

ORDER SHEET
 IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D-438 of 2026
(Mst. Sughran Khatoon Vs. P.O Sindh & others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Abdul Hamid Bhurgari, J;

Mr. Ghulam Murtaza Korai advocate for the petitioner.
 Mr. Ghulam Abbas Kubar, Assistant Advocate General,
 Sindh.

Date of hearing and order: 16-06-2026.

O R D E R.

Adnan-ul-Karim Memon J:- The petitioner, an elderly mother, challenged the transfer of her son, Arbelo Kosh, a condemned prisoner, from Central Prison Sukkur to Central Prison Hyderabad. Arbelo had been convicted on 20.01.2025 by the learned Additional Sessions Judge (MCTC), Ubauro, in Crime No.35/2021 and related cases, and was awarded death sentence along with other punishments. Against the conviction, he filed Criminal Appeal No. D-06/2025 before this Court, which remains pending.

2. The petitioner alleged that during his confinement at Sukkur Prison, prison officials demanded illegal gratification from her son and, upon his refusal, transferred him to Hyderabad Prison. Her counsel contended that the transfer was mala fide, caused severe hardship to her due to her old age and financial constraints, endangered her son's life, and was contrary to prison rules because it was effected during the pendency of his appeal before this Court. He sought a declaration that the transfer was illegal and a direction for his return to Central Prison Sukkur. He prayed to allow this petition.

3. The official respondents denied all allegations of mala fides and submitted that Arbelo Kosh was involved in disciplinary issues within the prison, including instigating other inmates.

Consequently, the Superintendent of the Prison recommended his transfer on administrative and disciplinary grounds. Acting on that recommendation, the Inspector General of Prisons sought approval from the Home Department, Government of Sindh, which sanctioned the transfer of five condemned prisoners, including Arbelo Kosh, from Sukkur to Hyderabad. The transfer was thereafter carried out in accordance with the approval granted and the relevant provisions of the Sindh Prisons & Corrections Service Rules, 2019. The respondents further maintained that the prisoner's return to Sukkur was not recommended due to his unruly and undisciplined conduct. They prayed to dismiss the petition.

4. learned AAG submitted that the allegations of illegal gratification and mala fide exercise of authority are bald assertions unsupported by any tangible material. He added that mere allegations, however serious, cannot displace official acts performed in the exercise of statutory powers unless substantiated by convincing evidence. The record, on the contrary, reflects that the transfer was initiated through the prescribed administrative channel, recommended by the prison authorities on disciplinary grounds, approved by the Inspector General of Prisons, and ultimately sanctioned by the Home Department, Government of Sindh, before its execution. He pointed out that much emphasis was placed by the learned counsel for the petitioner on the fact that Criminal Appeal No. D-06 of 2025 filed by the condemned prisoner is pending before this Court; therefore, his transfer from Central Prison Sukkur to Central Prison Hyderabad was impermissible. However, he is unable to subscribe to such contention. He has relied upon Rule 660(1) of the Sindh Prisons & Corrections Service Rules, 2019, which indeed provides that a prisoner shall not ordinarily be transferred until the result of the appeal is known; however, the rule itself expressly begins with the phrase "Subject to the provisions of Rule 650". He added that Rule 650 specifically governs condemned prisoners and authorizes their transfer from one prison to another under the direction of the Inspector General, subject to the control of the Administrative Department. He submitted that the legislature, by employing the words "subject to", has consciously accorded overriding effect to

