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Appeal No. HX08203-2002
SA (Fair Trial-Prison Conditions) Pakistan CG [2002] UKIAT 05631

IMMIGRATION APPEAL TRIBUNAL

Date of Hearing : 4 October 2002

Date Determination notified:

05/12/2002.

Before:

Mr M W Rapinet (Chairman)
Mr C A N Edinboro

SOHAIL AHMED

APPELLANT

and

Secretary of State for the Home Department

RESPONDENT

Representation

For the appellant : Mr R. Ghaffar, counsel, instructed by Nasim Law Associates

For the respondent : Mr Ekagha, Home Office Presenting Officer

DETERMINATION AND REASONS

1. The appellant, who is a citizen of Pakistan, appeals by leave of the Tribunal against the determination of an Adjudicator (Mr C.B. Buckwell) dismissing his appeal against the Secretary of State's decision to refuse asylum and give removal directions as an illegal entrant. The grounds of appeal are in the bundle before us.
2. The appellant arrived in this country in May 2000 with his wife and four children and immediately claimed asylum. The basis of his claim is that he was a member of the Pakistan Muslim League and he had been the private manager to Mr Mian Sharif, father of the former Prime Minister, Mian Nawaz Sharif. In addition, he had been involved in running a rice mill business. He joined the Muslim League at the same time as he had been appointed private manager to Mian Sharif in January 1993. The government of Nawaz Sharif had obtained bank loans in order to enable him to set up his rice mill business.

3. When Nawaz Sharif was removed from power by the existing regime in Pakistan in 1999, the appellant was arrested and maltreated. He was detained from 19 October 1999 to February 2000. He was released on condition that he disclosed information relating to Mian Sharif and other members of the Sharif family to the authorities and that he reported regularly to the police. Shortly thereafter he went into hiding and with the help of the wife of Nawaz Sharif left the country.
4. In addition, charges have been brought against him (which he maintains are false) in relation to fraud and possible embezzlement affecting the Railway Lahore Co., charges having been made by the Deputy Director of that company.
5. The Adjudicator has found the appellant to be credible but has found that there is no reasonable likelihood of persecution because it is a matter of record that Nawaz Sharif was tried and convicted and sentenced to a period of imprisonment following his removal from power, and that the Pakistani authorities have subsequently pardoned Nawaz Sharif on condition that he and his family went into exile, which they did in December 2000 to Saudi Arabia. The Adjudicator takes the view that the authorities have by now obtained all the information in relation to the Sharif family that they require and which ultimately led to the sentencing of Nawaz Sharif, and there would be no further motivation or interest in the Sharif family by the authorities and therefore in the appellant. So far as the charges in relation to the Railway Lahore Co. is concerned, the Adjudicator takes the view that the appellant faces prosecution rather than persecution.
6. Mr Ghaffar in his submission pointed out that the appellant had been arrested in 1995 and 1996 (during the reign of the PPP party) and that he had been arrested in 1999 and released on certain conditions which he had not fulfilled, having gone into hiding and subsequently fled the country. Furthermore, there were now charges against him relating to his rice mills. In Mr Ghaffar's submission the charges in the system were still there and the appellant faced a real risk of being detained in respect of those charges upon his return. Furthermore, the additional charges of fraud had been brought against him. Even if the old charges had now lapsed the 1999 detention would be on record and the current charges which are false, in the appellant's submission, are certainly outstanding and will probably result from his association with the Sharif family.
7. The appellant had escaped from Pakistan and therefore the authorities would still have an interest in him. The military regime were still trying to obtain information relating to the Sharif family and there had been and probably still is a blanket policy that the government would arrest anyone connected with that family. The appellant had been ill-treated when arrested and had never subsequently been produced before the courts. He had been targeted after the family had been charged.

