

SUPREME COURT OF AZAD JAMMU AND KASHMIR

[Appellate Jurisdiction]

PRESENT:

Ch. Muhammad Ibrahim Zia, C.J.

Raja Saeed Akram Khan, J.

Ghulam Mustafa Mughal, J.

Civil appeal No.268 of 2018

(PLA filed on 10.08.2018)

Azhar Mehboob s/o Mehboob Ahmed Khan,
Caste Sudhan r/o Thorar, Tehsil Rawalakot,
District Poonch.

.....APPELLANT

VERSUS

1. AJ&K Government through Chief Secretary, Muzaffarabad.
2. Secretary Interior of Azad Jammu and Kashmir, Muzaffarabad.
3. Section Officer Ministry of Interior, Muzaffarabad.
4. DIG Prisons, Muzaffarabad.
5. Additional District Criminal Court, Rawalakot, District Poonch.
6. Sessions Judge, Mirpur.
7. Health Department through Secretary Health, Muzaffarabad.
8. District Magistrate, Mirpur.

9. SSP, Mirpur.
10. Superintendent Central Jail, Bun Khurma, Mirpur.
11. Imtiaz Khan s/o Muhammad Sharif r/o Botha Gala, Thorar, Tehsil Rawalakot, District Poonch.

.....RESPONDENTS

(On appeal from the judgment of the High Court dated 04.07.2018 in writ petition No.71 of 2018)

FOR THE APPELLANT: Mr. Babar Ali Khan, Advocate.

FOR THE RESPONDENTS: Sardar Karam Dad Khan, Advocate-General and Raja Aftab Ahmed Khan, Advocate, for the respondents.

Date of hearing: 07.11.2018

JUDGMENT:

Raja Saeed Akram Khan, J.— The captioned appeal by leave of this Court has been directed against the judgment of the High Court dated 04.07.2018, whereby the

writ petition filed by the appellant, herein, has been dismissed.

2. The brief facts forming the background of the case are that vide judgment dated 07.03.2007, the brother of the appellant, herein, namely, Arshed Mehboob, was convicted and awarded death sentence as *Qisas* under section 302(a), APC by the Additional District Court of Criminal Jurisdiction, Rawalakot. The judgment of the trial Court remained intact up to this Court. Thereafter, the Superintendent Central Prison, Mirpur, wrote a letter to the Additional District Court of Criminal Jurisdiction, Rawalakot, on 05.12.2007, for issuance of black warrants in order to execute the death sentence. It is alleged by the appellant that he, along with other relatives went to meet Arshad Mehboob, convict-prisoner, whereupon, it revealed that due to long incarceration and hardships of

prison, he has become completely insane and lunatic. He was even unable to identify the appellant and other relatives. In this situation, he along with other relatives moved an application to the Superintendent District Prison, Mirpur on 11.01.2018, for treatment of convict-prisoner under the Prison Rules, however, despite the aforesaid application needful was not done rather the death warrants bearing No.110, dated 22.02.2018, was issued by the Additional District Court of Criminal Jurisdiction, Rawalakot for execution of death sentence. In this background, the appellant, herein, filed a writ petition before the High Court with the prayer to issue direction to the respondents for treatment of the convict-prisoner. A direction was also sought to restrain the respondents from taking any step towards execution of the death penalty. After necessary proceedings, the

learned High Court dismissed the writ petition through the impugned judgment, hence, this appeal by leave of the Court.

3. Mr. Babar Ali Khan, Advocate, the learned counsel for the appellant argued that a specific plea was taken before the High Court that the convict is insane and without determination of his mental condition, the death sentence cannot be executed under law, but the learned High Court failed to appreciate this aspect of the case. He added that the learned High Court failed to take into consideration the relevant rules as well as the report of Medical Officer in its true perspective. The learned counsel forcefully contended that the convict has become insane and he needed medical treatment, therefore, stoppage of execution of death sentence is the requirement of law. The learned counsel referred to the

different provisions of Prison Rules and case law in support of his arguments.

