

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE NAEEM AKHTER AFGHAN
MR. JUSTICE ISHTIAQ IBRAHIM

Jail Petition No.356/2023

(Against the judgment dated 17.03.2023, passed by the High Court of Sindh, Circuit Court Larkana in Criminal Appeal No.S-30 of 2016)

Qalandar Bux

...Petitioner(s)

VERSUS

The State

...Respondent(s)

For the Petitioner(s): Agha Muhammad Ali, ASC

For the State: Mr. Siraj Ali Khan, Addl. PG, Sindh

Date of hearing: 17.09.2026

JUDGMENT

ISHTIAQ IBRAHIM, J.- The prosecution case, in brief, as set out in the First Information Report (FIR) lodged on the report of the Office Superintendent, Sessions Court, Jacobabad, pursuant to the orders of the learned Sessions Judge, Jacobabad, is that three under-trial prisoners (UTPs), namely, Leemo Rind, Noor Muhammad and Akram Kehar, were unlawfully released from Central Prison-I, Sukkur on the basis of forged release orders/writs. UTP Leemo Rind was facing trial in the Court of Sessions Judge, Jacobabad in case arising out of Crime No.58/2006, registered under Sections 302, 147 and 148 PPC at Police Station Saddar, Jacobabad. UTP Noor Muhammad was facing trial before the learned 1st Additional Sessions Judge, Jacobabad, in a case arising out of Crime No.1/2002 under Section 302 PPC, registered at Police Station Dil Murad. Similarly, UTP Akram Kehar was facing trial before the learned 1st Additional Sessions Judge, Jacobabad, in case arising out of Crime No.02/2012 under Section 302 PPC, registered at Police Station Abad, Jacobabad, and case arising out of Crime No.04/2012 under Section 13-D of the Arms Ordinance at Police Station Abad, before the learned 1st Judicial Magistrate, Jacobabad. It is further alleged

in the FIR that UTP Leemo Rind was released from Central Prison-I, Sukkur on the basis of a forged release order No.1266 dated 25.09.2012, purportedly issued by the learned 2nd Additional Sessions Judge, Jacobabad. Likewise, UTP Akram Kehar was allegedly released on the basis of forged release writs Nos.1227 dated 20.09.2012 and 1320 dated 04.10.2012, purportedly issued by the learned 2nd Additional Sessions Judge, Jacobabad. It is further alleged that accused Abdul Qayoom Golo, along with jail officials, namely Qalandar Bux Sheikh, Deputy Superintendent, Central Prison-I, Sukkur (the petitioner), Irfan Pirzado Clerk, Amanullah Bhatti OG Warder, and PC Amir Ali Brohi, acted in collusion and, by misusing their official authority and powers, facilitated the unlawful release of the aforesaid UTPs from Central Prison-I, Sukkur on the basis of forged release writs/orders. On the direction of the High Court of Sindh, Karachi, an inquiry was conducted by the learned Sessions Judge, Jacobabad. In the said inquiry, accused Abdul Qayoom Golo, petitioner Qalandar Bux, Irfan Ali Pirzado, Amanullah Bhatti, PC Amir Ali Brohi and others were allegedly found responsible for the commission of offence. It was further alleged that the petitioner Qalandar Bux, Deputy Superintendent, Central Prison-I, Sukkur, in an attempt to protect himself, got registered Crime No.245/2012 registered at Police Station Rohri in respect of the same occurrence.

2. Upon completion of the investigation, a report under Section 173 Cr.P.C. was submitted against the petitioner, Qalandar Bux Sheikh, and his co-accused before the learned Special Judge, Anti-Corruption (Provincial), Larkana ("Trial Court"). Upon conclusion of the trial, the learned Trial Court, vide judgment dated 18.03.2016, convicted the petitioner under Section 221 PPC read with Section 5(2) of Act-II of 1947 and sentenced him to three years' rigorous imprisonment and a fine of Rs.50,000/-, and, in default of payment thereof, to undergo a further six months' simple imprisonment. The petitioner was also convicted under Sections 222 and 225 PPC read with Section 5(2) of Act-II of 1947 and sentenced to five years' rigorous imprisonment under each offence, along with a fine of Rs.50,000/- under each count, and, in default of payment thereof, to undergo a further six months' simple imprisonment under each count. Through the same judgment co-accused Abdul Qayoom Golo,

Nazeer Ahmed Bhangar, Irfan Ali Pirzada and Amanullah were also convicted and sentenced.

