

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

Present.

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ

Mr. Justice Khilji Arif Hussain

Mr. Justice Tariq Parvez

**Constitution Petition No.77 of 2010 and HRC Nos.13124-P,
40303-P, 40220-G and 43103-B/2011 And CMA Nos.42-43/2012**

President Balochistan High
Court Bar Association

Petitioner

VERSUS

Federation of Pakistan & others

Respondents

AND

C.M.A NO.431 OF 2012 In Const. Petition No.77 of 2010

(Gruesome & Sensational Murder of wife and daughter of Mir
Bakhtiar Domki at Karachi on 30.01.2012)

AND

CMA NO.178-Q OF 2012 In Const. P.No.77 of 2010

(Appeal for missing persons cases of Balochistan)

For the Petitioner (s):

Malik Zahoor Shahwani, Adv/
President Balochistan High
Court Bar

On Court Notice:

Maulvi Anwarul Haq, AGP

For Govt. of Balochistan:

Mr. Amanullah Kanrani,
Advocate General
Mr. Babar Yaqoob Fateh Muhammad,
Chief Secy. Balochistan
Qazi Abdul Wahid, DIG Operation
Wazir Hussain, Inspector;
Mansab Khan, SI;
Muhammad Ramzan a/w
Mir Jan S/o Amir Khan; Amir Khan S/o Gul
Bahar; and Gul Mir S/o Bahrn Khan
(Missing persons)

For KPK Govt :

Mr. Asadullah Chamkani, AG
Syed Arshad Hussain Shah, Addl.AG
Mr. Ghulam Dastgir, Chief Secy.

For Punjab Govt : Mr. Mudassar Khalid Abbasi, AAG
Mr. Khizar Hayat Gondal, Secy. L&G
Mr. Sikandar Suleman Raja, Secy.

For Sindh Govt. : Mr. Abdul Fateh Malik, AG
Mr. Qasim Mirjat, Addl.AG
Raja M. Abbas, Chief Secy.
Syed Mushtaq Ahmed Shah, IG
Mr. Mushtaq Mahr, DIG. CID
Mr. Aftab Nasir, SSP South
Mr. Zameer Ahmed Abbasi, DSP
Muhammad Mubeen, SHO/IO

For M/o Defence : Cmdr. Hussain Shahbaz, Dir (Legal)

For FC & IB : Nemo.

Date of Hearing : 12.04.2012

ORDER

In continuation of earlier order of this Court dated 06.04.2012, the learned Advocate General, Balochistan alongwith Qazi Abdul Wahid, DIG (Operations) has appeared and produced three missing persons, namely Mir Jan S/o Amir Khan; Amir Khan S/o Gul Bahar; and Gul Mir S/o Bahran Khan, all residents of Saryab Mills, an area within the jurisdiction of Police Station New Saryab, District Quetta. According to these persons, they were forcibly taken away during night time from their houses and were kept in the custody of unknown persons for about 40 days and as at the time of their arrest they were blind folded, therefore, they could not know that where they were taken and detained during this period, and thereafter they were left in the area of Khuchlak from where they were taken into custody by the police.

2. When we have inquired from the learned Advocate General, Balochistan, as to whether the aforementioned persons are involved in any case, he under instructions of Qazi Abdul Wahid, DIG (Operations) has stated that they have been detained under

MPO, however, when asked, no such order has been produced. He further explains that after effecting their recovery a message has been sent to different Police Stations in the province of Balochistan to inquire as to whether they are involved in some case or not. We failed to understand the excuses being offered by the learned Advocate General. The Police or for that matter any other agency has no authority to detain the persons, without showing their arrests in a particular case and obtaining their remands from the Court of law. In this view of the matter, we set at liberty the afore-noted persons and direct DIG (Operations) to take them safely to their houses so they may not face any difficulty and no one should cause their arrest in future without informing this Court.

