

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

Present:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ

Mr. Justice Jawwad S. Khawaja

Mr. Justice Amir Hani Muslim

HUMAN RIGHTS CASE NO.29388-K OF 2013

(Application by Mohabat Shah son of Kabul Shah for recovery of Yaseen Shah)

For the applicant : In person.

On Court Notice : Mr. Tariq Mehmood Khokhar, Addl. AGP
Maj. Gen.(R) Arif Nazir, Addl. Secy, M/o Defence
Mr. Anzar Rizvi, Sr. Joint Secy. M/o Defence.
Mr. M. Irfan, Director Legal, M/o Defence.
Mr. Zakir Hussain Afridi, IG Prisons.
Mr. Attaullah, Supdt, Jail Malakand.

Date of hearing : 26-11-2013

The Secretary Defence, reportedly has been advised medical rest, therefore, he is not in attendance in response to our direction dated 25-11-2013. This may be noted that in respect of one Yaseen Shah S/o Qabil Shah missing person, Superintendent, Judicial Lockup Malakand vide letter dated -12-2012 submitted before the Peshawar High Court, acknowledging that he alongwith other 34 undeclared internees had been handed over to the Army Authorities without any Internment orders. He further stated in the letter that when he took over the charge of Internment Centre Malakand on 19-9-2011, 66 undeclared internees including Yaseen Shah S/o Qabil Shah r/o Katlang were handed over to the Army Authorities without any Internment orders, the list of which was submitted to the Inspector General of Prisons KPK vide letter No.1954 dated 29-11-2011. Later on, 31 undeclared internees were handed over to him and rest of 35 detenees who were not declared as internees by the Interning Authorities including Yaseen Shah, were shifted out of Internment Centre Malakant by the Army Authorities.

2. The hearing of the case was postponed from time to time and mostly on every date of hearing, the learned Addl. Attorney General for Pakistan has assured that the said Yaseen Shah will be produced before the Court. On the last two dates of hearings i.e 22-11-2013 & 25-11-2013 when no progress was shown, learned Addl. Attorney General was directed to make sure the production of Yaseen Shah, in view of the evidence which has been furnished in writing by the Superintendent, Judicial Lockup Malakand, that he is not a missing person but is in the custody of the Army. Thus having left with no option, the Secretary Defence, Superintendent Judicial Lockup, Malakand and Inspector General of Prisons were directed to remain in attendance. The Secretary, however, failed to appear for the reason which has been disclosed by one Maj. Gen. (Retd) Raja Arif Nazir, Addl. Secretary Defence (appointed on contract) but no document has been placed on record about his proceedings on leave under the medical advice. He is hereby directed to produce the leave sanction order alongwith the charge report of any other incumbent who, in view of Rule 28 of the Revised Leave Rules 1980, has taken over the charge of the post. It is equally important to note that the Superintendent, Internment Centre Malakand, has furnished a list of undeclared internees who were taken away by the Army Authorities, their names are reproduced herein below : -

Sl. No.	Name with parentage	Declared/ Undeclared Internees	Remarks
1.	Shah Hussain S/o Umar Khitab	Undeclared	The charge of internment centre Malakand was taken on 04-02-2012 by the Army authority through Naib Subidar Amanullah Beg since then the where about of these undeclared detenues are not known to Jail authorities.
2.	Sultan Zeb S/o Aurang Zeb	Undeclared	
3.	Ijaz S/o Miraj Muhammad	Undeclared	
4.	Qamar Zeb S/o Awal Khair	Undeclared	
5.	Abdar Ali S/o Yar Muhammad	Undeclared	
6.	Nawab Ali S/o Abdul Matin	Undeclared	
7.	Khalid-ur-Rehman S/o Jamil-ur-Rehman	Undeclared	
8.	Yousaf S/o Akhtar Munir	Undeclared	
9.	Hashim S/o Ghulam Rasool	Undeclared	
10.	Muhammad Sabir S/o Pir Said	Undeclared	
11.	Abdu Bakar S/o Liaq-ur-Rehman	Undeclared	
12.	Hamid Ayoub S/o Muhammad Ayoub	Undeclared	
13.	Habib Ullah S/o Hazrat Muhammad	Undeclared	
14.	Amjid Hussain S/o Saeed Gul	Undeclared	
15.	Akhtar Ali S/o Naik Muhammad	Undeclared	

16.	Abdul Wadood S/o Abdul Qayoom	Undeclared	
17.	Zakir Ullah S/o Majid Ullah	Undeclared	
18.	Naeem-ur-Rehman S/o Sher Zada	Undeclared	
19.	Muhammad Ilyas S/o Muhammad Sadiq	Undeclared	
20.	Abdul Salam S/o Arshed Ali	Undeclared	
21.	Numan S/o Abdul Waris	Undeclared	
22.	Sardar Al S/o Rozi Mand	Undeclared	
23.	Rahmat Ullah S/o Naser Ullah	Undeclared	
24.	Zakir Khan S/o Akhtar Gul	Undeclared	
25.	Faisal Khan S/o Tahir Khan	Undeclared	
26.	Alam Khan S/o Rahmat Khan	Undeclared	
27.	Nadar Khan S/o Said Rahman	Undeclared	
28.	Kalim Khan S/o Hazrat Hussain	Undeclared	
29.	Haroon Rasheed S/o Fazal Ghafoor	Undeclared	
30.	Rasheed Ahmad S/o Shad Muhammad	Undeclared	
31.	Yaseen Shah S/o Qabil Shah	Undeclared	
32.	Sartaj Hussain S/o Khan Sherin	Undeclared	
33.	Muhammad Khan S/o Yousaf Khan	Undeclared	
34.	Sajjad Khan S/o Bakhti Rawan	Undeclared	
35.	Zafar Khan S/o Faqir Khan	Undeclared	

As sufficient evidence has been made available to conclude that 34+1=35, named herein above, are in custody of Army, therefore, the Army authorities are bound, under the law, to produce them before the Court of Law and has no authority to retain their custody unauthorisedly.

3. As there is no authorized person on behalf of the M/o Defence, to comply with the direction, therefore, we direct the Addl. Attorney General to take up the matter with the M/o Defence with the direction to produce the above named persons under the Constitution and law from the custody of the Army during course of the day and submit his report in this behalf at 1.00 p.m.

Chief Justice

Judge

Judge

Lahore the,
26th November, 2013.
Not approved for reporting.