

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE JAMAL KHAN MANDOKHAIL
 MR. JUSTICE ATHAR MINALLAH
 MR. JUSTICE MALIK SHAHZAD AHMAD KHAN

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AFR

Jail Petition Nos. 603/2017, 442/2019, 443/2019 & 444/2019

(On appeal against the judgments dated 30.12.2016, 22.12.2011 passed by the Balochistan High Court, Quetta in Cr. Appeal Nos. 177 & 178 of 2012, Cr. Appeal No. 140/2007 and Cr. Appeal Nos. 141/2007 & 142/2007)

Noor Muhammad and Fazal Muhammad	(In JPs 603/17 & 442/19)
Noor Muhammad	(In JP 443/2019)
Fazal Muhammad	(In JP 444/2019)
	...Petitioner(s)

Versus

The State	...Respondent(s)
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For the Petitioner(s):	Mr. Muhammad Shabbir Rajput, ASC Syed Muhib-ur-Rehman, AHC (Via video link from Quetta)
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For the State:	Ms. Robina Butt, ASC, State Counsel Balochistan
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Date of Hearing:	19.12.2024
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ORDER

JAMAL KHAN MANDOKHAIL, J.-

Jail Petition Nos. 603/2017, 442/2019 & 444/2019

Jail Petition Nos. 603/2017 & 442/2019 have been filed by petitioners Noor Muhammad and Fazal Muhammad whereas in Jail Petition No. 444/2019 Fazal Muhammad is the single petitioner. The Superintendent Central Prison Mach has submitted a report dated 07.11.2024, which shows that the petitioner Fazal Muhammad has expired on 31.08.2020, therefore, to the extent of petitioner Fazal Muhammad, these petitions are dismissed.

Jail Petition Nos. 603/2017, 442/2019 & 443/2019

2. Facts in brief are that the petitioner Noor Muhammad was arrested pursuant to FIR No. 83/2006 registered under Sections 364, 365-A, 109, 34 PPC read with Section 7 of the Anti Terrorism Act, 1997 at Police Station Satellite Town, Quetta. During the course of investigation, a raid was conducted at a compound wherefrom the abductee was recovered. During the raid, one loaded megarove (*Makarov*) pistol along with separate magazine and live cartridges was recovered from the possession of the petitioner, therefore, another FIR bearing No. 93/2006 under Section 13-E of the Arms Ordinance, 1965 at Police Station Satellite Town, Quetta was registered against him. It is also the case of the prosecution that in retaliation, the petitioner started firing upon the police officials, consequently, FIR No. 91/2006 under Sections 353, 186 PPC and 324/34 Q & D Ordinance read with Section 7 of the Anti Terrorism Act, 1997 was registered at Police Station Satellite Town Quetta. Upon conclusion of investigation in all the three FIRs, the matter was tried by the learned Anti Terrorism Court-I, Quetta. The learned Trial Court vide three separate judgments dated 05.07.2012 convicted and sentenced the petitioner as under:-

1. **Jail Petition No. 603/2017 (FIR No. 83/2006)**

Under Sections 364/34 PPC

To imprisonment for life.

2. **Jail Petition No. 442/2019 (FIR No. 91/2006)**

Under Section 353 PPC read with Section 7 of the ATA

To suffer RI for two years with fine of Rs.10,000/- or in default thereof to further undergo three months' SI.

Under Section 324/34 PPC read with Section 7 of the ATA

To suffer RI for seven years

Under Section 186 PPC

To suffer RI for three months.

Benefit of Section 382-B Cr.P.C. was also extended in favour of the petitioner.

3. Jail Petition No. 443/2019 (FIR No. 93/2006)

Under Section 13(e) of the Arms Ordinance, 1965

To suffer RI for seven years with fine of Rs.10,000/- or in default thereof to further suffer SI for three months. Benefit of Section 382-B Cr.P.C. was also given to the petitioner.

3. Feeling aggrieved, the petitioner filed appeals before the High Court, which were dismissed by means of the impugned judgments, hence, these petitions for leave to appeal.

4. Learned counsel for the petitioner at the very outset states that the petitioner was convicted in all the three FIRs, which were result of one and the same transaction, but while convicting the petitioner, the discretion for concurrence of the sentences was not exercised by the fora below. He states that the petitioner is behind the bars since 2006 and has served out his sentence for more than life, therefore, he will not press these petitions, if the sentences awarded to the petitioner in all the three FIRs are ordered to run concurrently. The learned counsel relied upon the case of Rahib Ali¹. He further states that even otherwise, at the time of the occurrence, the petitioner was minor, on the basis whereof, he is entitled for the benefit of Section 397 Cr.P.C.

5. On the other hand, THE learned Law Officer opposed the contentions raised by the learned counsel for the petitioner and states that the petitioner was involved in a heinous offence of kidnapping and attacking upon the police officials with the help of

¹ 2018 SCMR 418

firearm, therefore, the courts below rightly did not exercise the discretion.

6. Arguments heard and have perused the record.

7. The admitted fact of the case is that all the three FIRs are a result of one and the same transaction. Under Section 397 Cr.P.C., the Court has power to direct that the sentences awarded to the petitioner in the other FIRs shall run concurrently. In *Mst. Shahista Bibi*², this Court has held that the sentences of imprisonment or that of life imprisonment awarded at the same trial or in two different trials have to run concurrently. It is always expected that the Courts are required to exercise its discretion in favour of the accused, especially in the cases of minors, unless the circumstances demand otherwise, but in the case in hand, the discretion has not been exercised, which has caused prejudice to the rights of the accused/minor. It is a fact that the petitioner at the time of his arrest, was minor, and is behind the bars since 2006. He has almost served out his substantive sentence for life, therefore, on the basis of the facts and circumstances of the case, the petitioner is entitled for the benefit of Section 397 Cr.P.C. Since, the learned counsel for the petitioner does not want to pursue the matter on merits and requested for concurrence of the sentences, we are inclined to take a lenient view by accepting his request.

Thus, in view of the above, the convictions and sentences awarded to the petitioner as mentioned in paragraph No. 2 of this judgment are maintained. However, all the sentences shall run concurrently, with a benefit of Section 382-B Cr.P.C. In view of

² PLD 2015 SC 15

such modification in the impugned judgments, these petitions are dismissed.

Islamabad, the
19th of December, 2024
Khurram & Waqas Ahmad, LC

Approved For Reporting