- For Govt. of GB : Capt. Ali Asghar, I.G. (Prisons) GB
Dr. Mujeeb ur Rehman, I.G. Police GB

Date of Hearing : 01.04.2020

ORDER

Gulzar Ahmed, CJ.— The learned Attorney General for Pakistan has filed a criminal miscellaneous application in which recommendations are contained and this Court has been called upon to exercise its power under Articles 184(3) and 187 of the Constitution of the Islamic Republic of Pakistan, 1973 in dealing with the matters relating to the prisoners in jails all over Pakistan, in the wake of Coronavirus (COVID-19) pandemic. The recommendations of the Attorney General with regard to the Under Trial Prisoners (**UTPs**) is to the following effect:-

"Accused persons charged for offences under non-prohibitory clauses or under vagrancy law or offences carrying less than three years sentence may be considered for bail subject to the following:-

- (a) the benefit shall not extend in cases involving abuse/violent acts against children and women.*
- (b) benefit shall first be extended to persons otherwise suffering from ailments or physical or mental disability.*
- (c) benefit shall be extended to UTPs who are 55 years of age or older and then other male UTPs provided there is no history of past convictions.*
- (d) benefit shall be extended to all women/juvenile UTPs.*

Bail in the above cases may be extended on personal bonds.

And with regard to the convicted prisoners the recommendations of the learned Attorney General are as follows:-

"The following categories of convicted persons may be considered for release by the Provincial Governments under Section 401 Cr. P.C. :-

- (a) Convicts who have otherwise completed their sentences but remain in jail on account of non-payment of fine/monetary penalty.*
- (b) Women/juvenile convicts who have completed 75% of their sentence and have no history of past convictions.*
- (c) Convicts whose remaining term in jail is six months or less provided offence was not violence against women or children.*
- (d) Women/juvenile who were sentenced to a term of one year or less"*

As to the question of law is concerned, besides the provisions of the Constitution and section 401 Cr.P.C., which are noted above, what are the other provisions of law under which prisoners could be released from jail, the learned Attorney General states that for addressing this very issue, some time may be granted.

2. The President of the Supreme Court Bar Association of Pakistan (**SCBAP**) has submitted a report with the heading "what makes Pakistani prisoners more vulnerable through the Coronavirus" in which some statistics have been mentioned. The most relevant is that there are 114 Jails in Pakistan which have the capacity of accommodating 57,742 prisoners but in fact, there are 77,275 prisoners in these Jails. These prisoners who are in jail have been divided into two categories; one, convicted and the other, under trial. It mentions that there are 25,246 convicted prisoners, while 48,008 are under trial prisoners, and amongst them, there are 1,184 women prisoners, who also have their children in jail, and there are 1,500 elderly prisoners above the age

of 60 years. The President of SCBAP has contended that at least the vulnerable prisoners, namely, the women prisoners and elderly prisoners, above the age of 60 years, may be granted benefit of bail, so that they can be saved from being infected from the Coronavirus.

3. We have heard the learned Advocate General, Punjab and the learned Additional Advocate General, ICT, who are present in Court, and the learned Advocate General so also the Prosecutor General Sindh and the learned Advocate General K.P. and Balochistan through video link.

4. We have also heard Sheikh Zameer Hussain, the learned *amicus curiae*, who has appeared in Court in terms of Court's order dated 30.03.2020. He has made his submissions and contended that some mechanism has to be evolved for release of prisoners from jails, who are in dire threat of being infected and a classification and distinction in this regard may be made, and such be laid down by this Court. He however, contended that the impugned order of the Islamabad High Court is without jurisdiction and illegal.

5. We are informed by the learned Advocate General, Punjab that no prisoner has so far been released from the prisons in Punjab on account of Coronavirus (COVID-19), rather the Inspector General, Prisons Punjab has made internal arrangements, where he has ensured that the policy of distancing, as announced by the Government, is followed and in this regard shifting of prisoners have been made and some have been put

under quarantine, and that the accommodation of the prisoners in Punjab is not so alarming, where the arrangement for securing the health of prisoners could not be maintained. Be that as it may, the learned Advocate General, however, states that some policy in this regard may be devised and appropriate order by this Court may be passed.

6. The learned AG Sindh has stated that 519 prisoners have been released from the prisons in the Province of Sindh and such orders of release was/were passed by a Judicial Magistrate along with the list of prisoners and as stated by the learned AG, the order of the release was authorized by the Hon'ble Chief Justice of the Sindh High Court, in his instructions. The learned AG states that he is going to provide a complete list of all the 519 prisoners, their names, their prisons, whether they were under trial or convicted prisoners, detail of cases they were facing/faced before the Court(s), section(s) of law under which the offences for which they were being tried or convicted with short summary of facts of each case. The orders of the Magistrate with a list of prisons, the direction issued by the Hon'ble Chief Justice of the Sindh High Court and any other order passed by any of the District & Sessions Judge/Additional District & Sessions Judge may also be filed by the learned A.G.

