

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Case No. Writ Petition No.45360 of 2023

Parvez Elahi Versus Care Taker Government of Punjab etc.

Sr. No. of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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13.07.2023 M/s. Asif Mehmood Cheema and Amir Saeed Rawn, Advocates for the petitioner.
 Mr. Muhammad Anwar Khan, Assistant Attorney General.
 Mr. Ghulam Sarwar Nahung, Additional Advocate General, Mr. Sittar Sahil, Assistant Advocate General, Mr. Imran Abbas Sahi, AAG and Mr. M. Farrukh Khan, AAG.
 Malik Khuda Yar, Inspector Legal.
 Ahmad Waqar, Inspector, FIA/AML/Lahore, Shouzab, SI. Ch. Riaz, Deputy Director Legal Anti-corruption and Waseem Sadiq, Assistant Superintendent District Jail, Lahore.

Through this writ petition, the petitioner has requested for information about details of criminal cases and pending inquiries against him with further prayer to supply copies of said FIRs and inquiries; get the petitioner's Stress Nuclear Sestamibi scan done; provision of well-ventilated vehicle for transportation to the concerned Courts and finally that the petitioner may not be arrested in unknown criminal cases with ensued consequences for grant of opportunity to approach the concerned Court, if any cases are found registered.

2. Learned Counsel (s) for the petitioner contend that as a last hope they have knocked the door of this Court and invoke the extra ordinary jurisdiction under Article 199 (1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 which authorizes to pass an appropriate order on the application of any aggrieved person for enforcement of his fundamental

rights, and the petitioner being in the age of 76 years beseeching the grandeur of this Court, as in pain due to tyrant act of caretaker government making him prey of political victimization. He is being traumatized through registration of successive FIRs and once, he succeeds to obtain bail or discharge order in any case he is immediately arrested in other cases there and then and this trauma is continued for the last 1½ months. Learned counsel (s) have submitted in a chronological order the facts of petitioner's arrest, his appearance before the Court, grant of bail or discharge order and re-arrest soon after every expedition; however, state that as per list of cases provided by the respondents, all FIRs against the petitioner have almost been exhausted wherein he has successfully obtained release orders except in two cases i.e., FIR No.5/23 P/S ACE Gujrat and FIR No.1150/2023 P/S Ghalib Market, Lahore. Though he had applied for pre-arrest bail in case FIR No.1150/2023 P/S Ghalib Market, Lahore but it was dismissed due to non-prosecution; therefore, later he applied for post arrest bail in such FIR but application was dismissed on the stance of police that he is not under arrest in such case. They further state that at present petitioner is behind the bars in FIR registered at FIA, Lahore but has also succeeded to obtain bail in that case wherein his release order is being processed through dialogue between concerned Court and Superintendent Jail, but petitioner apprehends that the moment he comes out of the jail, he would be arrested in FIR No. 5/23 ACE, Gujrat and FIR No.1150/2023, P/S Ghalib Market, Lahore. Apprehension is further extending to the pending inquiries which can be formalized into an FIR at any moment of time by Anti-corruption establishment; though he has not been associated in such inquiries nor he knows about nature of allegations therein, therefore, he has made above submissions/prayers mentioned in the opening paragraph of

this Petition. Learned counsel (s) have relied on case titled "*Ali Muhammad Khan Versus Director Anti-Corruption Mardan and other*" passed in Writ Petition No.2790-P/2023 by the Peshawar High Court, Peshawar whereby an interim restraining order dated 05.07.2023 has been passed in favour of the petitioner therein, as not to arrest him in unknown FIRs. The learned Counsel (s), In the meantime, have also placed on record copy of order dated 11.05.2023 passed in petition for pre-arrest bail filed by the petitioner before the learned ATC, Lahore in case FIR No. 1150/2023 P/S Ghalib Market, Lahore supra.

3. On the other hand, Mr. Ghulam Sarwar Nehung, learned Additional Advocate General states that every time petitioner brings a *lis* before this Court with one pretext or the other without any substantive ground or material. Further states that no law prohibits the law enforcement agencies to arrest the accused in number of cases one after another and passing of omnibus order for not arresting the petitioner in any unknown FIRs is without any legal justification.

