



RULING OF THE CHAIR

ISSUANCE OF PRODUCTION ORDER

I have received an application from Senator Raja Muhammad Zafar ul Haq, Leader of the Opposition in the Senate under Rule 84 of the Rules of Procedure and Conduct of Business in the Senate, 2012, requesting that a Production Order be issued in respect of Senator Kamran Michael, in order to enable him to attend proceeding of the House during the current session. Rule 84 reads as follows:-

“84. Production of a member in custody for a sitting of the Senate or meeting of a Committee.— (1) The Chairman or Chairman of a Committee may summon a member in custody on the charge of any offence or under any law relating to preventive detention to attend a sitting or sittings of the Senate or meeting of a Committee of which he is a member if he considers his presence necessary.

(2) On a Production Order, signed by the Secretary or by any other officer authorized by the Chairman in this behalf, addressed to the Federal Government or, as the case may be, the Provincial Government where the member is held in custody, or to the authority having or holding custody of the member, the Federal Government or the Provincial Government or such other authority shall cause the member in custody to be produced before the Sergeant-at-Arms who shall, after the conclusion of the sitting or the meeting, deliver the member into the custody of the Federal Government or the Provincial Government or other authority, as the case may be.”

2. Sub-rule (1) of Rule 84 *ibid* gives discretion to the Chairman Senate to summon a Member in custody on the charge of any offence or under any law relating to preventive detention to attend a sitting of the Senate if he considers his presence necessary. The power given vide sub-rule (1) of Rule 84 is a discretionary power which is to be

exercised with a caveat i.e. if the presence of the Member is considered necessary, 'by the Chairman'.

3. In terms of relevant provision of the Rules, in issuing a Production Order Chairman must not act in a routine and mechanical manner but should also examine that why is it "necessary" that a certain member should attend proceedings of the House. The word, "necessary" is a phrase which cannot be exhaustively defined but, if for example, a crucial vote is to take place in the House where party position is such that presence of the detained Member can make a difference, then perhaps it can be urged that his presence is "necessary" in such circumstances. Furthermore, certain factors should also be taken into account before taking decision as to the issuance of the Production Order and establishing necessity of the Member to attend the proceeding of the House which may include the seriousness and nature of the allegations against the Member concerned, the possibility of delay that might take place in the judicial or *quasi judicial* processes, affect on investigation or merit of the case and safety of the Member that can become relevant because of his movement from the place of his confinement to the Senate.

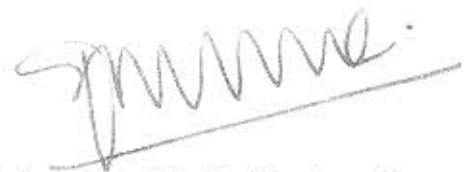
4. Reference is also made to the judicial dictums in this regard. One of such dictums was passed by the Sindh High Court, wherein, on a Petition titled Asif Ali Zardari vs Special Judge and two others which is reported as PLD 1992 Karachi 430, the High Court held that a Member of the Assembly had not been conferred any privilege under Article 66 of the Constitution or any other law, convention or usage to be allowed to attend the session of the National Assembly, even if he is an under trial prisoner. Similarly, the High Court of Sindh in a case cited as PLD 1999 Karachi 54, has dealt with the parameters of Production Order as it was provided in Rule 72 A of the then Senate Rules of 1988 (which was identical to the existing rule 84). The Court held as under:-

"Where the said rules of procedure apply the power to summon an undertrial prisoner shall always remain a discretionary power of the Authority (Chairman, Speaker and the like) in "which it vests. Next, it is only when "necessary" that such a power can come to be exercised. Lastly, but no less importantly in exercising such powers the relevant functionary would, all the time, ensure that in virtue of such an exercise the proceedings in the relevant Court of law are not unnecessarily delayed, let alone thwarted. These then are the parameters within which the powers under the referred rule 72A and 90 are to be exercised."

5. In view of the position reflected above, neither under rules nor by practice, it is mandatory or for granted that Production Orders have to be issued for each/any member under custody and for every session or business. The Presiding Officers had been rejecting requests in many cases/instances and gave Rulings justifying decision of not issuing Production Orders. Likewise the courts have also declared that issuing of Production Order is not mandatory and only case the Chair considers the presence of the Member detained for a particular business or reasons the same can be issued.

6. Being custodian of the House of the Federation I am conscious of the fact that out of one hundred and four seats in the Senate four seats are reserved for minorities i.e. one seat from each Province. Islam not only guarantees the legitimate interests of non-Muslims but also obligates the ruler of the time to ensure protection of their rights and liberties. I am also privy to Article 36 of the Constitution of the Islamic Republic of Pakistan which provides that the State shall safeguard the legitimate rights and interests of minorities. Senator Kamran Michael is the only Senator from the Province of the Punjab representing the Minorities and giving voice to their aspirations in the House.

7. The Senate of Pakistan not only represents the Federating Units but also provides a platform for giving voice to all segments of the society. Therefore, in order to ensure that minorities living in the Punjab are duly represented in the Sessions of the Senate, I hereby issue Production Order in respect of Senator Kamran Michael.



(Muhammad Sadiq Sanjrani)
Chairman Senate

Dictated in Chamber
Announced in the House on 25th February, 2019
287th Session