

(Original Jurisdiction).

**PRESENT.**

**MR. JUSTICE TARIQ PARVEZ**

**43103-B/2011 And C.M.A. 42-43/2012**

## Bar Association

AND

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

Mir Bakhtiar Domki at Karachi on 30.01.2012)

AND

**C.M.A NO.178-Q OF 2012 In Const. Petition No.77 of 2010**

(Appeal for missing persons cases of Balochistan)

President Balochistan High Court Bar

## Voice for Baloch Missing Persons

Ghulam Farooq (all in person)

On Court Notice: Malik Sikandar Khan, Dy. Attorney General

Mr. Babar Yaqoob Fateh Muhammad, C.S

Mr. Naseebullah Bazai, Secy. Home Deptt.  
 Rao Amin Hashim, I.G. P.  
 Mr. Munir Badini, Secy. Education  
 Mr. Naseem Lahri, Commissioner Quetta  
 Mr. Ahsan Mahboob, CCPO, Quetta  
 Mr. Hamid Shakeel, DIG Quetta  
 Qazi Abdul Wahid, DIG Operation  
 Mr. Noshair Younis, Focal person

For Sindh Police: Mr. Mushtaq Mahr, DIG. CID  
 Mr. Naeem Sheikh, SSP  
 Mr. Tariq Darejo, SP  
 Mr. Zamir DSP

For M/o Defence, IB & FC: Nemo

Date of hearing: 05-04-2012

### **ORDER**

**Iftikhar Muhammad Chaudhry, CJ.**— Mr. Naseebullah Khan Bazai, Secretary Home Department, Government of Balochistan has placed on record a list of dead bodies recovered from the year 2010 to 1<sup>st</sup> April, 2012. (He has not claimed confidentiality of its contents.) According to the details stated therein during the period mentioned hereinbefore 349 dead bodies have been recovered. In some of the cases FIRs have been registered, particularly in the area which is controlled by the Police, known as 'A' area. As far as the dead bodies recovered from 'B' area, controlled by Levies, are concerned, in some of the cases FIRs have been registered. Unfortunate aspect of the case is that no thorough investigation has been conducted to draw a logical conclusion, although in some of the cases accused were nominated and possibility of their involvement or not in the cases has also not been ascertained. For instance, in one of the cases pertaining to the murder of Jalil Reki matter has not been taken forward except lodging FIR. No doubt it is the right of

the complainant and accused under the Constitution that they should be dealt in accordance with law. When police conducts investigation without fear and favour, there is always possibility to reach to a just conclusion. Presumption, however, cannot be drawn against the persons, who have been involved in the cases unless evidence is collected. The police authorities as well as the Levies under the law are bound to collect the evidence and finally determine about the guilt or innocence of the persons nominated in FIR.

2. We are not in agreement that the police cannot deliver because in some of the cases, which have been brought in our notice when the police started investigation actively, they have achieved the objects, as few days before a considerable quantity of arms and ammunitions/explosives were recovered and the gangs operating in Balochistan for kidnapping the persons for ransom have also been brought to book, which indicates that intentionally in majority of the cases police and levies have failed to discharge their duties, therefore, under the circumstances, we direct that:-

- (i) Let both the agencies register FIRs in respect of dead bodies found in 'A' area as well as 'B' area forthwith, if already FIRs have not been registered and conduct investigation within stipulated time and reach at a logical conclusion;
- (ii) Surprisingly, no compensation has been paid by the State/Provincial Government to the heirs of the persons, whose dead bodies were found lying abundant in different areas of the Province as well as the injured persons. The Provincial Government through Chief Secretary is directed to make compensation as per the policy and if there is no policy they should immediately frame a policy in this behalf and respectable persons should approach the persons

whose families are suffering and pay the compensation to them;

