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In the Supreme Court of Pakistan

(Original Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali

Mr. Justice Khilji Arif Hussain

Mr. Justice Sarmad Jalal Osmany

Mr. Justice Amir Hani Muslim

Mr. Justice Gulzär Ahmed

Suo Motu Case No. 16 of 2011

On Court notice:

Mr. Abdul Fateh Malik, Advocate General, Sindh
Mr. Shahadat Awan, Prosecutor General, Sindh
Mr. Jawaid Farooqui, Dy. Attorney General
Mr. Adnan Karim, Asstt: Advocate General, Sindh
Mr. Waseem Ahmed, Home Secretary, Sindh
Mr. Arif Ahmed Khan, Secretary Finance.
Mr. Manzoor Memon, Secretary, Excise & Taxation.
Mr. Iqbal Mehmood, Addl: IGP, Sindh
Mr. Mushtaq Maher, DIG, South
Mr. Shahid Hayat, DIG East
Mr. Aamir Farooqi, Acting DIG, West
Mr. Ali Sher Jakhrani, AIG (Legal)
Mr. Saleem Ahmed, ADIG (Legal)
Mr. Khurram Gulzar, DIG Traffic
Mr. Ahmed Jamal Rehman, Acting DIG Traffic
Mr. Bashir Ahmed Memon, Addl: IGP
Mr. Iqbal Dara, SSP
Mr. Farooq Awan, SSP
Ms. Nasreen Ara, S.P. Traffic
Mr. Khaliq-ur-Rehman, Dy. Director, NADRA
Mr. Atta-ur-Rehman,
Regional Election Commissioner, Hyderabad.
Mr. Tanveer Zaki,
Regional Election Commissioner, Karachi.
Mr. Abdullah Hanjrah, Law Officer, E.C. Sindh
Mr. Saleem Raza Abbasi, Director Parole.
Mr. Manzoor Hussain, A.D. (R&P), Prisons
Mr. Ali Hassan Brohi, Spl. Secy. Prisons
Mr. Zafar Abbas Bokhari, I.G. Prisons
Syed Nayab Hassan Zaidi, Dy. Director, FIA
Syed Israr Ali, Addl. Director, FIA
Mr. Azad Khan, Addl. Director, FIA
Mr. Shoaib Siddique, D.G. Excise & Taxation.
Mr. Khawar Maneka, Collector of Customs Preventive
Mr. Imtiaz Sheikh, Adl: Collector of Customs Preventive

Date of hearing: 01.11.2012

Order

Today, when proceedings in this case have commenced, Mr. Ali Sher Jakhrani, AIGP (Legal) has placed on record written response to the copy of complaint received yesterday regarding influx of 'talbans' in

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huge number in and around the city of Karachi. Such report is taken on record with directions that concerned police officials and other agencies to look into this issue seriously and take all possible measures to meet any challenge, which may be faced by the citizens of Karachi due to such illegal immigration of foreigners and 'talbans', who are reportedly armed with sophisticated weapons.

2. As regards serious problem of traffic congestion faced by the citizens of Karachi, in response to our earlier order, Mr. Manzoor Memon, Secretary, Excise & Taxation (Motor Registration Wing), Mr. Khurram Gulzar, DIG Traffic and Mr. Ahmad Jamal Rehman, Acting DIG Traffic Management (motor vehicles licensing and vehicles fitness department) have appeared in Court. When they have been confronted with the deteriorating law and order situation in the city of Karachi due to patent illegalities and lawlessness as a result of their slackness, inefficiency and negligence in the performance of their respective duties, Mr. Manzoor Memon, Secretary, Excise and Taxation (Motor Registration Wing) has assured and undertaken that all illegalities and mismanagements in his department will be set right at the earliest and it will be ensured that whenever any motor vehicle, motorcycle or other vehicle is registered, immediately its official number plate is issued and documentation is completed without any undue loss of time. He has further assured that without fail tax payment stickers will also be provided to the taxpayers of the vehicles at the time of payment of such tax. Replying to our question about number of vehicle plying in Karachi, without number plates, with number plates "AFR" (Applied for Registration) and non-duty paid vehicles having no registration number or having fake/fancy number plates, he has again assured that all possible efforts will be made by his department to curb this menace and to bring the things in order. [Mr.

