

**BEFORE THE HON'BLE ISLAMABAD HIGH COURT, ISLAMABAD**W. P. No. <sup>3555</sup> / 2019

1. **Legal Aid Foundation for Victims of Rape and Sexual Assault (LRSA)**, through its Authorized Person - Muhammad Owais Awan, having its registered office at Building No. 14-C, Street No. 21, off Khayaban-e-Seher, Phase VI, DHA Karachi
2. **Maliha Hussain**, daughter of Saeed Ahmed Chaudry, resident of House No. 25-A, Street No. 55, F-7/4, Islamabad
3. **Dr. Fouzia Saeed**, wife of Paul Lundberg, resident of House No. 25-A, Street No. 55, F-7/4, Islamabad

...PETITIONERS

versus

1. **Federal Government**, through
  - i. The Secretary, Interior Division
  - ii. The Secretary, Law and Justice Division
  - iii. The Secretary, National Health Services, Regulation and Coordination Division
 Having their offices at Pakistan Secretariat, Constitution Avenue, Islamabad
2. **Islamabad Capital Territory Police**, through its Inspector General, having its offices at Police Lines Headquarters, Sector H-11, Islamabad
3. **Islamabad Capital Territory Administration**, through the Chief Commissioner Islamabad, having its offices at ICT Administration Complex, Sector G-11, Islamabad

...RESPONDENTS

**PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF THE ISLAMIC  
REPUBLIC OF PAKISTAN, 1973**

Respectfully submitted:

1. That the present petition pertains to the lack of effective investigation and prosecution in the case of the ten year old murdered rape victim, namely Farishta Bibi, and raises substantial questions with regards to implementation of effective mechanisms for the prevention of sexual violence, particularly against women and children, in the Islamabad Capital Territory.

#### PARTIES

2. That the names and addresses of the parties have been sufficiently provided in the title of the present petition for properly affecting the process of service upon them.
3. That the Petitioner No. 1 is a non-profit organization, which offers professional advice and consultation in all matters related to rape and sexual assault. The Petitioner No.1 has conducted the case of *Kainat Soomro & others versus Province of Sindh & others* [C.P. No. D-5920 of 2015], which was filed before the Hon'ble Sindh High Court on behalf of Kainat Soomro, Naseema Lubano and Benazir Jhatial, survivors of rape, in the public interest, and as a class action with the aim of focusing attention towards the illegal practices of police officials, prosecutors and medical practitioners in handling trials and cases of rape and sexual offences and the vacuum in this regard in the relevant legal framework, and for the implementation of the guidelines provided by the Honorable Supreme Court of Pakistan in the landmark case reported as *Salman Akram Raja and another versus Government of Punjab* (2013 SCMR 203).

*For the perusal of this Hon'ble Court, copies of the Trust Deed, Profile of Work, Board Resolution of Petitioner No.1 and Order dated 31.01.19 in C.P No. 5920/2015 are attached herewith as Annexure 'A' to 'A-3'.*

4. That the Petitioner No. 2 is a well-known activist, engaged in work on strengthening democracy and improving access to fundamental rights for all in Pakistan. She is an experienced gender trainer with 20 years of experience in Pakistan and the USA. Her work is focused on strengthening democracy, youth development, gender sensitization, gender and development, anti-sexual harassment legislation, women's empowerment, women's economic development and small business creation. She is presently serving as Program Director for MeherGarh, a youth focused human rights institution based in Islamabad. She is deeply committed to seeing women and children being safeguarded against all forms of sexual violence.

*For the perusal of this Hon'ble Court, a copy of the Curriculum Vitae of the Petitioner No. 2 is attached herewith as Annexure 'B'.*

5. That the Petitioner No. 3 is a well-known activist, engaged in work on improving access to fundamental rights for all in Pakistan. She has over 25 years of work experience as a women's rights activist and a gender and development

professional in the USA, Afghanistan, Pakistan, India, Cambodia, Philippines and the Pacific Islands. She is recognized as one of the most prominent women's rights leaders in Pakistan. She has worked extensively on issues of violence against women, political participation of women, women's right to mobility, discrimination against women from minority groups, and issues related to women in slavery. She established the first domestic violence Crisis Center in Pakistan, pioneered the first country-level Gender Strategy Program for UNDP, and has created and managed several organizations focused on the rights of women, minorities and youth issues and has played a key role in lobbying for anti-sexual harassment legislation to Pakistan. She is deeply committed to seeing women and children being safeguarded against all forms of sexual violence.

