

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate/Review Jurisdiction)

**PRESENT:**

**MR. JUSTICE UMAR ATA BANDIAL, HCJ**

**MR. JUSTICE ATHAR MINALLAH**

**Crl.M.A.NO.1566 AND 2027 OF 2016**

**Crl.M.A.No.1566 of 2016**

*(Compliance report of Secretary, Law and Justice Commission of Pakistan in respect of order dated 23.11.2015 passed in Crl.P.No.449 of 2015)*

In Attendance:

Ch.Aamir Rehman, Addl.AGP

Malik Waseem Mumtaz, Addl.AG Punjab.

Mr. Muhammad Farid Dogar, AAG, Baluchistan

Mr. Sibtain Mahmood, Addl.AG Sindh *(via video Link, Kci)*

Mualim Jan, Director Probation, KP

Shakir Ullah, SO, Home Dept. KP.

Sajjad Ahmed Alvi, AD Probation, Rawalpindi

Hafiz Muhammad Sultan, AD Probation, Rawalpindi

**Crl.M.A.No.2027 of 2016**

*(For permission to file and argue review filed against order dated 26.10.2016 of this Court passed in Crl.P.No.449 of 2016)*

Raja Azmat Ali

... Applicant/Petitioner

Versus

Abu Malik Naseem and another

For the applicant/petitioner: Nemo

For the respondents: Not represented.

Date of hearing: 23.05.2023

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**ATHAR MINALLAH, J.-** These proceedings stem from the order, dated 23.11.2015 whereby this Court had sought reports from the Federal Government and the respective Provincial Governments regarding the status of implementation of the enforced enacted laws

relating to the release of inmates from the prisons on the basis of 'probation'. The reports, submitted by the respective governments and the Secretary Law and Justice Commission of Pakistan ("**Commission**") have been perused. The latter, in its report, has raised crucial questions regarding the inability of the respective governments to extend the benefit of release provided under the relevant enforced laws.

2. The proceedings before this Court and the reports submitted by the respective governments manifest that grave conditions affecting the fundamental rights prevail in the prisons across the country. It is an undeniable fact that living conditions and the treatment of prisoners in overcrowded and inadequately equipped prisons profoundly affects the constitutionally guaranteed rights. Most of the victims of a non-functional criminal justice system are those who belong to economically and socially marginalized sections of the society. They do not have the means to access the courts nor has the State fulfilled its constitutional obligation to ensure inexpensive and expeditious justice contemplated under Article 37(d) of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**"). Justice is denied to the weak and vulnerable because the prevailing criminal justice system allows its exploitation by the privileged and those who wield influence. The abysmal conditions in the prisons are intolerable in a society governed under a Constitution. The prisons exist as institutions for the reformation and social rehabilitation of those prisoners who have been convicted by a competent court following a fair trial. The prisoner has been defined as a person legally committed to a prison as a punishment for a crime or while awaiting a trial. There are mainly two categories of prisoners i.e. convicted or non-convicted. The latter is presumed to be innocent till

guilt is established by a competent court of law. The convicted prisoners are imprisoned because they are required to undergo a period of sentence. The object of undergoing a sentence pursuant to being convicted by a competent court of law is to make the convicted person and others realize that what the former has done or his/her acts, omission, and conduct which have led to the conviction or handing down of the sentence were unacceptable. The sentence deprives a prisoner of his/her liberty and the freedom to be free and this curtailment of liberty may have limited consequences regarding some other rights. A non-convicted prisoner retains the presumption of innocence, which is an integral and fundamental part of the right to a fair trial. The prisoner, whether convicted or non-convicted, has no choice but to place reliance for his right to life and other needs, such as medical attention, solely on the authorities holding him/her in custody. This reliance gives rise to a duty of care on the part of the State and its functionaries. The Constitution guarantees the right to life under Article 9. In the context of a prisoner, it is implicit in Article 9 that it is the duty of the State to ensure that every person incarcerated including those who are convicted for an offence and undergoing sentence, are treated in a manner that does not expose the latter to harm and that humane treatment is extended so long as the incarceration lasts. The prisoner is thus entirely dependent on the State and is at its mercy for the purposes of safeguarding the right to life. The State, therefore, owes a duty of care to every prisoner, regardless of the nature of offence for which the latter has been incarcerated. It is only liberty and the right of free movement that has been curtailed and definitely not the constitutional rights to life and to be treated with respect, having regard to the fundamental rights of inviolability of the dignity of man guaranteed under Article 14 of the

Constitution. Moreover, it becomes a duty of the functionaries to ensure that no prisoner is unjustifiably deprived of the right to liberty even if it is on the basis of being released on probation.

3. In the circumstances and the context of unjustified deprivation of the right to liberty, the benefit of enjoying release on the basis of probation is of pivotal importance and thus the enforcement of the laws relating to probation become crucial. It is a right of every eligible prisoner to be considered for the purposes of enjoying liberty on the basis of probation. The neglect of the executive authorities to perform their obligations and duties imposed by law and to give effect to the enforced laws, particularly relating to the inmates of prisons amounts to a breach of the duty of care that is owed to the incarcerated prisoner. This breach of a fiduciary duty could expose the concerned authorities and the State to be sued by the inmates of the overcrowded prisons for damages.

4. We, therefore, dispose of the petition in the following terms:-

- (a) It is declared that neglect or refusal to effectively enforce the enacted laws relating to release of a prisoner on the basis of probation is violative of the fundamental rights guaranteed under the Constitution, inter alia, under Articles 9, 10-A, 14 and 25 *ibid*.
- (b) The respective Chief Executives' of the Federal Government and the provinces are directed to ensure that the enacted laws relating to release of a prisoner on the basis of probation are effectively implemented and made functional.

- (c) The Federal and Provincial Governments, as the case may be, shall ensure that the prisoners who are eligible under the enacted laws for availing the benefit of being released on probation are identified and their cases are processed expeditiously.

Chief Justice

Judge

Islamabad the

23<sup>rd</sup> May 2023

"NOT APPROVED FOR REPORTING"

(*Aamir Sh.*)