

**IN THE LAHORE HIGH COURT,
LAHORE.**
(JUDICIAL DEPARTMENT)
Writ Petition No.53882/2022

Sirat Naeem vs Province of Punjab, etc.

S/No. of order/Proceedings	Date of order/Proceedings	Order with signature of Judge, and that of parties or counsel, where necessary.
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13.04.2023 Mr. Taha Ilyas, Advocate for the petitioner.
Mr. Imran Abbas Sahi, AAG.
Mr. Asim Ali Gillani, Law Officer for
respondent No.5.

Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner (accused of case FIR No.1089/2020 under sections 324, 337-F (iii), 337-F(v), 148, 149 PPC, Police station Jinnah Road, Gujranwala), has questioned the vires of order dated 24.08.2022, whereby his application for setting-aside the report of medical board dated 29.07.2022 and re-examination through provincial medical board was dismissed by learned Judicial Magistrate Section 30, Gujranwala.

2. It was told that with no sensory motor or planter reflexes Petitioner has been experiencing paralysis on the left side of his body which necessitated him to seek bail on medical grounds through Crl. Misc. No. 65523-B of 2022 which is pending. However, through present writ petition he has thrown challenge to a report of Medical Superintendent DHQ Teaching Hospital, Gujranwala based on five members' medical board dated 29.07.2022 whereby after examining the petitioner it was opined as under;

“I am of the opinion that Mr. Sirrat Naeem is not suffering from Stroke/CVA”

Earlier petitioner applied for bail on medical grounds before concerned Magistrate on whose direction a medical board was constituted and pursuant to report of medical board dated 29.07.2022, learned magistrate declined the bail vide order dated 30.07.2022. Petitioner then challenged the report of medical board dated 29.07.2022 before the said magistrate on multiple grounds but in short routes it as contrary to medical

investigation reports available on the record; learned Magistrate by virtue of order dated 24.08.2022 dismissed the application for constitution of another medical board on very sound reasons, which order has been assailed by the petitioner in any way through writ petition without any legal justification particularly when bail application of the petitioner is still pending and such grounds he can urge in those proceedings because bail is always considered to be a stage of inquiry. But as urged by learned counsel for the petitioner that the main issue would remain the report of medical board and direction be passed for constitution of a higher skilled medical board at Provincial level pursuant to three tiers mechanism introduced by the Punjab Government Health Department through revamping of medicolegal work in year 2003.

3. Learned Assistant Advocate General submits that medicolegal work is entirely a different regime which is not applicable on the present subject and it is only discretionary with the court to seek as many reports as it desires if the earlier report is not satisfactory but present is not the case of that category, and even such request can be made while urging grounds for bail before the concerned court. Further states that pre-arrest bail of the petitioner was declined up to Supreme Court, now he is searching other ways to seek primarily a relief of bail and nothing else.

4. Contentions heard; record was examined, and I have also gone through the relevant Prison Rules applicable on the subject.

5. Revamping of medicolegal work for three-tiers mechanism issued by Government of the Punjab Health Department delineates appellate authorities against the opinion of initial medicolegal officer (IMLO) which of course deals with medicolegal work and not the health condition of a prisoner. What is the medicolegal work has well explained through a research article published on 2 December 2021 Volume 2021:13 Pages 521—526 in a Medical Journal “Open Access Emergency Medicine” published by Dovepress open access to scientific and medical research, on the topic ***“Characteristics of Medico-Legal Cases and Errors in Medico-Legal Reports at a Teaching Hospital in Saudi Arabia”***. The expression is follows:-

A medico-legal case (MLC) applies to any case of injury or medical condition in which law enforcement agencies seek to investigate and fix the responsibility regarding the said injury or medical condition. From a physician's perspective, a MLC is a medical or clinical case with legal implications. In such cases presented directly to the hospital, after obtaining a detailed history and examination of the patient, the physician concludes the need for the law enforcement administration to investigate further. Besides, such cases could also be referred to the physician by the law enforcement administration for application of medical expertise and opinion to aid in the administration of justice.

