

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Cr.L.M.A.No. _____/2020

IN

Cr. P.L.A. No. 299/2020

Criminal MA for impleadment as necessary
Party, on behalf of the Applicant namely
Ministry of Human Rights filed on
04.04.2020

Raja Muhammad Nadeem

..... **Petitioner**

Vs.

The state

..... **Respondents**

Counsel for Petitioner :

Counsel for Respondent:

Counsel for Applicant:

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Certified that the paper book as bound is complete and correct.

Dated: 04.04.2020

Muhammad Khalil Awan
Deputy Secretary
Ministry of Human Rights
Islamabad

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APPLICATION ON BEHALF OF THE APPLICANT UNDER ORDER V
RULE 2(2) READ WITH ORDER XXXIII RULE 6 OF THE PAKISTAN
SUPREME COURT RULES, 1980 FOR IMPLEADMENT AS PARTY IN
THE ABOVE TITLED CASE.

Respectfully Sheweth;

1. That the above case is fixed for 06.04.2020 before this Honorable Court.
2. That the applicant is Ministry of Human Rights. Therefore, seeks impleadment as necessary party in the lis.

It is therefore, respectfully prayed that permission to impleadment as necessary party may kindly be granted in the interest of justice.

(Muhammad Khalil Awan)
Deputy Secretary
Ministry of Human Rights
04-04-2020

**Brief on Behalf of the Ministry of Human Rights, Government of Pakistan for
Submission before the Honourable Supreme Court of Pakistan in Criminal
Petition No. 299 of 2020 (Raja Muhammad Nadeem v. The State)**

Paragraph 13 of Order dated 01.04.2020 passed by the Honourable Supreme Court of Pakistan, in Criminal Petition No. 299 of 2020, directs *inter alia* the Federal Government to place reports before this Court, for the assistance of the Court in the above-titled matter.

Pursuant to the directions of the Islamabad High Court, in the matter titled Khadim Hussain v. Federation of Pakistan (Writ Petition No. 4037 of 2019), the Commission on Jail Reforms was notified in 2019 under the Ministry of Human Rights to investigate prison conditions and make recommendations for reform.

The Ministry of Human Rights submitted reports on prison reforms for the Court's assistance, containing data that may prove useful for the Honourable Supreme Court in this instant petition, including *inter alia* data on:

- (i) The number of prisoners in each province categorized by Under Trial Prisoners, Convicted Prisoners and Condemned Prisoners;
- (ii) The number of female inmates (including number of mothers and children);
- (iii) The number of juveniles incarcerated in each province; and
- (iv) The number of seriously ill or terminally ill prisoners in each province (prison-wise).

A summary of the relevant data, for the assistance of the Honourable Supreme Court, is provided below:

As indicated from the data below, there is an urgent need to release prisoners across the country owing to overcrowding and the risk of the spread of COVID-19. In KP, there are 5381 prisoners in excess of capacity in central and district prisons. With respect to the same prisons in Punjab, there are 12,847 prisoners in excess of capacity. Similarly, with respect to central and district prisons in Sindh, there are 2777 prisoners in excess of capacity. Balochistan is the only province where current occupancy of central and district prisons does not exceed prison capacity.

I. Prison Population:

<u>Province</u>	<u>KPK</u>	<u>PUNJAB</u>	<u>SINDH</u>	<u>BALOCHISTAN</u>
Prisons (Central and District)	20	41	24	11
Capacity	4519	32477	13538	2585

Current Occupancy	9900		45324		16315		2122	
Addicts	1474	17	6473	248				
	673	1	1131	3				
Juveniles	339		618		153		46	
Mothers with Children	37		83					
Children	50		90		23			
Females	UT 139	Conv. 32	UT 452	Conv. 301	UT 148	Co nv. 51	UT 16	Conv. 05

There is an urgent need, in particular, to release sick prisoners or prisoners with serious underlying health conditions, since, if these categories of prisoners contract COVID-19, it would likely prove fatal for them.

II. Sick Prisoners:

Prisoners with	Punjab		Sindh		KPK		Balochistan	
	Male	F	Male	F	Male	F	Male	F
Hep	1047	34	461	1	208	0	72	0
HIV	255	2	115	1	39	0	13	0
TB	87	0	50	2	27	0	07	0
Mental disease	290	8	50	0	235	0	11	0
Other sickness	1453	27	50	0	642	20	0	0

III. Under Trial Prisoners

As under trial prisoners (data given in the table below) who fall within the ambit of non-prohibitory clause, are entitled to bail, their release is also strongly recommended, keeping in view the severe overcrowding highlighted above.

