

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

CP No. D- 2064 of 2025

[Arbab Muhammad Deen Memon v. Province of Sindh & Others]

BEFORE:

MR. JUSTICE ADNAN-UL-KARIM MEMON

MR. JUSTICE RIAZAT ALI SAHAR

Ms. Urooj Aqeel, Advocate for petitioner

Mr. Siraj Ahmed Bijarani, A.P.G.

Mr. Rafiq Ahmed Dahri, Asstt: A.G., along with Insp. Muhammad Chungal for SSP Hyderabad, Insp. Salman Mubin R.I Line, Hyderabad, ASI Zahid Hussain Narejo & Ali Hassan Shar, Incharge DSP for DIG Shaheed Benazirabad Range & SIP Faheem Hussain DIGP Office Hyderabad.

Date of hearing:

& Decision:

16.12.2025

ORDER

ADNAN-UL-KARIM MEMON, J - The Petitioner, through instant Petition, has prayed as follows:

(a) That this Honourable Court may be pleased to issue direction to the respondent No.1 to 5 to provide legal protection to the petitioner and his family members and further bound the official respondent No.4 to restrain the respondents No.7 and 8 not to cause harm, misbehave, create hurdle, mentally torture to the petitioner on the instigation of business partner of the petitioner.

(b) That this Honourable Court may be pleased to issue a direction to the respondents No.2 to 5 to remove the Handcuffs to the petitioner when they produce him before the Honourable Courts to attend the hearing, as per Prison Rules, because the petitioner is declared as "B-Class" Prisoner.

(c) Any other relief which the Honourable Court deems fit and proper in view of the above fact for protection of Petitioners and in the interest of justice.

2. The case of the petitioner is that he is owner of M/s SHAMS Builders & Developers, situated at Data Nagar Housing, Qasimabad, Hyderabad, and was carrying on business in partnership with Mahesh Kumar s/o Tikam Das. The petitioner was arrested on 17.01.2025 in Crime No.15/2025 registered under Section 489-F PPC at Police Station Qasimabad, Hyderabad, and was initially confined in NARA Jail, Hyderabad. Subsequently, the petitioner was shifted to Central Prison, Hyderabad, on 28.03.2025, where he has remained behind bars since the date of his

arrest. He submitted that Respondent No.4, at the instigation of petitioner's business partner Mahesh Kumar Hasija and his brother Ishwar Lal s/o Tikam Das, is continuously humiliating, pressurizing, misbehaving with, threatening, and mentally torturing the petitioner with ulterior motive and compelling him to withdraw from the pending cases and to damage his reputation in society and on social media, through Respondents 7 & 8 and their subordinate staff at District & Sessions Court, Hyderabad. He further submitted that while the aforesaid project was in progress, the petitioner's business partner Mahesh Kumar Hasija, in collusion with his brother Ishwar Lal, acted dishonestly and, in furtherance of their ulterior motives, started creating hurdles, cheating the petitioner, and falsely implicating him in concocted and fabricated criminal cases, which are presently pending before different courts at Hyderabad and Karachi. He submitted that since January 2025, the petitioner has been produced by the District Police before the courts in pending criminal and civil cases in handcuffs which is in blatant violation of the law; that as per Jail Fardi issued by Respondent No.6, the petitioner has been declared "B-Class Prisoner", and under the Prison Rules, a B-Class prisoner is not required to be produced in handcuffs. He submitted that the aforesaid illegal acts of District Police, Hyderabad, are in clear violation of Articles 4, 9, 14, and 25 of the Constitution read with Rule 174 of the Prison Rules, 1978. He added that for the foregoing reasons, the petitioner being an "aggrieved person" within the meaning of Article 199(1)(c) of the Constitution, and having no other adequate or alternate remedy available, has filed the instant constitutional petition.

3. Learned counsel for the petitioner submitted that 'B' Class prisoner is a superior-class inmate who, by social status, education, or habit, is accustomed to a better mode of living. They are generally not required to be produced in handcuffs in court unless they are considered a high security risk or a dangerous criminal. Learned counsel further argued that the government or courts, on an interim basis, determine a prisoner's class. She argued that eligibility for 'B' class typically includes individuals such as former or current gazetted civil or military officers, sitting or former parliamentarians, or persons with a bachelor's or professional degree and a certain level of tax payment history. She added that B-class prisoners are entitled to better facilities compared to the ordinary 'C' class inmates, often including their own rooms, specific furniture at their own expense, and a 'C' class inmate to act as a cook or attendant. The government generally provides only security in a separate ward, with other enhanced amenities paid for by the prisoner. She submitted that, unlike 'C' class prisoners who have to perform hard labor, 'B' class inmates are generally not required to work. She emphasized that regarding the use of handcuffs, the general rule is that prisoners should not be handcuffed unnecessarily when produced in court. The Law & Justice Commission of Pakistan has specifically recommended that the rule regarding the use of handcuffs should primarily apply to terrorists or dangerous

criminals. Therefore, a 'B' class prisoner, by virtue of their typical profile and general guidelines, is not automatically required to be handcuffed for court appearances. The use of handcuffs would be an exception based on specific security assessment of the individual prisoner's risk of escape or potential for violence, rather than their 'B' class status itself. The jail authorities have some discretion in the use of mechanical restraints, but it must be based on necessity, not a blanket rule. She cited various provisions of Prison Rules and lastly submitted that the aforementioned category of under-trial prisoners is not required to be produced in court in handcuffs. Learned counsel also pointed out that Petitioner has been subjected to severe torture by the jail officials finally he was shifted to the present prison. She prayed to allow this petition on the aforementioned analogy.

