

ORDER SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
C.P.NO.D-458 OF 2021

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on Office Objection "A"
2. For hearing of M.A.No.1894/2021 (5/A).
3. For hearing of main case.

14.09.2021

Mr. Habibullah G. Ghouri, Advocate for the Petitioners.

Mr. Abdul Hamid Bhurgri, Additional Advocate General Sindh alongwith Ashfaq Ahmed Kalwar, senior Superintendent, Nazar Muhammad Gaad, Deputy Superintendent and Maula Bux Sahito, Assistant Superintendent, Central Prison and Correctional Facility, Larkana

Omar Sial, J.: This petition has been filed by seven inmates of the Central Prison & Correctional Facility, Larkana, seeking this Court's directions to the Prison authorities that they should not be maltreated or tortured on the pretext of search operations; that any search operation should be conducted in the supervision of a judicial officer; that the fundamental rights of the prisoners should be respected and that they should be treated in accordance with the Prison Rules.

2. Notice to the Prison authorities was issued and their comments sought on the allegations made by the inmates. The initial comments filed were rather disturbing and prima facie reflected that the situation that the inmates complain of is only one side of the story. As a consequence, detailed comments were sought from the Senior Superintendent of the Central Prison & Correctional Facility, Larkana.

3. In compliance of the order of this Court, Mr. Ashfaq Kalwar, Senior Superintendent, Central Prison & Correctional Facility, Larkana is present. His comments in the form of a comprehensive report have been filed through the learned Additional Advocate General and a copy of the same provided to the learned counsel for the petitioners.

OS

4. The report filed by Mr. Kalwar reflects that he took over charge of the Prison on 28.7.2021 and that very day he wrote a letter to the Inspector General of Sindh, Prisons & Corrections Services, apprising him of the condition of the Prison. The letter was forwarded to the I.G. Prisons through the Deputy Inspector General of Prisons and Correction Services, Sukkur Region on 2-8-2021. Another letter was written by Mr. Kalwar to the I.G. Prisons, Sindh on 5-8-2021 in which he highlighted further serious issues with the Prison. On 11-8-2021 Mr. Kalwar wrote yet another letter informing the I.G. Prisons, Sindh of unrest in the Prison and the growing friction between the inmates and Prison staff in which several members of the staff had been taken hostage by the inmates (which included the petitioners as well) on the ground that the Prison staff had not permitted the mother of one of the inmates to meet him and beat him instead. On 17-8-2021 the I.G. Prisons, Sindh conveyed some of the issues raised by Mr. Kalwar to the Additional Chief Secretary, Sindh and sought the requisite funds to resolve the same. Yet another letter was written by Mr. Kalwar to the I.G. Prisons on 6-9-2021 once again informing him of the situation in the Prison and raising a red flag that there was a strong possibility that the inmates were in possession of weapons. No further progress seems to have taken place since. The letters written by the Prison authorities reflect the urgency of having the issues resolved on a war footing and have also made suggestions as to how to go about it.

5. Mr. Kalwar's report is an eye-opener. It highlights that the Prison remained unlocked from 8-7-2021 to 10-7-2021, while Mr. Liaquat Ali Peerzada was the Senior Superintendent, resulting in incidents of arson inside the Prison and large-scale riots by the inmates. It further reflects that criminal activities within the Prison are rampant and that the existing force deployed at the Prison is finding it extremely difficult to contain the situation. Huge quantities of drugs of all kinds, as well as alcohol, is circulating freely within the inmates; mobile phones are present and being used by the inmates to access the internet apart from freely communicating with the outside world; prison staff is not being permitted to enter the Prison and there have been a number of occasions when they have been taken hostage by the inmates and thereafter, tortured, abused and humiliated. Rules

OS

concerning locking up of the Prison are being openly violated with the inmates making their own rules; inmates have made escape routes from within their barracks and that the outer wall of the Prison is in a deplorable condition which can be broken with minimum force; out of the 30 CCTV cameras installed, 20 are not working and the remaining 10 are installed only on the outer perimeter wall; the medical infrastructure is in a dismal state and that there is a strong possibility that weapons are also available with the inmates.