3. The conviction and sentences of the petitioner were maintained and upheld by the learned High Court of Sindh, Circuit Court Larkana ('the High Court') by dismissing his appeal vide judgment dated 17.03.2023. Through the instant Jail petition the petitioner has assailed his conviction and sentence before this Court. Through the same judgment the conviction and sentence of the co-convicts named above were also upheld and maintained.

4. The co-convicts, namely Abdul Qayoom Golo, Irfan Ali Pirzada and Amanullah, had also filed Jail Petitions Nos. 166, 167 of 2023 and Criminal Petitions No.71-K and 72-K of 2023 against their respective convictions and sentences before this Court. Having served out their respective sentences, they were released from jail. Consequently, their jail and criminal petitions were dismissed by this Court vide order dated 09.03.2026.

5. As per the report submitted by the Superintendent/Officer Incharge, Central Prison and Correctional Facility, Larkana, the petitioner-convict, Qalandar Bux, was also released from jail on 31.08.2023 after serving out his sentence. However, learned counsel for the petitioner submits that the petitioner, being a retired Deputy Superintendent Jail, was exonerated from the same charge in departmental proceedings. It is, therefore, contended that the petitioner seeks to pursue the instant petition on merits.

6. Having heard the learned counsel for the parties and perusing the record, we find that, admittedly, there is no direct evidence on record connecting petitioner Qalandar Bux in the preparation of fake and forged bail-granting orders and release warrants for securing the release of the UTPs. At this stage, it would be appropriate to advert to the confessional statement of co-accused Nazeer Ahmad, wherein he has narrated in detail the manner in which he in connivance with co-accused Abdul Qayyum Golo, Court Clerk, managed to procure and prepare the fake and forged bail orders and release warrants of the UTPs against payment of illegal gratification paid to Abdul Qayyum Golo, Court Clerk. Even in the said confessional statement he has not attributed any role whatsoever to petitioner Qalandar Bux in the commission of the alleged offence.

Neither he has alleged that the petitioner was a party to the conspiracy, nor he has implicated him in the preparation, procurement or use of the fake and forged bail orders and release warrants. Thus, the confessional statement of co-accused Nazeer Ahmad, even if taken into consideration, does not furnish any incriminating material against the present petitioner rather it speaks about unawareness of the petitioner about the plot of the co-accused. It also transpires from the record that even before registration of the FIR on the report of the Superintendent, Sessions Court, Jacobabad, pursuant to the order of the learned Sessions Judge, Jacobabad, the incident had already been reported by the petitioner-convict, Qalandar Bux. On his report, FIR No.245/2012 dated 17.11.2012 was registered at Police Station Rohri, wherein, in his capacity as Deputy Superintendent, Central Jail, Sukkur, the petitioner furnished a detailed account of the occurrence by stating that owing to heavy rains and inadequate drainage at District Jail, Jacobabad, 261 prisoners, pursuant to the orders of the IGP Jails, had been shifted to Central Jail, Sukkur on 11.09.2012 for safe custody and production before the concerned Courts; that on 26.09.2012, bail order letter No.1266 dated 25.09.2012, pertaining to UTP Leemo in Crime No.58/2006, under Sections 302, 148 and 149 PPC, registered at Police Station Saddar, Jacobabad, was received from the Court of the learned 2nd Additional Sessions Judge, Jacobabad. The order was verified from the concerned Court through TCS, whereafter verification letter No.1280 dated 27.09.2012 was received. In compliance therewith, UTP Leemo was released from jail on 24.10.2012. He further alleged that on the same day, bailiff Naseer Muhammad delivered bail order letter No.3296 dated 24.10.2012, issued by the learned 1st Additional Sessions Judge, Jacobabad, in Crime No.1/2012 under Section 302 PPC, registered at Police Station Dil Murad, relating to UTP Noor Muhammad. The said order was handed over to jail clerk Irfan Ali Pirzado, who obtained the bailiff's signature on the release order, whereafter Noor Muhammad was released from jail. He further alleged that that P.O. Letter No.R-7451 dated 25.10.2012 was received from the Sessions Judge, Jacobabad, seeking production of UTP Leemo. The jail authorities informed the Court of his release vide letter No.13521 dated 31.10.2012. Likewise, upon receipt of P.O. Letter No.3247 dated 18.10.2012 regarding production of Noor

