JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. NO. 80 OF 2025

FAIZA ALI QADIR ETC

VS

FEDERATION OF PAKISTAN THROUGH SECRETARY CABINET, ISLAMABAD ETC

Petitioners by : **Mr. Suleman A. Zeb, Advocate.**

Respondents by : **Raja Zamir-ud-Din Ahmed, A.A.G.**
Mr. Tasawar Iqbal, State Counsel.
Ms. Rubeena Farooq, Deputy Secretary, and Mr. Asim Hussain Qureshi, Section Officer, Ministry of Interior.
Mr. Waqi-ul-Zaman, Assistant Superintendent Central Jail, Adiala, Rawalpindi.

Date of hearing : **15.09.2025**

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), the Petitioners have prayed for the following:-

i. Direct the Respondents No.1 & 2 to provide all documentations related to the Petitioners to the legal counsel of the Petitioners, specifically, the court files of the Petitioners, including (but not limited to) the charge sheet, legal documents, and judgments of the Trial Court and High Court in Sri Lanka.

ii. Direct Respondents No. 1 and 2 to provide the prisoner roll mentioning the date of arrest, narcotics/drugs recovered from the Petitioners' possession, and the time period which the Petitioners have served in the Sri Lankan Jail.

iii. Direct the Respondent No.2 to bring the sentences of the Petitioners in compatibility with the laws of Pakistan, specifically the CNSA 1997.

2. The brief facts of the case in hand are that the Petitioners are presently imprisoned at Central Jail, Rawalpindi. They were transferred to Pakistan from Sri Lanka on 07.10.2024 under the Agreement on Transfer of Offenders between the Government of the Democratic Socialist Republic of Sri Lanka and the Government of the Islamic Republic of Pakistan, 2004 **("Bilateral Agreement")**. In order to ensure effective representation before the legal fora in Pakistan, the Petitioners' counsel requires access to the complete record. Despite multiple attempts to obtain the Petitioners' case files and initiate the process of readjusting their sentences in accordance with Pakistani law, he failed to obtain those documents. On 10.12.2024, a formal request was made to Respondent No.2 for the complete case file and relevant documents, but in vain, which necessitated the Petitioners to file the instant Petition.

3. Learned counsel for the Petitioners submits that under Article 4(1) of the Constitution of Pakistan, the Government is constitutionally bound to ensure due process for Pakistanis imprisoned abroad. In terms of Sections 9(2) and 9(4) of the Transfer of Offenders Ordinance (TOO), 2002, any sentence imposed on a transferred offender must conform to the laws of Pakistan. Since the compatibility of the Petitioners' sentences with Pakistani law is yet to be determined, their continued enforcement is unlawful. It is therefore within the jurisdiction of this Hon'ble Court to ensure that the sentences are brought in line with domestic law. The continuation of sentences as imposed by Sri Lankan courts is inconsistent with the Bilateral Agreement, the TOO 2002, and the CNSA 1997, warranting this Court's intervention. The persistent denial of access to relevant case records violates the Petitioners' fundamental rights under the Constitution, particularly Articles 4, 9, and 10. It is a settled principle that prisoners retain their fundamental rights despite conviction and are entitled to judicial enforcement of those rights. Under Article 85 of the Qanun-e-Shahadat Order, 1984, judicial records are public documents, and Article 87 guarantees the right to access such documents where a legal interest is established. This right has been recognized by the Superior Courts, including in *Khizer Hayat v. Home Department* (LHC, Order dated 02.04.2014), affirming a lawyer's right to access a client's case file. Accordingly, the Petitioners' continued detention and lack of access to legal records amount to a violation of their constitutional and legal rights.

4. Learned A.A.G. endorsed the reports submitted on behalf of the Respondents No.1 and 2 and contended that the Ministry of Interior and Narcotics Control requested the Ministry of Foreign Affairs to take up the matter with the relevant authorities of the Democratic Socialist Republic of Sri Lanka and acquire the requisite information in respect of each prisoner. That, as per the response received from the Ministry of Foreign Affairs, the arrest period may be counted as part and parcel of the sentence only if specifically ordered by the relevant court and not otherwise.

5. I have heard the learned counsel for the Petitioners, learned A.A.G., State Counsel, and perused the record.

6. All the 43 Petitioners were convicted and sentenced by a competent Court in the Democratic Socialist Republic of Sri Lanka for the offence of drug trafficking/possession. They were subsequently transferred to the Islamic Republic of Pakistan under the Transfer of Offenders Ordinance, 2002 (hereinafter referred to as the **"Ordinance of 2002"**) to serve their respective sentences. At present, they are incarcerated in Central Jail, Rawalpindi, to serve their sentence. They have knocked on the door of this Court in order to make their sentences compatible with the penalty provided under Pakistani laws, i.e., the Control of Narcotic Substances Act, 1997. For ready reference, Section 9 of the Ordinance of 2002 is reproduced as follows:-

