

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

W.P. No.1075 of 2024.

Syed Faheem ul Hassan. Vs. I.G. Punjab Police, etc.

S. No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
	06.03.2024.	Mr. Kamil Hussain Naqvi, Advocate for the petitioner. Syed Farhad Ali Shah, Prosecutor General Punjab. Mr. Imran Abbas Sahi, AAG with Javed DSP. Mr. Ikram Ullah Niazi & Miss Maida Sobia, Deputy Prosecutors General.

This petition was filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 for the recovery of Zaheer-ul-Hassan, brother of the petitioner allegedly from illegal confinement of Imran Yousaf Inspector & Adnan Mushtaq ASI serving at Organized Crime Unit Civil Line Division Lahore (respondents No.4 & 5), with consequent relief of legal action against the said respondents.

2. In response to notice, report on behalf of respondent No.2 (Capital City Police Officer, Lahore) speaks that detenu required in number of cases was arrested in case FIR No.1641/2023 under section 392 PPC Police Station Old Anarkali District Lahore on 04.01.2024, being nominated through supplementary statement of the complainant, and while remaining on physical remand with police has been lodged to judicial custody on 08.01.2024.

3. Learned counsel for the petitioner regarded the report deficient due to deliberate concealment of actual facts. According to him, earlier learned Magistrate through order dated 29.12.2023 while declining physical remand, directed the lodging of detenu to judicial custody in FIR bearing No.3738/2023 Police Station Ghaziabad, District Lahore for his later appearance on 12.01.2024, but police did not lodge him to judicial custody in such FIR, which fact was denied by the respondents and claimed that after lodging him to judicial

custody, his physical custody was again obtained by the order of Magistrate in case FIR No.1641/2023 under section 392 PPC Police Station Old Anarkali District Lahore. Upon which learned counsel for the petitioner raised a question that “*once an accused is lodged to judicial custody, his further physical remand in that case or some other FIR(s) cannot be granted except a permission for investigation within the jail premises*”. Embarking upon such request while attending to section 167 & 344 of Cr.P.C, it was observed that though there exist no provision which could authorize the police to obtain physical remand of an accused in another FIR if he had been lodged to judicial custody in a case yet there is also no specific prohibition too. Thus, for seeking legal assistance learned Prosecutor General, Punjab and learned Assistant Advocate General were directed to assist the Court on this point.

4. In compliance with order dated 18.01.2024, the learned Prosecutor General, Punjab submitted his report and took the stance that “practice of police to arrest the accused at their wish and whims in different cases in one after the other for the purpose of investigation separately amounts to denial of fundamental rights and liberty”. He placed reliance on following cases reported as “GHULAM SARWAR Versus THE STATE” (1984 P Cr. L J 2588); “RAZIA PERVAIZ Versus THE STATE” (1992 P Cr. L J 131) “SHAH NAWAZ AND RANJHOO versus THE STATE” [NLR 1996 Cr. L.J 116 (Sukkur)], “DIL MUHAMMAD versus THE DISTRICT MAGISTRATE, QUETTA and 3 others” [1997 P Cr. L J 1203 (Quetta)] and “PARVEZ ELAHI versus CARE TAKER GOVERNMENT OF PUNJAB, etc.” (PLJ 2024 Lahore 43).

5. Learned Assistant Advocate General, on the other hand, while referring the cases cited in report of learned Prosecutor General, Punjab as “SHAH NAWAZ AND RANJHOO versus THE STATE” [NLR 1996 Cr.LJ 116 (Sukkur)], “DIL MUHAMMAD versus THE DISTRICT MAGISTRATE, QUETTA and 3 others” [1997 P.Cr.LJ 1203 (Quetta)], “PARVEZ ELAHI versus CARE TAKER GOVERNMENT OF

PUNJAB, etc” (**PLJ 2024 Lahore 43**), in addition case reported as “ADEEL and another versus The STATE” [**2016 YLR 2212 (Peshawar Abbottabad Bench)**] supported the view of learned Prosecutor General, Punjab but submits that in appropriate cases physical remand can be granted in different FIRs. Learned Deputy Prosecutors General were also heard at length who reiterated the stance of learned Prosecutor General but stated that a mechanism must be in place to regulate the physical custody of accused for investigation in different FIRs. Upon which for further assistance, research wing of this Court was assigned the duty to collect the relevant case laws. Mr. Muhammad Afzil, Civil Judge/Research Officer very efficiently collected following case laws, aptly applicable on the legal query involved in this case;