8. In Mr Ghaffar's submission the Adjudicator had not properly considered the provisions of Article 3 and Article 6 of the Human Rights Act. In this connection we would point out, as the Adjudicator has pointed out, that there is no claim outstanding under the Human Rights Act, the Home Office decision having been taken on 6 July 2000. The case of Pardeepan would apply. Mr Ghaffar, however, relies largely on the outstanding charges in relation to the 1999 events. He referred us to CIPU Report in regard to prison conditions and the severe treatment meted out by the police to detainees. In Mr Ghaffar's submission there was a real likelihood that the appellant would be re-arrested and detained pending trial and during detention would be subjected to condition which would amount to persecution.
9. Mr Ekagha in his submission maintained that the Adjudicator's conclusions are perfectly valid. There is no evident political motive behind the charges raised in 1999 in relation to the railway land. They have nothing whatever to do with the family. There is no reason why he should not return and face those charges. The appellant had been released from custody following the trial of the Sharif family and there was no reason to assume that he would be detained now. There would be no reason to assume that the authorities would be still interested in him by virtue of his connection with the Sharif family. There is no evidence to show that the appellant would be singled out for ill-treatment as a prisoner. Mr Ekagha points out that the proclamation allowing the appellant to appear in court on 1 March issued on 1 January gave the appellant three months within which to appear which is hardly an indication of the court's extreme eagerness to arrest the appellant. It further indicates that the authorities are approaching the case in a fair and reasonable manner.
10. Mr Ghaffar in a final submission maintained that Mr Ekagha was comparing the United Kingdom justice system with that of Pakistan and applying the standards applicable in this country to that.
11. We do not attach a great deal of importance to the arrests that took place in 1995 and 1996. In 1995 the appellant was arrested during the course of a demonstration and sentenced to one month's imprisonment. That offence can, therefore, have little relevance to this claim, the sentence having been served. As to the 1996 arrest and detention, they were also after a rally, and we remind ourselves that this took place during the reign of a different government and that, if the authorities had any interest in the appellant following that event, they had ample opportunity to arrest him both in 1997 and 1999, and in fact when they arrested him in 1999 and he was served with no proceedings in respect of the 1996 events. In fairness to Mr Ghaffar, he did not place a great deal of importance on these earlier events, concentrating instead on the 1999 arrest and the warrant that year in relation to the railway land.
12. It is common ground between the parties that Nawaz Sharif was charged and found guilty in April 2000 of various offences and sentenced to life imprisonment. In December that year a presidential pardon was granted and Nawaz Sharif and his wife and seventeen members of his family were allowed to leave the country to live in exile in Saudi Arabia. In return Nawaz Sharif

relinquished his personal and business assets and promised not to return to Pakistan for ten years and to remain out of politics for a further twenty-one years.

13. In paragraph 41 of the determination, the Adjudicator finds that by reason of the events which we have recounted above in relation to Nawaz Sharif, the authorities would no longer have any interest in the appellant and therefore he has no well-founded fear of persecution by reason of his connection with that family or his subsequent departure from the country. We would entirely agree with that finding. We would also comment on the fact that the appellant left the country in May 2000, a month after Sharif had been sentenced following his trial. As the Adjudicator points out, the authorities would by then have all the information at their disposal that they required in connection with the Sharif family and there was little of value that the appellant could give to them and, it would seem, nothing that could in any way have affected the trial of Nawaz Sharif which took place before the appellant left the country and on the basis of the information which the authorities already had.
14. We find ourselves in entire agreement with the Adjudicator that there is no reasonable likelihood of this appellant being re-arrested as a result of his earlier arrest in October 1999 in relation to his connection with the Sharif family. We would assume that Nawaz Sharif's father left Pakistan with him as seventeen members of his family went into exile. There is no contention before us that the father is still subject to prosecution and therefore that the appellant might be of interest because he was the father's business manager.
15. This leaves the question of the current charges against the appellant. These were laid in November 1999 by the deputy director of Railway Lahore and maintain that the appellant 'tampered the government record and got the land measuring two kanal mutated in his own favour which was the property of railway and received the consideration amount himself instead of depositing it to the national exchequer.' These charges, as we read them, amount to fraud and embezzlement. There are two arrest warrants, one dated 4 February 2000 and one dated 3 March 2001 and a proclamation dated 2 March 2002, all relating to this particular charge. We say that they all relate to this charge because the case no. 800/99 appears at the head of the first information report and on the other three documents. The Adjudicator has dealt with this aspect shortly by stating that the appellant will face prosecution. As Mr Ghaffar rightly points out, the Adjudicator has not considered whether such prosecution could amount to persecution by reason of the fact that there is a reasonable likelihood that the appellant would be persecuted whilst in prison pending trial and would not in any event receive a fair trial. These two aspects also come within the provisions of the Human Rights Act and we would emphasise that there is no Human Rights Act claim before us. Our consideration of the two aspects therefore, although they would appear to embrace Articles 3 and 6 are limited to whether there would be a Refugee Convention prosecution rather than a Human Rights Act claim.