*For the perusal of this Hon'ble Court, a copy of the Curriculum Vitae of Petitioner No. 3 is attached herewith as Annexure 'C'.*

6. That the Respondent No. 1 is the Federal Government of Pakistan, which, under the Constitution of Pakistan, 1973, (hereinafter referred to as 'the Constitution') is bound to protect and uphold the Fundamental Rights of the citizens of Pakistan as enumerated in Chapter 1 of Part II of the Constitution, especially within the Islamabad Capital Territory.
7. That the Respondent No. 2 is responsible, *inter alia*, for ensuring the safety and security of all persons residing in or present within the Islamabad Capital Territory, maintaining law and order and investigating criminal offences occurring within the Islamabad Capital Territory in accordance with the law.
8. That the Respondent No. 3 is mandated to exercise the powers of a provincial government in the Islamabad Capital Territory under the Islamabad Capital Territory (Administration) Order, 1980 (Presidential Order No. 18 of 1980).

#### FACTS

9. That it is most humbly and most respectfully submitted that the present petition is being filed in the backdrop of the alarming situation in relation to the rising incidence of sexual crimes in the Islamabad Capital Territory, particularly against children. According to Sahil, a leading non-governmental organization against child sexual abuse, the incidence of sexual crimes, including rape, sodomy and gang rape, has increased in the Islamabad Capital Territory over the past few years. Poor investigation and prosecution have resulted in low conviction rate and impunity for the perpetrators.

*For the perusal of this Hon'ble Court, a copy of the Report published by Sahil, for the year 2018, titled: 'Cruel Numbers' is attached as Annexures 'D'.*

10. That it is most humbly and most respectfully submitted that the Petitioners have come across a number of reports published in leading newspapers of the country and aired on electronic media channels in relation to occurrences of sexual crimes

in the Islamabad Capital Territory. A few months ago, the unfortunate incident of kidnapping, murder and possible rape of a 10 year old girl namely Farishta Bibi took place in Village Ali Pur of Islamabad Capital Territory, which generated immense public outcry. The girl was abducted by an unknown person on 15.05.2019 and her dead body was recovered on 20.05.2019. On 21.05.2019 a judicial inquiry into the circumstances surrounding her kidnapping, death and possible rape was ordered by the Respondent No. 3, vide Letter No. 5(3)-Home/2018. The said judicial inquiry was conducted by Mr. Waseem Ahmed Khan, Additional District Magistrate/Additional Deputy Commissioner Islamabad. During the course of inquiry, the Additional District Magistrate recorded the statements of eighteen (18) persons, including the concerned officials and officers of the local police, and submitted his inquiry report containing his findings and recommendations, dated: 31.05.2019, to the Respondent No. 3. The contents of the inquiry report reveal negligence on part of the Respondent No. 2, which was responsible for investigating the case, ensuring safe recovery of the victim and apprehending the perpetrator, however it completely failed in fulfilling its responsibilities under the law.

*For the perusal of this Hon'ble Court, the aforementioned Inquiry Report dated 31.05.2019 is attached as Annexure 'E'.*

11. That it is most humbly and most respectfully submitted that according to the statement of Farishta Bibi's father Gul Nabi recorded before the Additional District Magistrate, Islamabad, Farishta Bibi went out of her family home on the evening of 15.05.2019 at around 05:00-05:15 PM but never returned back. Initially, Farishta Bibi's father Gul Nabi and his family made efforts on their own to trace Farishta Bibi, but they remained unsuccessful. They kept searching for Farishta throughout the night and also made public announcements through mosques and even posted on Facebook stating that Farishta Bibi had gone missing, but to no avail. Eventually, on 16.05.2019 at about 05:00 PM, Gul Nabi went to Police Station Shahzad Town, Islamabad, [hereinafter referred to as 'P.S. Shahzad Town'] in order to seek the assistance of the police for tracing his daughter and to initiate appropriate legal action/proceedings in this regard. According to his statement, he informed the relevant police officials present at P.S. Shahzad Town about his missing child i.e. Farishta Bibi, however the police did not take any action and failed to lodge an FIR. The police official present on duty at P.S. Shahzad Town informed Gul Nabi that the relevant official who had to enter report of this incident was on patrolling duty, hence Gul Nabi would have to wait. He kept waiting in P.S. Shahzad Town till 10:45 PM, however, no one bothered to solve his problem. Eventually he got frustrated and complained to the official on duty, in response to which the police official harassed him, i.e. he snubbed Gul Nabi and suggested that Farishta Bibi must have eloped with somebody. This intensified the grief of Farishta Bibi's father, Gul Nabi, and he returned home. He visited P.S. Shahzad Town on the next day i.e. 17.05.2019, however, neither any FIR was registered, nor any investigation was started into the disappearance of Farishta Bibi. The police officials continued to delay the registration of FIR for several days on one pretext or another. Finally, on 19.05.2019, FIR No. 99/19 u/s 365-B PPC (Kidnapping, abducting or inducting woman to compel for marriage etc.) was