> *"**9. Inspector-General of Prisons to have the custody of an offender transferred to Pakistan.–** (1) Every offender being transferred to Pakistan from any specified country, upon an order under Section 4 shall be formally handed over to the Inspector General of Prisons so nominated by the Competent Authority and the concerned Inspector-General of Prisons shall have the authority to keep such offender in custody in any place as may appear to him to be appropriate for giving effect to the sentence of imprisonment imposed on such offender in such specified country for the period of the sentence as if it were a sentence imposed by a Court in Pakistan.*
>
> *(2) The enforcement of the sentence of imprisonment imposed on any offender who is transferred to Pakistan under sub-section (1) shall be governed by the laws of Pakistan.*
>
> *(3) Notwithstanding anything contained in sub-section (2) the Competent Authority shall, unless otherwise specified in the agreement, be bound by the legal nature and duration of the sentence of imprisonment imposed on any offender transferred to Pakistan under sub-section (1).*

(4) Where the legal nature and duration of the sentence of imprisonment imposed on any offender transferred under sub-section (1), is incompatible with any law of Pakistan, it shall be lawful for a Court of competent jurisdiction in Pakistan to adopt such sentence to make it compatible with laws of Pakistan provided however that the sentence as adopted by such Court in Pakistan corresponds, as far as practicable, to the sentence imposed on such offender in the specified country from which such offender was transferred to Pakistan."

7. The Agreement executed between the two Governments, i.e., the Government of Sri Lanka and Pakistan, which prescribes the procedure for the enforcement of sentence in Article 9, is reproduced as under:-

"1. The Authority of the Receiving party shall enforce or continue the enforcement of the sentence immediately through an order in accordance with the provisions of laws of its country and this Agreement. It shall be bound by the duration of the remaining sentence or measure of deprivation of liberty and shall not convert the sentence or deprivation of liberty into a pecuniary sanction.

2. *The Receiving Party, if requested, shall inform the Transferring Party of the procedures to be followed.*

3. *In the case of continued enforcement, the Receiving Party shall be bound by the legal nature and duration of the sentence as determined by the Transferring Party.*

4. *If the sentence, by its nature or duration, is incompatible with the laws of the Receiving Party, or laws so require, that Party may, through a court order, adopt such sentence to make it compatible with those laws. It shall not aggravate by its nature or duration the sentence imposed in the Transferring Party nor exceed the maximum prescribed by the law of the Receiving Party."*

8. A report was sought from the Respondents regarding the details of the Petitioners from the Government of Sri Lanka, which was provided, containing the name of the convict, the date of arrest, the date of conviction, and the quantum of sentence. However, the requisite information crucially does not include the quantity of narcotics recovered from each Petitioner. This omission is fatal to any determination of sentence compatibility, as the punishment under the Control of Narcotic Substances Act, 1997, is entirely contingent on the quantity of the prohibited substance.

9. In the light of the settled law laid down by the Division Bench of this Court in *Federation of Pakistan Vs. Asad Javed & others* **(PLD 2016 Islamabad 53)**, which is directly on point and binding upon this Court, the procedural course adopted in the instant Writ Petition is misconceived. The learned Division Bench has unequivocally held that a transferred offender cannot directly invoke the Constitutional jurisdiction of this Court under Article 199 for a determination under Section 9(4) of the Ordinance of 2002. The proper forum for such a grievance is the Competent Authority, i.e., the Ministry of Interior (Respondent No. 2). The law casts a statutory obligation upon Respondent No. 2 to first determine the issue of incompatibility and, if necessary, to refer the matter to the Court of competent jurisdiction for adaptation of the sentence. The failure of Respondent No. 2 to discharge this duty, specifically, its failure to procure the vital information regarding the quantity of narcotics from Sri Lankan authorities, is a clear dereliction of its statutory responsibility. Consequently, while this Writ Petition, in its present form, is not maintainable for seeking a direct order on compatibility, it is treated as a representation to the Competent Authority to perform its legal duty. Reliance is further placed on **Writ Petition No.3574 of 2020** titled *"Komal Qamar Vs. Federation of Pakistan etc"*., and **Crl. Appeal No.173 of 2021**, titled *"Asif Rasheed Vs. Federation of Pakistan"*

10. Accordingly, the instant Writ Petition is **disposed of** with the following directions:-

i. The Office shall remit a copy of this order along with the Petition to the Ministry of Interior, Government of Pakistan (Respondent No. 2), which shall treat the same as a formal representation from the Petitioners.

ii. Respondent No. 2 is directed, in discharge of its statutory duty under the Transfer of Offenders Ordinance, 2002, to immediately liaise with the Government of Sri Lanka to procure the complete judicial record for each Petitioner, specifically including the quantity of narcotics recovered.

iii. Upon receipt of the complete record, Respondent No. 2 shall determine whether the legal nature and duration of the sentences awarded by the Sri Lankan courts are incompatible with the laws of Pakistan, particularly the Control of Narcotic Substances Act, 1997.

iv. If an incompatibility is found, Respondent No. 2 shall, without delay, make a formal reference to the Court of competent

jurisdiction (as envisaged under Section 9(4) of the Ordinance) for the adoption of the sentences. All relevant documents, including those specifying the quantity of narcotics, shall be placed before that Court.

v. This entire process shall be completed by Respondent No. 2 within a period of **sixty (60) days** from the date of receipt of this order.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open court on _____.

JUDGE

//Sajid//