6. The condition of the Prison depicted above is horrifying to say the least. It appears that the present force deployed at the Prison is not in sufficient numbers and not adequately equipped to control the situation and due to the complicity of some members of the staff a state of anarchy prevails within the Prison. The present situation as reflected by the comments of the Senior Superintendent is a ticking time bomb and a disaster waiting to happen. There also seems to be an imminent danger of large-scale riots breaking out, and the possibility of the availability of weapons with the inmates, could result in casualties.

7. Mr. Habibullah Ghori, learned counsel for the petitioners has himself very fairly shown concern for the situation that prevails and has also submitted that he along with other lawyers practicing on the criminal side of the law often receive phone calls at odd hours of the night from the inmates. He however argues that the current situation as depicted in the report could not have originated had it not been for the complicity of the Prison staff. He is absolutely correct in what he says. It also appears that the lawlessness and overcrowding has led to deplorable living conditions for the inmates, not all of whom would be involved in illegal and unlawful activities within the Prison confines. While certain rights of the prisoners are taken away as a consequence of their incarceration, other fundamental rights continue to exist for them, in particular their right to dignity as enshrined in Article 14 of the Constitution. The availability of hygienic food, potable water, sanitation, medical facilities, rehabilitation programs, and hygienic living conditions and to be treated with respect and dignity and in accordance with law are the rights of the inmates, which rights appear to be violated by the Prison authorities as well. High handedness on the part of some of the Prison staff

while dealing with the inmates cannot also be ruled out. The free flow of drugs, alcohol and mobile phones is simply not possible without the complicity of the Prison staff. It further appears that non compliance of Prison Rules may have led to a further position of abuse from both, the inmates and the staff.

8. We appreciate the steps taken by Mr. Kalwar to provide better medical facilities to the inmates as well as the steps he seems to be repeatedly taking to activate the government machinery by informing them of the volatile situation and for taking immediate remedial steps. We also appreciate the honest comments that he has filed to convey the true situation without any fear of reprisals. The government bears a heightened obligation towards people in prison because when they deprive someone of their liberty, they assume a duty of care. It would be disastrous if the government continues to ignore the appalling and alarming situation persisting at the Prison at the moment. Immediate remedial measures are required. Abundant care and caution must also be taken in controlling the sensitive situation prevailing at the moment.

9. We are cognizant that the management of prisons is the responsibility of the executive and that judicial interference in the role of the executive, under normal circumstances, is not the preferred option. However, keeping in view the potential violation of fundamental rights in the Prison and the imminent danger to the public at large, the inmates and the staff, we are constrained to direct the Chief Secretary, Sindh, the Home Secretary Sindh, the Inspector General of Prisons and the Deputy Inspector General of Larkana to take immediate remedial measures to re-establish complete control of the Prison to prevent any untoward incident which in all likelihood can occur if the present situation is not addressed. The writ of the government must be established within the Prison on a war footing. The Chief Secretary, Sindh and the I.G. Prisons should also look into the performance of the previous Senior Superintendent of the Prison, Mr. Liaquat Ali Peerzada to determine whether he has had any active part to play in the current situation and take the necessary disciplinary action against all delinquent officers who have been complicit in taking the Prison to its present state. We have restrained ourselves from requiring the personal appearance of the aforementioned

officers; however, on the next date of hearing they should file a progress report on the measures that they have taken towards resolving the current state of affairs along with an expected time-frame. We are optimistic that the aforementioned officers, who are all capable and responsible officers of the government, will perform their duties without fear or favour.

10. Re-list on 23-9-2021 when Mr. Ashfaq Kalwar, Senior Superintendent of Prison, Larkana should be present in person. Let a copy of this order be faxed to the Chief Secretary, Sindh, the Home Secretary Sindh, the Inspector General of Prisons and the Deputy Inspector General of Larkana as well as be provided to the learned Additional Advocate General, Sindh, for information and compliance.


JUDGE


14/9/2021
JUDGE

Hearing of case

1. For order on office obj. "An"