7. The learned Advocate General, KP states that no prisoner has been released on account of Coronavirus (COVID-19) from prisons in KP and similar statement is also made by the learned A.G. Balochistan. I.G, Prisons, Gilgit-Baltistan (**GB**), who is

accompanied with the I.G. Police, GB, also makes a similar statement that no prisoner from prisons in GB has so far been released on account of Coronavirus (COVID-19).

8. In the circumstances, we direct the Inspectors General, Prison, all over Pakistan, to submit their respective reports regarding the population of prisoners in their respective prison and the actual capacity of the prisons and also point out the categories of prisoners who are under trial or convicted and separate list of prisoners, as has been noted in the recommendations of the Attorney General for Pakistan and also the vulnerable prisoners, as have been pointed out by the learned President of the SCBAP, i.e., the women prisoners and elderly prisoners, above the age of 60 years before the next date of hearing.

9. So far as the question about the legality of the orders passed by the Islamabad High Court and the direction issued by the Hon'ble Chief Justice of the Sindh High Court and the subsequent orders passed by the District & Sessions Judges and Magistrates, is concerned, arguments on this aspect of the matter will be heard by this Court on the next date of hearing. In the meanwhile, we expect that the lawyers, who are interested in assisting this Court, besides the learned amicus curiae, may file their written synopsis and such be done well before the next date of hearing.

10. It was pointed out to us during the course of hearing that daily a large number of prisoners enter the jail premises and

the jail authorities have not made any arrangement of screening of these new entrants in the jail, thus, an order may be passed by this Court that the new entrants are screened before they are allowed to enter the jail premises and if they are found to have any sign of Coronavirus (COVID-19), they should be appropriately quarantined and not put in jail directly. In this regard directions are issued to the IG, Prisons of all the prisons in Pakistan, including IG Prison GB, to ensure that no new prisoner is allowed to enter the respective jail, unless he is fully screened and they shall ensure that the new entrant does not contain any sign of being affected by the Coronavirus (COVID-19). In case of any hint that he is suffering from such malady, the I.G. of respective prison shall ensure that he is properly quarantined and not allowed to be mixed up with other prisoners, as long as the doctor in jail suggest otherwise.

11. The learned President of SCBAP has also stated before us that more than 800 posts of Jail Doctor are lying vacant and no steps are being taken by the respective governments for filling up these posts. All the Provincial Governments, ICT so also the GB are directed to fill up the posts of Jail Doctors immediately, without waste of any time and the governments' position in this regard be put up before the next date of hearing.

12. The learned A.G., KP has informed that the jail authorities in the Province of KP have affectively provided quarantine centres in their jails and the same, as noted above, has also been done by the jail authorities in the Province of Punjab.

Whether any such quarantine centres have been established by the remaining jails in Pakistan i.e. in the Provinces of Sindh, Balochistan, ICT and GB, their position be also stated in writing to the Court before the next date of hearing; however, we direct that quarantine centres be made by the respective jail authorities, immediately, preferably today with all necessary infrastructure.

13. We may also observe that while considering and dealing with the questions which are noted above, we direct the Federal Government, the Governments of all the Provinces as well as the GB and the Administration of Islamabad Capital Territory, to put up a report before this Court, about the measures and expected threats of Coronavirus (COVID-19) in their respective territory and the measures that have been adopted by these Governments to overcome and tackle this pandemic; what steps have been taken up by these Governments for providing necessary training and equipping the doctors and paramedic staff for dealing with this pandemic and also what measures so far have been adopted by these Governments for providing medicines, protective dresses, kits, medical equipments, ventilators, hospital beds, etc., for treatment of the patients affected by this pandemic; what is the state of readiness of all the hospitals of these Governments, to provide adequate treatment to the patients; what inventory/stock these Governments are maintaining for the provision of medicines, protective dresses, kits, medical equipment, ventilators, hospital beds, etc., for meeting the looming surge of this pandemic; and whether continuous process of training of doctors and paramedical

staff for dealing with this pandemic is being undertaken by the Governments and if not, what measures they would adopt for doing it now. A comprehensive report regarding the above aspects of the matter shall also be made available by the respective Governments to this Court well before the next date of hearing.

14. Adjourned to Monday i.e. 06.04.2020. The interim order passed on 30.03.2020 shall continue to operate till the next date of hearing.

CHIEF JUSTICE

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