

IN THE HONOURABLE
(CO)

Constituted

Muhammad Khan
Son of Mama Asal,
Resident of South Wazirist
Presently resident at D-141
Block-7, Gulshan-e-Iqbal,
Karachi.....

1. Province of Sindh
Through the Home
Sindh Secretariat,
Karachi
2. Inspector General of
Central Police Office
I.I. Chundrigar Road
Karachi
3. Inspector General of
Pir Illahi Bux Road
Muslimabad,
Karachi
4. Senior Superintendent
Central Jail,
Karachi
5. Anwar Ahmed Khan
Son of Nisar Ahmed
Presently detained at
Askari-V, Malir Cantonment
Karachi.....

CONSTITUTION
CONSTITUTION OF PAKISTAN
READ WITH, SECTION

It is most respectfully
Petitioner above named as

1. That the subject matter
No.SO(PRS-I)HD/1
as the 'Impugned Notification

COURT OF SINDH AT KARACHI
JURISDICTION)

4256 of 2018

.....Petitioner

vs

Sindh,

vs

), Street No.13,

.....Respondents

UNDER ARTICLE 199 OF THE
REPUBLIC OF PAKISTAN, 1973,
FINAL PROCEDURE CODE, 1898

humbly submitted on behalf of the

Notification is the challenge to the Notification
dated: 21-04-2018 (hereinafter referred to
sued by the Respondent No.1 in favour

of the Respondent No.5, through which notification the personal house of the Respondent No.5 has been declared as a sub-jail, as the Respondent No.5 is an accused person in a fake police encounter case, namely, Special Case No.323/2018 ('The State versus Anwar Ahmed Khan and Others'), pending before the Anti Terrorism Court No.II, Karachi. The Petitioner is the Complainant in the aforementioned Special Case as his son Naqeebullah Masood was allegedly murdered by the Respondent No.5 and his subordinates.

A copy of the aforementioned Notification No.SO(PRS-I)HD/II-174/2015, dated: 21-04-2018, and photographs of the son of the Petitioner, is annexed and marked as Annexure 'A' & 'B' to 'B-2', respectively.

2. That the son of the Petitioner, alongwith three other persons were murdered in a fake police encounter on 13-01-2018, allegedly by the Respondent No.5 and his subordinate police officers. It is submitted that FIR No.40/2018 (PS Sachal Malir District) was registered by the Petitioner against the Respondent No.5 and his subordinate police officers regarding the aforementioned murder.

A copy of the abovementioned FIR No.40/2018 is annexed and marked as Annexure 'C'.

3. That it is important to note that the inquiry report dated: 25-01-2018, JIT report dated: 30-04-2018, constituted on the orders of the Supreme Court, Final Charge Sheet and Supplementary Charge Sheet in Special Case No.323/2018, clearly implicate the Respondent No.5 and his subordinate officers in the fake encounter killing of the son of the Petitioner, alongwith three others.

A copy of the aforementioned inquiry report dated: 25-01-2018, JIT report dated: 30-04-2018, Final Charge Sheet and Supplementary Charge Sheet in Special Case No.323/2018, is annexed and marked as Annexure 'D' to 'D-3', respectively.

- 5
4. That the malafides of the Respondent No.5 and the criminal character of the Respondent No.5 is obvious from the aforementioned facts Firstly he defied even the Orders of the Honourable Supreme Court in Human Rights Case No.1949-K of 2018 and absconded. Only in view of the persistent Orders of the Honourable Supreme Court that he was finally arrested on 21-03-2018 from the premises of the Supreme Court. Secondly, in a report prepared by the police, the Respondent No.5 and his subordinate police officers have been accused of having engaged in 444 encounter killings over the last seven years. Thirdly, there is clear evidence that the Respondent No.5 is a thoroughly corrupt police officer, who has acquired assets beyond his known means and has engaged in money laundering. In this regard, a complaint by the Petitioner has been sent to the National Accountability Bureau. Fourthly, in view of the involvement of the Respondent No.5 in the abovementioned Special Case, he has been suspended from his post by the Respondent No.2. Therefore, in view of the aforementioned facts, it is unthinkable that such a person like the Respondent No.5 should be given any kind of concession under the law.

