

PESHAWAR HIGH COURT, PESHAWAR
Form of Order Sheet

Date of Order or Proceedings 1	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary 2
14.7.2021	<p><u>W.P No.4174-P/2020.</u></p> <p><i>Present: Mr. Ghulam Mohy-ud-Din Malik, Advocate, for the petitioner.</i></p> <p><i>Syed Sikandar Hayat Shah, Addl. AG, for the respondents.</i></p> <p style="text-align: center;">*****</p> <p><u>SHAKEEL AHMAD, J.-</u> This is a petition filed by Salamatullah S/o Haji Abdul Qadeem R/o Nasirpur District Peshawar, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, for a direction or writ in the nature of mandamus to release him on probation as per laid down provisions in Section 2 of “The Good Conduct Prisoner’s Probational Release Act, 1926” read with Rule 9 of “The Good Conduct Prisoner’s Probational Release Rules, 1927”.</p> <p>2. The facts of the case, in brief, are that after a full dressed trial in crime No.41 dated 14.06.2011 registered under Section 9 (c) of the Control of Narcotics Substances Act, 1997 of Police Station Anti-Narcotics Force (ANF), Peshawar. The petitioner was convicted and sentenced to life imprisonment by the learned Special Court, Peshawar, constituted under the Control of Narcotics Substances Act vide judgment dated 18.10.2012. Benefit of Section 382-B Cr.PC was extended to him and the said judgment of the learned trial Court was upheld by this Court as well as by the Apex Court, thus his conviction & sentence attained finality. In earlier round of litigation, the petitioner filed Constitutional</p>

petition bearing No.3970-P of 2018 for his release on probation, which was disposed of with the direction to exhaust alternate remedy as provided under Section 2 of “**The Good Conduct Prisoner’s Probational Release Act, 1926**” vide judgment dated 20.12.2018. In pursuance thereof, the petitioner as well as his wife submitted applications to the respondent No.2 for release of the petitioner on probation, however, till date it was not responded, which necessitated to file the instant petition.

3. We have heard learned counsel for the parties at length and scanned the record with their able assistance.

4. It transpires from the record that in earlier round of litigation, the petitioner had sought the same relief under Section 2 of “**The Good Conduct Prisoner’s Probational Release Act, 1926**” read with Rule 9 of “**The Good Conduct Prisoner’s Probational Release Rules, 1927**”, which was declined firstly, on the ground that he has not served out 10 years of his substantive sentence so as to bring his case within the ambit of Rule 9 of the ibid Rules and secondly, that the petitioner has not exhausted the alternate remedy as provided under Section 2 of the Act-X of 1926. However, it was observed that the petitioner shall be at liberty to approach the proper forum for redressal of his grievance under the ibid Act and Rules, if so advised. In pursuance thereof, the petitioner as well his wife filed representations for redressal of the grievance of the petitioner before respondent No.2 (Secretary Home), which has not been responded till today. We observe that Islamic Injunctions and teachings grant to every aggrieved person the freedom to lodge protest. Every

aggrieved person has a right of representation. He is free to lodge an appeal against an order affecting him adversely and it is his right that his appeal will be adjudicated upon without inordinate delay by an independent tribunal. He can, under no circumstances be stopped from exercising his basic right. In this context reference may be made to the following two Ayaats of Holy Quran:--

i. Ayat No.148 Sura 4 Al-Nisa of Holy Quran:

"Allah does not love the public utterance of hurtful speech, unless (it be) by one to whom injustice has been done."

ii. Ayat No.1 Sura 58 Al-Mujadilah (The Pleading one) of Holy Quran:

"Allah indeed knows the plea of the woman who pleads with you about her husband and complains to Allah, and Allah knows the contentions of both of you; Surely Allah is Hearing, Seeing."

Ayat No.1 of Sura Mujadilah, quoted above, has a reference to one Khaula, wife of Aus bin Samit, who had been separated by her husband on account of an old but a degrading custom whereby the husband could, with impunity, exercise Zihar i.e. he would compare the wife to the back of his mother and thereby succeed in denuding her of her marital status. The consequence of this declaration was a total estrangement between the spouses. The aggrieved woman henceforth was neither a wife nor a divorcee. Her rights were held in abeyance. Khaula, a genuinely aggrieved spouse, injured on account of the prevailing but inhuman custom, appeared before the Holy Prophet (p.b.u.h.) and lodged her protest. Her legal entity was at stake. Who was she? Neither a wife nor a divorcee. She could not withstand such a humiliating situation. In fact, she demanded review of the custom which had the force of law. This is

probably the only instance in human history when a time-honoured custom, having the force of law, was reviewed by Almighty Allah on the protest of a lady. Quick came the response through the medium of revelation. It is significant that Quran, which is a source of guidance till eternity, preserves this particular incident of violation of human right for the benefit of future generations. This episode brings into prominence inter-alia the following principles:

- a. There exists in the aggrieved person the unfettered right to lodge a protest or prefer an appeal before a higher authority with the object of seeking redressal of grievance;
- b. The authority hearing the appeal is under obligation to decide the same;
- c. The arbiter is required to give due weight to violation of human rights and human dignity;
- d. The authority may, where necessary, impose a penalty upon the violator of human rights (reference Ayat No.4 of same Sura), and
- e. Even a law can be amended/repealed on account of a protest and
- f. The right of an individual to initiate proceedings cannot be circumscribed.

