JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

Writ Petition No. 706 of 2024

Allama Raja Nasir Abbas and others

Vs.

Federation of Pakistan through Secretary, Ministry of Interior and others

Criminal Original No. 61 of 2024

Allama Raja Nasir Abbas and others

Vs.

Asad Warriach, Superintendent Adyala Jail

Petitioner by	:	Nemo.
Respondents by	:	Rana Imran Farooq and Raja Zamir ud Din Ahmad, AAGs. Ms. Maimana Khattak, State Counsel. Respondent in person.
Date of Hearing	:	**26-04-2024.**

SAMAN RAFAT IMTIAZ, J.-

1. This Judgment shall decide the aforementioned Writ Petition and Contempt Petition.

W.P. No. 706/2024:

2. The Petitioners [(i) Allama Raja Nasir Abbas, (ii) Allama Syed Ahmed Iqbal Rizvi, and (iii) Asad Abbas Shah] filed W.P. No. 706/2024 against the (i) Federation of Pakistan through Secretary, Ministry of Interior [Respondent No.1]; (ii) Superintendent, Central Jail Adyala, Rawalpindi [Respondent No.2]; (iii) Ministry of law and Justice [Respondent No.3] and (iv) Islamabad Capital Territory through the Chief Commissioner [Respondent No.4] praying for directions to the Respondents to allow and facilitate the Petitioners' meeting with

uncertified

the ex-Prime Minister of Pakistan Mr. Imran Ahmed Khan Niazi who is presently confined in Central Jail Adyala, Rawalpindi ("**Prisoner**").

3. According to the Memo of Petition the Petitioners are office holders of a political organization namely Majlis-e-Wahadat-e-Muslimeen and as such political allies as well as confidantes and close friends of the Prisoner. It was further alleged that the Petitioner No.1 was not allowed to meet the Prisoner on previous occasion despite orders passed by the Judge, Special Court (Official Secret Act), Islamabad which compelled the Petitioner No.1 to approach this court vide Writ Petition No.370/2024 in consequence to which the Petitioner No.1 was eventually allowed to meet the Prisoner. Thereafter, the Petitioners through their legal counsel submitted applications dated 18.02.2024 and 23.02.2024 requesting permission/clearance for meeting with the Prisoner in accordance with the Pakistan Prison Rules, 1978 ("**Prison Rules**") but have not been allowed to meet with the Prisoner, hence the writ petition.

4. Notices in the writ petition were issued to the Respondents on 04.03.2024. On the next date, 08.03.2024 the learned Assistant Attorney General **("AAG")** submitted para-wise comments on behalf of the Respondent No. 2. The para-wise comments refer to Rule 265 of the Prison Rules whereby political discussion during interview with prisoners is prohibited. The comments deny that any order was passed on the Petitioner No.1's application to the Judge, Special Court (Official Secret Act), Islamabad or direction given by any court of law. Yet according to the Respondent No. 2's comments the Petitioner No.1 did in fact avail the facility of interview with the Prisoner on 06.02.2024. It is noteworthy that no mention of any security threat or concern was made in such para-wise comments signed by the Respondent No.2 whereby the Respondent No.2 prayed for disposal of the Writ Petition No. 706/2024 on merits. On the same date the following order **("Visitation Order")** was passed by this Court:

> *"1. The learned Assistant Attorney General **("AAG")** has submitted comments on behalf of the Respondent No. 1 according to which the Petitioner No. 1 availed the facility of interview with the ex-Prime Minister of Pakistan [Imran Ahmad Khan Niazi] on 6.2.2024. On the other hand, **the comments do not shed light on the status of the applications dated 18.2.2024 and 23.2.2024** which are of subsequent dates which shows that such applications have neither been responded to nor any interview has been arranged in response thereto. The learned AAG submits that the applications should have been given through the focal person nominated by the political party headed by the ex-Prime Minister of Pakistan [Imran Ahmad Khan Niazi]. However the learned counsel for the Petitioners has*

uncertified

pointed out that the Petitioners do not belong to such political party. The learned AAG has not been able to highlight any provision of law which requires the Petitioners to come through a focal person.

2. In view of the foregoing, since similar petitions are being filed in abundance on daily basis the learned AAG as well as the learned State Counsel are directed to formulate a policy and suggest a way forward/solution to this recurring issue. ***In the meantime the Respondents are directed to arrange an interview for the Petitioners with the ex-Prime Minister of Pakistan [Imran Ahmad Khan Niazi] on 11.3.2024 and communicate the time designated well in advance to the Petitioners.***

2. Relist on 15.3.2024." [Emphasis added]

Contempt Petition No. 61/2024:

5. The Petitioners filed the instant Contempt Petition on 12.03.2024 seeking initiation of contempt of Court proceedings against the Respondent [Asad Warriach, Superintendent Adyala Jail] (herein after referred to as the (**"Respondent No. 2/Alleged Contemnor**") for noncompliance of the Visitation Order.