4. Arguments heard. Record perused.

5. Perusal of report submitted by the Director General Anti-Corruption Establishment Punjab, Lahore shows that certain FIRs are registered and some inquiries are pending against the petitioner which are as follows: -

Sr. No.	Regions	FIRs	Enquiries
1.	DACE, HQ Punjab, Lahore	i. FIR No. 06/2023, PS, DACE, Punjab Dated 05.04.2023 ii. FIR No. 07/2023, PS, DACE, Punjab Dated 11.04.2023.	i. E-42/2020, DACE, HQ, Punjab. ii. E-106/2023, DACE, HQ. iii. E-108/2023, DACE, HQ.
2.	Lahore Region-A	FIR No. 09/2023, PS, ACE, Lahore	E-269/2023, ACE, Lahore
3.	Lahore Region-B	Nil	Nil
4.	Gujranwala	i. FIR No. 06/2023, PS, ACE, HQ, Gujranwala Dated 27.04.2023. ii. FIR No. 07/2023, PS, ACE, HQ, Gujranwala Dated 28.04.2023. iii. FIR No. 05/2023, PS, ACE, Gujrat	Nil Nil i. E-216/2023, ACE, Narowal. ii. E-202/2023, ACE, Hafizabad.
5.	Faisalabad	Nil	Nil
6.	Sargodha	Nil	Nil
7.	Rawalpindi	Nil	Nil
8.	Sahiwal	Nil	Nil
9.	Multan	Nil	Nil
10.	Bahawalpur	Nil	E-177/2023, ACE Bahawalpur
			Nil

Similarly, Director FIA, Lahore Zone has submitted report that the petitioner is involved in following two FIRs: -

1. *FIR No.18/2023 dated 20.06.2023 u/s 161,162 PPC, 5(2)47 PCA, 5,23 FERA r/w section 3/4 AMLA, PS FIA AMLC Lahore;*
2. *FIR No.3/2023 dated 13.02.2023 u/s 3/4 AMLA 2010, PS FIA AMLC Lahore.*

As per report submitted by the AIG/Legal for Inspector General of Police Punjab Lahore, the petitioner is involved in case FIR No.1150/23 u/s 324/353/506-B/440/436/ 427/212/ 186/ 147/148/149 PPC, 7-ATA Police Station Ghalib Market, Lahore.

6. The petitioner has secured bail or discharge order in all cases registered by the Punjab Anti-Corruption Establishment except in FIR No. 5/23 ACE, Gujrat whereas in two cases of FIA, he has also secured bail, yet in one case his release is under process. One case behind him is the FIR No.1150/2023 P/S Ghalib Market, Lahore in which he earlier approached the Anti-terrorism Court Lahore but on chase by police in another case he could not appear on 11.05.2023 before the Court, therefore, his petition for pre-arrest bail was dismissed due to non-prosecution. Order of Learned Judge Anti-terrorism Court was examined which shows that dispensation was sought on medical grounds, learned Court though tentatively assessed the medical certificate yet neither provided opportunity to place on record the proof in respect of such contention nor summoned the accused. Learned Additional Advocate General says that there is no law for summoning of accused on the eve of his absence in above proceedings, and petitioner was not under arrest on the day when he absented himself from the Court; therefore, cannot be considered as in captivity. It is not necessary that one must be in the captivity to define it as in

custody, rather restriction on his freedom of movement due to fear of arrest or threat to life amounts to, as in the custody. Full Bench of this Court in a case reported as "SHABBIR AHMAD versus THE STATE" (PLD 1981 Lahore 599) explains this term with following expression;

"I would like to explain here the word 'custody'. It should not be construed as physical custody. If a person is in restraint or he apprehends arrest in a case which is cognizable obviously his custody is intended by the Police Officer who can arrest him without warrant."

Therefore, when one cannot reach to the Court due to fear of arrest, his absence be given an opportunity for an explanation particularly in sheer or extreme cases of real exigency. The opportunity for explanation has been focused in cited case in following terms;

"The absence of the accused for a genuine cause has to be taken into consideration by the Court and it should not take hasty steps without affording a reasonable opportunity of showing cause for his absence."

Similar view was expounded by the Supreme Court in a case reported as "SHAHZAI B and others Versus The STATE" (PLD 2021 Supreme Court 886) which is as follows;

"However, in case some explanation is furnished for his nonappearance, the Court may, if it finds that explanation to be satisfactory, exempt his presence for that day and adjourn the hearing of the petition for a short period."

Even if the accused is arrested in another case when he was on interim pre-arrest bail in one case, his petition should not be dismissed due to want of appearance rather a direction be passed for his production before the Court as held by this Court in a case reported as "FARHAN MASOOD KHAN versus STATE etc." (PLJ 2021 Cr.C. (Lahore) 550); therefore, contention of learned Additional Advocate General is without any legal force,

and learned ATC, Lahore had also lost sight of above dictum of the Superior Courts.

