

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.985-2020

Liaqat Ali

Vs.

National Accountability Bureau

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
------------------------------------	----------------------------------	--

26.03.2020 Mr. Shah Khawar, Advocate, Mr. Shakeel-ur-Rehman, Advocate and Mr. Hamid Nawaz, Advocate for petitioners.
Mr. Hassan Akbar, Additional Prosecutor General, NAB, Mr. Yasir Saleem Rana and Mr. Wasiq Hussain, Special Prosecutors NAB with Ali Abbas, Abdur Rehman, M. Haider Azmat, M. Qasim and Syed Jamil ur Rehman, Ads/IOs, NAB.

AAMER FAROOQ J. This order shall dispose of above mentioned petition as well as petitions, mentioned in the Schedule attached herewith, as they entail common questions of law and facts.

2. The petitioners, in all the petitions, are incarcerated in Central Jail,

Rawalpindi; they are facing allegations with respect to offences under National Accountability Ordinance, 1999 and in this behalf, either investigations/inquiries or references are pending against them. In other words all the petitioners are either under trial prisoners, as references have been filed against them or they are in judicial custody, as references have not yet been filed but none of them has been convicted by the court of competent jurisdiction.

3. The petitioners wrote letters to this Court through jail authorities which were treated as applications under Article 199 of the Constitution and numbered accordingly pursuant to clause 1(d), Chapter I, Volume V of Lahore High Court Rules and Orders (adopted by this Court). In this behalf, guidance can also be sought from case reported as 'Imran Khattak Vs. Sofia Waqar Khattak' (2014 SCMR 122). Notices were issued to National Accountability

Bureau. The Hon'ble Sindh High Court in case reported as 'Amir Lutuf Ali Zardari Vs. Province of Sindh (2019 CLC 224), observed as follows: -

“We are conscious that normally the Courts should avoid interference in independent affairs of other 'Organs' but whenever a question of 'fundamental rights of community or general public' is involved, this Court would be legally justified in departing from normal procedure. Needless to add that normal procedure is meant for normal situations but in abnormal situation a departure is always permissible and justified.

A reference can be made to the case of Watan Party v. Federation of Pakistan (PLD 2013 SC 167) it is held that:

"8. From the bare reading of the Constitution, particularly, Articles 29 and 38 of Chapter 2, Part-II, relating to principles of policy, it is evident that policies are to be made by the respective Federal and Provincial Governments and all decisions regarding their implementation are also to be taken by them on the basis of determined priorities of different projects and availability of financial resources at their disposal. Obviously, this exercise cannot be ordinarily interfered with by this Court by invoking its jurisdiction under Article 184(3) of the Constitution, unless shown to be mala fide or in violation of the fundamental rights guaranteed under the Constitution to every citizen of this Country, thereby affecting the interest of public at large.

(emphasis supplied)

Therefore, a 'tapping to slept organs' to do only what was always their obligations and duties cannot be avoided in name of procedural technicalities, if any, because procedural technicalities are always subordinate to substantial justice/fundamental rights of public at large hence cannot prevail over such rights. This Court, being custodian of 'fundamental rights' is always competent to come forward for enforcement of such rights.”

4. Mr. Hassan Akbar, Additional Prosecutor General, NAB put in appearance on behalf of NAB and submitted that all the petitioners may be ordered to be screened by Pakistan Institute of Medical Sciences (PIMS), Islamabad and in case, anyone of them is found to be suffering or being carrier of COVID-19 (Corona Virus), he may be released on bail. It was contended that if the above order is not passed, same will amount to passing of blanket order for release of under trial prisoners. It was further contended that Syed Arsalan, the petitioner in W.P. No.986-2020, is facing reference filed before Accountability Court, Rawalpindi hence in the referred matter, this Court does not has the jurisdiction.

5. Mr. Shah Khawar Advocate, appearing for the petitioner in the instant petition and other learned counsel appearing for the petitioners, contended that currently, entire world is facing extra

ordinary circumstances and same requires special measures for prevention of Corona Virus. It was contended that release of prisoners facing trial or investigation, would relieve them of their agony regarding apprehension of catching said disease and spreading of the same.