Khurram Gulzar, DIG (Traffic), on his turn, has stated that he is aware about the alarming situation of traffic congestion and consequent chaos in the city of Karachi, but handicapped for the reason that at his disposal he has only 3200 traffic police personnel, who are working in two shifts; therefore, it is not possible for only 1600 traffic police personnel at one time to control and manage traffic in a city like Karachi having more than 20 million population, with 2.7 million vehicles, out of which 1.1 million are four wheels private transport, 1.3 million two wheel motorbikes etc. and fifteen thousand public transport wagons and buses, most of which are outdated. He candidly conceded that public transport plying in the city, from fitness point of view, is in worst shape due to the fact that no effective measures have been taken by the motor vehicle fitness wing in ensuring their fitness as per requirement of law. He has further stated that he needs minimum 5000 additional personnel in traffic police to meet the challenge of abnormal traffic congestion in the city of Karachi and for this purpose he is going to make immediate request at the highest level, so that for this purpose necessary budgetary provision is provided by the Government of Sindh. Mr. Ahmed Jamal Rehman, Acting DIG Traffic Management (Motor Vehicles Fitness Wing) has also not disputed that from fitness point of view public transport, particularly, busses and wagons used for this purpose are in extremely poor condition, therefore, they carry high safety risk for the passengers. He has assured that to meet this challenge he will ensure with the help of the Government that further staff is deputed in his department and fitness of at least three thousand vehicles used in public transport is examined monthly and further action is taken in accordance with law. In order to see the truthfulness of his statement/commitment, we directed him to submit monthly statement about the vehicles examined by his

department, with complete details and action, if any, taken against the vehicles not eligible for such fitness.]

3. Mr. Khawar Maneka, Collector of Customs (Preventive) in response to our query stated that after the directions of this Court issued at Quetta Registry in Balochistan, the intelligence staff of Customs department has been put on high alert and as a result now on daily basis non-duty paid vehicles are being seized and action in accordance with law is taken against the owners of such vehicles. He is directed to submit a detailed report about the progress made by his department in last three months to curb plying and use of non-duty paid vehicles in large number at Karachi, most of which are smuggled ones.

4. Dealing with the issue of day to day target killings in the city of Karachi, we had earlier called upon the Advocate General and IGP, Sindh to submit a detailed report in this regard, which has been filed in Court today by DIGP (Administration), showing further deteriorating and alarming situation in Karachi.

5. The perusal of above report reveals that killing of innocent people for one reason or the other is a rapidly increasing phenomenon which needs to be tackled with iron hands. In this regard, in our view, it is necessary that different law enforcing agencies, particularly, Rangers deployed in Karachi, shall coordinate with each other in such a manner that not only wanted criminals are apprehended and brought to justice at the earliest without any legal flaw as to their arrest etc, but also other criminals are effectively checked/restrained from indulging in criminal activities, threatening to create law and order situation in Karachi. In this respect, we may further clarify that under the existing set up Rangers have been delegated with the powers of arrest and search. Therefore, on apprehension of accused they shall immediately transfer their custody with the concerned police station with recovery, if any, as

they do not have the powers of investigation. The concerned police station shall, thereafter register, investigate and submit *Challan* accordingly. The Rangers may if so desire join such investigation.

6. We have also heard the Advocate General Sindh, Home Secretary, Chief Secretary, Inspector General Police, Additional I.G.P. Iqbal Mehmood on the issue of Law and Order situation. We have noticed that no one amongst the high-ups is serious in building up the police institution. The police department has lot of shortcomings, but no one amongst the senior officers seems to have shown concern. The recruitment in police service is not transparent; the service record of the police personnel is not properly documented in terms of the rules which could provide senior officials of police yardstick for evaluating their performance; no Character Roll is attached to the Service Book nor to the Personal File of the police personnel; no periodical ACRs are written by the relevant officers under whose command they discharge their duties; and from the date of passing of the order date 13.9.2011 till-date no steps towards capacity building in the police department have been undertaken.

7. Inspector General Police and Additional Inspector General Police have conceded that Service Books in police department are not maintained properly and most of these service books are with the police officers. With this background how can law and order situation be improved when senior police officers have never shown concern to assess performance of their subordinates on merits. It is also a hard fact that the police has been politicized by out of turn promotions and inductions from the other departments time and again, through lateral entries which has brought unrest amongst the deserving police officials waiting their promotion on merits. The posting and transfer of the police officers also lack merits. The complete service record of a police personnel which could reflect posting and transfer is not maintained by the relevant wing. Even many police officers posted within Karachi on senior positions lack

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qualification and competence both. During the hearing Additional I.G. was confronted as to whether incident which took place in Joria Bazar was within the knowledge of local police. He informed that police did chase them but culprits, who were on 12 motorcycles escaped. On enquiry as to whether any message was passed on wireless at the time when the police was chasing those criminals, he candidly replied in the negative. If this is the state of affairs, how can there be peace in Karachi. It seems that instead of depoliticizing police force further damage has been caused by the government by inducting their blue eyed persons in police force through lateral entries and then granting them retrospective seniority and out of turn promotions.

