

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.S-249 of 2011.

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

05.06.2017.

Mr. Shoukat Ali Kaka, Advocate for appellants.

Mr. Shahid Ahmed Shaikh, A.P.G. alongwith Zia-ur-Rehman Superintendent, Central Prison, Hyderabad.

=

By order dated 25.03.2016, instant criminal appeal bearing No.S-249/2011 was disposed of. Relevant paragraphs-3 & 4 of the same are that:-

**“3. Appellants served out their entire sentence but were languishing in jail due to non-payment of Diyat amount which as per letter No.JB-30843-46 dated 02.12.2012 written by Senior Superintendent Central Prison Hyderabad, was approved by the Administrative Committee for Diyat, Arsh and Daman amount Government of Pakistan, Ministry of Law, Justice and Human Rights (Human Rights Wing) for appellants. After receiving of such letter, the jail authorities released the appellants and requested Additional Registrar of this Court for providing list of Legal heirs of deceased Tahir Hussain.**

**4. In response to the notice of this Court, appellants appeared in person alongwith their Advocate and on inquiry as to whether they want to proceed their appeal on merits, the learned counsel for appellants under the instructions of his client does not press the instant appeal which stands dismissed as not pressed.”**

Accordingly, application preferred by father and mother of deceased was also allowed with direction to Senior Superintendent Central Prison, Hyderabad :

“as he may be able to release / disburse the Diyat amount amongst the legal heirs in accordance with law.”

It is material to add here that appellants were not able to pay that amount hence jail authorities referred the case through proper channel to Home Department for releasing of Diyat amount and the Home Secretary, who is member of Administrative Committee of Ministry of Law, Justice & Human Rights (Human Rights Wing), approved the same. In consequence whereof (approval), the convict was released; appeal was disposed of and surety documents were released yet the matter is pending only for release of the

Diyat amount in favour of the legal heirs *despite acceptance of application, preferred by legal heirs, was allowed. The position, being so, is not worth appreciating because the compensation / Diyat amount is otherwise a declared right of the legal heirs which must either be paid in full or in installments by the convict and where the Government approves to pay the same, there should never be any delay in assuring the payment of due to the legal heirs as per their entitlement.*

Superintendent, Central Prison, Hyderabad is present and contends that he is not competent to disburse the Diyat amount to the legal heirs of any deceased with regard to any criminal case pending; however, he contends that he has communicated order of this Court as well reminded through 23 letters to the concerned authorities for release of that amount; yet, such amount is not released. He also contends that at present one convict namely Tahir S/o Qasim Dero is languishing in jail because of non-payment of Diyat / Arsh amount and he would remain in jail for indefinite period until the said amount is paid. At this juncture, learned APG contends that Jail Authorities have also communicated the account numbers of legal heirs in present case to the concerned Ministry.

At this juncture, Mr. Zaheeruddin Laghari Advocate present in Court has assisted the Court as *Amicus Curiae* and contends that proper procedure would be that amount with regard to Diyat be disbursed through concerned District & Sessions Judge, as being trial Court release order is to be issued by the said Court and there is one account with every Sessions Judge, hence it would be just and proper if such amount is deposited in concerned District & Sessions Court then there would be the transparency and record would also be straight with regard to that matter and the amount paid.

*Since, as already said that such amount is not an award or reward but a declared right which also involves an inquiry with regard to legal heirs of deceased as well their entitlement as per applicable law of inheritance. The Sessions Judge (s) of every District is otherwise administrative authority of*

that *judicial* district; has got *its own account* (account of *designata*) and is *otherwise* competent to conduct such inquiry and to release the amount among *entitled* under proper receipt (s) hence it would be not only be *fair* but would also ease the grievance of such *entitled persons* if such process of *disbursement* is undertaken by Sessions Court (s) because the purpose of approval of payment is also meant to pay and not to make legal heirs a *ping pong ball*.