6. The learned counsel for the Petitioners submitted that despite the Visitation Order dated 08.03.2024 passed by this Court directing *inter alia* the Respondent No.2/Alleged Contemnor to arrange an interview for the Petitioners with the Prisoner on 11.03.2024 and to communicate the designated time well in advance to the Petitioners, the Respondent No.2/Alleged Contemnor not only failed to intimate the Petitioners the time for the interview but also did not allow the interview to take place upon their arrival at Adyala Jail on the fixed date. The Petitioners allege that they arrived outside Adyala Jail on 11.03.2024 with a certified copy of this Court's Visitation Order dated 08.03.2024 at 09:00 a.m. and were made to wait till 4:00 p.m. at which time the Respondent No.2/Alleged Contemnor finally refused the Petitioners the right to interview with the Prisoner in contempt of this Court's orders.

7. The learned Advocate General submitted that there were several lapses in respect of the assistance provided on 08.03.2024 when the Visitation Order was passed by this Court in W.P. No. 706 of 2024 allowing the Petitioners to conduct interview with the concerned prisoner on 11.03.2024. His stance was that had this Court been properly assisted the Visitation Order would not have been passed to begin with. In this regard he submitted that the Respondents failed to apprise this

uncertified

Court that a security threat had been raised since 07.03.2024. Further that Order dated 26.10.2023 was passed in ICA No. 336 of 2023 titled *Imran Ahmed Khan Niazi vs. Federation of Pakistan, etc.,,* which records that the Respondent No. 2/Alleged Contemnor had apprised the learned Division Bench that in exercise of his discretion he had passed Order dated 25-10-2023 allowing 10 lawyers to have consultation with the Prisoner on two days i.e. Tuesday and Thursday every week in accordance with Rules 554, 559, and 567 of the Prison Rules. The Advocate General sought time on behalf of the Respondent No. 2/Alleged Contemnor to file his reply to the Contempt Petition. Vide Order dated 15-03-2024 passed by this Court in the writ petition, the Respondent No. 2/Alleged Contemnor was directed to file reply within seven days in particular to explain why:

(a) the Court was not informed on 08-03-2024 that a security threat has been raised as of 07-03-2024;

(b) no review application was filed to inform this Court of such security threat even after passage of the Order dated 08-03-2024;

(c) the Respondent No. 2/Alleged Contemnor failed to intimate the Petitioners about the time for the interview in advance as directed vide Order dated 08-03-2024 or that it could not be arranged;

(d) why the Petitioners were made to wait for seven hours at the jail premises if there was a security threat;

(e) how the Petitioners' presence at Adyala Jail for seven hours did not pose security threat but allowing them to conduct the interview in compliance of this Court's order after screening the Petitioners and conducting all possible security checks compromised security; and

(f) how any admitted lapses on the part of the Respondent No. 2/Alleged Contemnor in providing assistance to this Court at the time of passing of Order dated 08.03.2024 justified not giving effect thereto.

8. On 22.03.2024, the Respondent No. 2/Alleged Contemnor filed his Reply to the Contempt Petition. In this Reply the Respondent No. 2/Alleged Contemnor states at the outset that he has immense respect for this Court and cannot even think of disobeying any order/ direction passed by a court of law. Thereafter, the Reply refers to various provisions of the Prison Rules and to the Order dated 26.10.2023 passed in ICA No. 336/2023 wherein it has been recorded that the Respondent No. 2/Alleged Contemnor in exercise of his discretion has passed Order dated 25-10-2023 allowing 10 lawyers to have consultation with the Convict

unverified

on two days i.e. Tuesday and Thursday every week and at the request of the counsel for the Prisoner who was the appellant in such ICA submitted that application for meeting with family members more than once a week shall be decided by him in accordance with law. Various other orders have also been referred to highlight that the Jail Authorities have ultimate discretion with regard to the number of visits with prisoners. Based on the foregoing it has been contended that the view taken by this Court in the Visitation Order is different from what has been settled vide earlier orders in other proceedings and a conflicting view would not have been rendered had it not been for the inability to place on record the Order dated 26-10-2023 passed in the aforementioned ICA. Neither the Respondent No.2/Alleged Contemnor has specified whose inability caused the failure to place on record the earlier orders based on which he is of the view the Visitation Order would not have been passed nor what such inability was. Instead it has been contended that the Petitioners' side cannot be absolved of its duty to inform this Court about the passing of the aforementioned orders and that the Petitioners have failed to demonstrate that the Respondent No.2/Alleged Contemnor willfully, intentionally and deliberately and flouted or acted with the contumacious disregard with the Visitation Order.