8. The Police Training Schools established since long also required revamping. Serious efforts are required to train the police personnel to boost up their morale but no interest so far is shown to have been taken by the high-ups, as in one incident substantial number of the police trainees fell ill on account of food poisoning in a police training centre and an enquiry was conducted but no action has so far been taken on the enquiry report for which the I.G. Police when confronted could not offer any plausible explanation.

9. Neither the Government nor those who are at the helm of affairs even thought of upbringing the police personnel by providing them basic/necessary facilities in the police lines. I.G. Police has made statement that improvements have been made by providing necessary repairs to the houses inside the police lines but this statement is nothing, but a drop of water in the ocean.

10. Lastly, when we have taken up the issue regarding release of convict prisoners on parole as stated by the Government of Sindh yesterday, we have been surprised to notice that as per another list submitted today in Court more than 35 under trial prisoners, who are found involved in number of heinous crimes, mostly under Sections 302 & 365-A PPC, were released on temporary parole in the year 2003 by the

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Government Sindh in a shabby manner, which practice continued at least upto the year 2005, and since thereafter all these under trial prisoners facing trial before different Courts are at large/absconding, but no action has been taken against them or against the persons to whom their custody was handed over on parole.

11. In regard to the list of the convicts we have directed the officers to place the history ticket of the released convicts. Entire jail record was not placed before us as according to the official it was not readily available. We have seen other history conduct of one convict which does not reflect that his behaviour in jail was good. In any event powers exercised by the government official under the rules were not in conformity with condition contained in the Act and Rules. In the first place a convict must serve 1/3rd of the substantive sentence. In many cases we have noticed that this ingredient was missing when the order of the release was made. Additionally such convict has to be first offender and no information from any quarter was sought by the committee who ensured that the convict who was being granted concession of parole has not committed any other crime. Most important factor was that before releasing these convicts on parole, history tickets were not checked, and there was also no other material before the committee to satisfy that they will abstain from repeating crime and will lead useful and peaceful life as a civilized citizen. The officials who were part of the committee appeared before us and have conceded that there was no material of this nature available with them which could justify their release on parole.

12. We are clear in our mind that the government or any other authority under it cannot exercise powers under any provision of law parallel to the power conferred on the Judicial Officers. 35 under trial prisoners apparently were not granted bail and were involved in heinous offences and once they were refused bail the government under the garb of parole extended such concessions in order to defeat the judicial process of administration of justice. Neither the Act of 1926 nor the rules framed thereunder allow any authority to release under trial prisoners in this manner. Even after two years

their whereabouts are not known which apparently means that they did not appear before the trial Courts during parole and might have been declared absconders. In any event on one side hue and cry is made by the government about the law and order situation on the pretext of terrorism and on the other hand government is releasing the convicts and under trial prisoners who have purportedly committed heinous crime, including the acts of terrorism. These instances clearly reflect *mala-fide* conduct of the Government of Sindh in dealing with the poor law and order situation in Sindh, particularly, at Karachi, which, if continued, will never bring peace and rest in Karachi/Sindh.

13. As we again intend to take up this issue at the earliest, we direct the office that this case may be fixed in Court before the Special Bench within shortest period when the Bench is available at Karachi Registry. In the meantime, the Home Secretary, Government of Sindh and other concerned officials from Prisons Police and Parole Department are called upon to submit their detailed reply to justify such, *prima-facie*, illegal and highhanded action of the Government. Moreover, the concerned trial Courts, where these 35 under trial prisoners were facing trial shall issue N.B.Ws. against them so that they can be apprehended and tried in accordance with law. In the intervening period the Home Department and Inspector General Police shall also ensure arrest of aforesaid 35 under trial prisoners the list of which has been submitted by the I.G. Prison, and to produce them before the concerned trial Courts.

Further hearing of this case is adjourned to next session.

Sd/-Anwar Zaheer Jamali, J
Sd/-Khilji Arif Hussain, J.
Sd/-Sarmad Jalal Osmany, J.
Sd/-Amir Hani Muslim, J.
Sd/-Gulzar Ahmed, J.

Karachi the
1st November, 2012
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