

Form No: HCJD/C  
**JUDGMENT SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

***Case No: Writ Petition No.3716 of 2019***

**Mian Muhammad Shahbaz Sharif and another**  
**Vs.**  
**The State through Chairman NAB, Islamabad etc.**

**Petitioners by:** Kh. Haris Ahmed, Barrister  
Munawar Iqbal Duggal, Mian M.  
Faisal Irfan, Barrister Jahangir Khan  
Jadoon, Mr. Adnan A. Khawaja, Ali  
Shah Gillani, Mr. Ibrahim Haroon,  
Mr. Zubair Khalid and Mr.  
Muhammad Arshad Jadoon,  
Advocates.

**Respondents by:** Sardar Usman Ahmad Khan Buzdar,  
Chief Minister, Punjab.

Raja Muhammad Basharat, Law  
Minister, Punjab.

Sardar Ahmed Jamal Sukhera,  
Advocate-General, Punjab, Mr.  
Mushtaq Ahmed Mohal, Additional  
Advocate-General, Punjab, Barrister  
Qasim Ali Chowhan, Additional  
Advocate-General, Punjab, Faisal  
Farid Chaudhary, Additional  
Advocate-General, Punjab, Mr.  
Shaukat Rauf Siddiqui, Additional  
Advocate-General, Punjab, Syed  
Wajid Ali Gillani, Additional  
Advocate-General, Punjab.

Mr. Tariq Mehmood Jahangiri,  
Advocate-General, Islamabad, Mr.  
Muhammad Nadeem Khan  
Khakwani, Assistant Attorney-  
General, Mr. Nazar Hussain Sherazi,  
Assistant Attorney-General, Mr.  
Saqlain Haider Awan, Assistant  
Attorney-General, Islamabad and  
Mr. Sadaqat Ali Jahangir, State  
Counsel.

M/s. Jahanzeb Khan Bharwana, APG, NAB, Nayyer Rizvi, APG, NAB, Sardar Muzafar Ahmed Khan Abbasi, APG, NAB and Muhammad Irfan Boola, Special Prosecutor, NAB.

Dr. Saleem Shahzad Cheema, Medical Superintendent, Services Hospital, Lahore, Dr. Muhammad Arif Nadeem, Member Medical Board and Dr. Adnan Khan, Personal Physician of petitioner No.2.

**Date of Decision: 29.10.2019.**

**AAMER FAROOQ, J.-** This Court vide short order dated 29.10.2019 allowed the instant petition in the following terms:

*“For the reasons to be recorded later the instant petition is allowed and the sentence of petitioner No.2 namely Mian Muhammad Nawaz Sharif handed down by the Accountability Court-II, Islamabad in Reference No.19 of 2017 with respect to offence under Section 9(a)(v) read with Section 14(c) of the National Accountability Ordinance, 1999, is suspended and he is admitted to bail for a period of eight (8) weeks from the date of his release subject to furnishing fresh bail bonds in the sum of Rs.2 million with two sureties each in the like amount to the satisfaction of Deputy Registrar (Judicial) of this Court. In case the indisposition of petitioner No.2 continues, he before the expiry of period of eight (8) weeks may approach the Government of Punjab under Section 401 (2) Code of Criminal Procedure, 1898 and until the decision of the Provincial Government on the application he shall continue to remain on bail. However, if petitioner No.2 does not approach the Provincial Government within the period mentioned*

*hereinabove this order shall cease to have effect on lapse of period of eight (8) weeks and the bail granted shall stand revoked/cancelled.”*

Below are the reasons of our short order:

Mian Muhammad Nawaz Sharif (petitioner No.2), through the instant petition, seeks suspension of sentence, awarded by the learned Judge Accountability Court-II, Islamabad vide judgment dated 24.12.2018 in NAB Reference No.19 of 2017 and to be released on bail till the pendency of Appeal against the referred judgment.

2. The instant petition is fourth petition on the subject; in this behalf earlier writ petition was filed by petitioner No.2 seeking suspension of sentence and release on bail (W.P. No.32/2019) which was dismissed as withdrawn. Subsequently, another petition was filed i.e. W.P. No.352/2019 seeking suspension of sentence on the medical grounds but the same was dismissed vide judgment dated 20.02.2019. The judgment passed by this Court in the said writ petition was assailed before the Hon’ble Supreme Court of Pakistan through Civil Petition No.639/2019. The matter was decided by the august Apex Court on 26.03.2019 and conditional bail for a period of six (6) weeks was allowed to petitioner No.2. After lapse of said conditional bail, petitioner No.2 filed yet another petition seeking bail (W.P. No.1986/2019) which was dismissed on 20.06.2019. In the instant petition, petitioner No.2 seeks suspension of sentence and release on bail on medical grounds.