Several MLCs presented to the emergency medicine department include accidents, criminal or self-inflicted injuries such as fights or physical assault and battery, poisonings, road traffic accidents, burns, falls, bites, and others. In an MLC, the hospital medical record pertaining to the case and the medico-legal report (MLR) furnished by the physician are vital. An MLR is a report drafted by a physician for legal proceedings. It is considered to be the written evidence of the physician who has examined the case and documented the findings. In many countries like Saudi Arabia, an MLR is prepared when requested by authority.

Writing the MLR efficiently will provide a comprehensive understanding of how critical the injury is and its significance, helping the law enforcement agencies to further investigate and decide. Medico-legal documentation contains the holistic documentation of the clinical aspects of a case and information required by the courts. Documentation of injury may include the type, size, location, direction of injury, age of injury, and recovery time and direction of injury. Therefore, an MLR is critical since it provides significant written evidence of the medical expert to the courts. Incorrect or incomplete reports may trigger a pause or delay in legal proceedings, and victims' rights could be violated. The most common errors in MLR are poor identification of external traumatic lesion, failure to document cooperative, and consciousness status. Documentation of the type of injury and its description helps in inferring the causative weapon or agent. For instance, abrasions, contusions, and lacerations are caused by blunt force impact, whereas incised wounds are caused by sharp force impact.¹

The above expression says that a medico-legal case (MLC) applies to any case of injury or medical condition in which law enforcement agencies seek to investigate and fix the responsibility regarding the said injury or medical condition. Fixation of responsibility connotes that injury or medical condition should be result of any criminal activity whereas falling ill being misfortune could be result of any epidemic, or system failure due

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to any internal disease wherein if no criminal act is involved is hardly a subject of medicolegal work; therefore, three-tiers mechanism for medicolegal work does not apply on the subject in hand.

6. The present case has been examined in the light of **PAKISTAN PRISONS RULES, 1978** which find mentioned the enactments relating to treatment and other matters of prisoners pursuant to Rule-1 as under: -

Rule-1. The enactments (as subsequently amended from time to time and adapted by the Government of Pakistan Adaptation of Pakistan Laws Order, 1947) regulating the establishment and management of prisons, the confinement, **treatments** and transfer of prisoners, the maintenance of discipline amongst them and other matters relating to prisoner, are as follows:-

- (i) The Prisons Act, 1894 (Act IX of 1894);
- (ii) The Prisoners' Act, 1900 (Act III of 1900)
- (iii) Regulation III of 1818, for the confinement of State Prisoners;
- (iv) The Pakistan Penal Code, 1860 (Act XLV of 1860);
- (v) The Criminal Procedure Code, 1898 (Act V of 1898);
- (vi) The Civil Procedure Code, 1908 (Act V of 1908)
- (vii) [Mental Health Ordinance, 2001] - Extracts (vii-a) The Punjab Borstal Act, 1926;
- (viii) The Reformatory Schools Act, 1897;
- (ix) The Sindh Children Act 1955, and
- (x) The Sindh Borstal Schools Act 1955.]

The treatment clause for Prisoners in such enactments if any are being counted as under: -

i. **The Prisons Act, 1894 (Act IX of 1894),** following sections of the Act throws light on initiation of action if a prisoner requires treatment for any ailment;

14. Medical Officer to report in certain cases.— Whenever the Medical Officer has reason to believe that the mind of a prisoner is, or is likely to be, injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent, together with such observations as he may think proper.

37. Sick prisoners.— (1) The names of prisoners desiring to see the Medical Subordinate or appearing out of health in mind or body shall, without delay, be reported by the officer in immediate charge of such prisoners to the Jailer.

(2) The Jailer shall, without delay, call the attention of the Medical Subordinate to any prisoners desiring to see him, or who is ill, or whose state of mind or body appears to require attention, and shall carry into effect all written directions given by the Medical Officer or Medical Subordinate respecting alterations of the discipline or treatment of any such prisoner.