It has also been surfaced that on 22<sup>nd</sup> July, 2014, 10 cases of Province of Sindh were approved whereby amount of Diyat liable upon said 10 prisoners was decided to be paid by the Ministry of Law, Justice & Human Rights (Human Rights Wing). At this juncture, it would be conducive to reproduce the letter dated 3<sup>rd</sup> October, 2014, which is as under:-

“ F.No.2(17)/2012-DD (HR-I)  
**GOVERNMENT OF PAKISTAN**  
**MINISTRY OF LAW, JUSTICE AND HUMAN RIGHTS**  
(HUMAN RIGHTS WING)  
\*\*\*\*\*

Islamabad, the 3<sup>rd</sup> October, 2014

To,

- 1) The Secretary, Home Department, Government of Sindh.
- 2) The Secretary, Home & TA Department, Government of KPK.

Subject: **Payment of Diyat, Arsh and Daman amount for the release of (13) Prisoners as approved in the 4<sup>th</sup> Administrative Committee meeting held on 22<sup>nd</sup> July, 2014 in Islamabad.**

The Administrative Committee for Diyat, Arsh and Daman Fund approved the release of an amount Rs.5481630/- (Fifty Four Lac Eighty One Thousand Six Hundred and Thirty Rupees) for release of thirteen (13) prisoners who are languishing in jails on account of non-payment of Diyat, Arsh and Daman amount as recommended by the respective Provincial Sub-Committees headed by Provincial Home Secretaries of Sindh and Khyber Pakhtunkhwa. The Committee approved the release of 10 prisoners of Sindh and 3 prisoners of KPK. The copy of approved minutes of the said meeting is enclosed.

2. The Accounting procedure for utilization of Diyat, Arsh and Daman Fund stipulates that Diyat, Arsh and Daman Fund shall be drawn from the Bank account through cheques / payment advices. The payment may be made by issuing payment advice to the bank for transferring money from the

Ministry's Account to the third party's account i-e; **legal heirs of the aggrieved party.**

3. In view of the above I am directed to request you to provide complete details of legal heirs of aggrieved party in each case as declared by the sentencing court. The detailed information of legal heirs may include name with parentage, age, percentage of the Diyat, Arsh and Daman amount, NIC/B-Form, Bank Account No, and Address. The requisite information may reach this office on urgent basis so that payment could be materialized as approved by the administrative committee.

Encl: As above.

(Arfan Shabbir)  
Deputy Director (HR-I)"

It is **again not only** strange **but regretful** that **despite of lapse of three years to approach of** cases of 10 prisoners with regard to payment of Diyat amount not a single pie is released and legal heirs of victim(s) are not benefited despite of hectic efforts by the jail authorities by issuing 23 letters to the concerned quarter.

Under these circumstances, judicial propriety demands direction to Ministry of Law, Justice & Human Rights (Human Rights Wing), Islamabad, to ensure **immediate release of** approved cases, **involving** Diyat, Arsh or Daman within 15 (fifteen) days directly to the concerned District & Sessions Judge **who shall ensure payment thereof to legally entitled person and in case of Diyat to legal heirs after necessary inquiry which however shall not take a time more than a period Ten (10) days.** In case, if appeal filed on behalf of the convict / accused is pending or decided by this Court then such amount would be deposited with the Accountant of this Court **which shall be subject to final decision.**

As regards the instant case is concerned, the Deputy Director, Human Rights, Ministry of Law, Justice & Human Rights shall ensure that such amount is deposited within one month from today. In case of failure, contempt proceedings would be initiated against him. Attendance of Jail Superintendent is dispensed with till directed otherwise. Needless to mention here that I.G. Prison shall direct all Superintendents of Prisons throughout Province to

ensure that in future cases of all convicts who are languishing in jail(s) because of non-payment of Diyat, Arsh or Daman amount, are forwarded to the concerned quarter within one month **and if cases are approved then the quarter concerned shall be communicated the name of concerned Sessions Court alongwith its account number which they shall collect from concerned Sessions Court first.** Office shall fixe Cr. Appeal No.S-118/2009 (Tahir S/o Qasim Dero v. State) on 12.06.2017. Learned A.P.G. shall communicate this order to all concerned quarters for information and compliance.

To come up on 26.06.2017.

JUDGE

S