3. Learned counsel for petitioner No.2 *inter alia* contended that the condition of petitioner No.2 is critical and he is suffering from various ailments; in this behalf it was submitted that petitioner No.2 is a patient of Diabetes Mellitus, Hypertension, Hyperlipidaemia, Hyperuricemia, Chronic Renal Disease and Ischaemic Heart Disease. Learned counsel drew attention of this Court towards latest report filed by the Medical Board constituted by the Government of the Punjab to treat petitioner No.2 and laid emphasis on the conclusion which describes the condition of petitioner No.2 as fragile and unstable as well as being critical. Learned counsel further contended that in such circumstances it is fundamental right of petitioner No.2 to be treated by a Medical Team/Doctors of his own choice. It was further submitted that undoubtedly, petitioner No.2 has been convicted and sentenced; however, in order for him to serve the sentence he is to be in a stable condition enjoying good health. Learned counsel further argued that there are precedents which allow the release on bail even where a person is serving sentence. It was submitted that where the ailment is such which is detrimental to his life the concession of bail is to be allowed; in this behalf reliance was placed on the case titled **Pervaiz Akhtar v. Muhammad Inayat and 4 others** (1995 SCMR 929), unreported decision dated 05.10.2017 of the Hon'ble Lahore High Court, Lahore in case titled **Syed Saud Aziz v. The State and another** (W.P. No.2569/2017 & 2570/2017), **Amjad Hussain Gurchani v. Sajjad Haider Khan and another** (2004 SCMR 12), **The State v. Syed Qaim Ali Shah** (1992 SCMR 2192), **Muhammad Arshad v.**

**The State and another (1997 SCMR 1275), Mian Manzoor Ahmad Watto v. The State (2000 SCMR 107), Zakhim Khan Masood v. The State (1998 SCMR 1065), Firdous Paul v. The State (2004 SCMR 15), Haji Hussain v. The State (2018 YLR 876) and Malik Muhammad Yousafullah Khan v. The State and another (PLD 1995 Supreme Court 58).**

4. Learned Additional Prosecutor-General NAB *inter alia* contended that it is an admitted position and common knowledge that the condition of petitioner No.2 is critical and he is undergoing medical treatment by the Board of Doctors constituted by the Government of the Punjab. It was submitted that in the facts and circumstances it would be appropriate that petitioner No.2 may be released on bail on similar terms as was granted by the Hon'ble Supreme Court of Pakistan vide order dated 26.03.2019 in Civil Petition No.639/2019.

5. Dr. Saleem Shahzad Cheema, Medical Superintendent, Services Hospital, Lahore submitted in the Court various reports and summaries explaining the condition of petitioner No.2. He also read out the latest summary dated 28.10.2019 in this behalf. When asked to explain in simple terms the condition of petitioner No.2, he specifically submitted that it is serious as the various indispositions have led to imbalance and the Team of Doctors is unable to control.

6. Professor Dr. Adnan Khan, Chief Executive, Sharif Medical City, Lahore who is personal Physician of petitioner No.2 submitted that he is Physician of petitioner No.2 for the last twenty (20) years

and now is also part of the team of Doctors treating petitioner No.2. It was submitted that condition of petitioner No.2, Mian Muhammad Nawaz Sharif is most critical and he needs to be admitted to a hospital which has multiple facilities so that all the treatments can take place under one roof. He submitted that the reason for low platelet count is still unknown and for the same various tests are to be conducted including PET scan.

7. This Court vide order dated 26.10.2019 in C.M. No.4038/2019 had issued notice to Sardar Usman Ahmad Khan Buzdar, Chief Minister, Punjab, who pursuant to the order of this Court, appeared in person and apprised that best possible treatment is being given to Mian Muhammad Nawaz Sharif/ petitioner No.2 and the Government of Punjab shall endeavor to do its best under the facts and circumstances. In response to the query of the Court regarding plight of the prisoners who either are serving sentence or facing trial in the Jails of Punjab, the Chief Minister specifically stated that after assuming the position he made numerous visits in the prisons of the Punjab and is making all-out efforts to improve their conditions. In this behalf it was submitted that the Jail Reforms are being made and the best possible facilities shall be provided in due course of time.