Section 59 of said Act gives powers to Provincial government to make rules for the treatment of prisoners as mentioned at sr. No. 23 & 27 in the said section.

ii. The Prisoners' Act, 1900 (Act III of 1900) which deals with treatment of an unsound mind prisoner only, as under: -

30. (1) Where it appears to the [Provincial Government] that any person detained or imprisoned under any order or sentence of any Court is of unsound mind, the [Provincial Government] may, by a warrant setting forth the grounds of belief that the person is of unsound mind, order his removal to a lunatic asylum or other place of safe custody within the Province, thereto be kept and treated as the [Provincial Government] directs during the remainder of the term of which he has been ordered or sentenced to be detained or imprisoned, or, if on the expiration of that term it is certified by a medical officer that it is necessary for the safety of the prisoner or others that he should be further detained under medical care or treatment, then until he is discharged according to law.

iii. Regulation III of 1818, for the confinement of State Prisoners, it more or less requires the custody officers to furnish periodical reports to government about health of State prisoners for continuation or modification of detention orders. For treatment of such prisoners visiting judges can also pass appropriate orders.

iv. Pakistan Penal Code, 1860 (Act XLV of 1860):

It does not deal in medical treatment of the prisoners however section 374(2) says that whoever compels a prisoner of war or a protected person to serve in the armed forces of Pakistan shall be punished with imprisonment of either description for a term which may extend to one year.

v. The Code of Criminal Procedure, 1898, (Act V of 1898):

Chapter xxxiv deals with the medical examination of lunatics; Section 542 Cr.P.C. dealing with Power of Presidency Magistrate to order prisoner in jail to be brought up for examination, now has been repealed by the Federal Laws (Revision and Declaration) Act, 1951. (26 of 1951), S. 3 and II Schedule].

vi. The Code of Civil Procedure, 1908 (Act V of 1908)

It does not deal with medical treatment of prisoners.

vii. Mental Health Ordinance, 2001.

A special Act for a check on the mental health of the prisoners under the command of a board of visitors for appropriate orders.

(vii-a) The Punjab Borstal Act, 1926.

Section 30 of the Act deals with treatment and further action for persons of unsound minds and other prisoners. Pursuant to following section, certain laws and rules are made applicable to them:

32. Application to Borstal Institution of certain provisions of the Prisons Act, 1894; and the Prisoners Act, 1900.— Subject to the provisions of section 33 of this Act, the provisions of section 12 and Chapter XI of the Prisons Act, 1894 and of sections 35 to 50 (inclusive) and the rules made by the [Provincial Government], [* * *] under section 51 of the Prisoners Act, 1900, shall apply as far as may be to Borstal Institutions established under this Act, and all reference to prisoners, imprisonment or confinement in the said sections, chapters and rules shall be construed as referring to inmates, Borstal Institutions and detention.

viii. The Reformatory Schools Act, 1897. No direct provision for medical treatment of the prisoners is available in the Act.

7. The detailed document, however, is the Pakistan Prison Rules, 1978 which prescribes for medical examination of a sick prisoner. There are certain rules that deals with the subject including one cited by learned magistrate in his order dated 24.08.222. i.e., Rule 197.

8. The regime for check and health management of prisoners speaks the responsibilities of both Medical Officer and Superintendent Jail. According to **Rule 977**, Medical Officer shall be responsible for all matters connected with the health, physical and mental, of the prisoners and their treatment when sick and the hygiene of the prison. He shall take all measures necessary for the maintenance of the prison and its surroundings in a thoroughly sanitary state. **Rules 995** requires that he shall conduct weekly parades of prisoners as well; he shall observe the general state of their health and see that they are clean in their persons and free from disease. He shall examine the records of prisoners' weighment and satisfy himself that the weighments are properly carried out and recorded and that the prisoners clean their teeth and mouth regularly and the necessary facilities for this purpose are adequately provided. He shall examine all prisoners who show substantial loss in weight. As per **Rule**