*A copy of the report dated 05-03-2018 in HRC No.1949-K/2018 of Respondent No.2, Orders dated: 16-02-2018 and 21-03-2018, in HRC MNo.1949-K/2018, Summary of police encounter case in district Malir, NAB Complaint and Dawn article dated: 16-02-2018, is annexed and marked as **Annexure 'E' to 'E-5'** respectively.*

5. That after the arrest of Respondent No.5 on 21-03-2018 on the Orders of the Honourable Supreme Court, the Respondent No.5 was produced before the Anti Terrorism Court No.II, Karachi, on 22-03-2018, when he was remanded in police custody. It is further submitted that on 21-04-2018, the Respondent No.5 was remanded to jail custody. It is important to note three important aspects at this stage. Firstly, neither the Trial Court was informed nor any document was produced before the Court to show that the Respondent No.5 was not being sent to the Central Jail but was

7

being remanded to his own house, which had allegedly been declared as a sub-jail. Secondly, even till today no document like the Impugned Notification has been produced before the Trial Court to show that his own house has been declared as a sub-jail where he is comfortably residing. Thirdly, the Order dated: 21-04-2018 of the Trial Court is explicit in its direction that the Respondent No.5 is to be remanded to the jail and as a consequence, he could not be kept in any custody or detention premises other than in a jail.

*A copy of the diary/order sheet of the case in trial Court, is annexed and marked as **Annexure 'F'**.*

6. That to the surprise and shock of the Petitioner, the Impugned Notification dated: 21-04-2018, was issued by the Respondent No.1 in favour of the Respondent No.5, through which notification the personal house of the Respondent No.5 has been declared as a sub-jail, as the Respondent No.5 is an accused person in a fake police encounter case, namely, Special Case No.323/2018 ('The State versus Anwar Ahmed Khan and Others'), pending before the Anti Terrorism Court No.II, Karachi. It is submitted that the malafides and illegalities of the Impugned Notification is obvious and apparent from the aforementioned facts. Firstly, it is indeed extraordinary that the Impugned Notification has been issued on the very day on which the Respondent No.5 was remanded in judicial custody, such remarkable speed clearly indicates malafidness and even otherwise, clearly shows that this Notification must have been pre-dated, having in reality been issued after 21-04-2018. Secondly, as far as the Petitioner is informed, the Respondent No.5 is the only under trial prisoner in an Anti Terrorism case in Sindh whose own house has been declared as a sub-jail. Such favouritism and nepotism in favour of the Respondent No.5 is clearly malafide. Thirdly, the Impugned Notification fails to disclose any credible information regarding serious threats to the life of the Respondent No.5. Fourthly, if there is any serious threat to the life of the Respondent No.5,

why hasn't he been detained in some high security detention centre, or why hasn't his security been increased in jail, like other high profile terrorism prisoners. Such favouritism in favour of the Respondent No.5 is clearly malafide. Fifthly, the same logic of serious threats to life would also apply to the other 11 accused persons in the abovementioned same special case but they are detained in the Central Jail. How can they be safe in the Central Jail being his subordinate police officers in the same abovementioned Special case if he is not safe?. Sixthly, the letter dated: 21-04-2018, issued by the Respondent No.3 to the Respondent No.4 is clearly contradictory to the Impugned Notification, which also shows that there was no Impugned Notification on 21-04-2018, when the Respondent No.5 was remanded to jail custody by the Trial Court on 21-4-2018.

A copy of the letter dated: 21-04-2018, of the Respondent No.3 is annexed and marked as Annexure 'G'.

7. That the Respondent No.5's detention in the comfort of his own home declared as a sub-jail is simply a continuation of the VVIP treatment being accorded to this alleged terrorist. Such VVIP treatment is also obvious from two other facts. Firstly, even though the other accused persons in the abovementioned same Special Case are handcuffed but the Respondent No.5 appears without any handcuffs in court. Secondly, the Respondent No.5 has been exempted from wearing the orange prison jacket, which is compulsory for the other accused persons in the abovementioned same Special Case. Thirdly, the fraudulent conduct of the Respondent No.5 is obvious from the fact that he has made an application for better class in prison. It is absurd for the Respondent No.5 to argue that better class may be provided to him in his own home and this application for better class also shows the VVIP status of the Respondent No.5.

A copy of the better class in prison application of the Respondent No.5 and newspaper clipping dated: 19-05-2018, is annexed and marked as Annexure 'H' & 'H-1', respectively.

8. That it is most respectfully and most humbly submitted that being aggrieved by the, inter alia, abovementioned Impugned Notification as being unconstitutional, without jurisdiction and malafide, the Petitioner has no alternative and efficacious remedy except to invoke the constitutional jurisdiction of this Honourable Court on the, inter alia, facts and grounds stated herein.