registered and a formal investigation was launched, almost four days after the disappearance of Farishta Bibi which was already too late.

*For the perusal of this Hon'ble Court, a copy of the Death Report of Farishta Bibi, along with the application of Gul Nabi, dated: 19.05.2019, is attached here with as Annexure 'F'.*

12. That it is most humbly and most respectfully submitted that on 20.05.2019, when Gul Nabi reached P.S. Shahzad Town to inquire about the on-going investigation the officials of the P.S. Shahzad Town received a call that a dead body had been recovered near a jungle area in Mauza Tamma. Upon receiving this information Gul Nabi along with a police official went towards the mentioned area. On reaching the mentioned area, where the dead body had been found, Gul Nabi identified his daughter Farishta Bibi's decomposed dead body through her sandals which, according to him, he had bought for her on the same day when she had gone missing. Farishta Bibi's shawl was hanging on a tree branch at a distance of about ten feet from the dead body. The dead body was put in a coffin and brought to P.S. Shahzad Town. After necessary formalities, the dead body was taken to Poly Clinic Hospital, Islamabad, for postmortem. Initially the family was informed that the postmortem will be conducted in the morning. However, after protest by family members and other concerned citizens, postmortem was finally conducted which ended at around 03:00 AM on 21.05.2019. As per the statements of the concerned doctors who carried out the postmortem and prepared the postmortem report, the dead body was full of worms and maggots when they received it. It was decomposed to the extent that to give any ultimate findings on the cause of death was impossible and it could also not be said with certainty whether the victim was raped or not. They were of the view that had the dead body been recovered earlier, the exact causes of death could have been identified.

*For the perusal of this Hon'ble Court, copies of the Medico-Legal Report and the Final Challan are attached here with as Annexures 'G' and G-1.*

13. That it is most humbly and most respectfully submitted that in light of the aforementioned facts, the inquiry officer gave his findings as part of the Inquiry Report, dated: 31.05.2019. Some important findings were as follows:
- Inordinate and unexplained delay in registration of FIR
  - Registration of FIR under wrong section of law ✓
  - Inaction of Gender and Child Protection Unit of ICT Police in Farishta's case
  - Abysmal failure of supervisory officers of ICT Police ✓
  - Sorry state of affairs observed in the Wireless Control Rooms of ICT Police
  - Dysfunctional cameras installed in Police Stations with no live streaming
  - Delay in postmortem at Polyclinic Hospital
14. That it is most humbly and most respectfully submitted that the aforementioned findings of the inquiry officer have revealed severe shortcomings in relation to the functioning of the Respondent No. 2, which have rendered it incapable of

responding effectively to incidents of sexual crimes. In order to overcome these shortcomings, the inquiry officer had also provided a number of recommendations in his report. However, as per the Petitioners' knowledge, many of these recommendations have not been implemented so far.

15. That it is most humbly and most respectfully submitted that incidents of sexual crimes continue to take place unabated in the Islamabad Capital Territory. In July 2019, a four-year-old girl was subjected to rape and attempted murder in Bhara Kahu area, who has been recovering from her injuries and mental trauma in Pakistan Institute of Medical Sciences. Similarly, a ten year old girl was raped by her stepfather at their residence in Bari Imam area in June, 2019. In March, 2019, an 18-year-old girl who was working as a domestic worker in Lohi Bhair area was subjected to continuous rape by her employer for several months and after she conceived a baby she was pushed from stairs resulting in her death. The initial postmortem report revealed that the victim was 12 weeks pregnant at the time of her death.