<u>Province</u>	<u>Prisons</u>	<u>Total Adults</u>	<u>Male</u>	<u>Female</u>	<u>Total Juveniles</u>	<u>Male</u>	<u>Female</u>
KPK	20	6753	6614	139	314	305	9
Punjab	41	24545	24092	452	509	509	0
Sindh	24	11354	11206	148	143	143	0
Balochistan	11	1200	1184	16	44	44	0

On the grant of bail on humanitarian and medical grounds due to serious illness, it is this Ministry's responsibility to compile and share with this Honourable Court,

precedent that may assist the Court in determining the matter of grant of bail on the aforementioned grounds:

- *Mian Nasir Ali v. The State (2008 YLR 2028)*
- *Rizwan v. The State (2020 MLD 59 Balochistan)*
- *Dr. Asim Hussain and another v. Federation of Pakistan (2018 YLR 154 Sindh)*
- *Syed Fayyaz Hussain Gilani v. The State (2018 YLR 285)*
- *Syed Ali Raza & others v. Federation of Pakistan & others (2019 YLR 129)*
- *Kifayatullah v. Federation of Pakistan (2017 PCr.LJ 192)*
- *Mian Muhammad Shahbaz Sharif and another v. The State (2020 PCr.LJ 213)*
- *Naimatullah and another v. The State (2017 MLD 1097)*

The possibility of risking widespread infection across our prisons, at present, is highly likely taking into account overcrowding. Any infections among incarcerated persons would be hugely problematic, particularly in light of lack of medical equipment and training/capacity of prison staff. This would most likely prove fatal for the over 1500 prisoners who are senior citizens across prisons in the country (807 in Punjab; 223 in Sindh; 447 in KPK; and 50 in Balochistan). This is also a pressing concern with respect to differently-abled persons who are incarcerated. In fact, denial of reasonable accommodation in detention to differently-abled persons can be considered a form of discrimination, and in some cases, also as a form of torture and ill-treatment.

In this regard, Pakistan has an international legal obligation to refrain from denying or limiting equal access for all persons, including prisoners or detainees, to preventive, curative and palliative health services (General Comment No. 14, Committee on Economic, Social and Cultural Rights; para. 34). As our prisons are not adequately equipped to provide such care/medical intervention, it is strongly recommended that the elderly, differently-abled and persons with underlying health issues be immediately released, to comply with the Basic Principles for the Treatment of Prisoners (adopted by the United Nations General Assembly Resolution 45/111), which emphasize, in Principle 9, that prisoners shall have access to health services available in the country without discrimination on the grounds of their legal situation.

In this respect, the excerpts containing the relevant data on medical equipment and staff is provided below:

Equipment and Medical Staff

Data	Punjab		Sindh		KPK		Balochistan	
	Male	F	Male	F	Male	F	Male	F
Sanctioned strength of medical officers	64	23	47	7	31	5	12	04
Vacant strength of medical officers	36	09	31	6	17	2	04	03

Sanctioned strength of dentists in all the prisons in the province	0	0	0	0	2	0	0	0
Vacant posts of dentists in all the prisons in the province	0	0	0	0	0	0	0	0
Sanctioned strength of psychologists in all the prisons in the province (Chief, Junior etc.)	93	0	0	0	0	11	02	0
Vacant posts of psychologists in all the prisons in the province	56	0	0	0	0	2	04 Vacant	0
Sanctioned strength of female nurses and LHVs in all the prisons in the province	14		13		11		14	
Total number of addicts admitted in drug rehabilitation programs	538	-	200	0	59	0	05	0
Ambulances	30				6		4	
Labs	6		5		7		2	

As regards the measures being taken by prison authorities in respect of COVID, our Ministry has compiled the relevant information in tabular form and has reproduced it below for the assistance of the Honourable Supreme Court:

Areas	Punjab	KPK	Sindh	Balochistan
Bail		<ul style="list-style-type: none"> 3228 prisoners have been released since 01.03.2020 upon directions of Peshawar High Court 		<ul style="list-style-type: none"> Release of Prisoners had been halted by the Hon'ble Supreme Court of Pakistan till further orders.
Provision of sanitization equipment	<ul style="list-style-type: none"> Prisoners especially in Karachi Jail have been provided with masks, hand 	<ul style="list-style-type: none"> Prisoners and staff have been provided with soap and directed to wash hands 	<ul style="list-style-type: none"> Disinfectant spray is being done all over jails Prisoners have been provided 	<ul style="list-style-type: none"> Jails are lacking basic protective equipment Reference has been made to

	<p>sanitizers and other disinfectants</p> <ul style="list-style-type: none"> • Extra washbasins have been installed at all important places in all Jail blocks • Face masks and gloves have been provided to jail staff • Disinfectant spray is being done all over jails • Prisoners and staff have been advised to wash hands for 20 seconds and to avoid touching their faces • All utensils and blankets are being washed on daily basis 	<p>for 20 seconds and to avoid touching their faces</p> <ul style="list-style-type: none"> • Sanitizers and disinfectants and face masks are being prepared in jail premises to deal with the market shortage • Disinfectant spray is being done all over jails • DG Provincial Disaster Management Authority has been requested to provide masks, sanitizers, thermal scanners and protective equipment and gloves on emergency basis 	<p>with masks and hand sanitizers</p>	<p>the UNODC authorities to provide necessary medical items for both staff & inmates, for saving lives of as much as possible</p>
<p>Remissions</p>			<ul style="list-style-type: none"> • Prisoners have been granted 60 day remissions and prisoners have benefitted from it. 	<ul style="list-style-type: none"> • Special remission of sixty (60) days to all those who were entitled and seventy-eight (78) prisoners got released with this benefit