1060, the Junior Medical Officer shall conduct monthly weighments of prisoners, record each prisoner's weight on his history ticket, and report all prisoners steadily losing weight to the Medical Officer, as soon as possible after weighment, and patients in hospital shall be weighed every week and their weights shall be recorded on the temperature charts. According to **Rule 982**, whenever the Medical Officer has reason to believe that the mind or body of a prisoner is or is likely to be injuriously affected by the discipline or treatment to which he is subjected, the Medical Officer shall report the case in writing to the Superintendent together with such observations as he, may think proper. Similarly, as per **Rule 951**, the Superintendent shall visit the hospital frequently and shall see that proper arrangements are made for the safe custody and proper care of sick prisoners and that prison discipline is maintained in the hospital so far as is consistent with the medical treatment of the prisoners. He shall carry into effect all written directions given by the Medical Officer with regard to the proper segregations of prisoners suffering or suspected of suffering from contagious disease. He shall, whenever necessary, and without delay, take all reasonable measures for cleaning and disinfecting, any place occupied by such prisoner and for disinfecting, or destroying all infected clothing, bedding, or other articles. On direction of medical officer, the Superintendent will take suitable action into the matter. The Superintendent shall carry into effect all written requisitions of the Medical Officer about the provision of extra bedding clothing, the alteration of the diet of any prisoner or with respect to any alteration of discipline, or treatment in the case of any prisoner whose mind or body may in the opinion of the Medical Officer, requires it; (**Rule 966**).

9. The further management shall be like that the Senior Medical Officer shall daily visit the sick in the hospital and shall examine every prisoner who complains of illness, and may, if necessary, direct the admission of any such prisoner to hospital. If at any time the Senior Medical Officer is of opinion that any prisoner is malingering, he shall forthwith report the fact to the Superintendent; (**Rule 981**). Similarly, if any person is found sick by the jail administration, then as per process

mentioned in Rule **1029**, the names of prisoner desiring to see the Senior Medical Officer or appearing ill shall, without delay, be reported by the Officer Incharge of such prisoners to the Deputy Superintendent and the Deputy Superintendent shall immediately inform the Senior Medical Officer to see such prisoners and shall carry into effect all written directions given by the Senior Medical Officer respecting alterations of the discipline, diet or treatment of such prisoners. If the prisoner is in a serious illness he can be dealt with under following Rule: -

Transfer of prisoners to Civil Hospitals in case of serious illness.

Rule197. (i) Where it is necessary to remove a convicted prisoner or an under-trial prisoner to hospital outside the prison for operative or other special treatment which cannot conveniently be given in the prison itself:

(a) The orders of Government shall be obtained through the Inspector-General, in cases in which a convicted or under trial prisoner is to be admitted to the hospital for treatment provided that in, emergent cases the Superintendent of the prison is authorized to anticipate the sanction of Government and if he does so, he should make an immediate report through the Inspector-General.

(b) In cases in which a convicted or under-trial prisoner is taken to hospital for treatment as an out-patient only or for X-ray examination, the Superintendent of the prison is empowered to authorize this visit himself.

(ii) The discretion given to the Superintendent to anticipate the sanction of Government, does not apply to cases in which it is proposed to remove a prisoner to a hospital in another station. In such cases the orders of the Inspector General must be obtained in advance, and the Inspector General will make an immediate report to Government in all cases in which he allows prisoners to be so moved in anticipation of sanction.

(iii) In all cases in which a prisoner is removed to a hospital for the purpose of an operation, the removal should take place as close as possible to the time fixed for operation and the **prisoner should be brought back to the prison hospital as soon as this can conveniently be done.**

(iv) Prisoners admitted in hospital outside the prison shall always be guarded by the Police.

(v) All expenses incurred by the hospital authorities in connection with the treatment of prisoners from prison will be borne by the Health Department.
Emphasize supplied.

It shows that as early as possible the prisoner shall be brought back to the prison for further management. What further measures can be suggested are given below: -

Serious illness of an under-trial prisoner.

Rule 397.

When an under-trial prisoner is seriously ill, the Superintendent shall send a report of the fact to the court concerned, and such report shall be accompanied by a medical report of the case in order to enable the court to consider the possibility of ordering the release of the prisoner on bail.

Case of a prisoner seriously ill on release

Rule141.

No prisoner suffering from an acute or serious illness shall be discharged from prison against his will or until in the opinion of the Medical Officer he can be safely discharged or can be admitted to a Civil hospital.

Release of prisoners suffering from disease.

