Form No: HCJD/C-121.

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 4037 of 2019

Khadim Hussain
Vs
Secretary, M/O Human Rights, Ibd, etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01.	**22-11-2019**	Mr. Shahida Sukhera, Advocate for respondent No.1. Mr. Rabi Bin Tariq, State Counsel. Mr. M Saifullah Gondal, AAG.

The petitioner, namely Khadim Hussain son of Muhammad Miskeen had sent a written complaint, dated 13.11.2019, which was converted into a petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

2. The petitioner is incarcerated at the Central Jail Adyala, Rawalpindi. He is a convicted prisoner and in his written complaint he has highlighted the neglect of the executive authorities, which has led to damage to his eyesight. In his written complaint, he has asserted that he is an orphan and does not have the financial means to approach a Court of law for redressal of his grievances relating to neglect of the executive authorities in providing adequate medical assistance.

3. The executive authorities are vested with powers and jurisdiction under Rule 143 read with Rule 145 of the Pakistan Prisons Rules, 1978 (hereinafter referred to as the "***Prisons Rules***") and section 401 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the "***Cr.P.C***") to take measures in case

of prisoners who are suffering from serious illness. The conditions highlighted in the written complaint sent by the petitioner indicates failure of the system for those who are not privileged enough to exercise their right to access of justice because the executive authorities refuse to fulfill their obligations and duties.

4. The United Nations Committee on Economic, Social and Cultural Rights which monitors State's obligations under the International Economic, Social and Cultural Rights has stated that 'health is a fundamental human right indispensible from exercising of other human rights'. The International Covenant on Civil and Political Rights provides in Article 6(1) that every human being has the inherent right to life and that this right shall be protected by the law. The object of undergoing a sentence pursuant to being convicted by a competent court of law is to make the convicted person and others realise that what the former has done, his/her acts, omissions and conduct that has led to being convicted and handed down sentence are not acceptable. The sentence deprives the prisoner from his/her liberty and the freedom to be free while limiting some other rights. But by no stretch of the imagination the right to life is restricted or curtailed rather heavy burden lies on the State to safeguard the right to life of a prisoner because the latter is entirely at its mercy. The Constitution of the Islamic Republic of Pakistan, 1973 guarantees the right to life under Article 9. It is implicit in Article 9 that it is the duty of the State to ensure that proper medical care is extended to every person who is incarcerated in the prisons of Pakistan, including those who are convicted for an offence and is undergoing sentence. The status of a prisoner is similar to that of a ward of the State because he or

she, as the case may be, is in its legal custody and care. The prisoner is thus entirely dependent on the State and at its mercy for the purposes of safeguarding the right to life. The State, therefore, owes a duty of care to every prisoner regardless of his or her nature of imprisonment. It is only liberty and right of free movement that has been curtailed and definitely not the constitutional rights to life and to be treated with respect having regard to the fundamental right of inviolability of dignity of man guaranteed under Article 14 of the Constitution. A prisoner cannot be held in custody in an overcrowded prison where there is lack of sanitation or be treated with disrespect because such inhuman and degrading treatment would definitely be violative of Articles 9 and 14. It is undoubtedly implicit in article 9 that every person in legal custody of the State has access to medical care and medical opinion. The purpose and object of rules 143 and 145 of the Prisons Rules and section 401 of Cr.P.C. is to empower the competent authorities and the respective governments to fulfil their duties of care towards the prisoners in safeguarding their most valuable and crucial fundamental right to life. This fiduciary duty cannot be neglected by the State and its functionaries. It is the duty of the State to ensure that a prisoner suffering from a serious illness or disease is not only provided with the highest attainable standard of health services but in exceptional circumstances suspend the sentence by exercising powers vested under the Prisons Rules read with section 401 of Cr.P.C.

5. It is noted that when a prisoner invokes the jurisdiction of a competent court seeking bail and suspension of sentence solely on medical ground then in such an eventuality it,