Rule 650 over the general restriction contained in Rule 660. Therefore, the pendency of an appeal does not create an absolute embargo upon the transfer of a condemned prisoner where such transfer is otherwise justified on administrative, security, or disciplinary grounds and has been effected in accordance with law. He pointed out that it is a settled principle of interpretation that where a special provision and a general provision operate in the same field, the special provision prevails. Rule 650 is a special provision dealing exclusively with condemned prisoners, whereas Rule 660 embodies a general principle applicable to prisoners ordinarily awaiting the outcome of their appeals. Consequently, the case of the petitioner's son is governed primarily by Rule 650 and not by the general restriction envisaged under Rule 660. He emphasized that the historical prison jurisprudence on the subject also demonstrates that the prohibition against transfer during the pendency of appeal is not absolute but merely directory in nature, as reflected in the consistent use of the expression "shall not ordinarily be transferred." The corresponding provisions contained in the earlier Pakistan Prison Rules likewise recognized exceptions where administrative or lawful transfer orders existed. However, he recognized that at the same time, a convict whose appeal is pending continues to enjoy the constitutional guarantee of access to justice and a meaningful opportunity to pursue his legal remedies. Nevertheless, no material has been brought on record to show that the transfer from Sukkur to Hyderabad has in any manner impeded the prosecution of the pending appeal, restricted access to legal counsel, or caused prejudice to the prisoner in defending his conviction before this Court. He added that mere inconvenience to family members, though unfortunate, cannot by itself invalidate an otherwise lawful administrative decision taken in the interest of prison discipline and security. In the circumstances, he submitted that the transfer of condemned prisoner Arbelo Kosh from Central Prison Sukkur to Central Prison Hyderabad was effected under lawful authority, pursuant to Rules 650 and 652 of the Sindh Prisons & Corrections Service Rules, 2019, after obtaining the requisite approval from the competent authorities. He added that the petitioner has failed to establish any violation of law, malice in fact, malice in law, or procedural irregularity warranting interference by this Court in the exercise of

its constitutional jurisdiction. Consequently, the instant Constitutional Petition, being devoid of merit, is liable to be dismissed.

5. We have heard the learned counsel for the parties and perused the record with their assistance.

6. The record shows that the transfer was ordered under Rules 650 and 652 of the Sindh Prisons & Corrections Service Rules, 2019. Rule 650 specifically empowers the transfer of condemned prisoners from one prison to another under the direction of the Inspector General, subject to administrative control of the Government, while Rule 652 permits the transfer of prisoners for disciplinary, local, or other sufficient reasons.

7. Upon examining the relevant prison rules, particularly Rules 650, 652, 657, and 660, it appears that although Rule 660 provides that prisoners ordinarily should not be transferred until the result of their appeal is known, the rule itself is expressly made subject to Rule 650, which governs transfers of condemned prisoners. The statutory scheme therefore preserves the authority of prison administration and the Inspector General to transfer condemned prisoners on administrative, security, or disciplinary grounds, even where an appeal against conviction is pending, provided the prescribed procedure and approvals are followed. An excerpt of Rule 660 is reproduced as under:-

“660. Prisoner not ordinarily to be transferred.

(1) Subject to the provisions of rule 650, the prisoners shall not ordinarily be transferred from the prison to which they were in the first instance committed until the result of the appeal is known, or if appeal is not preferred or time for appeal has elapsed.

(2) Prisoners confined in default of furnishing security or of payment of fines shall not also be ordinarily transferred.”

8. Thus, the central question before the Court is whether the transfer of the petitioner’s son, despite the pendency of his criminal appeal before this Court, was/is a lawful exercise of administrative powers under the prison rules or whether it was actuated by mala fide considerations as alleged by the petitioner. The respondents maintain that the transfer was legally sanctioned,

administratively justified, and undertaken in compliance with the applicable prison regulations.

9. The Supreme Court in the case of Human Rights Cases by Syed A. Tajwar & Ansar Burney Welfare Trust) **1994 SCMR 1527** held that there is no legal impediment to keeping prisoners in jails nearest to their home districts, and such a policy is consistent with the spirit of the Pakistan Prison Rules. Rule 159 of the Prison Rules reflects this principle by requiring the transfer of a prisoner to the prison of his home district before release, while Rule 158 confers wide discretionary powers upon the Inspector-General (Prisons) to transfer prisoners from one prison to another. Accordingly, the Court observed that, as far as practicable, all Provinces should adopt a uniform policy of confining prisoners in prisons located near their home districts to facilitate family access and alleviate the hardships faced by prisoners and their relatives. The discretion of prison authorities in matters of transfer must therefore be exercised in a manner that promotes this humanitarian objective, unless administrative, security, or other compelling reasons justify a different arrangement.