*For the perusal of this Hon'ble Court, newspaper reports in relation to the aforementioned incidents are attached as Annexures 'H' to 'H-2'.*

16. That in view of the above stated facts, the Petitioners seek the kind indulgence of this Hon'ble Court for the enforcement of the Fundamental Rights enshrined in Chapter 1 of Part II of the Constitution of Pakistan, on the following, *inter alia*:

#### GROUNDS

- A. That it is most humbly and most respectfully submitted that Farishta Bibi suffered severe sexual violence, lost her life, and her decomposing body could not be found for five days after she went missing and resultantly her family suffered grievous emotional and psychological harm. They helplessly searched for her, while the Respondents failed to deliver on their constitutional and statutory obligations. It is submitted that the state, and particularly the Respondent No. 2, is duty-bound to protect and safeguard all Fundamental Rights enshrined in the Constitution, including Article 9 of the Constitution. This includes protection against abductions, target killings, homicide etc. (as held in *Watan Party and another versus Federation of Pakistan and others* [PLD 2011 SC 997] and *President Balochistan High Court Bar Association versus Federation of Pakistan and others* [2012 SCMR 897]). Moreover, it is submitted that Section 154 of the Cr.P.C. mandates the officers of a Police Station to register an F.I.R. whenever any information is supplied to them regarding the commission of a cognizable offence and noncompliance thereof renders the concerned police officers liable to be dealt with by their superiors for negligence of duty under Section 29 of the Police Act, 1861 (as held in *Nizam-ud-Din versus District Coordination Officer, Muzaffargarh* [2006 MLD 1349 Lah], *Muhammad Yousaf Versus Inspector General of Police* [PLD 1997 Lah 135]). It is apparent from the foregoing facts that the Respondents have knowingly, willfully and malafidely violated,

neglected and breached their duty under the Constitution and the abovementioned laws. The Petitioners, therefore, have a legal right to seek the enforcement of Respondents' obligations in the public interest.

- B. That it is most humbly and most respectfully submitted that the Judicial Inquiry dated: 31.05.2019 into the matter of Ms. Farishta in Case FIR No. 99/15, dated 19.05.2019 (Police Station Shahzad Town, Islamabad), clearly finds that the Respondents have failed to effectively investigate and prosecute the case of Farishta Bibi's abduction, rape and murder. It is submitted that, Articles 10-A and 14 of the Constitution, guarantee every citizen the right to a fair trial and due process of law, dignity and a life subject to the rule of law. Moreover, it has been held by courts that a fair trial cannot be held in the absence of an impartial and satisfactory investigation (*Bank of Punjab versus Haris Steel Industries* [PLD 2010 SC 1109]). It is important to note that in instances where the police has failed to do its duty, the courts have been pleased to pass appropriate directions. In *Raheela Sattar versus Government of Punjab and others* [1992 PCrL] 1703, a minor girl had been abducted and the police had failed to recover her, consequently the Lahore High Court directed the provincial Inspector General to take effective steps to recover the abductee and arrest the accused as early as possible and, in *Human Rights Case No. 42389-P of 2013* [2014 SCMR 515], the Hon'ble Supreme Court had directed the provincial Inspector General of Police to initiate criminal proceedings against delinquent police officers who failed to carry out a proper and impartial investigation into the gang rape of a hearing and speech impaired women. It is apparent from the foregoing facts that the Respondents have knowingly, willfully and malafidely neglected and breached their duties and are in blatant violation of Article 10-A and 14 of the Constitution and the Petitioners have a constitutional right to seek the enforcement of these obligations.
- C. That it is most humbly and most respectfully submitted the abovementioned Judicial Inquiry Report, dated: 31.05.2019, found that the inaction of the Gender and Child Unit of the Respondent No. 2 contributed to the mismanagement of Farishta Bibi's case. It is apparent that Farishta Bibi was a girl child and consequently her case fell under the scope of responsibilities of the Gender and Child Unit. Moreover, it is also apparent that Farishta Bibi belonged to a poor and under-privileged family. The attitude of the Respondent No. 2 towards her family was blatantly discriminatory and insensitive, clearly because of their underprivileged background. It is submitted that under Article 25 of the Constitution, the Respondents are under an additional duty to ensure the safety, security, dignity and participation in national life of all, particularly of disadvantaged groups. Article 25 of the Constitution requires that all citizens be treated with equality, that there is no discrimination on the basis of sex and empowers the state to do this by taking special provisions for women and children. However, it is apparent from the abovementioned facts that the Respondent No. 2 has knowingly, willfully and malafidely violated, neglected, breached and miserably failed in disposing of its duties accordingly. The Petitioners

