

IN THE HIGH COURT OF SINDH AT KARACHI
CP.No.S-654 of 2023

Petitioner : Shazia Bibi
through Syed Kamran Shah

Respondents : The Province of Sindh through
Prosecutor General Sindh and other
through Mr. K.A Wasvani Asst. A.G.
Sindh, Mr. Muhammad Anwar DPP
Mr. Tariq Qureshi, Addl. Secretary
(Prison), Home Department
Government of Sindh.

Date of hearing:- 24th July 2023

Date of order:- 03rd August 2023

Salahuddin Panhwar, J.-The relevant facts for disposal of instant petition are that the husband of the petitioner was convicted vide Judgment dated 18.10.2022 passed by the Court of Sessions Judge East, Islamabad in a case arising out of Crime No.239/2016 registered at P.S. Shalimar, Islamabad, against that judgment a Criminal Appeal No. 383/2022 was filed by the husband of petitioner, which is still pending adjudication before the Islamabad High Court; that there are also two other FIRs bearing Crime No. 258/2021, registered at PS Bahadurabad and Crime No. 523/2021, registered at PS Darakshan, Karachi, which are pending before concerned Courts at Karachi; that custody of the husband of the petitioner was transferred to Karachi under the Court's Order and presently he is confined in the Landhi Jail, Karachi; that the petitioner is permanent resident of Karachi and her sons and daughter are studying in Karachi; that the respondents are threatening the petitioner and causing harassment to the petitioner for re-transfer of the custody of her husband; that the petitioner being lady is suffering due to incarceration of her husband who is the only male member. The petitioner and her children are living in Karachi and in case the custody is re-transferred to the prison out of Karachi, it would cause great inconvenience; that the custody of her husband may be ordered to be retained at Landhi Prison as he is required in two criminal cases which are being tried at Karachi and his custody is not required at Islamabad as only his appeal is pending at Islamabad High Court.

2. At the outset, learned DPP while referring Rule 148 of Transfer of Prisoners contended that since petitioner's husband has been convicted by learned District & Sessions Judge Islamabad, presently he is facing trial in two criminal cases at Karachi, therefore, as per Rule his custody is to be retained near to his home to serve the sentence, hence, he has no objection if the custody of the husband is retained at Karachi.

3. In similar voice, learned AAG has also extended his no objection, whereas, Additional Secretary (Prison), Home Department present, filed comments. Being relevant, reply of paragraphs 2 and 4 are reproduced herewith:-

"2. It is a fact that two FIRs bearing No. 258/2021 P.S. Bahadurabad & FIR No. 523/2021 P.S. Darakhshan, Karachi have been lodged against lifer convicted Raja Arshad Mehmood.

According to the jail roll of Superintendent, District Prison & C.F. Malir Karachi the last date of hearing was 05.07.2023.

4. In the instant matter, office of the Prosecutor General Sindh has advised the Home Department that "**It is advised to not take action as the matter is subjudice otherwise it may cause adverse inference**" vide letter No.PGS/Pros/61/ 20101/3281 dated 08.11.2022. However, the matter of transfer may be decided by the Honourable Sessions Court East Karachi. Moreover, the application of petitioner has been forwarded to Chief Commissioner, Islamabad Territory Islamabad for comments /NOC vide letter No.HD/SOPRS-II/1-6/2021 dated 15.11.2022. Subsequently reminder has also been issued on 30.05.2023, but the reply of the same is still awaited."

(Underline is supplied for emphasis).

4. Since petitioner's claim is that she is permanently residing in Karachi along with her children who are getting education. In support of her claim, she has submitted electricity bills as well as fee vouchers of her son Ehtesham Arshad studying in Jinnah Sindh Medical University Karachi. Besides, petitioner's counsel contended that petitioner's husband was tried in Islamabad and accordingly, he was convicted; his appeal is pending before Islamabad High Court wherein his custody is not required. However, he further contended that the husband of the petitioner is not required to face trial out of Sindh Province. He further submitted that petitioner's husband is also facing trial of two cases in Karachi. Petitioner has apprehension that her husband will be transferred to Adyala Jail Rawalpindi.

5. At this juncture, it would be conducive to refer Rule 148 of the Pakistan Prisons Rules, 1978 in respect of the Transfer of Prisoners as relied by the learned APG.

Rule 148 of Transfer of Prisoners

Rule 148. – A.P. R.T. prisoner who is not a resident of the Province where he is serving his sentence, may be removed by order of the Inspector General within two months of his release to the prison of the district to which the prisoner is being removed, shall be informed.

Provided that if the Government appoints any prison or prisons as receiving centers for the prisoners removed from other Province, orders made under this rule shall in each case direct that prisoner be removed to such person.

6. Perusal of above Rule shows that there is no ambiguity with regard to retaining custody of the petitioner's husband at Landhi Prison, Karachi, who has been convicted as referred above as well as he is facing trial of two cases within the territory of Karachi-Division; therefore, it would be more convenient to retain the custody of the Petitioner's husband at Karachi to serve his sentence accordingly. Besides, the custody of the Petitioner's husband is also not required to be detained at Rawalpindi for purpose of facing any trial of criminal case.

7. Accordingly, in view of no objection by the respondents, the instant petition is disposed of with the above observation.

Sajid--

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