16. The relevant objective evidence in relation to this is contained in paragraphs 4.58 to 4.62. of the CIPU Report. The current regime has created a national accountability bureau with special courts to try cases of corruption as part of its policy to stamp out corruption in Pakistan. Whether or not the appellant's claim would come within these courts is far from clear and we notice in particular the proclamation is issued specifically under the Criminal Procedure Code, so it may well be that the appellant will not come within the jurisdiction of these new courts. We mention these relevant paragraphs, however, as useful objective material with regard to the attitude of the government towards past corruption in Pakistan. It is also not insignificant to note, from the point of view of the impartiality of the courts, that the Supreme Court in Pakistan modified the ordinance setting up of these new courts and reduced the period under which persons could be held without charge from ninety days to fifteen days and the maximum period of disqualification for political office from twenty-one years to ten years. This to us indicates the concern of the Supreme Court with regard to the constitution of Pakistan and the treatment of those charged by the authorities and the impartiality of the courts in preparing to intervene in relation to a structure set out by an authoritarian regime.

17. We observe in relation to the judiciary that although the constitution has been suspended by the present regime it did provide for an independent judiciary, although again that judiciary appears to be subject to executive branch and other outside influences. The government has taken steps to move the government itself from judicial oversight, thus ensuring that all courts functioning at the time of the coup continue to operate. The proceedings instituted against the appellant are certainly not government instigated proceedings but are being brought at the behest of Railway Lahore and information laid by the deputy director of that company. It is alleged by the appellant that these are trumped up charges. We cannot comment upon that and would assume that the charges in some way relate to the appellant's activities in relation to this rice mills. We observe that despite a certain amount of government interference the higher level of judiciary is considered to be 'competent and generally honest' although there are reports of corruption at a lower level of magistrates courts and minor court officials. The judiciary has demonstrated its capacity to act independently, ordering amendments to the National Accountability Bureau of Ordinance to which we have referred above, and further in March 2001 ordering the acquittal of ten political activists charged with murder and arson, including the murder of a policeman, and again in May 2001 the former Inspector General of Police was acquitted of corruption charges and when a full bench of the Sind High Court dismissed the government's appeal against that acquittal.

18. We remind ourselves of the fact that the appellant is certainly a man of considerable business experience who would have connections in Pakistan and probably the necessary resources in order to ensure that he would be properly represented by a competent lawyer if this charge against him is pursued. We therefore take the view that there is a reasonable likelihood that he will receive a fair trial and be properly represented and in the event that these charges are false, have every opportunity to make a plea to that effect to the judiciary.

Nothing in the objective evidence indicates that he would be precluded from so claiming or that his offence, if that is what it is, would be considered on political grounds. We therefore take the view that were the prosecution to be sustained, the appellant would receive a fair trial and be properly represented.

19. Turning to the question of maltreatment he might suffer whilst in prison pending trial, there is always the possibility that he could be released on bail pending trial in any event. But were such an application to fail, and this is after all not a capital charge, we take the view that there is no reasonable likelihood that he would suffer maltreatment in prison either by reason of his political affiliations or for any other Convention reason, nor are we satisfied on the basis of the objective evidence that the prison conditions are such as to enable the appellant to claim that persecution would arise by reason of those conditions. We observe that prison conditions generally are poor. We observe, however, that there are three classes of cells in prisons, the first class being class C which house common criminals. The other two classes, A and B, are described in paragraph 470 of the CIPU Report as markedly better and class A cells 'are reserved for prominent prisoners who are permitted television, servants and special food'. Although the question of prison conditions which arises largely out of the Article 3 claim is not before us, we are satisfied that the appellant would not be persecuted in prison for any of the Convention reasons, in particular his own political beliefs, and that there is no evidence that members of his political party are selected for ill-treatment at the hands of the police and prison warders by reason of their political affiliations.
20. For these reasons, therefore, the appeal is dismissed.

**M W RAPINET
VICE PRESIDENT**