

Through Video Conferencing

**IN THE HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

**LPA No.28/2020 in [WP (Crl) No.251/2019]
Alongwith connected CMs**

Mian Abdul Qayoom

..... Appellant(s)

Through: -

Mr Z. A. Shah, Senior Advocate with
Mr Mian Tufail, Advocate *(On Video Conference from their residences)*

V/s

Union Territory of JK & Ors.

..... Respondent(s)

Through: -

Mr B. A. Dar, Sr. AAG *(On Voice Call from his residence)*
Mr T. M. Shamsi, ASGI *(On Voice Call from his residence)*

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge *(On Video Conference from Srinagar wing)*
Hon'ble Mr Justice Vinod Chatterji Koul, Judge *(On Video Conference from residence at Jammu)*

ORDER

17.04.2020

1. This Letters Patent Appeal has been listed today on the urgency expressed by the learned counsel for the appellant to be heard remotely *via* Video Conferencing.

2. While, Mr. Z. A. Shah, learned Senior counsel, appearing for the appellant, has been provided the link and is on VidyoDesktop; Mr. B. A. Dar, learned Senior Additional Advocate General, representing the Union Territory respondents, is on Voice Call from his residence; and Mr T. M. Shamsi, learned Assistant Solicitor General of India, representing the Union of India, is also on Voice Call from his residence.

3. With the taking up of the matter for consideration, Mr. B. A. Dar submits that on account of the lockdown, he is confined to his residence and does not have either the hard or the soft copies of the case file or of the relevant detention records available with him at his residence. He further submits that due to network connection issue, he also does not have the Video Conferencing facility available to him at his residence and, therefore, he expresses his inability to make his submissions and argue the case. Mr. Dar submits that the hearing of the matter may be postponed till, at least, the present period of lockdown comes to an end, enabling him to properly assist the Court. Mr Shamsi also expressed the same inability for making his submissions due to network connection issue and, accordingly, sought postponement of the hearing till the prevailing lockdown period comes to an end.

4. Having considered the submission of Mr. Dar, we are of the view that there is a genuine difficulty incapacitating him to make his submissions. In that view, it is equally impracticable for the Court to commence the hearing of the case and/or to effectively conclude the hearing. We are of the view that it would be appropriate to adjourn the hearing of the matter today, with direction to list it before the available Division Bench on 4th of May, 2020.

5. At this stage, Mr. Z. A. Shah, learned senior counsel for the appellant, submits that on account of the appellant's multiple ailments associated with diabetes etc., the detinue is at a high risk of contracting COVID-19 in the over-crowded jail environment, and if it so happens, it would be perilous for his life. He further submitted that the family of the detinue had approached the High-Powered Committee in terms of the directions passed by Hon'ble the Supreme Court in *suo moto* proceedings titled '**Contagion of COVID-19**

Virus in Prisons' [Suo Moto Writ Petition (C) No. 1/2020] and, as per the information of the family of the appellant, the said Committee has already submitted the case to the Government for decision. It is also submitted by Mr Shah that a Division Bench of this Court, while dealing with the PIL concerning prevention of spread of COVID-19 in jails, has also directed the Government of Jammu and Kashmir to ensure de-congestion of the jails by releasing the prisoners on interim basis. The learned senior counsel also contends that the detenu has been detained for a period of one year, out of which, almost nine months have expired and, in case the hearing of the matter is not expedited, the proceedings will become infructuous.

6. Mr. B. A. Dar submitted that it is not possible for him to respond to the submissions made by the learned senior counsel without there being a proper motion made in that regard. He submits that in the event the matter is pending with the Government after report of the High-Powered Committee, as claimed by the learned senior counsel for the appellant, the Government will take a decision thereon in accordance with the law.

7. Having heard the above submissions on part of the learned counsel for the parties, we are of the view that there ought to be a proper motion filed in support of the submissions made by the learned senior counsel for the appellant, however, in view of the directions passed by the Hon'ble Apex Court in the above mentioned proceedings, there shall be no difficulty for the Government in taking a decision on the report of the High-Powered Committee.

8. In view of the above, the matter is adjourned to be listed on 4th of May, 2020, as ordered above.

9. Meanwhile, let the Government submit the response to the submissions made by Mr Shah seeking decision on the interim release of the detenu in tune with the directions passed by the Hon'ble Supreme Court in the aforesaid *suo moto* proceedings.

10. Registry to send copy of this order to all the appearing counsel for the parties as well as to the Principal Secretary, Home Department, Government of Union Territory of Jammu and Kashmir through e-mail.

(Vinod Chatterji Koul)
Judge

(Ali Mohammad Magrey)
Judge

SRINAGAR
April 17th, 2020
"TAHIR"