4. Learned counsel for the petitioner has rightly pointed out that the petitioner has been declared a “B-Class Prisoner” as per the Jail Fardi issued by the competent jail authority, which factum has been affirmed by the jail superintendent present in court, and therefore, his production before this Court in handcuffs is illegal, unconstitutional, and contrary to the settled law.

5. Under the Sindh Prison Rules, 1978, particularly Rule 174, the use of mechanical restraints such as handcuffs is not to be employed as a matter of routine and can only be justified in exceptional circumstances, such as where a prisoner is violent, dangerous, or there is a genuine risk of escape. The rule mandates that restraints must be used sparingly, reasonably, and only when strictly necessary, based on an individualized assessment. Section 574 of the Sindh Prison and Corrections Services Act 2019 provides that only dangerous, violent, or escape-risk prisoners may be handcuffed and only when necessary.

6. A & B-Class prisoners, as recognized under Section 736 of the Sindh Prisons and Corrections Services Act, 2019, is treated as a superior-class inmate on account of social standing, education, profession or established habits that warrant a comparatively better standard of living. Such classification may be granted either by the government or the competent court, including on an interim basis, and once accorded, it carries with it certain statutory and customary privileges, foremost among them protection against unwarranted humiliation and degrading treatment. An excerpt of the Rule 174 is reproduced as under:-

“Rule 174.- Male Prisoners except “A” Class prisoners and political detainees shall be handcuffed before removal from prison.

This was amended on 13th May 1996 as follows. In Rule 174 for the letter and word “A” class the letters and words “A” and “B” class shall be substituted.

7. It is a settled principle of law that handcuffing an under-trial prisoner cannot be adopted as a routine practice. The act of handcuffing constitutes a grave intrusion upon the fundamental rights guaranteed under Articles 9 and 14 of the Constitution of Islamic Republic of Pakistan and can only be justified in the presence of compelling and exceptional circumstances, which must be specifically recorded in writing. Human dignity being inviolable, any treatment that demeans or degrades a person, without lawful and proportionate justification, amounts to a direct violation of Article 14 of the Constitution. In such circumstances the law favours the aforesaid classes of Prisoners exempted from handcuffs before removal from prison. Since no allegations have been leveled whether prisoner is desperate and dangerous, no such report has been placed on record rather he has been allowed “B” class by the competent authority as per Annexure “D” Page 21 of the court file.

8. It is further well established that an accused person, even while in custody, does not forfeit his fundamental rights. The presumption of innocence remains operative until conviction, and the imposition of unnecessary physical restraints, including handcuffs, offends both the constitutional guarantees and the core principles of criminal jurisprudence. Under-trial prisoners cannot be equated with convicts, and their production before a Court in handcuffs, absent specific judicial authorization, is unlawful.

9. Reliance has rightly been placed upon the recommendations of the Law and Justice Commission of Pakistan, which have consistently deprecated the routine use of handcuffs and clarified that such restraints should ordinarily be restricted to terrorists, hardened criminals, or prisoners who pose a demonstrable and tangible security risk. The governing principle is that handcuffing is *prima facie* inhuman and unreasonable and may only be resorted to where there exists a clear and present danger of escape or violence, duly supported by recorded reasons. Neither poverty, the mere nature of accusation, nor the fact of custody can justify handcuffing. In circumstances where restraints are considered necessary, the prior permission of the competent Court must be obtained.

10. So far as the issue of torture to the prisoners is concerned, we are of the view that this is barbarism and violation of Article 9 of the Constitution. In such circumstances, no one is above the law, accountability is essential and law enforcement must protect life. This Court is the guardian of citizens’ rights, will not tolerate custodial tortures. The I.G. Prison Sindh must ensure that all police officials conduct themselves lawfully without fail. However, Torture in Police / Prison custody is strictly prohibited.

In the present case, no material has been placed on record to show that the petitioner is a hardened criminal, a flight risk, or a person prone to violence. On the contrary, he is an under-trial prisoner, granted B-Class status, and is facing trial in financial and business-related disputes. The production of “B” Class under trial prisoner in handcuffs, therefore, amounts to public humiliation, mental torture, and a direct violation of Articles 4, 9, 14, and 25 of the Constitution.

11. In view of the above constitutional provisions, statutory rules, and authoritative pronouncements of the superior courts, it is noticed that the routine handcuffing of the “B” Class under-trial petitioner is unlawful, discriminatory, and violative of his/her fundamental rights. The action of District Police, if carried on, is arbitrary, without lawful justification, and liable to be curbed.

12. In view of the above facts and circumstances of the case, this petition, therefore, merits consideration on the aforesaid analogy, coupled with the “B” class status of the Petitioner with no stigma of being a desperate or dangerous prisoner in absence of such material the police department can only escort the prisoner without handcuffs if the status of the prisoner is “A” or “B” class for his appearance before the court of law. This Petition stands disposed of in the terms of the preceding paragraphs.

Let a copy of this order be communicated to Chief Secretary Sindh, Home Secretary Sindh, and I.G Prison Sindh for compliance.

JUDGE

JUDGE