10. In **PLD 1996 SC 168** (*Sheikh Rashid Ahmad v. The State*), the petitioner, Sheikh Rashid Ahmad, a sitting Member of the National Assembly, had been convicted by a Special Court under the Suppression of Terrorist Activities Act, 1975, and sentenced to seven years' imprisonment. After filing an appeal before the Lahore High Court, Rawalpindi Bench, he sought transfer from Bahawalpur Jail to Rawalpindi Jail so that he could effectively consult his counsel during the pendency of the appeal. The High Court acknowledged that an appeal is a continuation of the trial and that it possessed the power to order such a transfer, but declined relief. Before the Supreme Court, it was argued that the petitioner's transfer from Rawalpindi Jail to Bahawalpur Jail was unjustified and hindered his constitutional right to consult and be defended by counsel of his choice. Reliance was placed on Rule 161 of the Prison Rules, which provides that a prisoner should ordinarily not be transferred from the prison where he was first committed until the appeal is decided or the period for filing an appeal has expired. The Supreme Court examined the relevant prison laws and found that the authorities had failed to produce

any material or recorded reasons justifying the petitioner's transfer from Rawalpindi to Bahawalpur. The Court held that, in the absence of such justification, the transfer order could not be regarded as bona fide and was contrary to Rule 161 of the Prison Rules. The Court further held that although Section 7 of the Suppression of Terrorist Activities Act excludes the direct application of Section 491 Cr.P.C., the High Court still retains inherent jurisdiction under Section 561-A Cr.P.C. to pass appropriate orders necessary to secure the ends of justice. The Supreme Court emphasized its own powers under Articles 187 and 191 of the Constitution, as well as its inherent authority under Order XXXIII Rule 6 of the Supreme Court Rules, to make orders necessary for complete justice. Consequently, the Supreme Court concluded that the High Court should have exercised its inherent jurisdiction to grant the requested relief. The appeal was allowed, the High Court's order was set aside, and directions were issued for the petitioner's transfer from Bahawalpur Jail to Rawalpindi Jail during the pendency of his appeal.

11. In the case of Shahzia Bibi Versus the Province of Sindh through Prosecutor General Sindh and another **2025 M L D 1756**, the petitioner, Shahzia Bibi, sought retention of her husband's custody at Landhi Jail, Karachi. Her husband had been convicted in a criminal case at Islamabad, and his appeal was pending before the Islamabad High Court, while he was also facing trial in two criminal cases in Karachi. She contended that transferring him to a prison outside Karachi would cause serious hardship to her and her children, who were permanent residents of Karachi. The respondents, including the Deputy Prosecutor General and the Advocate General, did not object to retaining the prisoner in Karachi. Referring to Rule 148 of the Pakistan Prisons Rules, 1978, the Court observed that a prisoner convicted outside his home province may be kept at a prison nearer to his residence. Since the prisoner was required to face trial in Karachi and his presence was not needed in Islamabad except for the pending appeal, retaining him at Landhi Jail was both legally justified and practically convenient. Accordingly, this Court disposed of the petition with the observation that the prisoner's custody should continue at

Landhi Jail, Karachi, as his transfer to another prison outside Karachi would serve no useful legal or practical purpose.

12. The Convicted also retains statutory rights of appeal despite being in custody. Although the Government cannot arbitrarily transfer such a prisoner, the competent court may permit such transfer where his appeal is pending to protect the prisoner's lawful rights, maintain family and legal access, or serve the interests of justice. Any order regarding the transfer of custody without the permission of the appellate court is impermissible. However, at the same time, a prisoner, whether a convict or an under-trial, cannot oppose transfer. However, where circumstances justify such a transfer, the courts have ample authority to order it to uphold the rule of law and ensure the proper administration of justice.

13. The submissions advanced by the learned AAG, though attractive at first glance, are not sufficient to sustain the impugned transfer order. It is respectfully submitted that the respondents have proceeded on the erroneous assumption that Rule 650 of the Sindh Prisons & Corrections Service Rules, 2019 confers an unfettered and absolute power upon the prison authorities to transfer a condemned prisoner notwithstanding the pendency of his appeal. Such interpretation defeats the very object of Rule 660 and ignores the constitutional safeguards available to a prisoner whose conviction is under judicial scrutiny before the appellate Court.

14. It is conceded that Rule 650 empowers the transfer of condemned prisoners; however, such power is neither arbitrary nor immune from judicial review. The expression "subject to the control of the Administrative Department" and the overall statutory framework require that the discretion be exercised reasonably, fairly, and for bona fide reasons. The mere existence of administrative approval cannot validate an order if the underlying reasons are not supported by cogent material or if the transfer adversely affects the prisoner's legal rights.