*Memon versus Federation of Pakistan* [PLD 2011 SC 854]). Therefore, as apparent from the foregoing facts, it is extremely important and in the interest of justice, that this Hon'ble Court exercise its powers and the findings and recommendations of the abovementioned Judicial Inquiry Report, dated: 31.05.2019, be implemented, under review by this Hon'ble Court and failure to do so will be a denial of justice and the denial of the enforcement of fundamental rights of the citizens of Islamabad including the Petitioners No. 2 and 3.

- G. That it is most humbly and most respectfully submitted that under Articles 9, 14 and 25, of the Constitution, the State is not only required to safeguard life and dignity of its citizens, it is also required to take additional measure to safeguard disadvantaged groups such as women and children. It is settled principle that under the powers enjoyed by the Hon'ble High Court under Article 199(1)(c), further recommendation and detailed instructions may be passed by the Hon'ble High Court in order to correct a denial of fundamental rights. Article 199(1)(c) "enables the Courts to practically enforce such rights by issuing appropriate directives... such directives could be issued to any person including the Government." (*Human Rights Commission of Pakistan and others v. Government of Pakistan and others* [PLD 2009 SC 507]). Moreover, the Honourable Supreme Court gave detailed directions for stopping and preventing human trafficking, especially of women (*Azhar Iqbal (Azhar Hussain) v. Abid Hussain* [2015 SCMR 1795]). Furthermore, the Supreme Court and various High Courts of India have also given detailed directions regarding the prevention and investigation of sexual violence, particularly against children in various cases, including *Sampura Behrua versus Union of India* (AIR 1998 Ori 85) and *Court on its own motion versus State and another* [(1995) 1 SCC 14]. It is submitted that it is apparent from the abovementioned facts that the Respondents have knowingly, willfully and malafidely violated, neglected, breached and miserably failed in disposing of its duties under Articles 9, 14, And 25 of the Constitution and that this Hon'ble Court is empowered to correct this wrong and deliver justice accordingly and the Petitioners have a constitutional right and obligation to seek the enforcement of these obligations.
- H. That it is most humbly and most respectfully submitted that it is well settled principle that when matters pertaining to public interest are taken up before the High Courts, the rule of 'locus standi' (i.e. the requirement of 'aggrieved party' or 'aggrieved person' in Article 199, Constitution) receives a liberal interpretation. Over the years, it has been consistently held in a number of judgments that any person or citizen sufficiently interested in the protection of the larger public interest can file a petition under Article 199 of the Constitution, 1973, to seek effective criminal prosecution of a criminal case of public importance, effective implementation of inquiry reports, and/or expert recommendations (*Mushtaq Ali versus Government of Sindh and others* [PLD 1998 Kar 416], *Javed Ibrahim Paracha versus Federation of Pakistan and others* [PLD 2004 SC 482], *Moulvi Iqbal Haider versus Capital Development Authority* [PLD 2006 SC 394], *Muhammad Tariq Abbasi and others versus Defence Housing Authority and others* [2007 CLC 1358 (Kar)], *Muhammad*



*Azhar Siddique versus Government of Punjab* [PLD 2010 Lah 138] and *Attaullah Khan Malik versus Federation of Pakistan* [PLD 2010 Lah 605]). Therefore, it is apparent from the abovementioned, that this Hon'ble Court is empowered to recognize the present Petitioners as 'aggrieved persons' as per Article 199 of the Constitution in order to address the grave and urgent issue of sexual violence, especially against children, in Islamabad.

