

Form No: HCJD/C.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1641 of 2021

Bushra Zeb
Vs.
Federation of Pakistan etc.

Petitioner by: M/s. Raja Aamir Abbas and Raja
M. Shafqat Khan Abbasi,
Advocates.

Respondents by: Raja Saad Sultan, Assistant
Attorney-General.
Lt. Cdr. Jamshed Gull M/o Defence.
Iftikhar ASI.

Date of Decision: 10.06.2021

AAMER FAROOQ, J.- The instant petition is in the nature of *habeas corpus* filed by Bushra Zeb, the wife of Faiz-ur-Rehman who worked as Security Sub Inspector, Inter Services Intelligence (ISI), Islamabad. It is stated in the writ petition that the husband of the petitioner went to work on 30.03.2021 and came back on 03.04.2021 for few hours alongwith his colleagues and left again and returned on 06.04.2021; he went missing since 06.04.2021.

2. In response to the notice issued to respondents, report was filed by respondent No.2 that Faiz-ur-Rehman Security Sub Inspector is in military custody under Section 2(1)(d) of Pakistan Army Act, 1952 read with Official Secrets Act, 1923; that the case is under investigation as he has facilitated

issuance of doubtful and fake citizenship certificates/ documents. When confronted that the custody of petitioner's husband is with military authority who are proceeding against him under the Pakistan Army Act, 1952 read with Official Secrets Act, 1923, learned counsel for the petitioner submitted that the referred custody is without lawful authority. It was contended that this Court has clearly pronounced the law on the subject in case titled **"Ali Rizwan Raja v. Federation of Pakistan and others"** (W.P. No.3970/2018) whereas the Hon'ble Lahore High Court in case titled **Husnain Inam v. Federation of Pakistan through Secretary, Ministry of Defence and 3 others** (PLD 2021 Lahore 296) has held that in *habeas corpus* the matter of custody can be looked into.

3. In response learned Assistant Attorney-General submitted that the judgment being relied upon by the learned counsel for the petitioner stands suspended by the august Apex Court in Civil Petition No.68/2020 titled vide order dated 14.01.2020.

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

5. The petitioner, in the instant petition, seeks production of Faiz-ur-Rehman, her husband before the Court and setting free from detention of the respondents. In the petition as well as the prayer only a vague assertion has been made that the

respondents are holding the husband of the petitioner in custody which is unlawful. In the report submitted by respondent No.2 it is categorically stated that the petitioner's husband has been held in custody under Section 2(1)(d) of Pakistan Army Act, 1952 read with Official Secrets Act, 1923, hence the custody is not unlawful. Relief to the extent of production of Faiz-ur-Rehman has borne fruit in light of the report by respondent No.2. In somewhat similar matter this Court dealt with the issue in **“Ali Rizwan Raja v. Federation of Pakistan and others”** (W.P. No.3970/2018) and observed as follows:

“12. In view of the above provisions of Pakistan Army Act, 1952 and the interpretation awarded to the same, it is clear that a person who is not an Army Officer can be detained and or proceeded under the Pakistan Army Act, 1952 in the circumstances mentioned in Section 2 (d) of the Act ibid. Moreover, such a person can be detained for investigation and proceeded with accordingly. There is nothing on record to show that otherwise the arrest/detention of Brigadier (retired) Raja Rizwan Ali Haider is unlawful in any manner. In PLD 1968 Lahore 1061 supra the Hon'ble Lahore High Court clinched the subject by observing that a person can be proceeded against under Pakistan Army Act, 1952 if he falls under Section 2(1)(d) of the same; when such is the case Sections 73 to 75 are attracted and detention can be extended time and again for reasons in writing where the Court Martial proceedings do not commence within eight

days of detention.

13. In view of the foregoing, since the whereabouts of Brigadier (retired) Raja Rizwan Ali Haider are known and he is under the custody of military under the Pakistan Army Act, 1952, hence his production order cannot be made. The relief to the said extent cannot be granted, hence is disallowed. Moreover, in light of report by respondents the detenue is under investigation for offences under Section 2(1)(d) of Pakistan Army Act, 1952. The petition to the extent of second part of relief has borne fruit and is accordingly disposed off. Likewise in view of above discussion third part of relief prayed is disallowed. However, needless to observe that Brigadier (retired) Raja Rizwan Ali Haider may avail remedies available to him under the law.”

6. In light of the above facts and law no interference is warranted in the instant petition, hence the same is dismissed. However, needless to observe that Faiz-ur-Rehman may avail remedies available to him under the law.

**(AAMER FAROOQ)
JUDGE**