3. The statement so submitted by Mr. Hamid Shakeel, Acting DIG (Investigation), about effecting the recovery of said three persons seems to be unbelievable under the facts and circumstances and *prima facie* we are of the opinion that these persons have been recovered from some particular place, but the names of the agencies/authorities, who kept them in custody, are not being disclosed. Also it cannot be ruled out that perhaps they were detained by the police, which kept them without any legal justification and after issuing directions by this Court, they had been released on the pretext that they were missing, otherwise in such a situation they should disclose the particulars of the agencies/persons, who have been curtailing the liberty of these persons as well as four other persons, who were recovered on the last date of hearing. The Acting DIG (Investigation), against whom it is alleged that he had effected their recovery, is directed to appear in

person before this Court tomorrow i.e. **13.04.2012** and explain in writing that from which area these persons have been recovered.

4. On the last date of hearing, three other persons namely Dr. Naseer Ahmed; Akhtar Langoo; and Hafeez Rodiani were also reportedly picked up and the IGP, Balochistan assured this Court that their recovery shall be effected, but it seems that no progress so far has been made. The IGP Balochistan is directed to appear in Court tomorrow and explain as to why he failed to fulfill his commitment, which he made with the Court. At the same time, the SHO as well as the SP Incharge of the area from where the said persons were allegedly picked up shall appear and submit their reports by tomorrow i.e. 13.04.2012 and also to explain as to why proceedings against them should not be initiated because it was their duty to provide protection of life and liberty to the persons living within the area of their jurisdiction, which they have failed to do so.

5. Similarly, another person namely Mazar Khan has not been recovered, although commitment was made before this Court on the last date of hearing to effect his recovery. It has been informed that a case has been registered against SHO Noor Bakhsh and presently he is behind the bars because reportedly the said person was picked up by some unknown persons in the presence of said SHO and no action was taken by him by showing resistance. As said SHO is in custody, therefore, SP Incharge of the area namely Fareed Waraich is directed to appear in person before this Court tomorrow and explain as to why he should not be ordered to be proceeded against according to law because the above-noted person was illegally removed from his jurisdiction and he (the SP)

being Incharge of the area has failed to provide him (missing person) the security.

6. The learned Advocate General, Balochistan informed that during the inquiry conducted in respect of the confinement of Hafiz Saeed-ur-Rehman S/o Allah Bakhsh in Gujranwala Jail, it has been revealed that the latter was never confined in the said Jail and the National Crises Management Cell, vide letter dated 06.06.2009, has furnished wrong information and qua the same an inquiry is underway. The learned Attorney General for Pakistan as well as the learned Advocate General, Balochistan state that as the matter is being probed into, therefore, some time may be given to do the needful.

7. The learned Advocate General states that so far no progress could be made in the case of Dr. Din Muhammad, who was allegedly picked up on 28.06.2009 from the area of Mashakai, District Awaran. The Home Secretary, Balochistan, is directed to conduct an inquiry and take all necessary steps to effect his (Dr. Din Muhammad) recovery and submit compliance report on the next date of hearing.

8. The IGP Balochistan is also directed to submit a comprehensive report in respect of the incident, which took place in between the night of 9/10 April, 2012 on Prince Road wherein 6 persons were murdered, including the incident near Bolan Medical College wherein six persons were killed and on Mir Ahmed Khan Road wherein two persons were murdered.

9. The Chief Secretary, Balochistan, has submitted a report wherein different aspects of the law and order situation, prevailing in the Province of Balochistan, has been highlighted, including the one incident, which allegedly took place in the area of Tehsil Baghbana, District Khuzdar in respect whereof a Civil Miscellaneous Application was filed by Mr. Sajid Tareen, learned ASC, wherein it was reported that 30 persons were picked up and out of them 16 persons have been recovered whereas 14 persons are still missing. Contents of the said report are reproduced hereinbelow:-

منجانب: تحصیلدار خضدار

بجانب: اسسٹنٹ کمشنر خضدار

ڈاک نمبر 39 مورخہ 7.4.2012

عنوان: گرفتاری 30 سیاسی کارکن بذریعہ مسٹر محمد اعظم باجوئی

بمعاہ مندرجہ الصدر بحوالہ آجانب کے حکم 430 مورخہ 7.4.2012

گزارش خدمت ہے کہ لیٹر جناب ہوم ڈیپارٹمنٹ گورنمنٹ آف بلوچستان نمبر SO.(STAT-2(94)2012 مورخہ 06-04-2012 ایڈریس جناب کمشنر صاحب قلات ڈویژن خضدار۔ ویٹر نمبر SB(1)76/4-1775 مورخہ 7.4.2012 کا بغور ملاحظہ کیا اور لیٹرز کے متن کو بخوبی سمجھ لیا۔