9. With regard to the queries raised vide Order dated 15.03.20224 the Respondent No.2/Alleged Contemnor's Reply may be summarized as follows:

a) that the lapse in informing this Court about the security threat in existence prior to 08.03.2024 was neither deliberate nor intentional;
b) that no review application was filed as the Visitation Order was only an interim Order and that the matter was already fixed on 15.03.2024 but that a Review Application has now been filed;
c) that the counsel for the Petitioner telephonically contacted the Respondent No. 2/Alleged Contemnor on 10.03.2024 but the Respondent No. 2/Alleged Contemnor could not give consent to the interview on 11.03.2024 in view of multiple security related exercises being carried out by the jail administration and considering that order dated 26.10.2023 passed in ICA No.336/2023 whereby parties have concurred to and agreed for interview on Tuesdays and Thursdays of every week, is in the field;
d) that the Petitioners were informed at the outer jail gate that their interview cannot be held as the Administration is engaged in 'security related activities';
e) that the Petitioners were informed to come on Tuesday as movement of a high profile prisoner from his cell to the designated room situated

uncertified

in the Administrative Block is cumbersome due to the imminent security concern and ongoing activities.

f) the Petitioners were requested to come on Tuesday which is the day fixed for interview with the Prisoner instead of Monday as the whole jail has to be locked before the Prisoner's movement due to his sensitivity;

g) the Home Department of the Government of Punjab issued a letter dated 12-03-2024 whereby the Inspector General of Prisons, Punjab was directed to stop/cancel visits/meetings for two weeks.

h) finally the Respondent No. 2/Alleged Contemnor has tendered an unconditional apology if this Court still thinks that there is any lapse on his behalf.

10. On the date of filing of the said Reply this Court directed the Respondent No. 2/Alleged Contemnor to arrange a meeting of the Petitioners with the Prisoner on 26.03.2024 at 2:00 p.m. strictly in accordance with the Prisons Rules. On the next date i.e. 01.4.2024 none appeared for the Petitioners however the learned Advocate General submitted that the interview of the Petitioners with the Prisoner has been arranged on the date fixed i.e. 26.03.2024.

11. No one is appearing on behalf of the Petitioners since 22.03.2024. Notwithstanding their absence it is trite law that contempt is a matter between the Court and the alleged contemnor[1] and as such the Petitioners are proceeded against ex parte.

12. A bare perusal of the contents of the Reply submitted by the Respondent No. 2/Alleged Contemnor on 22.03.2024 in W.P. No. 706/2024 summarized herein above reveals that it is devoid of any plausible explanation as to why the Visitation Order was not complied with nor have any of the queries raised in the Order dated 15.03.20224 passed by this Court in the Contempt Petition been responded to.

13. Instead the Respondent No. 2/Alleged Contemnor seeks to justify defying the Visitation Order by challenging the validity thereof. In the Reply the Respondent No.2/Alleged Contemnor refers to various provisions of the Prisoner Rules and then refers to previous orders passed by this Court while emphasizing that allowing an application for an interview with a prisoner lies with the discretion of the Respondent No.2/Alleged Contemnor in exercise of which he had already fixed Tuesdays and Thursdays of every week for visits with the Prisoners.

[1] *Khalid Rashid Vs. Kamran Lashari*, 2010 SCMR 594

uncertified

14. Under Rule 551 of the Prison Rules, an individual is entitled to submit an application, orally or in writing, to the Respondent No.2/Alleged Contemnor seeking permission for an interview with the Prisoner. If a prisoner is not entitled to an interview, the applicant has to be informed at once by the Assistant Superintendent or other officer in charge of interviews. Thus while the Respondent No.2/Alleged Contemnor has the power to reject an application for an interview with a prisoner he has a corresponding duty to inform the applicant at once. Whereas, in this case there was no response from the Respondent No.2/Alleged Contemnor to the Petitioners' applications dated 18.02.2024 and 23.02.2024 seeking permission for a visit with the Prisoner. It was due to the Respondent No. 2/Alleged Contemnor's failure to discharge his duty as per law that left the Petitioners no choice but to invoke the Constitutional jurisdiction of this Court under Article 199 of the Constitution vide the Writ Petition filed on 02.03.2024 that resulted in the passage of the Visitation Order after hearing both sides.

15. Without prejudice to the foregoing, once the Visitation Order was passed by this Court after giving the Respondent No. 2/Alleged Contemnor an opportunity to be heard, the Respondent No. 2/Alleged Contemnor was duty bound to obey it. He cannot justify his disobedience by citing rules which empower him to decide applications seeking permission to visit inmates[2]. The Visitation Order was categorical and directed the Respondents to arrange an interview of the Petitioner with the Prisoner in no uncertain terms thereby leaving no discretion with the Respondent No.2/Alleged Contemnor in the matter at such point. The suggestion that the Respondent No.2/Alleged Contemnor has the authority to disallow the Petitioners from visiting the Prisoner notwithstanding the orders passed by this Court that too after affording him the opportunity to be heard indicates an intent to lower the authority of the Court and interfere in the administration of justice.