8. During course of arguments the issue cropped up whether or not the Executive has power to suspend the sentence of any prisoner serving sentence; in this behalf Mr. Jahanzeb Khan Bharwana, learned ASC candidly contended that the Executive does have the

authority under Section 401 of the Code of Criminal Procedure, 1898 (Cr.P.C.). In response to the query of the Court, whether in the facts and circumstances of the instant case the Provincial Government would be Punjab or Islamabad Capital Territory regime, it was submitted that it would be the Government of Punjab as the sentence is being carried out in the Kot Lakhpat Jail, Lahore which falls within the territory of Punjab.

9. Mr. Tariq Mehmood Jahangiri, Advocate-General, Islamabad also contended that since Islamabad Capital Territory does not have any Central Prison or Jail and the prisoners/convicts serve their sentences in Adyala Jail, Rawalpindi or elsewhere. It was submitted that since petitioner No.2 is serving sentence at Kot Lakhpat Jail, Lahore the Government of Punjab shall be the Executive authority exercising powers under Section 401 Cr.P.C.

10. In response, Khawaja Haris Ahmad learned ASC, conceded the position that the relevant Executive authority in the instant case shall be the Government of Punjab; however, expressed reservations regarding referring the matter to the Executive on account of the fact that the present Government is political rival of petitioners. Learned counsel submitted that notwithstanding the reservations, Executive has ample power to suspend or remit the sentence. Reliance was placed on the case titled **Bhai Khan and others v. The State** (PLD 1992 Supreme Court 14) and **K. M. Nanavati v. State of Bombay** (AIR 1961 SC 112).

11. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record perused with their able assistance.

12. The medical condition of petitioner No.2, Mian Muhammad Nawaz Sharif, as per medical reports, has been critical since 21.10.2019 till to-date; in this behalf a summary dated 28.10.2019 evidences the position. The conclusion of the Board reads as follows:

*“The Special Medical Board is of the considered opinion that due to severe existent co-morbid conditions like Diabets Mellitus, Hypertension, Hyperlipidaemia, Hyperuricemia, Chronic Renal Disease and Ischaemic Heart Disease (for which he has been already operated upon and stents have also been placed), the condition of the patient is critical and the current scenario of very low platelet count and recent Non-ST Elevation Myocardial Infarction in the early hours of 25.10.2019 has added the seriousness of nature of his illness, where a very delicate balance has to be maintained between coagulation and anti-coagulation too sustain his very fragile and unstable health status.”*

13. In light of the above report, Mian Muhammad Nawaz Sharif needs balanced medical care involving various faculties and experts. The critical question for the Court is whether or not in such circumstances blanket order be passed releasing the prisoner on bail unregulated; we are of the opinion that such blanket order cannot be passed as generally is the case with respect to any under trial prisoner



inasmuch as the sentence is to be served and completed. The Executive/Jail Authorities do have powers to release a prisoner who is critically ill under Rules 143 and 164 of Pakistan Prison Rules, 1978 (the “Rules”). The position was discussed in detail by this Court in its decision titled *Mian Muhammad Nawaz Sharif v. The State etc.* (W.P. No.352/2019) dated 20.02.2019. This Court made the following observations:

18. *Another aspect of the matter is that the Pakistan Prison Rules, 1978 prescribe procedure for release of prisoners on bail suffering from disease (s). Rule 143 of said Rules reads as under:-*

***“Rule 143.- (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 recommended the release and certify that the disease is of the nature prescribed; and***
- (e) the prisoner has not more than six months to remain in prison before the expiry of his sentence”.***

***Likewise, Rule 146 of the Rules, reads as under:-***

***“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”.***

19. *The bare perusal of above Rules shows that Superintendent Jail has the authority to release a prisoner suffering from serious illness. The parameters prescribed in the referred Rules are not attracted in the facts and circumstances of present case.*

20. *Under Rule 197 of the Rules, 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, the same is permissible under certain conditions. In the instant case, the law was duly followed and as mentioned hereinabove, the petitioner was taken to the hospital as and when, he complained about his health.”*

14. It is noted with dismay that despite observations by this Court regarding the referred provisions, the Superintendent Jail, Kot Lakhpat, Lahore never initiated or referred the matter for release of petitioner No.2 despite his severe medical condition. Under Rule 145 of the Rules *ibid* the cases which do not fall under other Rules permitting release of a prisoner the matter shall be dealt with by the Government under Section 401

Cr.P.C. on receipt of recommendation from the Inspector General.