GROUNDS

- A. That the Impugned Notification purportedly issued under Section 541, Cr.P.C., 1898, is completely illegal for the following reasons. Firstly, the Order dated: 21-04-2018 of the Trial Court directed that the Respondent No.5 is to be remanded to the jail and as a consequence, he could not be kept in any custody or detention other than in a jail. Secondly, Section 2(1), Prisons Act, 1894, read with, Rule 2, Prisons Rules, 1978, clearly states that any place of confinement appointed under Section 541, Cr.P.C., 1898, is not a prison. Thirdly, the Impugned Notification is completely contradictory because both Section 541, Cr.P.C., 1898, as well as Rule 2, Prisons Rules, 1978, cannot be invoked simultaneously. It is most respectfully and most humbly submitted that in view of the aforementioned facts and law, the Impugned Notification issued under Section 541, Cr.P.C., 1898, declaring the personal house of the Respondent No.5 as a sub-jail is completely illegal because there is no concept of a sub-jail under Section 541, Cr.P.C., 1898. Therefore, the Impugned Notification is without jurisdiction, illegal and of no legal effect.

B. That the Impugned Notification purportedly issued under Section 541, Cr.P.C., 1898, is completely illegal for the following reasons. Firstly, the Order dated: 21-04-2018 of the Trial Court directed that the Respondent No.5 is to be remanded to the jail and as a consequence, he could not be kept in any custody or detention other than in a jail. Secondly, the Respondent No.5 is not a convict but an under trial prisoner and has been remanded to jail custody not for imprisonment but for under trial detention. It is most respectfully and most humbly submitted that Section 541, Cr.P.C., 1898, only applies to cases where a place is appointed by the provincial government for the purposes of imprisonment and not under trial detention. Therefore, the Impugned Notification is without jurisdiction, illegal and of no legal effect.

C. That the Impugned Notification purportedly issued under Rule 2 and Rule 4, Prison Rules, 1978, is completely illegal for the following reasons. Firstly, the Impugned Notification has declared the Respondent No.5's personal home as a sub-jail, meaning that it is one place for a single under trial prisoner. In other words, it is not a sub-jail for prisoners. Secondly, a bare reading of the language of Section 2(1), Prisons Act, 1894, as well as Rule 2 and Rule 4, Prison Rules, 1978, clearly shows that no single place can be declared as a sub jail for a single prisoner by the provincial government and the provincial government can only declare places as sub-jail through special order not for a single person but for group of prisoners. It is most respectfully and most humbly submitted that the declaration of the personal home of the Respondent No.5 as sub jail only for him is completely contrary to Section 2(1), Prisons Act, 1894, as well as Rule 2 and Rule 4, Prison Rules, 1978, as the aforementioned provisions do not allow for any person specific declaration of sub-jail. Therefore, the Impugned Notification is without jurisdiction, illegal and of no legal effect.

- D. That without prejudice to the above, any interpretation of Section 541, Cr.P.C., 1898, as well as Section 2(1), Prisons Act, 1894, and Rules 2 and 4, Prisons Rules, 1978, has to be in accordance with the fundamental rights especially Articles 4, 9 and 25, Constitution, 1973. It is respectfully submitted that the declaration of the personal home of the Respondent No.5 as a sub-jail cannot be interpreted as an exercise of powers under the aforementioned provisions because such a unfettered and absolute exercise of powers would be a gross violation of the aforementioned provisions of Section 541, Cr.P.C., 1898, Section 2(1), Prisons Act, 1894, and Rules 2 and 4, Prisons Rules, 1978. Thus, the provisions of Section 541, Cr.P.C., 1898, Section 2(1), Prisons Act, 1894, and Rules 2 and 4, Prisons Rules, 1978, have to be read down and interpreted in accordance with the fundamental rights and as a consequence, the Impugned Notification is without jurisdiction, unconstitutional and of no legal effect.
- E. That the malafides and illegalities of the Impugned Notification is obvious and apparent from the aforementioned facts. Firstly, it is indeed extraordinary that the Impugned Notification has been issued on the very day on which the Respondent No.5 was remanded in judicial custody, such remarkable speed clearly indicates malafidness and even otherwise, clearly shows that this Notification must have been pre-dated, having in reality been issued after 21-04-2018. Secondly, as far as the Petitioner is informed, the Respondent No.5 is the only under trial prisoner in an Anti Terrorism case in Sindh whose own house has been declared as a sub-jail. Such favouritism and nepotism in favour of the Respondent No.5 is clearly malafide. Thirdly, the Impugned Notification fails to disclose any credible information regarding serious threats to the life of the Respondent No.5. Fourthly, if there is any serious threat to the life of the Respondent No.5, why hasn't he been detained in some high security detention centre, or why hasn't his security been increased in jail, like other high profile terrorism prisoners. Such favouritism in favour of the Respondent No.5 is clearly malafide. Fifthly, the same logic of serious threats to life would