prima facie, gives rise to a presumption that public functionaries on behalf of the State failed in fulfilling duties and obligations under the constitution and law. They are required to satisfy that all reasonable steps were taken having regard to the Prisons Rules read with section 401 of Cr. P. C. When cases end up in the Courts relating to prisoners suffering from serious illnesses and disease seeking bail or suspension of sentence it manifests that the executive authorities have failed to perform functions and exercise powers stemming from obligations imposed under the law and the Constitution. In such an eventuality, the State is indeed in breach of the fiduciary duty to safeguard the right to life of a person and the right to be treated as a human. Every time an incarcerated prisoner or detainee approaches a court seeking bail or suspension of sentence the onus will be on the State to show to the satisfaction of the court that the functionaries had not neglected the duty of care which it owes to every prisoner. The failure on part of the respective Governments under the Prisons Rules and the relevant provisions of Cr.P.C has devastating consequences not only in case of the petitioner but more importantly for those thousands of helpless prisoners who are being held in custody in prisons in deplorable inhuman conditions and who do not have the means to exercise the right to access of justice by approaching a court of law. Such treatment amounts to serious violations of human rights and civil liberties for which solely the State and the executive authorities are to be held responsible and accountable. The conditions highlighted by the petitioner at the Central Jail Adyala, Rawalpindi shows disregard of the State functionaries for the fiduciary duties and duty of care which they owe to those who

are in their custody and have no access to justice because they don't have the means or assistance to approach a court of law.

6. The Federal Government has a pivotal role in protecting human rights across the country and it is its obligation to hold the respective governments accountable for the neglect and recklessness in dealing with helpless persons who are in their custody. The Federal Government on behalf of the State has a constitutional duty and obligation to respect and enforce international treaties and conventions relating to, inter alia, safeguarding human rights and civil liberties. The conditions in the prisons across the country raises serious questions regarding serious violation of human rights, civil liberties and international commitments of the State and the Federal Government.

7. Keeping in view the alarming state of affairs regarding the serious violation of human rights and civil liabilities of prisoners incarcerated in prisons across the country, this Court appoints a Commission headed by Ms Shirneen Mazari, Minster of Human Rights. The other members of the Commission shall be the Secretary, Ministry of Interior, Secretary, Ministry of Health, Government of Pakistan, Ms Zohra Yousaf, former Chairman of Human Rights Commission, Mr Ghazi Shahabuuddin, Journalist, Mr Zia Awan, Advocate Supreme Court, Mr Tariq Khosa former Director General, Federal Investigation Agency and the respective Chief Secretaries of the four Provinces. The Secretary Ministry of Human Rights shall act as the Secretary of the Commission. The Commission shall enjoy the powers under Order XXVI of the Code of Civil Procedure, 1908. The Commission shall be at liberty to co-

opt any person/expert at any stage and suggest terms of reference in addition to the T.O.R's proposed in this order.

The proposed terms of reference are as follows:-

i. To investigate human right violations in the prisons of Pakistan and lack of medical assistance and obstacles in access to a court of law of prisoners who do not have means or assistance in this regard.

ii. To investigate failure on part of the executive authorities and respective Governments to fulfill obligations and enforce the Prisons Rules and the Code of Criminal Procedure, 1898 relating to prisoners who suffer from illness and diseases.

iii. To carry out a review of the Prisons Rules and other relevant laws with the object of fulfilling the commitments of the State of Pakistan under the Constitution, International Treatise and Conventions.

iv. Proposals regarding solutions to deal with the human right violations in the prisons and amendments in any law, rules or regulation.

v. Proposals regarding appropriate governance and management systems.

vi. How to ensure individual and institutional accountability.

8. The Secretary, Ministry of Human rights is directed to convene a meeting of the Commission within seven days from the date of receiving a certified copy of this order. A report shall be

submitted after the Commission's first meeting. The Secretary, Ministry of Health, Government of Pakistan is directed to constitute Medical Boards in consultation with the respective Chief Secretaries in each Province for examining the health conditions of persons incarcerated in prisons. The Medical Boards shall ensure that proper medical treatment is extended to persons who are incarcerated in prisons so that human rights could be protected. The Secretary, Ministry of Health, Government of Pakistan is directed to submit a compliance report within seven days from the date of receiving a certified copy of this order.

9. The Secretary, Ministry of Health is directed to forthwith contact the Chief Secretary, Punjab for extending medical examination and treatment to the petitioner namely, Khadim Hussain son of Muhammad Miskeen who is incarcerated in Central Jail Adyala, Rawalpindi.

10. The office is directed to send copies of this order for compliance to all the officials and persons mentioned in this order through courier service and special messenger.

11. The Secretary, Ministry of Human Rights, Government of Pakistan is directed to nominate an authorized representative to appear before this court on the next date fixed along with status of the proceedings. The Secretary Ministry of Health, Government of Pakistan is directed to place on record a report regarding the medical condition of the petitioner.

12. This petition will be taken up at 10:30 a.m. on 29.11.2019.

(CHIEF JUSTICE)

*Asif Mughal/**

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