

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**  
MR. JUSTICE YAHYA AFRIDI  
MR. JUSTICE AMIN-UD-DIN KHAN  
MRS. JUSTICE AYESHA A. MALIK

**Crl. M. Appeal No.1-Q/24 in Criminal Petition No. Nil/2024**  
(Against the order of Officer In charge, Quetta of this Court dated 19.12.2023)

Mehboob-ur-Rehman and Jawar  
**...Appellants**

**Versus**

The State through Prosecutor General, Balochistan  
**...Respondent**

For the Appellants:	Nemo (Appellant No.1)
	Jawar, In person (Appellant No.2)
For the State:	Syed Pervaiz Bokhari, ASC (State counsel for Balochistan)
Date of hearing:	21.03.2024

**ORDER**

**Yahya Afridi, J.-** The appellants, Mehboob-ur-Rehman and Jawar Khan, were tried, convicted, and sentenced for commission of offences under Sections 380 and 457 of the Pakistan Penal Code, 1860 ("**PPC**"), by learned Judicial Magistrate, Duki *vide* judgment dated 20.12.2022. The convictions and sentences awarded to the appellants were confirmed by the appellate and, thereafter, maintained by the revisional Courts *vide* judgments dated 04.04.2023 and 06.12.2023, respectively. Aggrieved thereof, the

appellants filed the petition for leave to appeal against the judgment of the revisional Court maintaining their conviction and sentence, which was not entertained by the office of this Court *vide* order dated 19.12.2023, leading to the filing of the instant Criminal Misc. Appeal.

2. At the very outset, let us consider the reason that prevailed upon the Office not to entertain the petition filed by the appellants, it reads as under:

"You are informed that the subject case was presented by you on 18.12.2023 to this office, filed against the judgment/order dated 06.12.2023 passed by the High Court of Balochistan in Criminal Revision No.24/2023 which is not entertainable under Order-XXIII Rule-8 first proviso of the Supreme Court Rules, 1980. The said rule is read as under:-

"Provided that unless surrender is first made on an Order of an imprisonment as above, the petition shall not be entertained."

In view of above, the subject Criminal Petition is, therefore, returned herewith in original along with its paper books not being entertainable on the ground mentioned above."

3. The matter relating to the presence of the accused/convict challenging adverse orders/judgment at the time of filing criminal petitions before this Court has been provided under Rule-8 of Order XXIII of the Supreme Court Rules, 1980 ("**Rules of 1980**"). The relevant Rule reads as under:

"Order XXIII - PETITIONS FOR LEAVE TO APPEAL AND APPEALS ARISING THERE FROM IN CRIMINAL PROCEEDINGS

8. Pending the disposal of a petition under this Order, the Court may direct that execution of any order for imprisonment or fine, against which leave to appeal is sought, be stayed, on such terms as the Court may deem fit:

Provided that unless surrender is first made to an order of imprisonment, as above, the petition shall not be entertained.

Provided further, petition involving bail before arrest may be entertained and posted for hearing if the petitioner undertakes to appear and surrender in Court."

4. A careful reading of the above provisions makes it clear that: firstly, for an accused challenging any adverse order relating to his prayer for the grant of bail before arrest, the accused may not surrender to the police, and still undertake to appear and surrender in this Court at the time of hearing of his petition for the grant of bail before arrest, to render the petition maintainable; secondly, and more relevant to the issue in hand, for a convict challenging his conviction and sentence of imprisonment, he has to first surrender to undergo the term of the sentence awarded, so as to render his petition maintainable.

5. This Court has very aptly discussed the matter in **Muhammad Adnan alias Dana v. The State and others (2015 SCMR 1570)**, wherein it was opined that: -

"A bare reading of the above mentioned first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 makes it abundantly clear that a criminal petition is entertainable by the office of this Court only after a surrender is made by the petitioner to an order of imprisonment outstanding against him and after entertaining of such a petition after such surrender to the order of imprisonment this Court may stay execution of the order of imprisonment or fine. Surrender to an order of imprisonment is, thus, a condition precedent for entertainment of such a petition and it is only after a valid and proper entertainment of such a petition and it is only after a valid and proper entertainment of such petition that the relief regarding stay of execution of the order for imprisonment or fine can be granted. It is also quite clear that the requirement of surrender to an order of imprisonment pertains only to criminal petitions involving an order of imprisonment (e.g., cases where a conviction has been recorded or upheld and an express order has been passed that the petitioner may be taken into custody or cases where bail of the petitioner has been disallowed or cancelled and an order has been passed that he may be taken into custody) and not to criminal petitions seeking bail before arrest in a criminal case

where no order of imprisonment has so far been passed.....For what has been discussed above we have found that the present petition is not entertainable because the mandatory requirement of surrender to an order of imprisonment contemplated by the first proviso to Rule 8 of Order XXIII of the Supreme Court Rules, 1980 has not been fulfilled by the petitioner. In this view of the matter the objection raised by the office regarding entertainability of this petition is sustained and this petition is dismissed on that score."

The principle expressed in the above ruling of this Court has also been echoed in other decisions of this Court in **Zahid v. The State (PLD 1991 SC 379)**, **The State through National Accountability Bureau, Islamabad v. Haji Nasim-ur-Rehman (PLD 2005 SC 270)**, and **Atif Ali v. Abdul Basit (2022 SCMR 2055)**.

6. In view of the above discussion, since the appellants have been convicted and sentenced to imprisonment, they both have to first surrender to serve their sentences of imprisonment, in order for their present petitions for leave to appeal to be maintainable under the Rules of 1980. Accordingly, the order of the Office is maintained, and the present Crl. Misc. Appeal, being not entertainable, is dismissed.

Judge

Judge

Judge

Bench-IV  
Islamabad.  
21<sup>st</sup> March, 2024  
Approved for reporting.  
Nasir Khan /-