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At the Supreme Court in Jerusalem
Sitting as the High Court of Justice

HCJ 5188/96

In the matter of:

1. _____ **Al Kaka**
a detainee in the Interrogations Wing, Shikma Prison
2. _____ **Ghaneimat**
a detainee in the Interrogations Wing, Jerusalem House of Detention.
3. **HaMoked: Center for the Defence of the Individual,
founded by Dr. Lotte Salzberger (Reg. Assoc.)**
all represented by Attorneys Andre Rosenthal and/or Mustafa Yehiye,
License Numbers 11864 and 20107, respectively
33 Jaffa Street, Jerusalem, 94221
Tel. 250458 Fax. 259626

The Petitioners

v.

1. **General Security Service**
2. **Commander, Jerusalem House of Detention**

The Respondents

Petition for Temporary Injunction and Order Nisi

The Honorable Court is requested to summon Respondent 1 to appear and show cause why it has compelled Petitioners 1 and 2 to bend over in the frog position for various periods of time at great frequency since his interrogation began; and why it uses the *shabach* interrogation method, in which Petitioners 1 and 2 are held and tied to a stool (as in the case of Petitioner 1) or a hook on the wall behind him (as in the case of Petitioner 2), with a sack covering their heads all the way to their shoulders, and loud music is played almost non-stop; and why it does not allow Petitioners 1 and 2 to sleep for at least six hours a day in one stretch.

As regards Petitioner 2, why Respondent 1 keeps him handcuffed so tightly that the cuffs cause swelling and constant pain; and why Respondent 2 awakens the Petitioner from his sleep every hour in a few breaks that the interrogators allow him.

As interim relief, until the hearing on the petition, the Honorable Court is requested to order the Respondent not to use physical force during its interrogations, including stretching the arms of Petitioners 1 and 2 behind their backs and tying them to a chair or hook on the wall, and closing the handcuffs too tightly, and covering their heads with a sack while they held in waiting.

The Honorable Court is also requested to hear the matter in an expedited manner.

The Honorable Court is further requested to summon the Petitioners for the hearing on the petition.

The grounds for the petition are as follows:

1. A. Petitioner 1, a third-year student at a college in Ramallah, was arrested on 5 July 1996, and has been held since 15 July or 16 July 1996 in the interrogation wing of Shikma Prison. From the day he was arrested, 5 July, to the time he was transferred to Shikma Prison, a period of ten days, the Petitioner was not interrogated.
- B. As stated, the interrogation of the Petitioner began only after he had been taken to the interrogation wing of Shikma Prison. His interrogation is being conducted on two levels. One, exhausting the Petitioner by depriving him of sleep and by holding him, before he is taken into the interrogation room, in the painful *shabach* position. Two, using physical force during the interrogation, by forcing him to kneel in the frog position for various lengths of time and at great frequency when he enters the interrogation room.
- C. In *shabach*, the Petitioner sits on a low chair, his hands cuffed behind his back, his arms pulled behind him, one crossing over the back of the low chair and the other under, so that, together with the stretching, he is placed in an uncomfortable position that, as time passes, causes physical pain and suffering. Because his hands are tied, he is unable to move, and as time passes, his muscles hurt more and more. The Respondent places a sack made of heavy material on his head, so that the natural openings for air are blocked, causing an increasing sense of suffocation and heat; the feeling of suffocation is especially felt during Israeli summer days. Simultaneously, the guards play loud music in an area where a number of detainees, including the Petitioner, are held while waiting to be interrogated.
- D. In the interrogation room, the Respondent often makes the Petitioner kneel in the frog position for various lengths of time. When the Petitioner refused, the interrogator forces him. On 18 July 1996, when he gave a statement to his attorney, the Petitioner related that he had refused to kneel and the interrogator had removed him from the interrogation room, tied him to the wall, apparently to a noose, and ordered him to stand. This took place following about three consecutive days of interrogation and waiting, during which he was not allowed to sleep, except for a short amount of time, the length of which the Petitioner does not recall.