(iii) If any of the persons, who had died during service, benefits which are ordinarily given to them, be also extended. However, extending of above benefit does not mean that Provincial Governments/Law Enforcing Agencies are absolved from their duties to trace out the accused, whosoever he may be and how his status is high, they should be brought into book and matter be reported to Registrar of this Court for our perusal;

3. It has been reported that there are personnel of F.C, who are involved in killing some of the persons as this fact was disclosed by Mir Muhammad Sadiq Umrani, Provincial Minister, whose statement has been supported by Haji Ali Madad Jattak during the proceeding of the Provincial Assembly dated 06.02.2012. While making statement, the former had stated that incident of kidnapping of two persons had been shown by him alongwith Mir Zafarullah Zehri, Home Minister and Mr. Younas Mullazai, Provincial Minister and next day when they were coming from Qalat to Quetta they have found dead bodies of the same. Surprisingly, no action has been taken on this report. Copy of these statements be sent to the learned Attorney General, who should appear tomorrow, alongwith I.G, F.C, Balochistan and file explanation about whatever have been said at floor of the Assembly.

4. Another statement has been filed by the Home Secretary under the headings '**Target and Sectarian Killings**'; according to which number of total target killings is 1085. Surprisingly, in the statement already placed on record in C.M.A 5908/2011, except fifteen (15) persons, no accused has been arrested. Explanation for the same is not available. It is to be noted that as far as sectarian killing is concerned, it is rising day by day. Few days before on 29<sup>th</sup> March, 2012 six persons and between 4<sup>th</sup> and 5<sup>th</sup> April, 2012 two persons were killed for sectarian reasons reportedly. Similarly, few days ago five persons of NGOs were kidnapped but no progress so far has been made. Neither I.G.P, who is chief of Police, nor Home Secretary, who is chief of Levies Force, have explanation, meaning thereby that they had not taken interest. Had they

shown interest, there was no difficulty to trace the crime and cause arrest of the accused persons. However, they are directed to explain about the registration of FIRs and investigation conducted by them, involvement of accused persons and progress of the cases of above incidents. They are also directed to make payment of compensation to the heirs, whose persons have been killed/injured. If any of the persons belonging to the law-enforcing agencies has been killed/injured should be extended the benefit, permissible under the policy. Again it is repeated that by extending this benefit it would not mean that law-enforcing agencies are absolved from causing arrest of the accused and bringing to book them in order to ensure rule of law in the Province.

5. Third category of crime which is rising day by day is abduction/kidnapping for ransom. For example in Quetta in the year 2010 and 2011, 194 case of kidnapping/abduction have been reported. According to learned Advocate General in all these cases FIRs have been registered and majority of the persons have been recovered. However, statement has been contradicted by learned counsel appearing for the petitioner and explained that police cannot claim credit of the same because these persons came back after making payment of ransom. Even by the time, five persons from BRSP and one person namely, Dr. Rajesh, belonging to Hindu community, are still missing; whereas, two persons belonging to Sindh have returned after making payment of ransom. Home Secretary claims that on account of hectic efforts made by law-enforcing agencies a good number of persons involved in abduction/kidnapping have been arrested. We may for the time being accept this statement, but at the same time in the print and electronic media, Mir Zafarullah Zehri, Home Minister has admitted publically that some of the Ministers of the Balochistan are involved in the offences of abduction/kidnapping for ransom etc. This statement was made few days before, but no action was taken by I.G.P or any other member of the law-enforcing agencies, responsible in the Province to ensure the law and order. In view of such important disclosure I.G.P, Home Secretary and other important officers should have immediately taken action on the basis of credible information, which was coming from the mouth of not a person less than the Provincial Minister of the Government. However, after hearing of the

case on 3<sup>rd</sup> April, 2012 Qazi Abdul Wahid, D.I.G Operation, had recorded his statement; contents whereof are reproduced herein below:

