

**JUDGMENT SHEET**

IN THE PESHAWAR HIGH COURT,  
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

**Cr.M. No. 13-A of 2015**

**JUDGMENT**

Date of hearing\_\_\_\_\_

Appellant(s)/Petitioner (s)\_\_\_\_\_

Respondent (s) \_\_\_\_\_

**QALANDAR ALI KHAN, J:-**

Al-Haj

Sardar Mohazam Khan, petitioner, is a  
convict-prisoner in Central Jail, Haripur.

He was tried by Anti Terrorism Court,  
Abbottabad, in a murder case and

sentenced to death, and his appeal before

this Court also failed. However, the death

sentence was remitted/reduced to life

imprisonment by the august apex Court

vide judgment dated 25.11.2014.

2. The petitioner has moved the instant  
petition under Section 561-A Cr.PC for

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suspension of his sentence and his release on parole on medical grounds. The background of the application, explained in the petition by the petitioner, is that he contracted disease of brain tumor (Malignant Meningioma) in the year 2010, whereupon he underwent brain surgery and recovered from immediate effects of the disease, however, could not receive the recommended treatment of radiation therapy because of his confinement in the jail, therefore, recurrence of the disease in March, 2015, this time he also had myocardial infarct (heart attack) causing extensive damage to heart.

3. According to the contents of the petition, the petitioner is presently admitted in Neuro Ward of Ayub Medical Complex in extremely serious condition and his treatment has been practically abandoned because of lack of facility and skill available in Ayub Medical Complex or else-where except in Gamma Radiation

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Institute in Karachi, thus, he has been recommended by Neuro Surgeon in Ayub Medical complex for treatment in Medical Institute for Gamma Radiation. The petitioner has alleged, in the petition, that his condition has reached dangerous stage posing serious threat to life just because he could not be properly looked after in jail or in the hospital.

4. This case has its following unique characteristics, if not the first and only case of its kind, which are necessarily to be kept in view at the time of consideration of the petition under section 561-A Cr.PC.

(i) The petitioner was charged for murder, and sentenced to death by the trial Court, which was upheld by this Court, but remitted/reduced to life imprisonment by the august Apex Court.

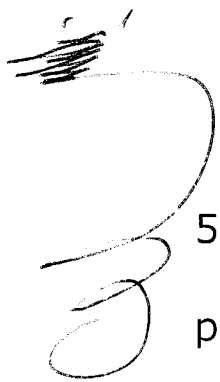
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(ii) Application under Section 561-A Cr. PC has not been moved in

proceedings pending before a Court.

(iii) The medical certificate/recommendation for gamma radiation in a private facility in Karachi is only by Incharge, Neurosurgery Department, Ayub Medical Complex, Abbottabad, and not by a Medical Board.

(iii) The petitioner is seeking his release on parole on medical grounds.



5. Admittedly, there are no pending proceedings in any Court, right from trial Court up to the august apex Court.

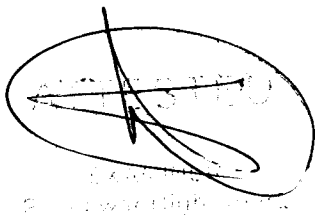
Additionally, the High Court is neither the trial Court nor the final Court of appeal in this case, so as to assume jurisdiction under Section 561-A Cr. PC.

6. The medical certificate/recommendation of Professor of Neurosurgery has been obtained by the petitioner on his own, without approaching the Standing

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Peshawar High Court

Medical Board through a Court or concerned authority, in order to make recommendation for release on parole for gamma radiation in a private facility at Karachi.

7. During arguments, learned counsel for the petitioner referred to **PLD 1969 S.C 65, PLJ 1978 Cr.C 564, 2010 MLD 730 (Quetta), 2014 P.Cr.LJ 1598 (Sindh), 2012 YLR 1315 and 1994 SCMR 798**, all pertaining to pending cases and appeals; but could not cite a single precedent showing release of a convict prisoner for treatment in a private hospital on the basis of opinion/recommendation of a single medical officer when the courts had already become functus officio after decision in the case up to the august Apex Court. The learned counsel also failed to persuade us to exercise jurisdiction under section 561-A Cr.PC when not a single precedent of



exercise of jurisdiction by the High Court is available in a similar nature case.

8. Consequently, the petition is devoid of merit and is therefore dismissed in limine.

**Announced:**  
**16.04.2015**

*sd/Naqar Ahmad se th*  
*sd/Galandar Ali Khan*

CERTIFIED TO BE TRUE COPY  
Examiner  
Peshawar High Court, Peshawar  
Authorised Under Article 87 of  
The Qanun-e-Shahadat Order 1984  
02 MAY 2015