

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**  
[Shariat Appellate Jurisdiction]

**PRESENT:**

Ghulam Mustafa Mughal, J.

Cr. Misc. No. 01 of 2019  
(Filed on 14.01.2019)

Sajid Hussain s/o Muhammad Younas, caste Jatt, r/o Gurah Nowana Moziah, Tehsil Dadyal, District Mirpur, presently prisoner in Central Jail, Mirpur.

...APPLICANT

VERSUS

1. The State through Advocate-General.
2. Mst. Zainab Bi (mother),
3. Mst. Shamim Akhtar (widow),
4. Atif Ayoub,
5. Faraz Ayoub (sons),
6. Saiqa Ayoub,
7. Khola Ayoub, daughters of deceased Muhammad Ayoub.
8. Mst. Riaz Bi, widow,
9. Mst. Riaz Bi, widow,
10. Waqas Abid,
11. Bilal Abid, sons,
12. Ghazala Abid,
13. Shamila Abid,
14. Zakia Abid,
15. Sadaf Abid daughters of deceased Muhammad Abid caste Jatt r/o Mohara Khatian, Tehsil Dadyal, District Mirpur.

.....RESPONDENTS

[On appeal from the judgment of the Shariat Appellate Bench of the High Court dated 28.12.2018 in Criminal Revision No.93 of 2018]

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FOR THE APPLICANT: Mr. Riaz Naveed Butt,  
Advocate.

FOR THE RESPONDENTS: Raja Inamullah, Advocate.

FOR THE STATE: Mr. Mehmood Hussain  
Chaudhary, Additional  
Advocate-General.

Date of hearing: 21.01.2019

**ORDER:**

**Ghulam Mustafa Mughal, J.**—The captioned application has been filed under Order VI, rules 1 and 2 of the AJ&K Supreme Court Rules, 1978, for ad-interim relief against the judgment dated 28.12.2018, passed by the Shariat Appellate Bench of the High Court in Criminal Revision No.93/2018.

2. The facts forming the background of the captioned revision petition are that the convict-applicant, herein, was tried in the offences under sections 302 and 34, APC and 13/20/65 of the AO, read with section 14, EHA, in the Additional District Court of Criminal Jurisdiction Dadyal. After completion of the trial, the applicant, herein, stood convicted and was awarded death

sentence vide judgment dated 05.08.2017. He challenged the legality and correctness of the judgment dated 05.08.2017, by way of appeal before the Shariat Appellate Bench of the High Court which is still subjudice. An application was filed on 06.12.2018 for release of the convict-applicant, herein, on medical grounds, stating therein, that the applicant is behind the bars from 02.06.2010 and is now seriously ill. It was further stated that his treatment in the jail is not possible, hence, he is entitled to be released on bail on medical grounds. It was also stated that the applicant is ready to furnish bail bond and surety bonds to the satisfaction of the Court. The learned Shariat Appellate Bench of the High Court after necessary proceedings through the impugned judgment dated 28.12.2018, has dismissed the application for grant of bail.

3. Mr. Riaz Naveed Butt, the learned Advocate for the applicant, while referring to different documents appended with the revision petition argued that the District Magistrate vide order dated 10.10.2018, referred

the matter to the Medical Superintendent, District Headquarter Hospital Mirpur, for constitution of the Medical Board which was accordingly constituted consisting upon Doctor Ishfaq Ahmed, Urologist, Sajjad Ahmed, Nephrologist and Bashir Ahmed, Radiologist. He further argued that the said Board examined the applicant and found him suffering from numerous diseases and finally referred to Nephrologists at Pakistan Institute of Medical Sciences (PIMS) for Renal Biopsy. The learned Advocate submitted that this opinion was given by the Medical Board much before but no steps have been taken for sending him for Renal Biopsy as suggested by the Medical Board. The learned Advocate also referred to the report of the Jail Doctor as well as other test reports according to which it is clear that the convict-applicant is suffering from various diseases. He further submitted that in the circumstances of the case, the convict-applicant is now entitled to be released on bail on pending his appeal medical grounds because he falls within the definition of infirm and sick person within the meaning of section 497

(1), Cr.P.C. In support of his submissions, the learned Advocate has placed reliance on the case reported as *Inayat Ullah vs. The State* [1997 SCR 139] and an unreported judgment rendered in the case titled *Naseer Akhtar vs. The State* (Cr. Misc. No.22/2017, decided on 19.09.2017). He prayed that the convict-applicant may be released on bail so that he can go for treatment and his life can be protected.

4. Conversely, Raja Inamullah, the learned Advocate appearing for the private-respondents, argued that the medical board has not given any definite opinion rather has referred the case to the Nephrologists for Renal Biopsy at PIMS. He further argued that until and unless a definite opinion of the medical board is not obtained, it cannot be said that the treatment of the convict-applicant is not possible in Jail. He added that the convict-applicant has been sentenced to death and the plea of release on bail on medical ground has been taken after being convicted. The learned Advocate submitted that the discretion exercised by the learned Shariat Appellate

Bench of the High Court is in accordance with law, hence, may not be interfered with.

5. Mr. Mehmood Hussain Chaudhary, the learned Additional Advocate-General while appearing on behalf of the State has adopted the arguments advanced by Raja Inamullah Advocate.

6. I have heard the learned Advocates representing the parties and have gone through the record of the case. At this stage no opinion can be given regarding ailment of the convict-applicant. It is correct that for enlarging a convict on bail on medical ground, it is sufficient that he is infirm and sick within the meaning of Section 497 (1), Cr.P.C. In the present case, though the convict-applicant is suffering from different diseases but the Medical Board has not suggested that his treatment in jail is not possible. Moreover, as definite opinion would be formed by the Medical Board after Renal Biopsy, therefore, releasing the convict-applicant on bail at this stage would not be in the interest of justice.

7. In view of above, finding no force in this application, the same stands dismissed.

Before parting with, we would like to direct the Home Secretary as well as District Magistrate Mirpur to take immediate steps for examination of the convict-applicant at PIMS Islamabad in view of the recommendations of the Medical Board. The needful shall be done within a period of 2 weeks.

JUDGE

Mirpur,  
21.01.2019