

of the Sindh Prisons Rules and Correction Services Act 2019. The relevant sections are reproduced as under:-

38. Separation of Prisoners. — following Prisoners shall be kept separately:

- (a) civil prisoners or person confined for contempt of court shall be kept separately from criminal prisoners;
- (b) sentenced prisoners be kept separately from persons awaiting trial;
- (c) male prisoners shall be kept separately from female prisoners;
- (d) transgender prisoners shall be kept separate from female and male prisoners;**
- (e) children shall be kept separate from adult Prisoners;
- (f) Female Prisoners with children residing inside Prisons shall be kept separate from other female Prisoners; and
- (g) Prisoners suffering from communicable disease shall be kept separate from other prisoners.
- (g) Prisoners suffering from communicable diseases shall be kept separate from other Prisoners.

39. Separate Confinement.— (1) Where the Officer In-charge considers under his opinion or any report receive from official sources or upon own request of Prisoner that association of one or more Prisoners is detrimental to:

- (a) good order or discipline of prison;
- (b) is likely to encourage commission of any offence or breaches of discipline;
- (c) security of prisoner's own life or security of other prisoner(s) from that prisoner;**
- (d) prison security and management that warrants confinement of dangerous, terrorist or hardcore prisoners separately;
- (e) health of any prisoner himself or of other prisoners; The Officer In-charge shall arrange for separate confinement of such prisoner(s)

(2) Nothing contained from sub-section (a) to (e) shall be construed as punishment and subject to good order and discipline, the Prisoner shall be entitled to receive privileges as other prisoners receive

3. He further contends that there is capacity issue hence it is not possible to provide separate barrack for transgenders, however he has provided a room with all facilities to present appellant who is present in court and also confirms that there is no issue in the said

prison and there is no access of hardened criminals to see/meet him. Report is taken on record.

4. None can deny that **'transgender'**, being citizen of Pakistan, always had all the privileges and guarantee available to any other *gender* because such *guarantees* and *privileges* are never confined to a particular **'gender'** but to the **'person'**. The definition of **'person'**, I would insist, always includes the **'transgender'**. Such rights and privileges shall always be available to a **transgender** even while undergoing punishment as **'prisoner'** or **'under trial prisoner'**.

5. It is an undeniable position that the appellant was attacked by other prisoners when he (appellant) was confined in **Landhi Jail** which, *prima facie*, was negation of referred **rules** as well failure of the Jail incharge in adhering to the relevant **rule**.

6. Be that as it may, the **capacity issue** is not a sufficient excuse when it comes to a question of **fundamental rights**. The Senior Superintendent, Central Prison, Karachi, however, appears to be no aware of the **'Transgender Persons (Protection of Rights) Act, 2018** which puts the Government under an obligation to perform following act(s) i.e:-

"6. Obligations of the Government.- (1) The Government shall take steps to secure full and effective participation of Transgender Persons and their inclusion in society, namely:-

a) Establish Protection Centers and Safe Houses to ensure the rescue, protection and rehabilitation of Transgender Persons in addition to providing medical facilities, psychological care, counseling and adult education to the transgender Persons.

b) Establish separate prisons, jails, confinement cells, etc. for the Transgender persons involved in any kind of offence of offences;

c) ..

d) ...

e) ..

f) Take any other necessary measures to accomplish the objective of this Act.

7. The failure of the *Government* in discharging its defined **obligations** is not worth appreciating but this *alone* can't be an excuse for the **jail authorities** in not keeping the **transgender** persons separate from **male** and **female** prisoners particularly when the **Rule-38** (*referred above*) requires so as mandatory obligation which is evident from the use of word '**shall**'.

8. Accordingly, all the jail authorities shall ensure compliance of such mandatory rule till the time the government discharges its obligation, as detailed above. The jail authorities shall not come forward with an *excuse* of capacity issue rather shall ensure satisfaction of the spirit of the rule which is '**transgender shall be kept separate**'. Under these circumstances, judicial propriety demands notice to Advocate General Sindh and Home Secretary, Government of Sindh, who on next date of hearing, shall place on record the initiatives of the government towards discharge of its obligation(s), as per the said **Act**.

9. I/O present contends that he is not aware about program flashed on ARY TV with regard to present incident however that was under the direction and supervision of DSP Farhat Kamal Kayani. Accordingly said DSP shall be present on next date of hearing. Additional I.G.P Sindh shall ensure his appearance.

10. Learned Additional P.G. shall make arrangements with regard to televised display of both C.Ds. in the chamber on next date. Let the copy of this order be circulated to all jail authorities through the I.G. Sindh (Prison), Advocate General Sindh, Chief Secretary,

Government of Sindh and Home Secretary, Government of Sindh for information and compliance.

11. To come up on 09.03.2021 at 11.00 am. Repeat P/O of present appellant.

IK

J U D G E