16. The Respondent No.2/Alleged Contemnor also refers to Order dated 26.10.2023 passed in ICA No.336/2023 and submits that it is still in the field. The apology, if any, being tendered to this Court by way of the Reply is for the lapse in placing before this Court the ICA Order. Moreover, although the Advocate General admitted in his oral arguments that the lapse in assistance was on the part of the Respondents but in the Reply the Respondent No.2/Alleged Contemnor tries

---

[2] *T. R. Dhananjaya Vs. Vasudevan*, AIR 1996 SC 302

uncertified

to pass the buck to the Petitioners by holding them responsible for not informing this Court of prior orders despite the fact that the Petitioners are not party in such proceedings.

17. Be that as it may, the order passed in the ICA does not aid the Respondent No.2/Alleged Contemnor. The Order simply records that the Respondent No.2/Alleged Contemnor in exercise of his discretion and having regard to the peculiar circumstances of the Prisoner had passed Order dated 25.10.2023 allowing 10 lawyers to have consultation with him on two days i.e. Tuesdays and Thursdays of every week to which the Prisoner expressed his satisfaction. Any schedule agreed upon by and between the Respondent No. 2/Alleged Contemnor with the Prisoner for meetings with his lawyers does not apply to the Petitioners who are not the Prisoner's lawyers. Similarly, the orders referred to by the Respondent No.2/Alleged Contemnor which were passed by this Court directing members of Pakistan Tehreek-e-Insaaf to make applications through focal persons is irrelevant to the case at hand as the Petitioners are not members of such party.

18. But most importantly the Respondent No.2/Alleged Contemnor seems to miss the point that he is not entitled to disregard a court's order by deciding that such order was passed *per incuriam*[3]. As held in *T. R. Dhananjaya Vs. J. Vasudevan*, AIR 1996 SC 302 when an order is passed, what remains for the respondent to do is to only implement the order passed by the court. The age-old maxim that *"no person shall be adjudged in his own cause"* will be of no substance if a party could decide whether directions given to it by a court of law are liable to be followed or not. The scheme of our Constitution is based on trichotomy of powers. In the system of trichotomy the Judiciary has right to interpret, the Legislator has right to legislate, and the Executive has to implement and such trichotomy of powers delicately balanced in the Constitution cannot be disturbed[4].

19. As long as the Visitation Order was in the field the Respondent No.2/Alleged Contemnor was bound to obey it. The Respondent No.2/Alleged Contemnor could have sought a review of the order. But no effort was made by the Respondent No. 2/Alleged Contemnor to file a review of the Visitation Order

---

[3] *Ibid*
[4] *Syed Nazar Abbas Jaffri V. Secretary to Government of the Punjab*, 2006 SCMR 606

Uncertified

or an application seeking early fixation of the instant Writ Petition so as to inform this Court of the circumstances due to which the Visitation Order could not be complied with. Such timely action on the part of the Respondent No. 2/Alleged Contemnor would surely have demonstrated that non-compliance was not willful or contemptuous and the failure to assist this Court was indeed unintentional. In this regard it is pertinent to note that a review petition was filed on 21.03.2024 only after this Court raised a query vide Order dated 15-03-2024 why no review was sought. In any event such Review Petition has been withdrawn on 21.05.2024.

20. In short, this part of the para-wise comments is an effort to demonstrate why the Visitation Order should not have been passed. Now let us see the reasons given as to why directions given in the Visitation Order were not followed.

21. The Letter No. 15-1/2024 dated issued by the Government of Punjab on 12.03.2024 provides no justification for the Respondent No. 2/Alleged Contemnor to have not allowed the Petitioners to meet with the Convict on 11.03.2024 in compliance of the Visitation Order dated 08.03.2024.

22. According to the Reply of the Respondent No. 2/Alleged Contemnor explosive substances were recovered from the vicinity of Adyala Jail on the night of 06.03.2024 and as such there was a security threat in existence even prior to the Letter issued by the Government of Punjab on 12.03.2024. Yet no explanation has been offered as to why such security threat was not mentioned by the Respondent No.2/Alleged Contemnor in his para-wise comments filed on 08.03.2024 nor why the learned AAG as well as the State Counsel failed to highlight such security alert before this Court on 08.03.2024. The only submission made in this regard is that the lapse to provide proper assistance was neither deliberate nor intentional.