- I. That there is no other efficacious or speedy remedy available to the Petitioner in the instant case, except for invoking the constitutional jurisdiction of this Hon'ble Court.
- J. That the Petitioner begs leave to press further additional grounds at the time of the hearing of the instant petition

#### PRAYER

It is, therefore, most respectfully and most humbly prayed that this Honourable Court may graciously pass judgment, and orders, in the following terms:

- a) Declare that the Respondents have failed in their constitutional and legal duty to protect the fundamental rights of the murdered rape victim i.e. Farishta Bibi, and of the citizens of the Islamabad Capital Territory;
- b) Direct the Respondents to ensure effective investigation and prosecution in relation to the case of murdered rape victim Farishta Bibi, arising out of FIR No. 99/19, P.S Shahzad Town, Islamabad, and to submit monthly reports to this Hon'ble Court, till the completion of the trial;
- c) Direct the relevant trial court to complete the trial of murder victim Farishta Bibi, arising out of FIR No. 99/19, within sixty days from the disposal of the instant petition, and to submit fortnightly reports to this Hon'ble Court till the decision of the case;
- d) Direct the Respondents to implement the recommendations of the Judicial Inquiry into the matter of Ms. Farishta in Case FIR No. 99/19, dated: 19.05.2019 (Police Station Shahzad Town, Islamabad), dated: 31.05.2019, and to submit monthly reports regarding such implementation to this Hon'ble Court till the full implementation of these recommendations;
- e) Direct the Respondents to implement the following recommendations, in addition to the recommendations of the aforementioned Judicial Inquiry, for the prevention of and effective action against the crime of child sexual assault, rape and murder, and to submit monthly reports to this Hon'ble Court till the full implementation of these recommendations:
  - i) Any complaint regarding the suspicion of an offence against a child be registered immediately, in a separate notebook and in the

presence of a witness, and all apparatus that should be functional be immediately deployed and activated in order to search for the missing child and/or apprehend the perpetrator;

- ii) The safety of the accused in police custody should be ensured at all times;
- iii) The investigation of a case of a crime that is sexual in nature and/or pertains to a child should be assigned to a female police officer and/or a person duly sensitized on the issues and implications pertaining to such cases;
- iv) No child survivor may ever be held in police custody overnight, even if it may be on the pretext of a medical examination;
- v) Every victim or survivor of a sexual offence should be afforded a medicolegal exam (consisting of a physical exam, DNA testing and chemical testing) within 24 hours of their person being found, and if the medical exam is delayed to 48 hours, then reasons for delay should be recorded in writing;
- vi) All efforts should be made to provide medical aid, testing for any sexually transmitted diseases and pregnancy, and a trained therapist to a child survivor before and after the medical exam, and reasons for failure to do so should be recorded in writing;
- vii) For every child survivor, their statement under Section 164 of the Criminal Procedure Code, 1898:
  - a. Should be recorded within 10 days of the perpetration of the crime or within 10 days of the recovery of the child,
  - b. The statement should be recorded in a child friendly atmosphere or at the hospital if need be,
  - c. The presence of a parent or trusted person may only be refused if the magistrate believes the child stands to be intimidated or uncomfortable due to such presence,
  - d. The statement should be recorded verbatim and be supplemented by an audio recording;
- viii) The child survivor should never be placed in the direct presence of the accused either during the police investigation or the trial in any circumstances;
- ix) Respondent No. 2 should set up community policing initiatives in order to gain citizens' assistance in prevention of crimes against children and maintenance of law and order;
- x) The Gender and Child Unit of the Respondent No. 2 should maintain a separate list of repeatedly accused persons which should be shared with all police stations;

- f) Direct the Respondents No. 2 and 3 to submit a detailed report of all cases involving sexual assault and rape against women and children instituted in the Islamabad Capital Territory during the last five years, for passing of

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appropriate orders by this Honourable Court for any inquiry/investigation or expeditious disposal in this regard;

- g) Grant such further, additional or alternative relief as the Hon'ble Court may deem fit and proper in the circumstances of the case.

  
Fuzia Saeed.  
Petitioners

Through

**Faisal Siddiqi**  
Advocate Supreme Court

**Muhammad Haider Imtiaz**  
Advocate High Court

**ADDRESS FOR SERVICE:**

Office No. 20, First Floor, Al-Hameed Mall, G-11 Markaz, Islamabad.

**CERTIFICATE:**

It is certified that no other petition on this subject matter is pending or filed by the Petitioner before this hon'ble court.

  
PETITIONERS