

HIGH COURT OF AZAD JAMMU AND KASHMIR

1. All Prisoners Central Jail Muzaffarabad. V. The State & others.
2. Imran & others, District Jail Mirpur. V. The State & others.
3. Arshad & others, District Jail Rawalakot V. The State & others.
4. Sohail Altaf & others, District Jail Pallandri V. The State & others.
5. Rafiq-ur-Rehman etc, District Jail Bagh V. The State & others.
6. Faisal Mushtaq etc, District Jail Bhimber V. The State & others.
7. Shabir Iqbal etc. District Jail Kotli. V. The State & others.

Before:- *Justice Azhar Saleem Babar, ACJ.*
Justice Ch. Muhammad Munir, J.
Justice Raza Ali Khan, J.

PRESENT

Mr. Nasir Masood Mughal, Advocate, for the petitioners.

Raja Ikhtlaq Hussain Kiani and Raja Ayaz Farid, Assistant Advocate General, for the State.

IG Police, DG Health, DIG Prisons and Commissioner Muzaffarabad Division.

This order shall dispose of the bail petitions titled above.

Prisoners from all the Central and District Jails of Azad Kashmir have filed applications for release on bail through the concerned Jail Authorities. In view of importance of the matter, notices were issued to Advocate General, Chief Secretary, IGP, DG Health and DIG Prisons. Learned Additional Advocate General and Assistant Advocate General filed comments on behalf of the Govt. It is the contention of the Govt. that it does not oppose the bail applications in view to take precautionary measures to contain the spread of Corona Virus. DG Health AJ&K appeared before the Court and filed comments. He explained that Health Department is ready to implement the Court orders. He further stated that in case, the bail applications are accepted, proper screening of the prisoners shall be

conducted and any suspected patient of Corona Virus may be isolated in quarantine. Inspector General of Police stated that the Police Department in collaboration with the Health Department is extending its utmost efforts to curtail the threat of Corona Virus spread and assured that the State machinery is ready to combat with the situation as per the Court orders. DIG Prisons also did not oppose the bail applications in view of Corona Virus threat. Mr. Nasir Masood Mughal Advocate, President Central Bar Association Muzaffarabad, argued that the spread of COVID 19 is a global threat and requested to release the prisoners keeping in view the legal propositions and threat to sovereignty of the State.

We have mused upon the mater in detail. The petitioners are under trial and convicted prisoners detained in different Central and District Jails in the territory of AJK. In the wake of spread of deadly "*corona virus*" the petitioners have sought relief of bail in cases falling under prohibitory and non-prohibitory clauses of section 497 of Cr.P.C. At the moment one State Subject is reported to have died because of corona virus attack, whereas around 65 are suspected affectees in the region. In order to control the spread of outbreak of the corona virus, the Govt. of AJK has imposed restrictions on movement of citizens and entry in the territory of AJK has been banned. A partial lockdown has been announced by the Govt. and inter district and local transport has been curtailed. The State Government has established quarantine centers at different places in the territory, however, no such facility is available in central and district prisons. Social distancing is a

preventive measure of utmost importance to avoid spread of deadly virus. Right of life to a State Subject is of paramount consideration guaranteed by Article 4(1) of the Interim Constitution, 1974. In such state of affairs, when the prisons are already overcrowded, lives of the prisoners are at risk and it is the responsibility of this constitutional Court to take care of the matter and to adopt appropriate measures. The High Court of Islamabad has already taken notice of the situation and in case titled *Kabir vs. The State* has observed as follows:-

“It is noted that a prisoner has no option but to absolutely rely on the State and the prison authorities for his/her welfare and medical needs. Neglect on part of the State or prison authorities can lead to irreversible consequences, inter alia, causing physical and mental torture. The infliction of unnecessary pain, suffering and agony is not in conformity with the constitutionally guaranteed rights nor the object of incarceration. The incarceration deprives a prisoner from his/her liberty and the freedom to be free and curtailment of liberty has limited consequences regarding some other rights. But by no stretch of the imagination is the right to life restricted or curtailed, rather a heavy burden lies on the State to safeguard this most valuable fundamental right because a prisoner does not have the freedom to make choices or decisions to regulate affairs of life. This reliance gives rise to a duty of care on the part of the State and its functions. The right to life is the most fundamental amongst human rights and the august Supreme Court highlighting its importance in the case titled ‘*Ms Shehla Zia and others v. WAPDA*’ [PLD 1994 SC 693] has observed and held that the word “life” is very significant because it covers every facet of human existence.

The World Health Organization has declared emergency in the wake of the outbreak of “corona virus”. The State of Pakistan has also formulated a comprehensive National Action Plan. In this regard the principle of “social distancing” has been adopted and is being strictly implemented. The concern about spread of the corona virus is most relevant to the prisons. The confined space of a prison makes it virtually impossible

to implement the policy of “social distancing”. The prisoners are vulnerable and exposed to suffer irreparably in case of an outbreak. Prisons, which are overcrowded, have high turnover and intolerable living conditions, could potentially become epicenters for outbreak of the deadly virus. A prison outbreak is likely to present potentially deadly risk not only to its inmates but the general public as well. The appalling conditions and health facilities would definitely exacerbate such a crisis. The inmates of the prisons need to be cared for because they are absolutely dependant on the State and most of them cannot even afford to approach the courts. The federal Government has, therefore, justifiably adopted the policy of reducing the population of the prisons in order to meet the challenges posed by the invisible enemy i.e. the corona virus.”

In view of above situation it is directed as follows:-

As fresh ground emerges for consideration of bail applications in the wake of threat of COVID-19, so, the attached applications are entertained on priority basis.

1. The under trial prisoners involving offences under Qisas and Diyyat Act, Imprisonment for life and the offences involving imprisonment for 10 years and above (with or without fine) shall be released on conditional bail for a period of 2 months. The period of 2 months may be extended till the time the situation returns to normalcy.
2. The under trial prisoners detained in offences involving less than 10 years shall be released on bail provided they furnish surety and personal bail bonds.
3. Surety and personal bonds shall be furnished before the Sessions Judge of concerned district and the Judicial Magistrate on duty shall attest the bonds to his satisfaction.

4. This order shall not apply to the prisoners involved in offences under Antiterrorism Act. In the circumstances of the case, it is directed that a committee comprising Commissioner and Deputy Inspector General of Police of the Region shall scrutinize the cases under Antiterrorism Act on individual basis and submit its recommendations to the High Court keeping in view any threat to sovereignty of the State.
5. So far as the matters relating to convict prisoners, the concerned authorities may consider release of the said prisoners on parole in accordance with Prisons Rules, because a prisoner whose order of conviction has attained finality does not fall within the ambit of this order. A copy of this order shall be furnished to all the concerned authorities including Chief Secretary, IG Police, DG Health, Commissioners, DIGs of all the three regions, District & Sessions Judges for compliance and further proceedings.

The department of Health, Govt. of AJ&K in collaboration with District Administration shall ensure that a prisoner affected by Corona Virus is not let free to mix up with the general public or even with inmates of his family. The Health Department shall conduct necessary tests before the prisoners are let free on bail and shall be isolated in a quarantine centre, if required.

ACTING CHIEF JUSTICE JUDGE JUDGE

Muzaffarabad,
27.03.2020.