23. The Respondent No.2/Alleged Contemnor is occupying a highly sensitive post that requires utmost responsibility. It is inconceivable that he would be faced with a security threat to the jail since 6.03.2024 and yet fail to mention the same in the para-wise comments filed on 8.03.2023 in a matter regarding the right to visit an inmate of the jail wherein instead of seeking dismissal of the writ petition he prays for its disposal on merits.

24. Furthermore, in another matter fixed on 11-03-2024 before this Court i.e. W.P. No. 775/2024 the learned AAG and the learned State Counsel in the presence

uncertified

of the Assistant Superintendent Jail, Adyala submitted that an interview can be arranged for the petitioner in such petition with the Prisoner on 12.03.2024 at 1:00 p.m. The foregoing is sufficient to show that not just the learned AAG and the State Counsel but even the Assistant Superintendent Jail was unaware of any security threat till as late as 12.03.2024!

25. Even if the position taken by the Respondent No.2/Alleged Contemnor that a security threat existed since 06-03-2024 is to be believed the failure of the Respondent No. 2/Alleged Contemnor as well as that of the AAG, the State Counsel, and the Assistant Superintendent Jail to inform this Court of the same cannot be downplayed by describing it merely as a 'lapse' nor can such purported lapse be considered unintentional.

26. There is also no explanation why the Petitioners were not intimated in advance that the visit could not be allowed in spite of the fact that the Visitation Order required the Respondents to intimate the time of the visit on 11.03.2024 to the Petitioners well in advance. According to the Reply of the Respondent No. 2/Alleged Contemnor it was the Petitioners' legal counsel who contacted the Respondent No. 2/Alleged Contemnor on 10.03.2024. This by itself shows a careless and casual attitude toward the Visitation Order passed by this Court unbecoming of an officer of the rank of the Respondent No. 2/Alleged Contemnor.

27. Be that as it may, interestingly enough according to the Reply the reason given to the Petitioners for not allowing the interview on 11.03.2024 was not the security threat. As per the Reply the reason given to the Petitioners' counsel on 10-03-2024 why the visit could not be allowed on 11.03.2024 was due to engagement with 'security related exercises' being carried out by the jail administration and as such the Petitioners were informed/requested to reschedule the visit from Monday (11.03.2024) to Tuesday (12.93.2024). It is therefore clear that the security risk, if any, was not to an extent which made the interview impossible on 11.03.2024.

28. The Respondent No.2/Alleged Contemnor chose not to follow the Visitation Order and instead rescheduled the interview purportedly due to engagement of jail authorities with 'security related exercises' not the security threat itself, if any. It is pertinent to note that no details of such exercises or schedule nor the number of personnel on duty at the Adyala Jail during visitation hours has been provided to the Court to convince this Court that such engagement with such exercises justified

uncertified

the Respondent No.2/Alleged Contemnor's act of defiance and to disregard the Visitation Order. Obeying Court orders and directives is not a matter of choice or convenience and violation thereof cannot be condoned on the basis of vague assertions and excuses. Orders passed by a High Court cannot be allowed to be trifled with and put on the back burner on one pretext or another.[5] It does not appeal to the prudent mind that all the staff and personnel on duty at the Adyala Jail would be busy in 'security related exercises' at the same time. Surely such activities would be carried out in batches leaving sufficient personnel to carry out day-to-day duties including arranging visits with the prisoners. There is nothing on the record before this Court to conclude that the Visitation Order could not be complied with due to 'security related exercises'.

29. During the course of arguments the learned Advocate General was repeatedly asked whether the Government would close down this Court if (God forbid) there was a security threat to it but he could not muster up a response. As a matter of fact courts and judges have been under attack but such attacks have never resulted in closure of courts for any period of time. The State is required to provide security without shutting down the business of the State. The fact that the Respondent No.2/Alleged Contemnor deemed it appropriate to restrain the Petitioners from visiting the Prisoner despite the Visitation Order for such reasons not only shows that the Respondent No.2/Alleged Contemnor considers the prisoner visits easily dispensable but it also betrays a *nonchalant* attitude toward court orders and directives.

30. Banning inmates from meeting their families, friends, and lawyers is not just a violation of the Prison Rules but such tactics are an abuse of human rights. The Human Rights Watch in its report titled *'We are in Tombs'* published in September, 2016[6] highlighted the abuses that took place in one of the prisons in Egypt officially known as Tora Maximum Security Prison but which owing to its reputation has earned a different moniker: the Scorpion. The report notes that the Egyptian Interior Ministry banned visits from time to time in the year 2015 and even otherwise arbitrarily denied visits by relying upon what the report describes as vaguely worded Egyptian laws that have remained unchanged since 1956 that

---

[5] *Sheikh Attiq-ur-Rehman Vs. Syed Ali Murtaza*, 2014 YLR 1215

[6] "We Are in Tombs" Abuses in Egypt's Scorpion Prison (Human Rights Watch, September 28, 2016), available at https://www.hrw.org/report/2016/09/29/we-are-tombs/abuses-egypts-scorpion-prison#:~:text=Based%20on%20interviews%20with%2020,to%20physical%20abuse%20and%20prolonged.