- E. The Respondent has also deprived the Petitioner of sleep from the time he arrived in the interrogation wing of Shikma Prison.
- F. The Petitioner is given an extremely short, and insufficient, amount of time to eat.
- G. The interrogators assume that the Petitioner “knows” why he is being questioned, and did not tell him the suspicions against him, if such exist, and only made a general statement regarding “membership”, without adding any details. They also contend that he is a “nationalist.”
- H. The Petitioner’s affidavit is attached hereto and is marked P/1.
2. A. Petitioner 2, a resident of Surif , Hebron District, has been detained since 2 July 1996 and has been interrogated in the interrogations wing of the Jerusalem house of detention.
- B. The interrogators use the *shabach* method, described above, in a slightly different manner: the Petitioner’s arms are stretched behind his back, tied to a hook on the wall behind him, and not to the small chair itself.
- C. The interrogators allow the Petitioner to sleep every other day between two to three hours at a time, but the prison guard wakes up the Petitioner almost every hour.
- D. The Petitioner’s hands are swollen and hurt from being handcuffed too tightly. An interrogator gave the Petitioner a piece of material to place under the cuffs to relieve the pain a bit, but the material was given to him after the injury had occurred, and his hands are still swollen and continue to hurt.
- E. The interrogators use the *gambaz* method, in which the Petitioner kneels on his toes in the frog position for about five minutes at a time, for about ten times. The Petitioner has back pains, inflammation of the spine, and rheumatism; he informed his interrogators about these ailments, but to no avail.
- F. The Petitioner has showered once a week since he was arrested. He was not given shampoo and was not provided a change of clothes, not even underwear.
- G. The Petitioner asked to be checked by a physician, but his request was not granted.
- H. The Petitioner had been arrested in the past and was held in administrative detention in 1988, 1991, 1994, and 1995.

- I. The Petitioner's affidavit is attached hereto and is marked P/2.
3. Petitioner 3 is a non-profit society, whose purpose is to aid persons who fall victim to acts of violence, maltreatment, or are denied fundamental rights by state authorities (including local authorities), particularly persons needing assistance in submitting complaints to the authorities, and to safeguard fundamental rights in any other manner, for example by filing suit, including petitions to the Supreme Court sitting as the High Court of Justice, either in the name of the person claiming his rights have been violated or as a public Petitioner.
4. Before delineating the legal grounds for the petition, we should mention that, when a petition was filed on 12 July 1996 (and was resubmitted on 14 July 1996 because of a technical problem), the Respondent agreed that interrogation of the Petitioners would be conducted without using the *shabach* position. It was agreed that, if it were necessary to bind the Petitioners' hands behind their backs, their arms would not be stretched and would not be crossed between the back of the chair.

The Respondent also agreed that it would not place a sack on the Petitioners' head.

A copy of the letter of Attorney Blass, and a copy of the consent request to postpone the day set for the hearing, in which the Respondent agrees not to use the sack, are attached hereto and marked P/3 and P/4, respectively.

5. The Petitioners contend that in the case of Petitioner 1, the Respondent routinely uses the methods described above without any necessity.

The Petitioner was arrested on 5 July 1996. He was taken to an interrogation facility about ten or eleven days afterwards. The Respondent's explanation why it is "necessary" to use physical violence against the Petitioner is unacceptable because the said Respondent believed that it was possible to wait a relatively long time before beginning the interrogation. That is, the Respondent itself believes that there is no urgency in the interrogation.

6. The Petitioners contend that holding Petitioners 1 and 2 in the painful *shabach* position and preventing them from sleeping, along with the violent interrogations they undergo in the interrogation rooms, combine exhaustion and violence, in violation of the law.

The use of the kneeling position in the interrogation room is absolutely forbidden.

The excessive tightening of the handcuffs on the wrists of Petitioner 2 exceeds the interrogators' authority. It is indisputable that detainees, every detainee, may be handcuffed, but the tightening of handcuffs in a manner that causes continuous pain and suffering must cease immediately.