also apply to the other 11 accused persons in the abovementioned same special case but they are detained in the Central Jail. How can they be safe in the Central Jail being his subordinate police officers in the same abovementioned Special case if he is not safe?. Sixthly, the letter dated: 21-04-2018, issued by the Respondent No.3 to the Respondent No.4 is clearly contradictory to the Impugned Notification, which also shows that there was no Impugned Notification on 21-04-2018, when the Respondent No.5 was remanded in jail custody by the Trial Court on 21-04-2018. It is most respectfully and most humbly submitted that it is a fundamental principle of the Constitution as well as a constitutional right that the rule of law as envisaged under Article 4, Constitution, 1973, shall be supreme and such arbitrary and malafide notifications are a violation of such a right. Therefore, the Impugned Notification is without jurisdiction, unconstitutional and of no legal effect.

- F. That the malafides and illegalities of the Impugned Notification is obvious and apparent from the aforementioned facts. Firstly, it is indeed extraordinary that the Impugned Notification has been issued on the very day on which the Respondent No.5 was remanded in judicial custody, such remarkable speed clearly indicates malafidness and even otherwise, clearly shows that this Notification must have been pre-dated, having in reality been issued after 21-04-2018. Secondly, as far as the Petitioner is informed, the Respondent No.5 is the only under trial prisoner in an Anti Terrorism case in Sindh whose own house has been declared as a sub-jail. Such favouritism and nepotism in favour of the Respondent No.5 is clearly malafide. Thirdly, the Impugned Notification fails to disclose any credible information regarding serious threats to the life of the Respondent No.5. Fourthly, if there is any serious threat to the life of the Respondent No.5, why hasn't he been detained in some high security detention centre, or why hasn't his security been increased in jail, like other high profile terrorism prisoners. Such favouritism in favour of the Respondent No.5 is

clearly malafide. Fifthly, the same logic of serious threats to life would also apply to the other 11 accused persons in the abovementioned same special case but they are detained in the Central Jail. How can they be safe in the Central Jail being his subordinate police officers in the same abovementioned Special case if he is not safe?. Sixthly, the letter dated: 21-04-2018, issued by the Respondent No.3 to the Respondent No.4 is clearly contradictory to the Impugned Notification, which also shows that there was no Impugned Notification on 21-04-2018, when the Respondent No.5 was remanded in jail custody by the Trial Court on 21-04-2018. It is most respectfully and most humbly submitted that this is a case of a clear cut discrimination to favour the Respondent No.5 because he has been provided the comfort of his home, he is the only accused person in the abovementioned Special Case being given the facility and perhaps the only under trial prisoner being tried under the Anti Terrorism Act, 1997, to have such a facility. This is a blatant violation of Article 25, of the Constitution, 1973, and cannot be justified on any basis including reasonable classification. Therefore, the Impugned Notification is without jurisdiction, unconstitutional and of no legal effect.

- G. That the malafides and illegalities of the Impugned Notification is obvious and apparent from the aforementioned facts. Firstly, it is indeed extraordinary that the Impugned Notification has been issued on the very day on which the Respondent No.5 was remanded in judicial custody, such remarkable speed clearly indicates malafidness and even otherwise, clearly shows that this Notification must have been pre-dated, having in reality been issued after 21-04-2018. Secondly, as far as the Petitioner is informed, the Respondent No.5 is the only under trial prisoner in an Anti Terrorism case in Sindh whose own house has been declared as a sub-jail. Such favouritism and nepotism in favour of the Respondent No.5 is clearly malafide. Thirdly, the Impugned Notification fails to disclose any credible information regarding serious threats to the life of the Respondent No.5.