Uncertified

allow visits to be banned or restricted on account of *inter alia* security reasons. Notwithstanding such law in Egypt, the report describes restrictions on visits as human rights abuses. While reading the Human Rights Watch report, one is struck by the similarities in the highly deprecated actions taken by Egyptian authorities at the Scorpion and the actions taken by the Respondent No.2/Alleged Contemnor in Adyala Jail almost as if the same script is being followed.

31. The United Nations Standard Minimum Rules for Treatment of Prisoners known as the Nelson Mandela Rules adopted through UN General Assembly Resolution A/RES/70/175 on December 17, 2015 envisage that prisoners will be allowed, under necessary supervision, to communicate with their family and friends by receiving visits and adequate opportunity to be visited by lawyers. Such is the importance of prisoner visits which in this case was compounded by the Visitation Order.

32. Lastly, almost as an afterthought the Respondent No. 2/Alleged Contemnor tenders a so-called unconditional apology that too only *if* this Court thinks that there is any lapse on the part of the Respondent No. 2/Alleged Contemnor in assisting this Court.

33. Before going further, it is necessary to understand contempt and the power conferred upon the superior Courts to take action against contempt. The expression 'contempt of court' has been discussed in *Dr. A. N. M. Mahmood Vs. Dr. M. O. Ghani, Vice-Chancellor and others*, PLD 1967 Dacca 67 as follows:

> ***"Contempt of Court"*** *is an expression, which is usually synonymous with what is described as disobedience to the Court or despising the authority, dignity or justice thereof. It* ***commonly consists in a party doing otherwise than he is enjoined to do, or not doing what he is commanded or required by the process or order of the Court.*** *See Millor v. Knox ((1878) 4 Bing N C 574). As Oswald puts it, these powers are given to the Court to keep the course of justice free: powers of great importance to society; for by the exercise R of such powers law and order prevail. It is the best insurer of the rule of law because those who violate the law and desecrate its streams are shown that the law is irresistible. This "obstruction" to the free flow of justice is known legal phraseology as "contempt" and it has nothing to do with the personal feelings of the Judge. (Oswald on "Contempt", page 9).*
>
> *The law has armed the High Court of Justice with this power and has imposed on it the duty of preventing brevi manu and by summary proceeding, any attempt to interfere with the administration of justice. Per Bowen, L. J. in, In: re Johnson ((1887) 20 Q B D 68)."* [Emphasis added].

uncertified

34. I would also like to quote the following passages from the judgment as well as the additional note passed in *Naveed Nawazish Malik vs. Ghulam Rasool Bhatti and another*, 1997 SCMR 193 explaining the power of the superior Courts to institute contempt proceedings as follows:

> *"9. At this stage it may be pointed out that from time immemorial Courts being the sole institution to dispense justice amongst person and person, and State and person have been venerated, respected and safeguarded against onslaughts which may bring them in disrespect or disrepute.* ***Any attempt to disobey or show disrespect to any order or direction issued by a Court or to interfere or prejudice the administration of law and justice has been not only disfavoured but made punishable.*** *Such a respect and veneration is inherent in the Courts and administration of justice for the unique and enviable position the Courts hold in the governance and administration of the State.* ***The Courts hold a pivotal position to dispense justice which is the cornerstone of a stable society. Dispensation of justice is an attribute of God delegated to man for which he is directly accountable to God.*** *Justice imparted by Courts have greater degree of respectability and public acceptance than those who intend to perform such act beyond the realm of judiciary.* ***It*** *is the sole arbiter of the right of people; it;* ***serves as a bulwark, a safety valve between the people and the State administration.*** *It is a forum where aggrieved people not only make claim but complain and express their vent up grievances for determination of their rights. In such unique position in the constitutional set up whose independence is guaranteed, is entitled to all respect, regard and veneration.* ***To keep the respect and confidence in the judiciary alive, it is essential that willful disobedience of its order, obstruction in the administration of law or disrespect to the Courts' must be viewed seriously.*** *The law therefore makes such actions or inactions and acts of omission or commission punishable. This is so with the pious object to keep the stream of justice unpolluted, the edifice of justice untarnished and the fountain of justice clean, clear and pure. Administration of justice can be effective only if its image and respect remains unchallenged, the majesty and dignity of law Courts is not compromised and confidence of the people is not shaken. The dignity and discipline should be maintained from within and outside.* ***The jurisdiction of the superior Courts in contempt cases is intended to protect itself from any action tending to obstruct the impartial administration of justice or impair the dignity of the Court.*** [Emphasis added].