Muhammad Khoso, the concerned Court was informed of his release vide letter No.13752 dated 03.11.2012; that thereafter, the Sessions Judge, Jacobabad summoned him (the petitioner) and the concerned jail staff. On 14.11.2012, he (the petitioner) along with the Superintendent Jail, Assistant Superintendent Central Jail and Clerk Irfan Ali Pirzado, appeared before the learned Sessions Judge, Jacobabad with the original record. During the proceedings, Irfan Ali Pirzado identified bailiff Naseer Muhammad and narrated the relevant facts. On 15.11.2012, they were directed to appear before the learned Assistant Sessions Judge, Jacobabad in connection with an inquiry, where they appeared along with the original record. The petitioner alleged that accused Leemo and Noor Muhammad had procured their release through bailiff Naseer Muhammad and lower court staff by means of forged bail orders purportedly bearing the signatures of the learned Judges and official Court seals. He accordingly requested registration of a criminal case and legal action against the persons responsible for preparing and using the forged documents and facilitating the release of the said prisoners.

7. In his statement recorded under Section 342 Cr.P.C., the petitioner referred to the registration of the aforesaid FIR and reiterated the circumstances in which the two under-trial prisoners were released. We have carefully examined the entire record and find that the prosecution has not been able to bring on record any cogent or reliable evidence establishing that the petitioner, while serving as Deputy Superintendent, Central Jail, Sukkur, acted with mala fide or with any ulterior motive or pecuniary consideration in releasing the under-trial prisoners in the discharge of his official duties. On the contrary, the material available on record indicates that the petitioner was himself misled by the co-accused and the jail staff, who produced before him the purported bail and release orders bearing the signatures of the concerned Judges and the seals of the respective Courts, thereby creating an apparent authority for the release of the prisoners. It is very crucial to be kept in mind that the petitioner himself reported the occurrence and registered FIR thereby bringing the matter to the notice of the police authorities. Had he been acting in concert with the co-accused or had he knowingly facilitated the unlawful release of the UTPs, his conduct in voluntarily reporting the occurrence, particularly before

registration of the FIR in the present case, would hardly be consistent with such a hypothesis. His subsequent conduct in appearing before the Sessions Judge, Jacobabad, along with the relevant jail record, further lends support to the conclusion that the petitioner had no prior knowledge of the fraudulent nature of the documents placed before him. It is also borne out from the record that, in the departmental proceedings arising out of the same occurrence, the petitioner was exonerated of the charge. Needless to observe, such exoneration, by itself, cannot furnish a ground for acquittal in a criminal case, since departmental and criminal proceedings operate in distinct fields and are governed by different standards of proof. Nevertheless, the fact of exoneration, when considered along with the other circumstances appearing on record, may legitimately be taken into account as a corroborative circumstance while assessing the prosecution case against the petitioner. The question, therefore, is whether the act attributed to the petitioner, viewed in the light of the attending circumstances, falls within the protective ambit of Sections 76 and 79 PPC which for the sake of ready reference are reproduced below:-

“S.76. Act done by a person bound, or by mistake of fact believing himself bound by law:- Nothing is an offence which is done by a person who is, or who by reason of mistake of fact and not by reason of a mistake of law in good faith believes himself to be, bound by law to do it”.

“S.79. Act done by a person justified, or by mistake of fact believing himself justified, by law:- Nothing is an offence which is done by any person who is justified by law, or who by reason of a mistake of fact and not by reason of a mistake of law in good faith, believes himself to be justified by law, in doing it.

Section 76 PPC exempts an act done by a person who is bound by law to do it, as well as an act done by a person who, by reason of a mistake of fact, and not a mistake of law, in good faith believes himself to be so bound. Section 79 PPC, on the other hand, extends protection where a person is justified by law in doing an act or, owing to a mistake of fact and not a mistake of law, in good faith believes himself to be so justified. The distinction between the two provisions is material. Section 76 operates where the accused believes himself to be legally bound to perform the act, whereas Section 79 applies where he believes himself legally justified in performing it. Both provisions, however, proceed upon the same fundamental premise, namely, that the belief must arise from a mistake of fact, must be

entertained in good faith, and must not be founded upon a mistake of law. Thus, the relevant inquiry is not merely whether the act ultimately proved to be legally correct, but whether, at the time of its commission, the accused, on the facts as honestly perceived by him, had reasonable grounds for believing that he was legally bound or justified in acting as he did.