“ADEEL and another Versus The STATE” (**2016 YLR 2212**), Gen. ® Syed PERVEZ MUSHARRAF Versus THE STATE and another” (**PLD 2014 Balochistan 33**), “MUHAMMAD TAUQEER and another Versus THE STATE” [**2009 P Cr. LJ 648 (Islamabad)**], DIL MUHAMMAD versus DISTRICT MAGISTRATE QUETTA etc” (**PLJ 1997 Quetta 137 (DB)**), “MAHMUD ALI KASURI, BAR-AT-LAW versus PUNJAB GOVERNMENT THROUGH SECRETARY, HOME AFFAIRS AND 3 OTHERS” (**PLD 1977 Lahore 1400**); “GHULAM RUBBANI AND 3 OTHERS versus THE STATE AND ANOTHER” (**PLD 1971 Lahore 741**); “State Versus Sukhsingh and others” (**1954 AIR (Raj) 290**); “M/s. Jagathi Publications Ltd., rep., by Y. Eshwara Prasad Reddy v. Central Bureau of Investigation, Hyderabad (Andhra Pradesh)” (**2012 (2) ALT (Crl.) 285**); Asad Qaisar versus Government of Khyber Pakhtunkhaw, thorough Chief Secretary, Peshawar and others (Writ Petition No. 5281-P/2023 With CM No, 2615-P/2023)

6. Out of above Judgments, some speak that though there exist no provision in Cr.P.C. which could authorize subsequent physical remand in the same case once accused is lodged to judicial custody but concerned Magistrate can grant physical remand of such accused in different FIRs if there exist exceptional and convincing circumstances. The logic behind such decision is being highlighted while referring relevant case laws. A division Bench Judgment reported as “ADEEL and another Versus The STATE” (**2016 Y L R 2212 Peshawar (Abbotabad Bench)**), concludes as under;

“39. It is settled law that once an accused is sent to Judicial lockup he cannot be handed over to Police subsequently and successive remand cannot be given except in extra ordinary circumstances. If remand is required in exceptional cases then it must be on the basis of detail given in the application for remand and the reasons given by the Magistrate concerned.”

Another Division Bench Judgment reported as “MAHMUD ALI KASURI, BAR-AT-LAW versus PUNJAB GOVERNMENT THROUGH SECRETARY, HOME AFFAIRS AND 3 OTHERS” (**P L D 1977 Lahore 1400**), commands as under;

“In addition to the provisions which would ordinarily safeguard the interest of a free person against arrest and detention, in the above visualized situation, the police would face further obstacle in a case where the accused is already in detention in Jail under Court orders. Firstly, the fresh arrest and police custody would, in some manner, encroach upon the judicial custody; and, secondly, it would disturb the prison arrangements which must already be in force in pursuance of the writ of the Court or its warrant/order. The fresh arrest thus cannot be effected by the police unless a specific Court order is obtained in this behalf. Not only this, an order permitting fresh arrest simpliciter would not authorise the police to take the accused out of judicial custody and bring him under police custody without a proper remand order of the Court, even if it is for only twenty-four hours. The Jail Authorities under the law would not be competent to hand over the custody of the accused to the police without the orders of the Court for any period of time whatsoever.”

In the same Judgment, the discretion of police to arrest or not to arrest was focused upon in following words;

“It may be clarified here that the police is not bound under the law to resort to the power to arrest under section 54, Cr. P. C., in every case where they are permitted to do so. They have the discretion either not to arrest or to arrest under or without warrant. The discretion is wide. There is no compulsion that it must always be exercised in one manner, namely, of effecting physical arrest without warrant. Therefore, in most of the cases, it would not be necessary for the police to go through the ritual of formally arresting a person who is already in detention in jail as an undertrial prisoner in other case.”

The final form of guidelines to grant successive remand, formulated in the judgment, is reflected as under;

“As a corollary, it would follow that it would not be necessary for the Court to permit such, an arrest in every case. The facts and circumstances of the case necessitating such action by the police would have to be kept in mind consistent with the principle that in case of detention for trial of an offence (subject to the facts and circumstances of the case and/or the legal provisions relating to bail) detention in police custody is only an exception to the normal course of judicial custody, if at all the prisoner cannot be allowed to remain at liberty.”

Another Division Bench Judgment reported as “DIL MUHAMMAD versus DISTRICT MAGISTRATE QUETTA etc.”

(PLJ 1997 Quetta 137 (DB) throws light on the subject that successive remand can be obtained in different FIRs with the permission of concerned Magistrate; it is as follows;

“7. In the light of above mentioned discussion it can be inferred that once a person is sent to judicial custody, his custody cannot be handed over to Police subsequently and successive remand cannot be given in different cases, but if the cases are registered at different places or different Police Stations remand can be given after completion of necessary formalities which are mandatory in nature and should not be ignored and it must be kept in view that where a accused person is in custody it is necessary that trial Court should be kept aware regarding his remand and prior approval whereof would be necessary. There is no bar in the Provisions as contained in Section 167 and 344 Cr. P.O. that custody of an accused person cannot be handed over to Police if he is required for the purpose of investigation in a case different from one in which he had already sent to judicial custody.”