Justice Fazal Karim, rendered his additional note in the said case, explaining the purpose and object behind initiating contempt proceedings in the following words:

> *"2. The term "Contempt of Court" is of ancient origin; it has been criticised as inaccurate and misleading, suggesting in some contexts that it exists to protect the dignity of the Judges. In truth "it is not the dignity of the Court which is offended ....A petty and misleading view of the issues involved ...it is the fundamental supremacy of the law which is challenged". Lord President Clyde in 'Johnson v. Grant' 1923 SC 789.* ***Contempt of Court means an interference with the administration of justice*** *and "it. is unfortunate that the offence should continue to be known by a name which suggests to the modern mind that its essence is a supposed affront to the dignity of the Court". (Lord Ackner in Attorney-General v. Times Newspapers Ltd. (1974) AC 273, 322).* ***The sole purpose of proceedings in contempt is to give our Courts the powers effectively to protect the rights of the public by ensuring that administration of justice shall not be obstructed or prevented.*** *(Salmon LJ in Morris v. Crown Office (1970) 2QB 144, 129)."* [Emphasis added]

35. In the case of *Senator Haji Adeel Vs. Raja M. Abbas and others*, 2013 SCMR 346 it was observed that the Supreme Court has repeatedly and consistently held that the ultimate purpose of contempt proceedings is not the protection of a judge personally but in fact it is for the protection of the public at large, whose

rights and interest would obviously be affected, if by any act or omission of any party, the authority of the court is lowered and the confidence of the people in the administration of justice is diminished or weakened.

36. In the above background it is also necessary to understand the importance of tendering an apology to the Court and the manner thereof. In the case of *Sir Edward Snelson, K. B. E., Secretary to the Government of Pakistan, Ministry of Law vs. the Judges of the High Court of West Pakistan, Lahore and another*, PLD 1961 SC 237, the Supreme Court made significant observations regarding the importance of prefacing any response by an alleged contemnor with submission of apology as follows:

> *"The power of committal for contempt is given to such superior Courts in order that they may swiftly and summarily perform one of their most important duties which is to protect themselves against wilful disregard or disobedience of their authority, by visiting with prompt punishment any conduct which tends to bring their authority and the administration of justice into scorn or disregard. It is evident that a Court of justice which has no power to vindicate its dignity or which having the power fails to perform the duty of vindicating its dignity would swiftly lose all hold upon the public respect and in consequence the maintenance of law and order through the agency of the Courts of justice would be rendered impossible.* ***The dignity and authority of the Courts has a link with the supremacy and majesty of the law. Any conduct which is calculated to diminish that dignity or authority is a criminal contempt which a Court is under duty to punish.*** *The Courts of justice are a creation of the sovereign authority, but their mainstay rests in the public confidence, and anything which is calculated to withdraw the public confidence from them has the character of a libel to be visited by action in contempt.*
>
> ***These are the basic reasons why, in the vast majority of cases respondents to a writ of contempt for a libel on the Court preface their submissions with an apology.*** *That does not necessarily mean that the assumption must in all such cases be that the Court issuing the writ is in the right in regard to the substance of the complaint.* ***It merely concedes that the Court had the power to commence the proceeding upon its own interpretation of the offending words of action, and the position of the superior Courts in any civilized country is so high that a mere expression by the Court in this manner of its having taken offence at something said concerning itself is or ought to be sufficient to induce in the alleged offender a feeling of regret that, whether wittingly or otherwise, he should have given cause for such offence.*** *It has long been accepted that the extraordinary power of punishment for contempt has been given to the Courts in order "to keep a blaze of glory around them and to deter people from attempting to reader them contemptible in the eyes of the public". Any individual or institution who or which is conscious of this principle, and adheres to it would necessarily feel that to give offence to a Court at all, in a manner such that the Court feels it has been lowered in the eyes of people, is a matter for regret, and no person or institution in a State should feel himself or itself so great as to regard the offer of an apology as being beneath his or its dignity."*

37. The Supreme Court has enumerated the fundamental principles of accepting an apology for contempt in *Syed Masroor Ahsan and others v. Ardeshir Cowasjee*, PLD 1998 SC 823 as follows:

Uncertified

(a) *The apology must be offered at the earlier stage of the proceedings and may not be postponed till fag-end of the proceedings.*

(b) *The apology must be unconditional, unreserved, and unqualified.*

c) *The apology must represent sincere and genuine remorse and should not be a mere formality.*

(d) *The contemnor should not attempt to justify his conduct.*

38. There is no dispute that the Visitation Order directed the Respondents including the Respondent No. 2/Alleged Contemnor to arrange an interview of the Petitioners with the Prisoner on 11-03-2024 and to communicate the time designated well in advance to the Petitioners. There is also no dispute that the Respondent No. 2/Alleged Contemnor was aware of the Visitation Order. There is no denial on the part of the Respondent No. 2/Alleged Contemnor that the Visitation Order was not complied with. The fact that the Respondent No. 2/Alleged Contemnor did not even bother informing the Petitioners in advance that he had no intention of arranging the interview as directed by this Court despite direction to inform the time of the interview well in advance of the 11-03-2024 indicates that the intention was not just to disobey the Court's order but to lower the dignity of the Court[7].