6. Arguments advanced by learned counsels for the parties have been heard.

7. The entire world is facing the pandemic of Corona Virus and almost in every country extraordinary measures are being taken to protect population from catching and spreading of said disease. In this behalf, measures have also been taken to protect the prison population as well. In this behalf, recently in an article in the 'Guardian' (United Kingdom) of Wednesday March 25, 2020, Head of Prisons Governors Association says crowding and staff shortages mean COVID-19 could overwhelm system; the Prison Governors Association, through its

Head, stated that prisoners should be released in order to prevent UK jails being overwhelmed by Corona Virus pandemic; it was also said that prisons were facing 'unprecedented risk' and release of some prisoners would help prevent disorder and slow the spread of the virus (www.theguardian.com),

8. This Court, already being mindful of the unprecedented circumstances, initiated proceedings under Code of Criminal Procedure, 1898 for release of prisoners facing allegations in petty offences. In case titled 'The State Versus District Administration' (Crl. Misc. No.214-2020) in the matter of 'Threat of corona virus outbreak and overcrowding in Adiyala Jail, Rawalpindi), this Court, vide order dated 20.03.2020, observed as follows:

"4. It is noted that a prisoner has no option but to absolutely rely on the State and the prison authorities for his/her welfare and medical needs. Neglect on part of the State or prison authorities can lead to irreversible consequences, inter alia, causing physical and mental torture. The infliction of unnecessary pain, suffering and agony is not in conformity with the constitutionally guaranteed rights nor the object of incarceration. The incarceration deprives a prisoner from his/her liberty and the freedom to be free and curtailment of liberty has limited consequences regarding some other rights. But by no stretch of the imagination is the right to life restricted or curtailed,

rather a heavy burden lies on the State to safeguard this most valuable fundamental right because a prisoner does not have the freedom to make choices or decisions to regulate affairs of life. This reliance gives rise to a duty of care on the part of the State and its functionaries. The right to life is the most fundamental amongst human rights and the august Supreme Court highlighting its importance in the case titled '*Ms Shehla Zia and others v. WAPDA*' [PLD 1994 SC 693] has observed and held that the word "life" is very significant because it covers every facet of human existence.

5. The World Health Organization has declared emergency in the wake of the outbreak of "corona virus". The State of Pakistan has also formulated a comprehensive National Action Plan. In this regard the principle of "social distancing" has been adopted and is being strictly implemented. The concern about spread of the corona virus is most relevant to the prisons. The confined space of a prison makes it virtually impossible to implement the policy of "social distancing". The prisoners are vulnerable and exposed to suffer irreparably in case of an outbreak. Prisons, which are overcrowded, have high turnover and intolerable living conditions, could potentially become epicenters for outbreak of the deadly virus. A prison outbreak is likely to present potentially deadly risk not only to its inmates but the general public as well. The appalling conditions and health facilities would definitely exacerbate such a crisis. The inmates of the prisons need to be cared for because they are absolutely dependant on the State and most of them cannot even afford to approach the courts. The Federal Government has, therefore, justifiably adopted the policy of reducing the population of the prisons in order to meet the challenges posed by the invisible enemy i.e. the corona virus".

9. Under section 401 of Code of Criminal Procedure, 1898 as well as Rules 143 and 146 of Pakistan Prison Rules, 1978, the Provincial Government and jail authorities have ample power to release any prisoner by suspension or remission of sentence or grant of bail, where circumstances, so warrant. This Court, in case titled '*Mian Muhammad Nawaz Sharif Vs. The State and others*' (W.P. No.3716-2019) vide judgment dated 29.10.2019, observed as follows:-