- "1. That I am performing my duties as Minister for Home & Tribal Affairs Department, Government of Balochistan since April, 2008.*
- 2. That the total Members of the Balochistan Provincial Assembly are 65 elected from Balochistan. They are representing their concerned area. Out of the 65 members there are 54 Ministers and Advisors.*
- 3. That the incidents of kidnapping for ransom in various Districts of the Province during the past few year has escalated which has created sense of insecurity amongst the common masses and brought bad name to the provincial government on the whole particularly to the Ministry of Home Tribal Affairs Department for the law and order situation in the province.*
- 4. That there had been reports in the news papers from different circles about the alleged involvement of Ministers in the crimes of kidnapping for ransom and also I had received Telephone Call off and on from different areas of the province alleging that the Ministers are involved in the cases of kidnapping for ransom.*
- 5. I had been holding meetings with senior officers of the Police and Levies to further investigate into the alleged charges against the Ministers of their involvement in the crimes i.e. Kidnapping for ransom and once a strong and material evidence appears on record against any of the Ministers the same will be brought on record and I will be in a position to also give my final statement.*

6. It seems that in the above statement, he had avoided to disclose the names of Ministers. Contrary to it, in his press talk, he had stated that he has disclosed the names to the Chief Minister and number of such Ministers, who are involved, are two to three. His press talk has been displayed on the multimedia in the Court. Transcript of his statement, wherein he has taken the stand, is as follows:

سوال۔ اچھا سمر آج کا بینہ کا اجلاس ہوا۔ لاء اینڈ آرڈر کے حوالے سے بات چیت ہوئی کیا اس میں کوئی خاص اہم فیصلے کیے گئے۔

جواب۔ جی ہاں آج کا بینہ کی میٹنگ چلی اس سلسلے میں کافی دیر تک انشاء اللہ کل تک یہ Continue رہے گا، کافی ساری چیزیں اس میں Discuss ہوئی۔ لاء اینڈ آرڈر کے حوالے سے۔ پہلے لوگ تنقید کرتے تھے کہ آپ نے کچھ بات کہی ہے کہ یہ Own کرتے ہیں یا نہیں کرتے جی بالکل میں اپنے Stand پر قائم ہوں میں نے آج کا بینہ کو بریفنگ بھی دے ہے اور نام بھی اشارتا بتائے اور چیف منسٹر صاحب کو بھی بتائے ہیں کہ یہاں کچھ منسٹر Directly بھی اور Indirectly بھی اور ان کو بریفنگ بھی دی ہے اس سلسلے میں انشاء اللہ ہم

چیف منسٹر کے حکم کے ہم پابند ہیں۔ میں نے پہلے بھی اپنے Statement میں کہا تھا کہ چیف منسٹر صاحب اگر ہمیں اجازت دیں کیونکہ ہماری Collision کو رمنسٹ ہے کچھ مجبوریاں بھی ہوتی ہیں اس بات پر ہم نے طے کیا ہے کہ اس معاملے پر آج کے بعد ہم کو ہی Compromise نہیں کریں گے۔ یہ ایک Home منسٹر کے بس کی بات نہیں ہے اس میں آپکو Public کا سپورٹ بھی چاہیے ہوتا ہے اور اپنے Colleagues کا بھی سپورٹ بھی چاہیے ہوتا ہے ایک تو ہمارے پشتونو کی طرف اچھی روایات ہے نواب ایاز جو گیزٹی صاحب نے کہا کوئی اگر کسی کو Ransom کے لئے لے جاتا ہے کہ کوئی اگر کسی کو پیسے 10 لاکھ دے گا تو اُس سے 20 لاکھ وصول بھی کیے جائیں گے اس طرح قلعہ عبداللہ کی طرف کچھ گروپس تھے جو ہم نے کاروائی کی ان کے خلاف اُس کے بعد یہ کاروائیاں بند ہونا شروع ہو گئیں اور Ransom دینا لوگوں میں اتنی جرات اور ہمت ہے وہ نہیں دیتے۔ ہماری طرف بد قسمتی سے Public کی طرف سے اتنی Support نہیں ہے اور ہمارے Colleagues کی طرف سے آج میں نے یہ