15. Under Section 401 Cr.P.C. the Provincial Government/ Executive Authority has ample power to suspend the sentence of any prisoner on any ground, whatsoever. For ease of convenience the relevant provision is reproduced below:

**401. Power to suspend or remit sentences.** (1) *When any person has been sentenced to punishment for an offence, the Provincial Government may at any time without conditions or upon any conditions which the person sentenced accepts, suspend the execution of his sentence or remit the whole or any part of the punishment to which he has been sentenced.*

(2) *Whenever an applications is made to the Provincial Government for the suspension or remission of a sentence the Provincial Government may require the Presiding Judge of the Court before or by which the conviction was had or confirmed to state his opinion as to whether the application should be granted or refused, together with his reason for such opinion and also to forward with the statement of such opinion a certified copy of the record of the trial or of such record thereof as exists.*

(3) *If any condition on which a sentence has been suspended or remitted is, in the opinion of the Provincial Government, not fulfilled the Provincial Government may cancel the suspension or remission, and thereupon the person in whose favour the sentence has been suspended or remitted may, if at large, be arrested by any police-officer without warrant and remanded to undergo the unexpired portion of the sentence.*

(4) *The condition on which a sentence is suspended or remitted under this section may be one to be fulfilled by the person in whose favour the sentence is suspended or remitted, or one independent of his will.*

(4-A) *The provisions, of the above sub-section shall also apply to any order passed by a Criminal Court under any*

*section of this Code or of any other law, which restricts the liberty of any person or imposes any liability upon him or his property.*

*(5) Nothing herein contained shall be deemed to interfere with the right of the President or of the Central Government when such right is delegated to it to grant pardons, reprieves, respites or remissions of punishment.*

*(5-A) Where a conditional pardon is granted by the President or, in virtue of any powers delegated to it, by the Central Government, any condition thereby imposed, of whatever nature, shall be deemed to have been imposed by a sentence of a competent Court under this Code and shall be enforceable accordingly.*

*(6) The Provincial Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petition should be presented and dealt with.”*

16. The relevant subsections for the purposes of present case are Section 401(1) and 401(2) Cr.P.C. Under subsection (1) of Section 401 Cr.P.C. the Provincial Government can, on its own, pass any order regarding the suspension of sentence; however, where the suspension is conditional the concerned prisoner has to give consent to it. On the other hand, under Section 401(2) Cr.P.C. an application can be made by any prisoner to the Provincial Government for suspension of sentence and where such an application is made, the matter is referred to the Court which passed the sentence which shall render its opinion and furnish it to the Provincial Government which then decides the matter. It is surprising that despite a clear provision being present in the law it is not agitated commonly.

17. Section 401 Cr.P.C. has existed on the statute since inception of the Code of Criminal Procedure, 1898 and though has been used and the powers under the same have been exercised for the purposes of remission of the sentence but no case law exists regarding the suspension. Likewise, no case law exists regarding exercise of powers under subsection (2) of Section 401 Cr.P.C. One of the reasons for not invoking of Section 401 Cr.P.C. for suspension of sentence either by the Provincial Government on its own or on the application of the convicted person could be the existence of Section 426 Cr.P.C. by virtue of which the Appellate Court hearing the appeal has the jurisdiction to suspend the sentence awarded by the learned Trial Court. The bare reading of two provisions make it clear that the jurisdiction under Section 426 Cr.P.C. and the Executive power under Section 401 Cr.P.C. can coexist. However, since the Appellate Court as well as the Provincial Government has the jurisdiction and the power to suspend the sentence, the rationalization of the two provisions would be that where the convicted person/appellant seeking setting aside of the sentence in appeal may also request the Court for suspension of the sentence then in that eventuality the Executive power ought not be exercised under the principle of propriety; however, where the Executive authority has been exercised and while doing so the principles of discretion, reasonableness and rationalization are not adhered to exercise of such power is subject to judicial scrutiny. By no stretch of

imagination it is to be taken that in case the Executive takes note of the matter under Section 401 Cr.P.C. that would deprive the Court of its jurisdiction under Section 426 Cr.P.C. or curtail the same. The rationale behind Section 401 Cr.P.C. is that the Provincial Government on its own can scrutinize the matter and where for reasons it believes that the sentence is to be suspended can do so without even the convicted person agitating the matter. The power under Section 401 (2) Cr.P.C. is akin to the jurisdiction under Section 426 Cr.P.C. inasmuch as an application has to be filed for suspension of sentence to the Provincial Government and the matter is referred to the learned Trial Court for opinion. Even in such case there are certain circumstances, as in the present case, where the Executive is in a better position to decide about the circumstances calling for suspension of the sentence inasmuch as, where the suspension is sought on the ground of medical condition and the nature of ailment is such that a team of Doctors or Board is to decide the issue such Board is constituted by the Provincial Government and it would be expedient that the decision is taken expeditiously by the Provincial Government. The reasons or circumstances calling for suspension of sentence under Section 401 Cr.P.C. are not exhaustive and the Provincial Government has to decide the issue on the facts and circumstances of each case. An effort was made to reconcile Sections 401 and 426 Cr.P.C. by Indian Supreme Court in case titled **K. M. Nanavati**