Fourthly, if there is any serious threat to the life of the Respondent No.5, why hasn't he been detained in some high security detention centre, or why hasn't his security been increased in jail, like other high profile terrorism prisoners. Such favouritism in favour of the Respondent No.5 is clearly malafide. Fifthly, the same logic of serious threats to life would also apply to the other 11 accused persons in the abovementioned same special case but they are detained in the Central Jail. How can they be safe in the Central Jail being his subordinate police officers in the same abovementioned Special case if he is not safe?. Sixthly, the letter dated: 21-04-2018, issued by the Respondent No.3 to the Respondent No.4 is clearly contradictory to the Impugned Notification, which also shows that there was no Impugned Notification on 21-04-2018, when the Respondent No.5 was remanded in jail custody by the Trial Court on 21-04-2018. It is most respectfully and most humbly submitted that an examination of the aforementioned facts clearly shows that the entire basis of the Impugned Notification is completely malafide and has been issued only in order to facilitate the Respondent No.5. Therefore, the Impugned Notification is without jurisdiction, malafide and of no legal effect.

H. That the malafides and illegalities of the Impugned Notification is obvious and apparent from the aforementioned facts. Firstly, it is indeed extraordinary that the Impugned Notification has been issued on the very day on which the Respondent No.5 was remanded in judicial custody, such remarkable speed clearly indicates malafidness and even otherwise, clearly shows that this Notification must have been pre-dated, having in reality been issued after 21-04-2018. Secondly, the letter dated: 21-04-2018, issued by the Respondent No.3 to the Respondent No.4 is clearly contradictory to the Impugned Notification, which also shows that there was no Impugned Notification on 21-04-2018, when the Respondent No.5 was remanded in jail custody by the Trial Court on 21-04-2018. A bare examination of the letter dated: 21-04-2018 shows that it has been issued

by the Respondent No.3 to the Respondent No.4 on the basis of a earlier letter issued by the Respondent No.4 on the same date 21-04-2018 but how could the Respondent No.4 issue such a letter when the Impugned Notification was not even copied to him on that very date? How could he have knowledge of such notification to be able to write a letter to the Respondent No.3 regarding it. Moreover, if it is presumed that the Impugned Notification was issued on 21-04-2018, why doesn't it find mention in the letter of the Respondent No.3 dated: 21-04-2018. Surprisingly, although the Impugned Notification has been copied to him but he does not refer to or rely on the Impugned Notification but instead refers to a telephonic conversation with the Respondent No.1, who has issued the Impugned Notification. The question arises as to why the Impugned Notification was not relied upon in the said letter and why there was a need to rely on the telephonic conversation if the Impugned Notification was in existence on 21-04-2018. It is most respectfully and most humbly submitted that an examination of the aforementioned facts clearly shows that the aforementioned Impugned Notification was issued after 21-04-2018 and was predated fraudulently in order to mislead the Trial Court. Therefore, the Impugned Notification is without jurisdiction, malafide and of no legal effect.

- I. That it is most respectfully and most humbly submitted that the Petitioner seeks the permission of this Honourable Court to raise further grounds at the time of the hearing of this Petition and the accompanying applications.

PRAYER

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment and orders against the Respondents in the following terms:

- A. Declare that the Impugned Notification No.SO(PRS-I)HD/II-174/2015, dated: 21-04-2018 [Annex 'A'], issued by the Respondent No.1, and any subsequent orders/letters issued on the basis of the Impugned Notification, is unconstitutional, without jurisdiction, malafide and of no legal effect;
- B. Declare that Section 541, Cr.P.C., 1898, Section 2(1), Prisons Act, 1894, and Rules 2 and 4, Prisons Rules, 1978, have to be read down and interpreted in accordance with the constitutional and fundamental rights guaranteed under the Constitution, 1973, and as a consequence, the Impugned Notification is unconstitutional, without jurisdiction and of no legal effect;
- C. Permanently restrain the Respondents, or any person acting through or under them, to refrain from taking any action, or relying, on the basis of the Impugned Notification dated: 21-04-2018, or any other order/letter issued on its basis;
- D. Grant such further, additional or alternative relief, as this Honourable Court may deem fit and proper;

Petitioner

Advocate for the Petitioner

Karachi.

Dated: May 29th, 2018

DOCUMENTS FILED:

As shown in the petition

DOCUMENTS RELIED UPON:

The abovementioned documents e.t.c.

ADDRESS OF PETITIONER:

As per in title of the petition

ADDRESS OF PETITIONER
COUNSEL:

Faisal Siddiqi
Advocate
HC-8504/HC/KHI
14-C, 21st Street,
Khayaban-e-Sehr,
Phase 6, D.H.A
Karachi.

DRAWN BY ME

ADVOCATE