

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No. 1969/2020

Shahid Akbar Abbasi  
Versus

The Chief Commissioner, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22-07-2020	Mr Jehangir Khan Jadoon, Advocate for petitioner and petitioner (Shahid Akbar Abbasi, Advocate) in person. Mr Waqar Uddin Syed, DIG (Operations), ICT Police. Mr Omer Khan, Superintendent of Police (City), ICT Police. Mr Azhar Shah, D.S.P. (Legal), ICT Police. Mr Fazal Khaliq, S.I./I.O., ICT Police.

Athar Minallah, C.J.- The petitioner has invoked the jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (*hereinafter referred to as the 'Constitution'*) alleging that his brother, namely, *Matiullah Jan*, who by profession is a journalist, was forcibly taken away from outside the school where the latter's wife is employed. He has asserted that the abduction was caught on the CCTV installed at the premises. It has been asserted that some of the abductors were in police uniform. It has also been alleged that it was a case of enforced disappearance. Keeping in view the gravity of the matter, notices were issued to the concerned public office holders yesterday.

2. *Mr Waqar uddin Syed*, Deputy Inspector General of Police (Operations), Islamabad Capital Territory has appeared and has informed the Court that *Mr Matiullah Jan* had returned home last night and that investigations are in progress following the registration of a criminal case. He has informed that, inter alia, the offence under section 7 of the Anti Terrorism Act 1997 has been included in the First Information Report. He has given an assurance that no stone would be left unturned in order to apprehend and prosecute the abductors.

3. The incident took place during day time in the heart of the capital of Pakistan. Admittedly, some of the abductors were wearing police uniforms. Some of the vehicles used by them during the commission of the crime had an official appearance. The victim was a person engaged in the profession of journalism. The incident was caught on the CCTV installed at the premises of the school. Prima facie, because of the characteristics of the incident, it has to be treated as a case of enforced disappearance, unless otherwise established during the investigations. What is of concern is the fact that the alleged abductors had no fear and were able to abduct a journalist with impunity in broad day light. This speaks volumes

for the state of rule of law in the capital of Pakistan. It is beyond comprehension that criminals could have dared to commit such a heinous crime in a city which is supposed to be sensitive and has the highest security alert in the country. It is the impunity and fearlessness caught on the CCTV footage which raises serious questions. Were the public office holders complacent? If not, then has the rule of law in the capital become so vulnerable and weak that criminals can commit grave crimes with such impunity and that too, in police uniforms and vehicles having an official appearance? Such incidents and impunity are intolerable in a State governed under a constitution which guarantees fundamental rights.

4. There is yet another important aspect of the case at hand and that is the profession of the victim. Not that the victim is above the law or that he should be given preference over others, but impunity for crimes against journalists are taken seriously globally because of its fall out on the society and the fundamental rights of the general public. Abduction or enforced disappearance of any citizen is one of the gravest offences and thus cannot be tolerated in a society that professes to be committed to upholding the rule of law. But even a perception of involvement of the State and

its functionaries in crimes committed against a journalist extends the infringement to the fundamental rights of the public at large guaranteed under Articles 19 and 19-A of the Constitution. Any such perception, though it may ultimately be established to be wrong, obviously sends a message to others that the target or purpose of the crime was to suppress free speech and threaten others from following suit. This fear or threat definitely has devastating consequences for the society, its citizens and the democratic polity. Nothing impedes the freedom of expression and free speech more than the fear or perception that the State and its functionaries, instead of protecting the fundamental rights guaranteed under Articles 19 and 19-A, are involved or complacent in the impunity for crimes against its citizens, particularly those who are engaged in the profession of journalism. Removing such a perception becomes a duty of the State. Many journalists have been killed in the line of duty in the past decade and were targeted for exposing the truth. It is noted that, besides being a constitutionally guaranteed right, freedom of expression reaffirms other fundamental rights. No society can develop, prosper and progress by suppressing freedom of expression and free speech by ignoring impunity for crimes against the

journalists. It is an essential attribute of human beings to be able to speak freely, communicate and convey a message without fear of being harmed, so long as it does not infringe upon the rights of others or the content does not fall within the ambit of the expression "hate speech". Free speech is not confined to speaking but extends to listening to and respecting opinions of others. Suppression of free speech leads to regressive societies, encouraging extremism and eroding rule of law. It inevitably results in chaos and anarchy. A free press has the role of a watchdog and impeding its ability to disseminate information and hold the State and its institutions accountable definitely denies to the people the enjoyment of their rights. Our national security can only be strengthened and enhanced by keeping people informed and encouraging them to exercise the right to express freely, subject to reasonable restrictions. Truth, and knowing the truth is a panacea for poverty, erosion of rule of law, regression and chaos. Free speech is crucial for bringing about change, progress and prosperity.

5. The case in hand is, therefore, a challenge for the Federal Government and the public office holders of the Islamabad Capital Territory. They have to demonstrably show that

there is a political will to put an end to impunity for crimes against citizens and to protect journalists from harm for exercising the right of free speech. It is their duty to demonstrate that, in the State of Pakistan, there is no tolerance for crimes which may be perceived as a threat to freedom of expression. Registration of criminal cases and giving public statements is not enough. The status of rule of law ought to be such that no one has the courage to commit a crime with such impunity as was demonstrated in the case in hand. This is indeed a test case for the Federal Government and the public functionaries of the Islamabad Capital Territory to dispel the impression that neither the State nor its agents were involved or complacent in a grave crime.

6. This Court has confidence in the State and the abilities of its functionaries to meet the challenges highlighted above. This Court has no doubt that the Federal Government has the political will to ensure that those who had attempted to terrorize the journalists as a class and the public at large are not only apprehended but made an example, so that no one would dare to commit a crime with such impunity. This Court disposes off this petition with the expectation that investigations in this case will be conducted in the

most transparent and diligent manner and that the perpetrators will be dealt with in a manner so that no journalist in the country fears to be harmed for exposing the truth. No one is above the law and every citizen, including the State, are subservient to the rule of law and the supremacy of the Constitution. George Washington had rightly stated that "if freedom of speech is taken away, then dumb and silent we will be led, like sheep to the slaughter."

(CHIEF JUSTICE)

Luqman Khan/\*

Approved for reporting