8. Tested on the aforesaid principle, the case of the petitioner stands on a different footing from that of the co-accused who allegedly prepared or procured the forged documents. The petitioner was performing an official function as Deputy Superintendent, Central Jail, Sukkur. The documents presented to him purported to be duly issued bail orders of competent Courts and bore what appeared to be the signatures of the concerned Judges and the official seals of the Courts. The petitioner was not shown to have participated in the preparation of those documents, nor has the prosecution produced evidence establishing that he knew them to be forged. Rather, the record demonstrates that the documents were presented to him in a manner calculated to induce him to believe that they were genuine judicial orders requiring compliance. In such circumstances, the petitioner's conduct cannot be removed from the factual circumstances in which the impugned releases were effected. If, acting in the discharge of his official duties, he honestly believed, on the basis of the documents placed before him, that the competent Courts had ordered the release of the respective prisoners, his act of giving effect to such orders was, in substance, an act which he believed himself bound to perform in compliance with the authority of the Courts. The mistake lay not in the interpretation of law but in his perception of the factual authenticity and genuineness of the documents placed before him. Such a mistake, if entertained in good faith, is precisely the kind of factual mistake contemplated by Section 76 PPC. At the same time, and for the same reasons, the circumstances also attract Section 79 PPC. The petitioner, being the officer responsible for custody of the prisoners, was entitled to act upon what he bona fide believed to be valid orders of competent Courts. His belief that he was legally justified in releasing the prisoners was founded upon the apparent authenticity of the bail and release orders, including the purported signatures of the Judges and the Court seals. There is nothing on record to show that such

belief was knowingly false or actuated by mala fide considerations. His subsequent conduct in reporting the occurrence and producing the relevant record is, rather, inconsistent with a conscious participation in the fraudulent release.

9. No doubt, the petitioner did not specifically invoke the protection available under Sections 76 or 79 PPC either during the investigation or trial, nor did he take such a plea in his statement recorded under Section 342 Cr.P.C. However, mere absence of a specific plea, in the peculiar facts and circumstances of the present case, would not preclude the Court from examining the applicability of these statutory exceptions where the material on record otherwise brings the case within their ambit. It is settled law that an accused is not necessarily required to take a specific plea of an exception where the facts and circumstances emerging from the prosecution evidence themselves disclose its applicability. The Court is competent to take cognizance of such circumstances and extend the benefit of the relevant exception to the accused, notwithstanding the absence of a formal or specific plea in his defence. The material necessary for determination of the issue is already available on the record, and the question is essentially whether the facts proved by the prosecution, when tested against the statutory requirements of the said provisions, disclose a criminal act on the part of the petitioner. Where the proved circumstances themselves establish that an accused acted under a bona fide mistake of fact, in the belief that he was performing or was justified in performing an act required or authorized by law, the Court is required to give effect to the protection expressly afforded by the Pakistan Penal Code.

10. For what has been discussed above, the prosecution has failed to establish the requisite culpable knowledge or mala fide intention on the part of the petitioner. The evidence, instead, reasonably establishes that he acted upon apparently genuine judicial orders, believing himself legally bound, or at least legally justified, in giving effect thereto. His belief resulted from a mistake of fact concerning the genuineness of the orders and not from any mistake as to the law. Such conduct, in the peculiar facts and circumstances of the case, falls within the protective ambit of Sections 76 and 79 PPC. Consequently, the acts attributed to the petitioner cannot, in the absence of proof of conscious participation, dishonest intention or

knowledge of the forgery, be treated as constituting the offences for which he has been convicted.

11. Accordingly, this petition is converted into an appeal and allowed. The conviction and sentences of the appellant Qalandar Bux recorded by the Courts below are set aside and he is acquitted of the charges.

Judge

Judge

Judge

Islamabad the
17th September, 2026
Not Approved for Reporting
M.Siraj Afridi PS