تجویز دی کابینہ کی سفارش کلچر ہمیں ختم کرنا ہوگا کہ جس Levies کی Recruitment اور Administration کے حوالے سے Levies کی میرٹ کیا ہوتی ہے Levies کی میرٹ Simple یہ ہوتی ہے کہ آپ کا High ways جو Disturb ہے جو Tribes وہاں Effective ہیں کوئی زہری Effective ہے یا ریسیٹانی Effective ہے یہ تو ان کو Recruit کیا جائے اس کے علاوہ ہمارے Colleagues یہ کرتے ہیں کہ ہمارا چیف منسٹر صاحب کو فو رس کر کے D.C میرالایا جائے جب D.C اس کا جائے گا تو ظاہر ہے اس کی مرضی کے مطابق چلنا پڑیگا اگر DP ہے اور DIG ہے اور میرے Region میں یہ DIG بھیجا جائے پھر کام نہیں کر سکتے ہم کام نہیں کر سکتے۔ آج CM کو یہ تجویز دی ہے اور دوستوں کو Agree کیا گیا ہے انشاء اللہ آج کے بعد Home منسٹر، IG اور Home سیکرٹری کی ہم بالکل اپنی مرضی سے لے جائینگے۔ اپنے DPOS اور DIG وغیرہ اور اس کے بعد ہم اس جیو کی ذمہ دار ہے اور خود جوابدہ ہے۔ اس چیز پر لاء اینڈ آرڈر اس قسم کا کوئی مسئلہ اگر

ہم کنٹرول نہ کر پائے انشاء اللہ آج جو ہم نے Decision لی ہے اس سے انشاء اللہ آپ کو بہتری نظر آئیگی۔

سوال۔ وزراء کا نام تو کافی عرصے سے لیا جا رہا ہے اور آپ نے ہی Disclosed کیا تھا بڑی Important بات تھا اس کے بعد سارے وزیر یہ کہہ رہے کہ کچھ وزراء Involve ہے نام تو نہیں بتا سکتے لیکن جھوڑا اندازہ بتائے کہ کتنے وزیر ہیں۔ پانچ، چھ ہیں سات ہیں دس ہیں پندرہ ہیں کتنے ہیں۔

جواب۔ نہیں سراسر اصل میں دو یا تین وزراء ہیں آج میں نے وضاحت بھی کی ہیں بتایا بھی ہے اور اشارہ بھی بتایا ہے کہ ساری کی ساری کابینہ Involve نہیں ہیں پتہ نہیں کیا بدبختی ان کو پڑی ہوئی ہے بہر حال میں نے نشاندہی کی ہے۔

7. In view of both the above statements on behalf of the Home Minister, Province of Balochistan, no further comments are called for as both the statements are self-explanatory. The I.G.P present in Court, is directed to collect both the statements and proceed in accordance with law and whosoever is involved, notwithstanding the fact that what is his status, be dealt according to law, without being influenced in any manner.



8. I.G.P has informed that due to shortage of police officers, it is not possible to take action against culprits as presently police force is running by the shortage of 26 officers, but despite issuance of notification by the Federal Government no one has come forward to serve in Balochistan. Under the circumstances we direct the Secretary Ministry of Interior as well as Secretary Establishment, Government of Pakistan that according to rules/regulations, issue notifications of such officers and depute them in Balochistan so that law and order situation is brought under control and send copy of such notifications to Registrar of this Court and the I.G.P would inform that as to whether notification has been acted upon or not, enabling us to pass appropriate order in Court for such officers, who are reluctant to join duty despite the fact that under the provisions of Civil Servants Act they should have no hesitation to serve in the Province of Balochistan. This order be communicated to the Attorney General during course of the day, who will take up the matter with both the Federal Secretaries and ensure that notification is issued as early as possible and report in this behalf be submitted tomorrow positively.