7. The practice of police to arrest the accused intermittently at their wish in different cases one after another for conducting investigation separately amounts to denial of fundamental rights to life and liberty. It has also taken notice of Honourable Supreme Court of Pakistan and expressed serious concerns in a case reported as "GOVERNMENT OF SINDH through The Chief Secretary, Karachi and 4 others versus RAEESA FAROOQ and 5 others" (1994 SCMR 1283); it dictates that when action of law enforcement agencies by their act seems malafide, High Court must come into the rescue of an aggrieved person; such dictates of Hon'ble Supreme Court is cited as follows;

"Where the action and proceedings are not bona fide and with ulterior motive to obtain information about an absconding accused and arrest after arrest is made involving same person in different blind reports lodged much earlier and no explanation is provided for such series of actions in seriatum one after the other, the High Court is empowered to afford protection to the citizen against frivolous and mala fide actions by imposing conditions on the erring authorities and agencies."

The High Court under Article 199(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 is competent to pass appropriate orders on the application of any aggrieved person yet this appropriation must not violate any provision of law. However, when there is no express provision in the context of remedy sought for or which could cater to a situation as the justice demands then the Court can exercise powers ex debito Justitiae and can grant a relief not specifically prohibited by law; reliance is on case reported as "Mian MUHAMMAD NAWAZ SHARIF versus PRESIDENT OF PAKISTAN and other" (PLD 1993 Supreme Court 473). Ex debito Justitiae means "of or by reason of an obligation of justice" and it commands that the

way of justice is paved with truth (Justitia via strata veritate). This court in a case reported as "MUHAMMAD NAEEM versus THE STATE" (1980 P Cr. L J 377) (Lahore) while exercising powers ex debito justitiae granted interim bail to the accused and held that this power can be invoked under Article 203 of the Constitution.

8. In a case reported as "Mst. RAZIA PERVAIZ and another versus THE SENIOR SUPERINTENDENT OF POLICE, MULTAN and 5 others" (1992 P Cr. L J 131), this Court has embarked upon the practice of police to arrest the accused in more than one cases one after another and declared as under;

"Before parting with the judgment, I feel constrained to observe that the provisions of section 54, Cr.P.C. relating to the arrest of the accused by the police and the provisions of section 167, Cr.P.C. pertaining to the remand of the accused person to police custody have been misused and old unwarranted police tactics of arresting the accused person repeatedly in more than one cases, have been played in the instant case, although the law does not authorise 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. This commonly committed mischief not only defeats the object of section 167, Cr.P.C. of limiting the period of physical detention of an accused person to fifteen days but is obviously a joke with the powers of the Magistrate in the matter of remand and custody of an accused person."

(Emphasis supplied)

The matter of blind FIRs was also subject of a case reported as "JAM SAQI Versus PROVINCE OF SINDH through Secretary, Home Department, Karachi and 6 others" (2005 P Cr.L.J 1626) wherein the Hon'ble Division Bench has observed that If an action is taken with malafide intention then the powers exercised by the State functionaries cannot be treated as the powers they can exercise with bonafide intentions in ordinary course of law. The Division Bench finally directed in following terms;

"We direct that the entire police administration in the whole of Province of Sindh shall not arrest the petitioners and Mst. Akhtar Sultana in any blind FIR or in any FIR which is pending

for more than one year against the petitioners and Mst. Akhtar Sultana until and unless the necessary particulars of FIR are placed before this Court and appropriate orders are sought from this Court."

Almost a similar view was already in place which was reported through case titled as "*Maulana ABDUS SATTAR KHAN NIAZI versus THE STATE*" (PLD 1974 Lahore 324); the case deals with an injunctive order, as not to arrest the petitioner in unknown cases; which High Court declared can be passed under Article 102 of the Constitution of Pakistan, 1962. In the recent case "*Ali Muhammad Khan Versus Director Anti-Corruption Mardan and other*" passed in Writ Petition No.2790-P/2023 by the Peshawar High Court, Peshawar, an interim injunctive order was passed as not to arrest the petitioner therein in unknown FIRs.