Rule143. (i) The Superintendent [will refer the case for] release of prisoner suffering from serious illness with the consent of the [Officer Incharge of the Prosecution] in whose jurisdiction the prisoner's offence was committed, provided that: -

- (a) the disease is likely to prove fatal if the prisoner; remains in prison;
- (b) there is reasonable chance of recovery if the prisoner is released.
- (c) the prisoner has not done any willful act, since he has been in prison, to produce or aggravate his disease;
- (d) the Medical Officer and the Medical Superintendent of the District Headquarter Hospital recommend the release and certify that the disease is of the nature described; and
- (e) the prisoner has not more than six months to remain in prison before the expiry of his sentence.

(ii) The prisoner shall be informed, before release that his liberation is conditional on the sanction of the Government, and that if such sanction is withheld, he will have to return to prison to serve the remainder of his sentence. The prisoner's friends shall be sent for and a security bond taken from them, before he is released, that they will give him up if required to do so.

(iii) The case shall be immediately reported to the Inspector General in the prescribed form for submission to Government.

Release of prisoners on ground of old age, infirmity or illness.

Rule146. The Superintendent may recommend a prisoner for premature release who owing to old age, infirmity or illness is permanently incapacitated from the commission of further crime of the nature of that for which he has been convicted. The case shall be submitted to Government through the Inspector General. It shall be accompanied by the recommendations of the Medical Officer. The Inspector General will, in all such cases, obtain the medical opinion of the Medical Board which will be convened by the Director of Health Services.

The board will send its opinion through the Inspector General Prisons.

Chapter-18 of Pakistan Prisons Rules, 1978 ranging from Rules 433 to 455 specifically deals with prisoners under mental ailments.

10. The responsibility assigned to the medical officer and jail superintendent though amenable to a check by Inspector General of Prison who can be approached upon in case of any flagrant violations of duty by them, yet an oversight mechanism is also in place whereby District Coordination Officers and Sessions Judges were authorized to ensure that the law and rules applicable on the subject be followed in letter and spirit. The relevant rules are as under;

Visit by official visitors:

Rule 914.

(i) [District Co-ordination Officer] and Sessions Judges shall visit the prison at their headquarters at least once in three months and those in other district in their divisions when on tour.

(ii) [District Co-ordination Officer] shall visit the prisons situated in their jurisdictions at least once a month. (iii) In January each year, the Superintendent shall submit a report to Government through the Inspector General, giving the number of visits made by the visitors during the previous years.

Duties of official visitors:

Rule 915.

(i) Any official visitor may examine any book, paper and record in the prison, and may interview any prisoner confined therein.

(ii) It shall be the duty of every official visitor to satisfy himself that the provisions of the Prisons. Act, 1894, and of all rules, regulations, orders and directions made or issued thereunder, are duly observed, and to bear and bring to notice any complaint or representation made by any prisoners.

11. The managerial scheme of prisoners' health maintenance is obvious from the rules cited above; the double check of Medical Staff and Jail Superintendent within the jail premises and an oversight mechanism by Inspector General of Prison, Sessions Judge and District Coordination officer (now Deputy Commissioner) ensures that no prisoner should be deprived of his right to treatment. The opinion of medical officer is always conditional to subsequent examination by a board if constituted. Though constitution of board figures only in Rule 146 above, yet there is no specific prohibition for constitution of medical board in other cases as well. The core issue is not the ailment or deteriorating health condition, it is the question whether such ailment could be managed within jail premises and this decision can only be made by a court assuming

jurisdiction for question of liberty of prisoner in such cases, and of course such decision is taken keeping in view the opinion of jail medical officer, jail superintendent and on report of an expert, if any. Petitioner can well assert his contentions before the court dealing with bail application; this exercise in duplication is beyond comprehension when no law supports constitution of Provincial Medical Board in such matters.

12. For what has been discussed above, the order impugned herein, being far from any legal, factual or jurisdictional error is unexceptionable; thus, the same is upheld and the instant writ petition is dismissed.

This order has been pronounced on 13.04.2023, and after dictation & preparation, it was signed on 02.05.2023.

(Muhammad Amjad Rafiq)
Judge

Approved for reporting.

Judge.

Javed*