

SUPREME COURT OF AZAD JAMMU AND KASHMIR
[Appellate Jurisdiction]

PRESENT:

Raja Saeed Akram Khan, J.
Ghulam Mustafa Mughal, J.

1. Criminal Misc. No.17/2020
(Filed on 31.03.2020)

Kaleem Abbasi & others

.....PETITIONERS

VERSUS

The State & others

..... RESPONDENTS

(Application for interim relief)

FOR THE PETITIONERS:

Mr. Tahir Aziz Khan,
Advocate.

FOR THE STATE:

Raja Ikhlq Hussain
Kiani, Addi. Advocate-
General and Raja Ayaz
Ahmed, Assistant
Advocate-General.

2. Criminal Misc. No.18/2020
(Filed on 31.03.2020)

Zahid Hussain & another

.....PETITIONERS

VERSUS

Muhammad Fiaz & others

..... RESPONDENTS

(Application for interim relief)

FOR THE PETITIONERS: Ch. Shoukat Aziz,
Advocate.

FOR THE STATE: Raja Ikhlaq Hussain
Kiani, Addi. Advocate-
General and Raja Ayaz
Ahmed, Assistant
Advocate-General.

Date of hearing: 31.03.2020.

ORDER:

Raja Saeed Akram Khan, J.— These applications under Order VI, Rules 1 and 2 of the Azad Jammu & Kashmir Supreme Court Rules, 1978, have been placed before the Court for ex-parte ad-interim relief, during the pendency of the petitions for leave to appeal, awaiting completion in registry office of the Court.

2. The brief facts of the case are that the prisoners from all the Central and District Jails of Azad Kashmir filed applications for release on bail on the ground emerged in the wake of threat of COVID-19 before the learned High Court. After necessary proceedings, the learned High Court through the impugned order dated 27.03.2020, has decided the applications in the following terms:

“1. The under trial prisoners involving offences under Qisas and Diyyat Act, Imprisonment for life and the offences involving imprisonment for 10 years and above (with or without fine) shall be released on conditional bail for a period of 2 months. The period of 2 months may be extended till the time of situation returns to normalcy.

2. The under trial prisoners detained in offences involving less than 10 years shall be released on bail provided they furnish surety and personal bail bonds.

3. Surety and personal bonds shall be furnished before the Sessions Judge of concerned district and the Judicial Magistrate on duty shall attest the bonds to his satisfaction.

4. This order shall not apply to the prisoners involved in offences under Antiterrorism Act. In the circumstances of the case, it is directed that a committee comprising Commissioner and Deputy Inspector General of Police of the Region shall scrutinize the cases under Antiterrorism Act on individual basis and submit its recommendations to the High Court keeping in view any threat to sovereignty of the State.

5. So far as the matters relating to convict prisoners, the concerned authorities may consider release of the said prisoners on parole in

accordance with Prisons Rules, because a prisoner whose order of conviction has attained finality does not fall within the ambit of this order. A copy of this order shall be furnished to all the concerned authorities including Chief Secretary, I G Police, DG Health Commissioners, DIGs of all the three regions, District and Session Judges for compliance and further proceedings.”

The petitioners have challenged the aforesaid order of the learned High Court by filing separate petitions for leave to appeal. During pendency of the said petitions the titled applications for interim relief have been filed. Since both the applications have arisen out of the same order of the High Court therefore, the disposal of the same through this single order is felt advised.

3. Mr. Tahir Aziz Khan and Ch. Shoukat Aziz, Advocates, the learned counsel for the petitioners in their respective petitions/applications, submitted that the impugned order of the learned High Court is based on misconception of law and facts of the case. They added that the learned High Court does not enjoys any such powers to release the bulk of prisoners/ convicted persons under trial. They further added that in view of the prevailing situation, i.e. global pandemic Covid-19, the Islamabad High Court passed the similar order which has already been suspended by the Apex Court of

Pakistan. In this state of affairs, the impugned order is not maintainable and liable to be suspended.

4. After hearing the learned counsel for the petitioners at some length, at this preliminary stage, we would like to direct the office to put up these applications before the Court along with the petitions for leave to appeal on their completion. However, keeping in view the peculiar facts and circumstances of the case, meanwhile the operation of the impugned order/judgment shall remain suspended till further orders, subject to the objections from the other side.

The learned Additional Advocate-General along with the Assistant Advocate-General appeared on Court's call. They are directed to communicate the order of the Court to all the Jail Authorities not to release any person/prisoner in pursuance of the order of the High Court and if anybody has been released the concerned SSP is directed to re-lodge the said person in prison after taking all the necessary measures.

JUDGE

JUDGE

Muzaffarabad.
31.03.2020.