SAMEE AND BASEER

5. The reference to Divine attribute of Hearing and Seeing for well over four score times in Holy Quran shows that the right of an aggrieved person to lodge protest, appeal or representation against the wrong doer before a higher tribunal i.e., a person other than the one whose order is to be challenged has Divine sanction. The repeated reminders by Holy Qur'an that Allah is Hearing and Seeing is, on one hand, a permission to an injured soul to initiate proceedings and on the other hand a warning to the adjudicator that Allah constantly watches the way matters are being

adjudicated upon. These oft-repeated attributes of Allah i.e., Seeing and Hearing, mentioned in the Holy Quran are designed to act as guarantees. In other words, the rights and freedoms are justiciable.

6. The Constitution as well as legal instruments in force in Pakistan, provide ample remedies to aggrieved persons by way of appeals, revisions, reviews. The Constitution mandates that the Supreme Court, Federal Shariat Court and the High Courts shall have power to exercise original and *Suo Motu* jurisdiction, and thereby provide relief to aggrieved persons. The superior Judiciary has, while interpreting various provisions of law held that right of appeal, representation, show-cause notice is inherent in Islamic teachings. An instrument, having the force of law, which purportedly denies the right of appeal etc. or which does not provide for a show-cause notice will be deemed to be violative of the Injunctions of Islam. In this behalf reference may be made to the following precedents: -

a. Pakistan and others v. Public at Large and others PLD 1987 Supreme Court 304

b. Pakistan through Secretary Ministry of Defence v. The General Public PLD 1989 Supreme Court 6.

c. In re: The Civil Servants Act, (LXXI of 1973) PLD 1984 Federal Shariat Court 34.

d. Messrs Sadiq Brothers v. Appellate Additional Commissioner, Income Tax/Wealth Tax, Rawalpindi and another 2004 PTD 122. (Appeal Barring a right of appeal offends against Injunctions of Islam.

e. Dr. Muhammad Aslam Khaki and others v. Government of Punjab and others PLD 2005 Federal Shariat Court 3

7. Islam has conferred upon human beings the freedom of expression. Grievances have to be redressed. Any bar on this right is negation of the

Divine principle of human dignity. A portion of the famous Khutba known as Khutba-e-Ajeeba (a wonderful sermon) and Khutba-e-Ghurra (an eminent sermon) mentioned in Nahjul Balega as Khutba No.86, delivered by Imam Ali R.A. the fourth Caliph, is illustrative of this point:

"He has given ears to you so that you may hear and preserve in mind things useful to you. He has given eyes to you so that you may acquire such knowledge which will bring you out of the darkness of ignorance and make you see the light of reasoning and wisdom. He has also given to you so many useful organs of body, each of which is composed of many parts, their functioning depends upon their interdependence and their symmetry; their forms and periods of their utility, their co-ordinated action to serve the body, their connection with a heart which is properly fed (with blood) and nourished, in fact this perfectly expedient body and mind are the blessings bestowed upon you besides so many other bounties and thank-worthy boons and protections. He then fixed a limit of life for every one of you and has kept it a secret from you.

In the histories of the past nations and lives of individuals, He provided opportunities for you to study the foot-prints on the sands of time and to be warned of the consequences of evil deeds. Lives of men, who were enjoying themselves to their hearts' contents and had perfect freedom of action, have such useful lessons in them to teach. Just read them over and over again and see how quickly death overtook them. They did not get time to satisfy their desires fully before death put an end to their lives and placed them beyond and further possibility of fulfillment of those wishes."

This sermon appears to be a commentary upon the Ayat No.257 of Sura 2, Al-Baqra which declares as follows:

"Allah is the Guardian of those who believe, He brings them out of every darkness into light. And those who disbelieve, their guardians are the evil ones; they bring them out of light into all kinds of darkness. These are destined for the Fire, and there shall they abide."

8. It has been statutorily provided that every public functionary shall exercise the jurisdiction vested in it reasonably, fairly, justly and for the

advancement of the purposes of the enactment.

9. From the above discussion, it can safely be concluded that an early decision on the representation/appeal of an aggrieved person is an inherent right of every citizen and such public functionary shall not keep the representation/appeal of an aggrieved person undecided for an indefinite period. The authority, officer or person making any order or issuing any direction shall provide a copy of the order to the person affected prejudicially, and he is also supposed to give reasons in support of the decisions, orders, especially when someone is deprived of his vested right.

10. In view of the above, we direct respondent No.2 (Secretary Home) to decide the fate of the representation filed by the petitioner as well as his wife within a period of one (01) month from the date of receipt of this order in the light of the observations made hereinabove, positively.

11. This writ petition is disposed of in the above terms.

12. The office is directed to send the copy of this judgment to the Chief Secretary & Administrative Secretaries of Khyber Pakhtunkhwa Province for compliance in future.

JUDGE

JUDGE