

BLACK/DEATH WARRANTS & ROLE OF MAGISTRATE

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BRIEF INTRODUCTION:

This is an execution process of punishment of death of condemned prisoner which issues in form *XXXV Schedule V of Cr.P.C.* Such warrant sets the time and place of execution. Black warrant has not been defined in legal dictionary. Such warrant denotes as death warrant. Death warrant issues by the court of sessions which passed the sentence of death under section 381 of code of criminal procedure and *20 Part E Rule 1 Volume III of The High Court Rules & Order* but sessions court uses this power when the death punishment confirmed by the high court as required section 376 of the code and the government should has directed him to fix a date for execution of the sentence. Through this warrant sessions court fixes the time of execution which shall not be less than 14 days and not more the 21 days from the date of issuing such warrant.

According to the amendment of year 1997 in section 381 Cr.P.C now the legal heirs of the deceased may present at the time of execution if they desire. The purpose of this amendment is that the legal heirs can forgive the condemned prisoner at the last moment of execution. According to rule 358 of prison rules 1978 the presence of magistrate is necessary at the place of execution to whom sessions judge deposes while using administrative powers.

DEFINITION:

Black's law dictionary death warrant as:

"A warrant authorizing a warden or other person officially carries out a death sentence" &
"A death warrant typically sets the time and place for a prisoner's execution".

Qanooni Lugat by Justice ® Dr. Tanzil-ul-rahman:

"Hukam nama phansi"

CODIFY LAWS

- SECTIONS 381,374,376 THE CODE OF CRIMINAL PROCEDURE
- CHAPTER 24 B RULE 39 VOLUME III & CHAPTER 20 PART E RULE 1 VOLUME III OF HIGH COURT RULES AND ORDERS
- RULES 105, 358, 329 TO 364 OF PRISON RULES 1978

WHO MAY ISSUES SUCH WARRANT?

According to section 381 Cr.P.C and chapter 20 Part E Rule 1 Volume III of The High Court Rules & Order only the sessions court which passed the death sentence can issues a warrant for the execution of sentence, even, where the condemned prisoner has been transferred from the jail within the jurisdiction of the sessions court to another jail outside its jurisdiction, then the sessions court which originally passed the death sentence will have power to issues such warrant court of sessions includes sessions judge and additional sessions judge as define section 9 of Cr.P.C.

Relevant provisions are reproducing for ready reference:

SECTION 381 CR.P.C "execution of order passed under section 376:

when a sentence of death passed by the court of session is submitted to the high court for confirmation, such court of session shall, on receiving the order of confirmation or order of the high court thereon, cause such order to be carried into effect by issuing a warrant or taking such order steps as may be necessary"s

CHAPTER 20 PART E RULE 1 VOLUME III OF THE HIGH COURT RULES & ORDER

"order of the high court to be sent to sessions judge for caring out sentence: After a death sentence is confirmed or other order has been made by the High Court, the Registrar will return the record, with a duplicate or an attested copy of the order under the seal of the court, to the sessions judge, who will take the steps prescribed by section 381 of the code of Criminal Procedure to cause the sentence or order to be carried into effect".

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CHAPTER 24-B RULE 39 VOLUME III OF THE HIGH COURT RULES & ORDER

Date of execution of death sentence : in issuing warrants for the execution of sentences of death , sessions judges should be directed by government to fix a date for execution of the sentence that is not less than fourteen or more than twenty one days from the date of issuing of the warrant .

Case laws: PLD 1061 KAR 453, 2003 YLR 2291, PLR 1962 (1) W.P 27

PRESENCE OF MAGISTRATE

According to rule 358 of Prison Rules 1978, Magistrate first Class shall be present when execution is being carried out. This is mandatory to ensure the presence of Magistrate at the place of execution of death warrant. Sessions judge has power to depute a Magistrate of First class to attend the execution proceeding who will submit the report of execution. The legal heirs of the deceased may present there at the time of execution and they can forgive the condemned prisoner at the last moment of the execution of death punishment and the magistrate shall record the statements in this regard and inform the session judge. Presence of magistrate at the place of execution is like executing officer.

RULE 358 OF PRISON RULES 1978 IS REPRODUCING

OFFICER TO ATTEND EXECUTION: "the superintendent, the medical officer and a First Class Magistrate deputed by the session Judge shall be present when an execution is being carried out. -----
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PRESENCE OF LEGAL HEIRS OF DECEASED

The legal heirs of the deceased shall be allowed to witness the execution proceeding if they desire. The legal heirs have the right to forgive the condemned prisoner at the last moment of the execution and if they do so then the execution proceeding will be suspended and the report was submitted to the Sessions Judge. Proviso added in section 381 Cr.P.C the year 1997 through an amendment which is reproducing:

SECTION 381 CR.P.C

Execution of order passed under section 376 Cr.P.C. -----
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"Provided that the sentence of death shall not be executed if the heirs of the deceased pardon the convict or enter into a compromise with him even at the last moment before execution of the sentence."

CASE LAWS: PLD 1989 SC 633, NLR 1989 SCJ 878

ROLE OF MAGISTRATE

According to Rule 358 of Prison Rules 1978, a Magistrate First Class will be the officer who shall be present at the time of execution of death sentence of condemned prisoner. Sessions Judge has power to depute a Magistrate for the execution proceeding who will be executing officer of the death warrant and perform acts on behalf of Sessions Judge. Magistrate shall submit the report of execution and shall remain there till the disposal of dead body. The legal heirs of the deceased may present there at the time of execution and they can forgive the condemned prisoner at the last moment of the execution of death punishment and the magistrate shall record the statements in this regard and inform the session judge.

RULE 358 OF PRISON RULES 1978 IS REPRODUCING

OFFICER TO ATTEND EXECUTION: "the superintendent, the medical officer and a First Class Magistrate deputed by the session Judge shall be present when an execution is being carried out. -----
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So, in this regard Magistrate has a significant role in the execution proceeding.

LEADING CASE LAWS

- PLD 1061 KAR 453
- 2003 YLR 2291
- PLR 1962 (1) W.P 27
- PLD 1989 SC 633
- NLR 1989 SCJ 878

CONCLUSION:

For the execution of death punishment of the condemned prisoner, the sessions Judge who originally passed the sentence, issues death warrant for carrying out the punishment and through such warrant the

time of execution sets which shall not be less than 14 days or more than 21 days of the issuing of warrant. This process is issued only when the death has been confirmed as required section 376 Cr.P.C. and sessions judges should have directed by government to fix a date for execution of the sentence. A Magistrate, deputed by the sessions judge, shall also be present at the time of execution with other officers required by law but such execution will not be carried out when the legal heirs of the deceased forgive the accused even at the last moment and the report will be sent to session court in this regard. After the amendment in codified law, now the presence of the legal heirs of the deceased may be ensured if they desire. The report of the execution proceeding shall be submitted to the sessions judge after completion.