4. On the other hand, Sardar Karam Dad Khan, Advocate-General and Raja Aftab Ahmed Khan, Advocate, strongly controverted the arguments advanced by the learned counsel for the appellant. They submitted that the impugned judgment of the High Court is perfect and legal which is not open for interference by this Court. They added that the convict is not insane and a false story has been invented just to avoid the execution of death sentence and this fact even has been proved from the report of the Medical Board constituted on the direction of this Court. Thus, this appeal is liable to be dismissed.

5. We have heard the arguments and gone through the record. The brother of the appellant, namely, Arshad Mehboob, was

convicted and sentenced to death in a murder case by the Court of competent jurisdiction and the sentence remained intact up to this Court. At the time of the execution of the sentence, the convict's brother approached the High Court to stop the execution of sentence on the ground that the convict has become insane. The learned High Court refused to accept the petition of the appellant, whereupon, he filed instant appeal by leave of the Court. In the Prison Rules to meet such situation as is involved in the present case, a mechanism has been provided that in the first instance the Jail Superintendent place the patient under the observation of Medical Officer for a period of 10 days and on the expiry of the said period, the Medical Officer shall submit the report/result to the Jail Superintendent. In the instant case, the Jail Superintendent put the convict under

observation of the Medical Officer but no definite opinion was given by the Medical Officer regarding the mental health of the convict rather he only recommended that the convict should be evaluated by a psychiatrist or a Medical Board. Keeping in view the circumstances of the case, this Court after hearing the counsel for the parties issued the direction to the Director General Health to take immediate steps for constitution of a Medical Board consisting of psychiatrists to make psychiatric assessment of the convict, Arshad Mehboob and submit the report of the Medical Board before this Court. In compliance of the order of this Court, the report has been submitted. It is an admitted position that during the course of trial, no complaint regarding the insanity of the convict had ever been made. After completion of the judicial proceedings at the verge of execution of the

punishment, the application has been moved that the convict has become insane. According to the report of the Medical Board, the convict is physically fit and except depression, no serious mental disease has been pointed out. In view of the background of the case, the symptoms mentioned in the report, appear to be the result of fear of death and mere on suchlike ground, the execution of death sentence cannot be stopped.

6. In a case reported as *Mst. Safia Bano v. Home Department, Government of Punjab and others* [PLD 2017 SC 18], same proposition came under consideration of the apex Court of Pakistan wherein the plea was taken before the Court that at the time of issuance of black warrants the convict was a patient of schizophrenia, therefore, before execution of death sentence he needed medical treatment. The Court denied stopping

the execution of death sentence even it had been established from the medical record that the convict is suffering from schizophrenia. The relevant paragraphs of the referred report are reproduced here which read as under:-

“12. In the light of above discussion, we have again perused the material placed on record, which reveals that indeed right from the stage of trial Imdad Ali, husband of the petitioner, took such plea in defence, but all the Courts discarded his plea of mental illness of the nature, which could be made basis to term him as lunatic. Even the medical record produced before us reveals that husband of the petitioner was all along considered as psychiatric patient suffering from paranoid schizophrenia. Learned Division Bench in its impugned order has aptly taken into account all these relevant facts and circumstances in the light of Prison

Rules, 1978 and thus rightly rejected the plea of petitioner and dismissed her petition.

13. In our opinion, rules relating to mental sickness are not subjugative to delay the execution of death sentence, which has been awarded to the convict, Imdad Ali and attained finality up to the level of this Court. Especially, when all relevant facts have received due consideration in appropriate quarters and the mercy petition has already been dismissed by the President of Pakistan. This being the reason, leave is declined and this petition is dismissed.”

In the instant case, the convict is not suffering from any serious mental illness; therefore, no such ground is available in the case which may put any embargo on the execution of death penalty.

As no valid ground to interfere in the impugned judgment is available, therefore, this appeal being devoid of any force, is hereby dismissed with no order as to costs.

JUDGE

CHIEF JUSTICE

JUDGE

Muzaffarabad,
07.11.2018