

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Crl. Misc. No.230/2020

Kabir
Versus
The State

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24-03-2020.	Mr Niaz Ullah Niazi, learned Advocate General, ICT, Islamabad. Syed Muhammad Tayyab, Deputy Attorney General. Mr Rabi bin Tariq, State Counsel. Mr Waseem Ahmed Qureshi, Special Prosecutor ANF. Mr Hamza Shafqaat, Deputy Commissioner, ICT, Islamabad. Mr Waqar Uddin Syyid, Deputy Inspector General, ICT Police, Islamabad. Mr Azhar Shah, DSP Legal, ICT Police, Islamabad. Mian Abid, Joint Director ANF.

Through this consolidated order I shall decide 270 petitions listed in "**Annexure-A**" attached hereto.

2. The petitioners are incarcerated in the Central Prison, Rawalpindi. They have sent their respective representations through the Superintendent, Central Prison, Rawalpindi. All the petitioners are under trial prisoners alleged to have been involved in various offences. The offences are of different nature and may be divided into two broad categories i.e. non-violent and violent crimes. Keeping in view the extraordinary situation that has arisen due to the novel Covid-19 ("**Corona Virus**"), this Court vide order, dated 20-03-

2020, had admitted those prisoners to bail who were alleged to have been involved in offences falling under the non-prohibitory clause. According to the written report submitted by the Deputy Commissioner, Islamabad Capital Territory two hundred and eighty three such prisoners have been released.

3. In the petitions in hand, the petitioners are alleged to be involved in offences falling within the ambit of the prohibitory clause. This Court vide order, dated 20-03-2020, had observed as follows:

"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.

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.”

4. In view of the above and having regard to the policy of the Federal Government and other factors such as the intolerable living conditions in the overcrowded Central Prison, Rawalpindi, the gravity of risk posed by the novel Covid-19, safety concerns of the prisoners and their right to life, the petitions listed in **“Annexure-A”** hereto are allowed and consequently all the petitioners are admitted to bail. However, their release shall be subject to the following conditions:

- a) The Chief Commissioner and the Inspector General of Police, Islamabad Capital Territory shall constitute a joint committee to scrutinize each case and release in each case will be subject to the satisfaction of the said Committee.

- b) The Committee shall satisfy itself that the prisoner, if released, will not be a threat to public safety and that sufficient security/surety can be furnished by such prisoner so that there is no apprehension of abscondance or that he or she, as the case may be, may repeat the offence.
- c) If the Committee is satisfied that release of a prisoner admitted to bail is not in public interest then it shall record its reasons.
- d) Subject to satisfaction of the aforementioned Committee, the prisoner shall be released after proper screening by officials already nominated pursuant to clause (b), paragraph (6) of order, dated 20-03-2020.
- e) The Committee is expected to ensure that unnecessary and unreasonable restrictions are not imposed while releasing under trial prisoners who are more than fifty five years old or are women and juveniles.
- f) This Court expects that the exercise pursuant to this order shall be completed at the earliest, preferably within three days.

g) This order shall also cover those cases in which bail may have been refused earlier because prevention of outbreak of the novel virus and its potential spread in prisons is definitely a fresh ground.

5. This Court records its appreciation for the efforts made by the Deputy Commissioner, Islamabad Capital Territory, the Deputy Inspector General of Police and all the officials who assisted them in making the release of under trial prisoners possible pursuant to order, dated 20-03-2020. This Court salutes the valour, commitment and heroic role of the medical practitioners and para medics in general and those including the prison staff involved in taking care of the prisoners incarcerated in the Central Prison, Rawalpindi in particular. The State and every one of us owes a duty of care towards the incarcerated prisoners because they are defenseless due to limitations having been placed on their liberty. In these challenging times the most vulnerable and defenseless classes of the society deserve special care and attention. Needless to say, in the words of Martin Luther King, Jr. that the ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy. This Court has faith and confidence in the

resilience of this nation and expects that every citizen will act responsibly so that lives can be saved and the invisible enemy in the form of the novel virus is defeated.

(CHIEF JUSTICE)

Tanveer Ahmed.

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