39. The Respondent No. 2/Alleged Contemnor has failed to establish that he or the Assistant Jail Superintendent or the AAG or the State counsel was aware of any security threat to Adyala Jail till 12-03-2024. Even otherwise, he has failed to demonstrate that there were any 'security related exercises' going on at the Adyala Jail on 11-03-2024 due to which the Petitioners' visit with the Prisoner could not be arranged nor how such visit constituted a hindrance in such exercises. Had that been the case the Respondent No. 2/Alleged Contemnor was obliged to approach this Court seeking a review of its order in a timely manner and certainly not after filing of a contempt petition against him. As long as the Visitation Order was in the field neither he nor anyone else can be allowed to brazenly defy and disregard Court orders and directives and to make compliance a matter of personal choice or discretion.

40. Obedience to law and legal processes is a primary condition of civilized existence[8]. It is the legal duty of all citizens under the constitution what to speak of

---

[8] *Dr. A. N. M. Mahmood (Supra)*

uncertified

a government servant[9]. The higher the rank and status of an individual or corporate body the greater the responsibility imposed on such individual or body not to interfere with the course of justice[10]. In the words of Justice Louis Brandeis of the United States Supreme Court in the case of Olmstead Vs. United States (227 US 438, 485) as quoted by my lord Mr. Justice Asif Saeed Khan Khosa (as he then was) in his additional note appended in the *Contempt Proceedings against Syed Yousaf Raza Gillani, The Prime Minister of Pakistan regarding non-compliance of this Court's Order dated 16-12-2009,* PLD 2012 SC 553 "*if the government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law onto himself; it invites anarchy*". In the instant case, the Respondent No. 2/Alleged Contemnor in his capacity as the Jail Superintendent was liable to act with more circumspection in respect of Court orders than was exhibited by him. His conduct indicates highhandedness and a brazen disregard for the authority of this Court. Therefore, I am of the view that *prima facie* both essential ingredients to constitute 'willful contempt' stand proved[11].

41. Notwithstanding the foregoing, this Court can also not overlook the fact that the Respondent No. 2/Alleged Contemnor arranged the Petitioner's visit with the Prisoner on 26-03-2024 in accordance with the Order dated 22-03-2024 passed by this Court during pendency of these proceedings. I rely upon the additional note authored by Mr. Justice Babar Sattar in *The State through Advocate General Vs. Imran Ahmad Khan Niazi*, PLD 2023 Islamabad 145, whereby it was observed that the jurisprudence developed after the promulgation of the Contempt of Court Act, 1976 reflects that the conduct of the alleged contemnor after the action attracting the application of contempt law have always been taken into account by the constitutional courts to determine whether or not the alleged contemnor is liable to punishment or whether his subsequent conduct reflected remorse and was purgatory and thus curative.

42. In light of the above, despite the gravity of the offence this court restrains itself from proceeding further in the Contempt Petition because of the subsequent events, as referred to hereinabove, reflect that the threat of a substantial detriment

---

[9] *Syed Nazar Abbas Jaffri V. Secretary to Government of the Punjab (Supra)*; *Contempt Proceedings against Syed Yousaf Raza Gillani, The Prime Minister of Pakistan regarding non-compliance of this Court's order dated 16-12-2009 (Supra),* PLD 2012 SC 553

[10] *Ibid.*

[11] *T. R. Dhananjaya Vs. Vasudevan*, AIR 2012 SC 3891

uncertified

to the administration of justice has been averted[12]. However, this Court expects that in future the Respondent No. 2/Alleged Contemnor shall exercise greater circumspection and care [13] otherwise if he repeats such omission, he would be dealt with strictly without showing any leniency to him[14].

43. For the foregoing reasons the titled petitions are **disposed of** with the observations hereinabove.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on this 23rd of May, 2024.

JUDGE

Approved for Reporting
Blue Slip added.

JUNAID

uncertified

[12] *The State through Imran Ahmad Khan Niazi*, PLD 2023 Islamabad 145
[13] *The State Vs. Dr. Firdous Ashiq Awan*, PLD 2020 Islamabad 109
[14] *Suo Moto Contempt of Court Proceedings initiated against Kh. Zahir Ahmed, former Commissioner, Capital Development Authority, Islamabad*, PLD 2002 SC 399