9. Next important issue prevailing in Balochistan is about the missing persons. According to the President of Balochistan High Court Bar Association, Human Rights Commission has reported that 72 persons are presently missing from the different areas of the province.

10. Ms. Farzana Majeed appeared and stated that her brother Zakir Majeed, resident of Khuzdar was student of MA English and is missing since 8<sup>th</sup> June, 2009. He was picked up by the Agencies from Mastung when he was coming from Noshk accompanying his two friends, who were also abducted but subsequently were released. They had narrated to her family members that in the vehicle there were people of agencies and FC. They are running from pillar to post but no one has helped them in this behalf. She had also submitted the application to the Chief Justice, Supreme Court and appeared before Mr. Justice Javed Iqbal, who had stated that their brother will come but so far no progress has been made. However, according to the report of the Human Rights Commission, placed on record by the President of High Court Bar Association, his name has appeared at Sr. No.159 of the list and he has been shown as traced. In respect of missing of Zakir Majeed, FIR No.62/2010 at PS Sadar,

Mastung dated 29<sup>th</sup> June, 2010 was also registered. It seems that this FIR was registered on the recommendation of the Commission appointed by the Government of Pakistan for tracing him, however, facts remains that so far he has not been traced as per the statement of his sister and continuously he is missing since 8<sup>th</sup> June, 2009.

11. Allah Bakhsh and Mst. Bakhtawar, parents of Hafiz Saeed ur Rehman appeared and stated that their son is missing since 4<sup>th</sup> July, 2003. Despite efforts he has not been traced out so far. He has placed on record a letter dated 7<sup>th</sup> December, 2009 of Government of Balochistan, Home and Tribal Affairs Department, signed by Zafar Iqbal contents whereof are reproduced hereinbelow:

*"2. It has been intimated by the Ministry of Interior, National Crisis Management Cell Islamabad vide letter 1/1/2007 (R&A) dated 6<sup>th</sup> June, 2009, that Mr. Hafiz Saeed-ur-Rehman s/o Allah Bux who was arrested on 04.07.2003 from Quetta is undergoing RI for 25 years onward through FGCM in Gujranwala jail.*

*3. Above in view it is, therefore, requested that kindly confirm his presence within two days positively by return Fax No.081-9201835. As the cases is the Supreme Court."*

12. Mr. Hamid Shakeel, Acting DIG, Investigation stated that efforts are being made to trace the missing persons and in this behalf two dead bodies were de-entered but those were found of other persons. Mr. Kamran Murtaza, learned counsel, however, stated that according to the contents of the letter of Government of Balochistan, reproduced hereinabove, he is undergoing RI 25 years through FGCM in Gujranwala Jail but no one has probed this aspect of the case. Mr. Hamid Shakeel, Acting DIG is directed to check up the letter and submit report about the veracity of the same. In the meanwhile, efforts should also be made to trace Hafiz Saeed-ur-Rehman. Copy of this letter be sent to the learned Attorney General who will collect necessary information from the Interior Ministry and shall submit report tomorrow. Malik Zahoor Shahwani, Advocate, President High Court Bar Association stated that in the list he has been shown as traced but otherwise he has not been traced as indicated from the facts noted hereinabove.

13. Ms. Sami appeared and stated that she is daughter of Dr. Din Muhammad, who is resident of Mashakai, Awaran. He is missing w.e.f. 28<sup>th</sup> June, 2009 when he was performing his duties in Rural Health Centre, Ornaj. His servant/cook Ramzan informed that at about 12:00 am 4-5 persons entered into his house and picked him up. All those persons were in the civil dresses. They came to his house in Toyota Sarf vehicle and on the following day FIR was lodged. Mr. Noshair, SP stated that investigation was conducted from agencies as well but so far he has not been traced out. According to SP he had no political activities but Nasrullah Baloch stated that Dr. Din Muhammad was Member of Central Committee, BNM for the last about three years. His name is appearing at Sr. No.64 of the list of Pakistan Human Rights Commission, submitted by President of High Court Bar Association.