آجانب سے پوشیدہ نہ رہے کہ مورخہ 5.4.2012 کو بمقام کونسل سپریم کورٹ پنجاب نے MISSING PERSONS کے سلسلے میں سماعت کے دوران مسٹر ساجد ایڈووکیٹ نے جو درخواست سپریم کورٹ پنجاب کو کونسل کے سامنے پیش کر کے اظہار کیا ہے کہ میں نے دس دن قبل تیس سیاسی کارکنز بلا کسی قانونی کارروائی و مضابطہ کے گرفتار کر لیا ہے اور یہ کارکن تاحال MISSING ہیں۔

یہ کہ 10 دن قبل میں نے تحصیل خضدار ایریا میں 30 سیاسی کارکن گرفتار نہیں کی ہیں اور نہ ہی ان کے بارے میں مجھے کوئی معلومات ہے اور اس سلسلہ میں کوئی رپورٹ کسی کے جانب سے موصول نہیں ہوئی ہے۔ درخواست مسٹر ساجد ایڈووکیٹ حقائق پر مبنی نہیں ہے تاہم مذکورہ ایڈووکیٹ نے جو درخواست معزز عدالت میں پیش کی ہے اس درخواست کی نقول فراہم کی جائے تاکہ درخواست کے مطابق جواب دیا جاسکے۔

رپورٹ حسب الطلب ارسال خدمت ہے۔

تحصیلدار خضدار

10. Copy of this order be sent to Mr. Sajid Tareen, learned Advocate, for filing of his comments, if need be, on the report submitted by the Tehsildar, reproduced hereinabove, so that we may decide the CMA filed by him to the extent of missing of 30 person, which was also published/reported in Daily Intikhab, from the area of Tutak Sub Tehsil Baghbana, District Khuzdar.

11. The Inspector General of Police, Sindh has appeared and stated that Mr. Shabbir Sheikh, Additional IG, who was Incharge of the investigation of the case of murder of the wife of Sardar Bakhtiar Khan Domki (*granddaughter of late Nawab Akbar Khan Bughti*) has left for America to attend a departmental course, but remaining members of the same team are conducting the investigation. He also states that he himself has taken over the charge of the investigation of the case and meanwhile in view of the importance of the case he will make efforts to call Mr. Shabbir Sheikh, Additional IG, back. We have informed him that a person, who had been heading the investigation of such an importance case, which has direct and indirect repercussions on the law and order situation, prevailing in the Province of Balochistan, instead of leaving for America should have given importance to it.

12. Mr. Mubeen, SHO/IO of the case has appeared and submitted a report claiming its confidentiality. Though it is too early,

yet we are hopeful that the accused persons involved in the case shall be soon traced out. The said report has been returned to him.

IO requests that as he requires some assistance from Inspector General of Police, Islamabad, therefore, directions may be given to him to cooperate with the former in making a breakthrough in the case. Order accordingly.

13. In response to the notices, the Chief Secretaries of all the Provinces, except Chief Secretary, Balochistan, who has already submitted his report before this Court at Quetta on the last date of hearing, undertake to file their respective reports. The case is adjourned enabling them to consult their respective Governments and present schedules for holding local government elections under the command of the Constitution in terms of Articles 32 and 140A (latter incorporated in pursuance of 18th Amendment of the Constitution).

14. The matter to the extent of recovery of missing persons and appearance as well as submissions of reports by Police Officer/Officials shall be taken up tomorrow i.e. **13.04.2012** at Islamabad, however, the main case shall be put up for hearing on **30th instant** at Quetta Branch Registry.

Chief Justice

Judge

Judge

ISLAMABAD

12.04.2012

Zubair