				<ul style="list-style-type: none"> The Government of Balochistan also announced one-twenty (120) days remission under section-401 Cr. PC, by which around 120 prisoners benefited and released.
Reduced visitation	<ul style="list-style-type: none"> 04 Non contact Infrared Digital Thermometers have been provided at main points (Outer gate, admin block, jail hospital and central tower) and ailment of prisoners and staff are being monitored All irrelevant and unknown persons are not being allowed to enter jail premises 	<ul style="list-style-type: none"> Ban on provision of food and other items to prisoners from outside by their relatives has been imposed since 28.02.2020 Guests of prisoners have been banned 		
Quarantine facilities	<ul style="list-style-type: none"> Separate ward/barrack with 04 rooms and 08 beds has been designated at Jails as Emergency Quarantine Unit All new prisoners are being kept in quarantine 	<ul style="list-style-type: none"> Quarantine facilities have been established All new prisoners are being kept in quarantine facilities for 14 days 	<ul style="list-style-type: none"> All new prisoners are being kept in quarantine facilities for 14 days 	

	facilities for 14 days			
Court proceedings	<ul style="list-style-type: none"> • Court production of prisoners have been stopped 	<ul style="list-style-type: none"> • Prisoners have been exempted from court appearances w.e.f 17.03.2020 	<ul style="list-style-type: none"> • Prisoners have been exempted from court appearances 	
Segregation of categories of prisoners	<ul style="list-style-type: none"> • Gathering of prisoners has been restricted and they are advised to keep possible distance of 3 metres 	<ul style="list-style-type: none"> • Prisoners above 50 years of age and those with pre-existing health conditions have been segregated 		
Training of prison staff	<ul style="list-style-type: none"> • Training of medical staff has been conducted regarding COVID 19 • Unnecessary movement of prison staff outside jail premises has been restricted to emergency cases • Panaflexes containing awareness on COVID 19 have been placed in all jails and awareness sessions are being conducted • Control Rooms have been established at Regional Offices under supervision of DIG Prisons and Superintendant 	<ul style="list-style-type: none"> • Staff and prisoners have been sensitized about precautionary measures • Control Rooms have been established 	<ul style="list-style-type: none"> • Training of medical staff has been conducted regarding COVID 19 	

	<p>jails to monitor the situation. Staff has been posted for duty in three shifts round the clock</p> <ul style="list-style-type: none"> • Warder guards have been directed to make arrangements to place their iron cots at least 03 feet apart as preventive measure. 			
Other measures	<ul style="list-style-type: none"> • Industrial work has been halted • Notifications and instruction have been shared with all Jail Superintendents to strictly implement rules no 1043, 1049, 1082 and 1089 or Pakistan Prison Rules 	<ul style="list-style-type: none"> • Ban on inter prison transfer has been placed • Liaison with District administration has been established 	<ul style="list-style-type: none"> • 320 prisoners have been relocated to less crowded prisons • Total population of all prisoners has remained the same • Government of Sindh has been requested to exercise powers under section 401 CrPC for necessary action to ease congestion and overcrowding 	

As per the directions of the Islamabad High Court, our Ministry conducted a comparative analysis between the Mandela Rules (the international standard for treatment of prisoners) and Pakistan’s Prison Rules. The objective of this comparative analysis was to identify gaps in Pakistan’s Prison Rules and recommend how these gaps are to be filled. Our recommendations included:

- (i) Immediate filling of vacant posts (of the 193 posts of medical officers in jails of Pakistan, 108 remain vacant);

- (vi) Encouraging judicial visits for granting bail and other relief to deserving prisoners.

An additional recommendation our Ministry would humbly make here would be to the Provincial Governments to exercise their powers under Section 401 of the CrPC to suspend or remit sentences, where possible and permitted.

The State of Pakistan has a range of obligations, under international human rights law, with respect to persons detained or imprisoned. Under Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), Pakistan is under an obligation to safeguard the "right of everyone to the enjoyment of the highest attainable standard of physical and mental health", and in doing so, must take steps necessary for "the prevention, treatment and control of epidemic, endemic, occupational and other diseases". This obligation to safeguard physical and mental health of its citizens applies equally to citizens suffering incarceration.

The State of Pakistan is further under an obligation to safeguard the right to life, protected under Article 6(1) of the International Covenant on Civil and Political Rights (ICCPR), and to prohibit inhumane or degrading treatment in its prisons under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

As the Ministry of Human Rights has been collecting data on prisons across Pakistan and recommending prison reforms to bring Pakistan's prisons into compliance with international human rights standards, it is most humbly requested that the Honourable Supreme Court consider this Ministry's brief, and further consider impleadment of the Ministry of Human Rights in the instant petition.

Shireen M. Mazari
 Shireen M. Mazari
 Minister for Human Rights

2nd April 2020