14. Ms. Sumaira appeared and stated that on 1<sup>st</sup> March, 2012 a raid was conducted at her home situated at Saryab Mills and 10 persons were arrested. Three person namely Muhammad Hanif, Muhammad Shabbir and Lal Muhammad have returned after 22 days, whereas sevens persons namely Amir Khan, Mir Jan, Gul Mir, Balagh Sher, Hazar Khan, Mazar Khan and Javed all by cost Mari are still missing. When we inquired form the IGP, DIG Investigation and DIG Operation, they stated that no report has been registered about this incident, however, Ms. Sumaira stated that on the following day road was blocked by the residents of the area and the police came over there and assured that FIR will be registered but so far no FIR has been registered. In view of the facts which have been narrated hereinabove, we are of the opinion that police is fully aware of the incident because a confidential report has been shown to us wherein request has been made for transfer of the case to the crime branch. They are directed to effect recovery of seven persons and produce them before the Court tomorrow, positively.

15. Ghulam Farooq appeared and stated that Ali Asghar Bangalzai is missing from the year 2010. I.G.P. is directed to put up a comprehensive report in this behalf.

16. There are so many persons who are missing. The President of High Court Bar Association shall submit details of the same after consulting the

concerned. The learned Attorney General is directed to look into the matter and submit report tomorrow, explaining that how many persons are missing; as to why they have not been traced and what efforts are being made by the Federal Government. Similar statement has to be made the Advocate General.

17. It is reported by the President High Court Bar Association that Hamza Shahwani has been traced and is no more missing person but Munir Mardani is still missing from Khuzdar. The Secretary Interior is directed to look into the matter and inquire from the concerned quarters and explain the position tomorrow.

18. We have noted that in Balochistan the main problem is of socio-economic nature, which can only be solved, if the general public of the province is empowered by holding the election of the local bodies, which otherwise is the obligation of the Government in term of Article 32 of the Constitution, which provides: -

*"The State shall encourage local Government institutions composed of elected representatives of the areas concerned and in such institutions special representation will be given to peasants, workers and women."*

The Chief Secretary informed that he has recently taken over the charge and had no full knowledge, except the process of de-limitation, which is likely to be completed shortly and he will discuss this issue with the Chief Minister. He may do so but we are of the opinion that after passing of 18<sup>th</sup> Amendment in the Constitution, under Article 140-A, each provincial government is bound by law to establish a local government system and devolve political, administrative and financial responsibility and authority to the elected representatives of the local governments. It is not only the province of Balochistan but other provinces as well as Territory of Islamabad have not held election so far. We would like to have comments of all the Chief Secretaries, in this behalf. Learned Attorney General may seek instructions from all of them and submit statement under his own signatures.

19. A CMA bearing No.178-Q/2012 has been moved by Nasraullah Baloch. Notice be issued to the Attorney General to file reply of the same.

**C.M.A NO.431 OF 2012:** Mr. Mushtaq Mahr, DIG, CID, Karachi submitted a report and stated that some time be given to them to do the needful. As the report was claimed to be confidential, therefore, same has been returned to them.

It is to be note that despite repeated directions, so far no progress has been made and every time police authorities come forward with the request for extension of time. We have pointed out to them that if they feel difficulty in conducting the investigation or they are not in a position to deliver, they should point out to the Court so we may pass appropriate order against them and direct to someone else for the purpose of investigating the case. Previously, Mr. Shabbir Sheikh, Additional I.G. was conducting the case but now he has been allowed to proceed to America on Course.

Case is adjourned for tomorrow i.e. 06.04.2012.

Chief Justice

Judge

Judge

Quetta, the  
5<sup>th</sup> April, 2012  
Nisar/\*