7. The Petitioners refer to Section 277 of the Penal Law, 5737 – 1977, which prohibits the use of force or violence against a person under interrogation. The state expressed its disgust toward the used of physical force against detainees, whatever the kind of interrogation, when it ratified, on 4 August 1991, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment.
8. The Petitioners further request to anticipate a possible contention of the Respondent regarding the defence of necessity in regard to some of the interrogation conditions described above that are carried out prior to the Petitioner entering the interrogation room. We contend that the action taken to exhaust the Petitioners, as described herein, is violent in that stretching the detainee's body into the position described causes physical pain and suffering that accumulates over time, and does not come within the necessity defence.
9. The Respondent relies on the necessity defence, as set forth in Section 34K of the Penal Law, to explain acts taken against interrogees, and will surely argue that the necessity defence also applies in the case of Petitioner 1. As stated above, the Petitioners contend that the said defence should be rejected outright, in particular in the case of Petitioner 1, in light of the time that passed from the day he was arrested until the time that these forbidden methods were used against him.

A. The Petitioners contend that this defence is an option available to a judge when giving his verdict *vis-à-vis* a defendant who contends in his defence that the forbidden acts can be explained by showing that the requisite conditions were met. In the present case, the Respondent seeks to establish, in advance, that because it is likely that the defence will apply, it is not prevented from using the violent methods mentioned above. The case is comparable, in the opinion of the Petitioners, to the granting of a pardon before the indictment is filed.

B. The Honorable Court is requested to rule unequivocally that the use of force and violence during interrogations is forbidden, and is contrary to the values of the state, its

aims and its “credo”, even if the said violence is used systematically against persons who are suspected of crimes against its existence.

C. The Petitioners contend that it is unnecessary to decide on the status of the necessity defence at this stage of the hearing. If the Respondent believes that the interrogators can successfully raise and prove the defence when an indictment is filed for the forbidden acts that they committed against Petitioners 1 and 2, they should make their arguments at that time, but not before. The Honorable Court is requested to deny as premature the Respondent’s request, which most certainly will be made, and not decide the question of whether the necessity defence applies herein, so long as there is no judicial proceeding hearing the charges in such an indictment. The Respondent’s contention is premature.

D. The Petitioners request the Honorable Court to make an analogy from another situation, where a defendant facing criminal charges raises the insanity defence. The fact that the defendant can at a later time argue that he is not capable of standing trial because he was not sane at the time he committed the offense, does not prevent the prosecution from filing the indictment against him, even if there is evidence to support the contention prior thereto. In giving its verdict on a defendant who argues that he committed the offense because the action he took was done out of necessity, the court must also examine the conditions that provide an excuse for the offense, as it does regarding a contention that a defendant is incapable of standing trial for reasons of insanity.

10. A. In the alternative, the Petitioners will contend that the necessity defence is not applicable in the present case because the element of immediacy, which is set forth in the defence, is missing.

B. The necessity defence is a defence given to an individual who encounters a situation that he could not have anticipated, who acts immediately to repress the immediate danger, and cannot form the basis for an action of a state agency that is taken systematically and planned in advance.

11. The interrogation methods described in this petition violate, in the opinion of the Petitioners, the fundamental right to bodily integrity and dignity. The Petitioners content that the Respondent does not have the authority to violate this fundamental right of the Petitioners. Violation of a person’s basic rights is allowed only in the conditions set forth in a law that “conforms with the values of the State of Israel, is intended for a proper

STATE OF ISRAEL

**Ministry of Justice
State Attorney's Office**

15 July 1996

Attorney Andre Rosenthal
33 Jaffa Street
Jerusalem
Via Fax

Re: HCJ 5057/96, al-Madhun and three others

1. In follow-up to our telephone conversation, and for the sake of good order, I am herein setting forth in writing the comments that I made to you, whereby the interrogation of Petitioners 1-4 in the aforementioned petition will be conducted without the use of physical force. When it is necessary to bind the hands of the interrogees for safety reasons, their hands will be bound behind their backs only, and not in the way described in the petition.

2. In that the State Attorney's Office will be conducting its annual continuing education studies until Thursday of this week, and in that the interrogation of the Petitioners is being conducted as mentioned above, and, as stated, there is at this stage no special urgency in the matter, I requested your consent not to hold a hearing on the petition in the coming days.

3. I would appreciate your consent, and in the event that a hearing is set for the coming days, that we act jointly to postpone the date of the hearing.

Very truly yours,

[signed]

Malchiel Blass
Head, High Court of Justice Matters in the
State Attorney's Office