**v. State of Bombay** (AIR 1961 SC 112) wherein it has been held as under:

*“As to suspension of sentence again in s. 426 of the Criminal Procedure Code it is expressly stated that an appellate court can suspend the sentence for reasons to be stated; no such limitation is imposed on the executive under s. 401 of the Code. The language of the two sections themselves shows the field in which the two powers operate although the effect may be the same. It is relevant to consider in this connection the grounds on which a court acts in regard to offenses punishable with death or imprisonment for life (s.497 of Cr. P. C.) but no such restrictions impede executive action. Similarly when the Supreme Court acts under art. 142 it acts judicially and takes only those facts into consideration which are sufficient in the judicial Sense to justify the exercise of its power ; so would be the case when the power is exercised under the rules framed by the court. Thus it appears that the power of the executive and of the judiciary to exercise the power under arts. 161 and 142 or under ss. 401 and 426 are different in nature and are exercised on different considerations and even may have different effect.*

*Executive power exercised in regard to sentences passed by courts is in its very nature the exercise of constitutional authority which negatives the orders of the court. Every time it is exercised it conflicts with some order of the court whether it is a case of pardon or commutation of sentence or a reprieve or suspension or respite. It is an interference with some action of the court which*

*makes the power of the executive to that extent overriding. It is for this reason that it has been said in American judgments, e. g., Ex parte Grossman(1) that although the Constitution has made the judiciary as independent of other branches as is practicable it is, as often remarked, the weakest of the three. It must look for a continuity of necessary cooperation in the possible reluctance of either of the other branches to the force of public opinion. The action of the executive interfering with sentences passed by courts is a matter which is not within the amplitude of the judicial power of the courts and whenever any action is taken by the executive, unless it is illegal, it is not justiciable nor subject to legislative control.”*

18. Another important aspect, while exercising power or involving Section 401 Cr.P.C. is the relevant Government. Generally, any person tried and convicted in any one Province of the country serves the sentence in that Province and the Provincial Government for the purposes of Section 401 Cr.P.C. would be the one where the person was convicted and serving the sentence. Islamabad Capital Territory does not have any Central Prison of its own and all the persons convicted by Court in Islamabad whether for offences under Code of Criminal Procedure or any other law serve sentence in Central Jail, Adayala Rawalpindi which is situated in Punjab or any other Central Prison (Kot Lakhpat in the instant case which is in Punjab). The key question for invocation of Section 401 *ibid* is



whether it is ICT Administration (the Chief Commissioner/Federal Government or the Government of Punjab). Indian Supreme Court while dealing with the similar matter and interpreting Section 432 of Indian Code of Criminal Procedure (similar to Section 401 Cr.P.C) held that appropriate Government shall be the one where the Court which convicted the prisoner is situated. [*Hanumant Dass vs Vinay Kumar & others* (AIR 1982 SC 1052; *State of Madhya Pradesh versus Ratan Singh and others* (AIR 1976 SC 1552)]. We fail to bring ourselves in agreement with the referred view on account of Pakistan Prison Rules, 1978. The Administrative control of Kot Lakhpat Jail is exercised by the Government of Punjab; moreover, under Rule 145 of the Rules, the release or suspension of sentence of a prisoner can be made under Section 401 Cr.P.C. by the Government on the recommendation of Inspector General. Since, in the instant case Kot Lakhpat Jail is under Government of Punjab, the Inspector General of Punjab could have made recommendation to Government of Punjab for release of Mian Muhammad Nawaz Sharif for his release on account of indisposition and the said Government, on its own, could have suspended the sentence, if it is believed the circumstances so warrant. Application under Section 401(2) Cr.P.C. shall also be made to Government of Punjab for similar reasons of administrative control over the Central Prison where petitioner No.2 is serving sentence. Even though the opinion shall be requisitioned from Accountability Court-II, Islamabad.