On the basis of similar provisions of Cr.P.C., a Division Bench Judgment of RAJASTHAN HIGH COURT from Indian Jurisdiction is also available in support of successive remands which was reported as “*State Versus Sukhsingh and others*” [1954 AIR (Raj) 290: 1955 RLW 46: 1954 CriLJ 79: 1955 RLW 46: 1954(4) ILR (Rajasthan) 413]. It questions that whether where an accused is kept in jail by orders of adjournment or remand under Section 344 of Cr.P.C, can he be handed over to the police in some other case for purposes of investigation. In view of the powers of the Magistrate under Section 167(2), the Court saw no prohibition in the Criminal Procedure Code against such a course. Thus, the logic was discussed like as under;

“Supposing a person is accused of one offence, and investigation of that case is complete and the challan has been submitted to Court, he will, in these circumstances, be sent to jail or to judicial custody to await his trial. Supposing later evidence is discovered of his complicity in another case, and the police in order to complete the investigation of that case requires to question the accused, or the handing over of the accused to police custody would aid the investigation In some way; in such a case we fail to understand why it may not be open to a Magistrate under Section 167(2) to take the accused out of jail or judicial custody and hand him over to the police for the maximum period of 15 days provided in that Section. Of course, before the Magistrate does so, he will have to satisfy himself that a good case is made out for detaining the accused in police custody in connection with the investigation of the other case.”

The above judgment was also followed in our jurisdiction in case reported as “GHULAM RUBBANI AND 3 OTHERS versus THE STATE AND ANOTHER” (**PLD 1971 Lahore 741**).

7. As per facts of a case reported as “STATE versus FATEH MOHAMMAD” (**1972 S C M R 182**), in response to a warrant of arrest issued by the Magistrate, the offender directly surrendered before him who lodged the accused to judicial custody; later police sought physical remand of accused which was granted. Such order of Magistrate was overturned by the High Court but Supreme Court of Pakistan held as under;

“The statutory right of the police to investigate a cognizable offence cannot be circumvented by the accused by avoiding the Police and surrendering before a Magistrate. It is true that having surrendered before the Magistrate and put himself in the custody of the Court the Police could not secure custody of the person without an order of the Magistrate concerned. And this is exactly how the police secured the custody of the respondent in the present case: It is for the Magistrate in such circumstances to consider whether the accused should continue to remain in the custody of the Court or be delivered over to the Police for the purpose of completing the investigation. In the present case the learned Magistrate in the exercise of the discretion allowed to him under the law made over the custody of the respondent to the Police for a limited time and for a particular purpose. Thus, the Magistrate was legally competent to do. The learned Single Judge of the High Court, therefore, was not right in interfering with the order of the Magistrate without having first held that the Magistrate had not exercised his discretion in a judicial manner.”

8. On information about presence of accused in judicial custody in a case in another district or province, Police can follow the procedure laid down in Rule 26.20 of Police Rules, 1934 for subsequent remand; it is reproduced as under;

26.20. Transfer of arrested persons. - (1) If a police officer lawfully arrests a person, without warrant, in a district in which the investigation, enquiry and trial cannot be held, and the offence is non-bailable or such person cannot give bail, he shall take or send such person before the District Magistrate or Ist Class Magistrate having jurisdiction over the area and obtain an order for the transfer of the **prisoner** to the district in which the offence was committed.

(2) No accused or convicted person shall be taken in custody from one district to another or from one province to another, except under the written order or warrant of the magistrate or other lawful authority directing such transfer.

9. Even as per Rule-6 (1) (b) of Part-B, Chapter-11 of High Court Rules & Orders, Volume-III, Magistrate can remand the accused to Police custody (if empowered to do so) or to

magisterial custody as he may think fit, for a term not exceeding 15 days, which term if less than 15 days, may subsequently be extended up to the limit of 15 days in all, but it does not mean that if before exhausting 15 days' physical remand accused is lodged to judicial custody, police can retake his physical custody in the same case to claim remaining period out of 15 days. In Rule-10 of same Chapter of High Court Rules & Orders as cited above, it is mentioned that if the limit of 15 days has elapsed, and there is still need for further investigation by the Police, the procedure to be adopted is laid down in section 344, Criminal Procedure Code. The case is brought on to the Magistrate's file and the accused, if detention is necessary, will remain in magisterial custody. The case may be postponed or adjourned from time to time for periods of not more than 15 days each, and as each adjournment expires the accused must be produced before the Magistrate, and the order of adjournment must show good reasons for making the order. Same procedure is highlighted in APPENDIX No. 25.56(1) of Police Rules, 1934.