"21. Every person has the right to life which now has an extended meaning and includes the right to enjoy the amenities of life. The State has responsibility to ensure this fundamental right of every individual even a person who is in incarceration and serving sentence. It is the fundamental obligation of any Government to provide medical care for those whom it is punishing by incarceration. Generally the inmate relies upon the Prison Authorities to take care of his medical needs; however, if the State fails to do so or nature of ailment is such that cannot be taken care of by the Jail Authorities, resort can be made in exceptional circumstances seeking for suspension of sentence. The denial on the part of the State in such exceptional circumstances to release any prisoner amounts to infliction of such unnecessary suffering which is not in accordance with the present standards of decency. The Hon'ble Supreme Court of Pakistan in case titled Shehla Zia v. WAPDA (PLD 1994 SC 693) has observed that the word life is very significant because it covers every facet of human existence. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity legally and constitutionally. This fundamental right is enshrined in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 and the State is to ensure that the right is guaranteed to all including the prisoners serving sentence or facing trial. It is not out of place to observe that the state of our prisons is such that in most of them even the basic amenities like toilets, recreation areas and appropriate medical facilities are not available and inmates during the course of serving sentence die at times due to lack of proper care and medical attention. The State urgently needs to look into this aspect and provide best medical care which any person could have availed if he was not incarcerated".

10. It is an admitted position that Central Jail, Rawalpindi (Adyala Jail) is over-crowded and the prisoners are packed in small cells without basic facilities. Moreover, even the health care facilities, provided in jail hospital, are not up to the mark. In the referred facts and circumstances, if any one prisoner becomes Corona Virus positive, the chances of spreading of the same to entire prison population or the persons coming in contact

with him, are immense. Now-a-days, all over the world, policy of social distancing and self-quarantine is being promoted, which cannot even be imagined in a place like Adyala Jail.

11. The petitioners, as noted above, are either facing investigations/inquiries or references; they are on judicial remand and not required for investigation as such. In order to protect the petitioners as well as all other inmates, who have been locked up with them, it is appropriate that they be released on bail otherwise they will face unconscionable and extreme hardship. Due to Corona pandemic, the investigation process is at stand still and even conclusion of trials are a far cry and delay in process is inevitable which as well would cause hardship. Reliance is placed on case reported as 'Talat Ishaq Vs. NAB and others' (PLD 2019 SC 112).

12. In W.P. No.986-2020, it was pointed out that the reference is pending against petitioner before Accountability Court,

Rawalpindi hence this Court has no jurisdiction in the matter. In this behalf, learned Additional Prosecutor General, NAB also placed before the Court order passed by the august Apex Court dated 05.03.2020 in case titled 'Syed Arsalan Ahmed, Syed Usman Ali Vs. The State through Chairman, National Accountability Bureau, Islamabad' (Civil Petition No.172-2020 & Criminal Petition No.65 of 2020). Even other than the referred petitioner, if any other petitioner is facing investigation, inquiry or reference, which matter does not fall within jurisdiction of this Court, he cannot be granted concession of bail, as the matter is beyond the territorial jurisdiction of this Court. The argument of learned Additional Prosecutor General, NAB to the effect that all the petitioners be tested for the disease and only if anyone is positive, he may be released on bail is not tenable in the facts and circumstances, as the approach being adopted worldwide, is prevention of the disease by way of isolation and/or quarantine.

It is an old saying that prevention is better than cure however, if argument of NAB is sustained, it might be too late for preventing the disease from spreading. It is reiterated that present circumstances are unprecedented requiring unprecedented measures.

13. In view of above, instant petition as well as all the petitions mentioned in the Schedule attached herewith are allowed, except W.P. No.986-2020; consequently, the petitioners are enlarged on bail, subject to furnishing bail bonds in the sum of Rs.5,00,000/- each, with one surety each in the like amount, to the satisfaction of Deputy Registrar (Judl.) of this Court, who shall also ensure that either inquiry/investigation is being conducted by NAB at Islamabad or reference is

pending before Accountability Courts, Islamabad and if it is not the case, the sureties shall not be accepted and the petitioners, in such matters, may approach the court of competent jurisdiction. Likewise, the petitioner in W.P. No.986-2020 may approach the court of competent jurisdiction, as his petition stands dismissed due to lack of territorial jurisdiction. The petitioners shall also surrender their passports.

(CHIEF JUSTICE)

**(AAMER FAROOQ)
JUDGE**

Approved for reporting

Zawar