19. During course of arguments, learned counsel for petitioner No.2 expressed apprehension that if the matter is referred to the Provincial Government/Government of the Punjab for suspension of sentence, the matter would be politicized inasmuch as the present Government of Punjab is political rival of the petitioners. Be that as it may, every Government is guardian of rights of every citizen of Pakistan regardless of whoever the person is. Petitioner No.2 might be the political rival but it is incumbent upon the Government of Punjab that as and when the matter is agitated before it to decide the issue in accordance with its statutory and constitutional obligations and in case they do not do so, the decision is always subject to judicial scrutiny. It is the fundamental right of petitioner No.2 to be treated in accordance with law and is entitled to all the rights that exist or are available to him under the laws of Pakistan. As noted above, Section 401 Cr.P.C. clearly provides him right to approach the Government of Punjab/ Provincial Government for suspension of his sentence and such exercise of the right should not be avoided only because the Government of the day is his political rival. Even otherwise, under Section 401(1) Cr.P.C. the Government of Punjab, in the instant matter, could have decided the suspension of sentence of petitioner No.2 on its own as it has ample authority to do so and should not have waited for petitioner No.2 to agitate the matter before this Court. Likewise, even in future any Provincial Government

generally with respect to all the prisoners serving sentence in the Jails in Pakistan, are expected to exercise powers under Section 401 Cr.P.C. wherever the circumstances so warrant. In the instant case, Government of Punjab can also on its own initiate the question regarding the suspension of sentence of petitioner No.2 due to his serious indisposition or any other factor.

20. As noted above, petitioner No.2 is serving sentence with respect to NAB Reference filed against him under National Accountability Ordinance, 1999 (the "Ordinance"). The referred Ordinance excludes the jurisdiction of the Courts to grant bail under Section 497 Cr.P.C. as well as suspension of sentence under Section 426 Cr.P.C.; however, under Section 9 of the Ordinance the authority/power is not excluded under Section 401 Cr.P.C., hence there is no bar even in cases of National Accountability Bureau for Provincial Government to exercise such power. Moreover, under subsection 4(a) of Section 401 Cr.P.C., Section 401 Cr.P.C. also applies to sentence passed under the Cr.P.C. or any other law. This means that Section 401 Cr.P.C. is applicable to all the prisoners/persons serving sentences under the Ordinance.

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. One of the reasons, petitioner No.2 sought the bail in the instant case, was that though he is being treated in Services Hospital, Lahore by a team of very competent Doctors but the Hospital despite being the leading Hospital of the country did not have all medical facilities catering the ailments of petitioner No.2 and he has to go to other Hospitals for his heart condition and investigation for diminishing platelet. The cases, like the instant one, should not come to the Courts and applicants can be saved time and money if the Government Hospitals are the state of art or even in prison due medical attention can be provided. Moreover, if the Provincial Governments exercise their powers which they have under Section 401 Cr.P.C. the burden of Courts is lessened. The failure on part of Provincial Governments to recognize responsibilities under Section 401 Cr.P.C. as well as the Rules has devastating consequences for thousands of helpless prisoners who are being held in custody in prisons in deplorable inhumane condition and do not have the means to exercise the right of access to justice by approaching the Court of law.

22. The rule of law in every civilized society plays the pivotal role in ensuring that every state organ is working according to its obligations and exercise responsibilities as provided in the constitution and the law. The Executive cannot be absolved of its responsibilities as important as ensuring the

right to life enshrined in the constitution. Hence, this judgment may be taken as an eye-opener for the Federal as well as Provincial Governments to rescue the inmates suffering from serious illness by exercising powers under Section 401 Cr.P.C. and to relieve them of their plight.

23. In our short order of the even date we granted eight (8) weeks bail to petitioner No.2 by suspending the sentence handed down by the learned Judge Accountability Court-II, Islamabad vide judgment dated 24.12.2018 in NAB Reference No.19 of 2017. In case the health of petitioner No.2 does not improve and he needs further medical attention, the Government of Punjab may, on its own, decide the issue regarding suspension of the sentence. Even otherwise, petitioner No.2 may approach the Government of Punjab under Section 401(2) Cr.P.C. The apprehension expressed by the learned counsel for petitioner No.2 can be alleviated as in case of non-exercise of duty by the Government of Punjab or misuse of the discretion or exercise of the same in an arbitrary and whimsical manner, the matter can be agitated before the Court of law for appropriate remedy.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**

\*M.Naveed\*

*Approved for reporting*