15. The respondents have relied upon allegations of indiscipline and instigation against the condemned prisoner. Significantly, no disciplinary proceedings, punishment order, inquiry report, prison offence record, or other contemporaneous material has been produced to substantiate such allegations. Mere assertions contained in comments cannot substitute evidence. In administrative law, a discretionary order must stand on the reasons that existed at the time it was made and not upon subsequent explanations furnished during litigation. In the absence of any verifiable record demonstrating security concerns or disciplinary misconduct, the alleged justification remains unsubstantiated.

16. The learned AAG has further argued that Rule 660 is subordinate to Rule 650 because of the phrase "subject to the provisions of Rule 650". With respect, this interpretation is overly broad. The phrase does not render Rule 660 redundant nor does it completely extinguish the protection afforded to a prisoner whose appeal is pending. Rather, both provisions must be harmoniously construed. Rule 650 provides the power to transfer, whereas Rule 660 recognizes the legislative policy that prisoners should ordinarily remain in the prison where they were initially confined until the outcome of their appeal. Consequently, any departure from the ordinary rule requires exceptional, compelling, and demonstrable reasons. Otherwise, Rule 660 would become meaningless.

17. The jurisprudence of the superior courts consistently recognizes that an appeal is a continuation of the trial and that a convict retains an enforceable right of meaningful access to legal representation. In *Sheikh Rashid Ahmad v. The State* (PLD 1996 SC 168), the Hon'ble Supreme Court held that a transfer affecting a prisoner's ability to pursue his appeal cannot be sustained in the absence of lawful justification. The Court emphasized that prison authorities must demonstrate bona fide reasons for such transfer and that judicial intervention is warranted where the transfer adversely affects the prisoner's legal rights. The principle emerging from the judgment is not confined to elected representatives but extends to all prisoners whose appeals are pending before a competent Court.

18. Likewise, in *Human Rights Cases* (1994 SCMR 1527), the Hon'ble Supreme Court underscored the humanitarian principle that prisoners should, as far as practicable, be confined in prisons nearest to their home districts to facilitate family access and reduce unnecessary hardship. The respondents have not shown any compelling necessity outweighing this recognized principle. The petitioner is an elderly mother who has specifically pleaded financial hardship and inability to travel repeatedly to Hyderabad. Such hardship is not a mere inconvenience but directly affects the prisoner's right to maintain contact with family members, a right repeatedly acknowledged in prison jurisprudence as integral to humane treatment of prisoners.

19. The contention that no prejudice has been caused because the appeal remains pending is equally misconceived. Prejudice is not confined to the denial of access to counsel. The transfer of a condemned prisoner hundreds of kilometres away from his family during the pendency of an appeal inevitably impairs regular consultations, collection of instructions, preparation of legal strategy, and emotional support essential for pursuing legal remedies. The law does not require the prisoner to prove actual failure of his appeal before seeking relief; a substantial likelihood of impairment of legal access is sufficient.

20. Most importantly, the respondents have not obtained any permission, leave, or direction from the appellate Court before transferring a condemned prisoner whose criminal appeal is admittedly pending before this Court. Once appellate jurisdiction has been invoked, the custody and detention of the convict become directly connected with the appellate proceedings. Any transfer capable of affecting the prisoner's access to the Court, counsel, or family ought to be undertaken only after informing or obtaining appropriate permission from the appellate Court. Failure to do so renders the exercise of administrative discretion vulnerable to judicial scrutiny.

21. Therefore, while the power of transfer under Rule 650 is acknowledged, its exercise in the present case fails to satisfy the requirements of fairness, necessity, proportionality, and transparency. The respondents have not produced convincing

material establishing security, disciplinary, or administrative exigency of such magnitude as to override the statutory policy embodied in Rule 660 and the constitutional right of the prisoner to effectively pursue his pending appeal.

22. The impugned transfer, having been effected without demonstrable necessity and without regard to the pending appellate proceedings, cannot be said to be a bona fide exercise of statutory power. Consequently, the transfer order is declared unlawful, set aside, and the respondents are directed to restore the custody of the prisoner to Central Prison Sukkur, or to seek appropriate permission from the appellate Court before effecting any further transfer if the respondents can demonstrate such transfer based on undisciplined issue .

23. This petition stands disposed of in the above terms.

Judge

Judge

Nasim/P.A