10. In the celebrated judgment of this Court reported as "Mst. Razia Pervaiz and another versus The Senior Superintendent of Police, Multan and 5 others" (1992 P Cr. L J 131), it was declared that an accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him, and warned that law does not authorize the police to arrest an accused required in more than one cases, in one case and to wait for his arrest in the other case till the expiry of the period of remand under Section 167, Cr.P.C. or till he is released on bail in the first case, and this Court, therefore, held in a case reported as "PARVEZ ELAHI versus CARE TAKER GOVERNMENT OF PUNJAB etc." (**PLJ 2024 Lahore 43**) as under;

"It is held that if it spurs out from the record that arrest in different cases is not being sought for the purpose of investigation but to keep the accused in physical custody of law enforcement agency for a longer period in order to kneel down him to their terms, then it is not only illegal but an offence, and *bona fide* of police for arrest in

different cases is reflected if they put remand request with criminal record of accused.”

In Indian jurisdiction, ANDHRA PRADESH HIGH COURT while dealing with a case reported as “M/s. Jagathi Publications Ltd., rep., by Y. Eshwara Prasad Reddy Versus Central Bureau of Investigation, Hyderabad” [2012(2) ALT (Crl.) 285 : 2013 CriLJ 118 : 2013(2) CCR 98 : 2014(10) R.C.R.(Criminal) 84 : 2012(2) Andh LD (Criminal) 762] directed the authorities that “*All political parties should have equal opportunities to participate in election campaigns and propaganda and no one should be unnecessarily arrested and harassed, except, wherein, his arrest is bona fide required for the purpose of investigation*”, and declared for that situation as reflected below;

“(3) It is also made clear that wherein a case the accused involved in several distinct offences which are within the knowledge of investigating agency, his arrest must be shown in all such distinct offences, i.e., he is deemed to have been arrested in all such cases.”

Similarly, in our jurisdiction Peshawar High Court while dealing with a situation of political turmoil has also held recently in a case titled as Asad Qaisar versus Government of Khyber Pakhtunkhaw, thorough Chief Secretary, Peshawar and others (Writ Petition No. 5281-P/2023 With CM No, 2615-P/2023) that;

“In other words, a person once arrested is deemed to be arrested in all cases registered against him prior to his arrest. Arrest of an accused persons involved in so many criminal cases of the same province after his release on bail in another case amounts to colorful exercise of powers which cannot be countenanced at any cost.”

11. On the strength of above judgments and legal provisions, it can safely be held that when an accused is arrested in a case, his arrest must be shown in all cases registered against him so far within the knowledge of investigating agency; however, if he has been lodged to judicial custody in a case, his subsequent physical remand can be obtained by the police in other FIRs registered at different police stations or districts or province with the permission of concerned Magistrate/Court.

12. Coming back to case in hand, it is, therefore declared that if the accused was in a judicial custody in another case, granting of further physical remand by the Magistrate in case FIR No.1641/2023 under section 392 PPC Police Station Old Anarkali District Lahore was not illegal, but in order to further ascertain the contention of learned counsel for the petitioner that detenu was not lodged to judicial custody pursuant to order of Magistrate dated 29.12.2023 in case FIR No.3738/2023 under sections 392/411 PPC Police Station Ghaziabad District Lahore, a report from superintendent District Jail, Lahore was requisitioned which was received to the effect that detenu was not lodged in the jail pursuant to order of Magistrate dated 29.12.2023 in FIR No.3738/2023 cited supra. Thus, this Court by virtue of order dated 20.02.2024 directed Capital City Police Officer, Lahore to conduct an inquiry in the matter, register a criminal case against delinquent police officers/officials and submit report to this Court.

13. Today report has been received. Capital City Police Officer, Lahore after conducting inquiry has found the delinquent police officials as responsible for committing criminal breach of duty and in compliance whereof an FIR bearing No.681/2024 under Article 155 (1)(c) of the Police Order, 2002 at Police Station Ghaziabad District Lahore stood registered. Learned counsel for the petitioner states that now after granting bail to the detenu by concerned Court he has been set at liberty. As Police has also conceded the commission of criminal act by respondents No.4 & 5, therefore, this writ petition now stands disposed of.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**

Approved For Reporting

Judge

This order was pronounced
on 06.03.2024; after
dictation and preparation
was signed on 25.03.2024.

Gulzar*