9. The uncalled practice for arrest after arrest cannot be weighed in the light of object of law enforcement agencies, rather from the actions which speak intentions, alive in this case, and many others, they were so prompt and swift so as to leave desperation as foot prints in the book of history. Without collecting proper information and sufficient material rushing for an arrest stands in complete negation of dictum of Honourable Supreme Court in a case reported as "*Mst. SUGHRAN BIBI versus The STATE*" (PLD 2018 Supreme Court 595) which otherwise is binding on every organ of the State as per Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973. Any deflection of such dictum in the given situation amounts to a malafide action couched in ulterior motives for keeping the petitioner behind the bars at every cost. The Honourable Supreme Court in supra case *Government of Sindh etc. versus Raesa Farooq* (1994 SCMR 1283) regarded that such like actions of police are for extorting confession or information from accused through ulterior

motives. Such practice is a source of nuisance and causes harm to mind and reputation of a person which in turn is synonymous to causing hurt; according to section 332 PPC hurt includes injury, and injury defined in section 44 PPC means "any harm whatever illegally caused to person, in body, mind, reputation or property". Therefore, causing injury for extorting information or confession is an offence u/s 337-K PPC which is reproduced for reference;

337K. Causing hurt to extort confession, or to compel restoration of property: Whoever causes hurt for the purpose of extorting from the sufferer or any person interested in the sufferer any confession or any information which may lead to the detection of any offence or misconduct, or for the purpose of constraining the sufferer, or any person interested in the sufferer, to restore, or to cause the restoration of, any property or valuable security or to satisfy any claim or demand, or to give information which may lead to the restoration of any property, or valuable security shall, in addition to the punishment of qisas, arsh or daman, as the case may be, provided for the kind of hurt caused, be punished, having regard to the nature of the hurt caused, with imprisonment of either description for a term which may extend to ten years as ta'zir.

(Emphasis supplied)

Putting somebody in captivity with threatened incarceration, of course indicate design either to obtain required information or to secure forced confession of alleged or supposed crime. People resist against injustice with inner strength both physical and mental but are prone to rely on support from outside world like friends, relatives, colleagues, community or general masses; therefore, captivity, particularly illegal, disconnects the person from outside world and breaks him down so badly as to accept everything before him to avoid danger to his health, mind, property and most of all the family. Producing such effects amounts to commission of offence u/s 337K of PPC which is a cognizable offence; therefore, arrest after arrest also falls in the same category.

10. In the light of above discussion, it can be said that in this digital age when sharing information is so simple and cheap, its dissemination has become so rapid and effective either through social media account or online information available at respective Police Information System Software, the record of criminal cases of an accused can be obtained easily. Even otherwise, a Crime Investigation Agency (CIA) is in existence whose primary duty is collection of information relating to investigation of every case registered in the district that does include information of arrest as per Rule 21.35 of Police Rules, 1934 and it also talks about arrest of accused in all cases and not in one. On receiving an information of arrest of an accused CIA is duty bound to inform the Incharge Police Station about any other cases registered against him in the district; therefore, Station house officer can also develop contact with CIA of other districts or provinces so as to collect information about number of cases registered against him throughout the country. Therefore, once an accused is arrested, he can be put into investigation for all cases registered against him and if the investigation cannot be completed within stipulated period during a physical remand, it can well be continued during judicial custody of accused in the jail with all just legal exceptions, of course with the permission of concerned Magistrate; therefore, arrest after arrest or successive remands in different cases amounts to denial of fundamental rights to life and liberty and also opposes to principle of due process. 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.

11. It is trite that section 54 of Cr.P.C. empowers the police to arrest without a warrant any person required in nine situations mentioned therein but it is only permissible and cannot be used as substitute of might is right, therefore, for effecting arrest, a warrant should be obtained and as per section 75 (2) of Cr.P.C. it remains operative until executed or cancelled by the Magistrate/Court concerned. therefore, whenever any arrest is required, law enforcement agencies are duty bound to submit information of all cases in which the arrest of accused is being sought. This command of law in fact provides opportunity to ensure the compliance of dictum laid down by Honourable Supreme Court in "Sughran Bibi Case" supra for collection of sufficient material before making arrest. The concerned Magistrate/Court are the Guardian of the Constitution and shall accord permission to arrest only if it does not oppose to fundamental right to 'safeguards as to arrest and detention' as enshrined in Article-10 of the Constitution. The request of police must be supplemented by an opinion of concerned prosecutor so as to convince the Magistrate/Court that material is or isn't available to give a go to the request of police. Mentioning the criminal antecedents of an accused in a request of remand helps the police to obtain physical custody and also resist bail there or at subsequent stage because maintaining criminal history is one of the grounds to decline bail to the accused, as being hardened or dangerous, in order to avoid repetition of the offence; therefore, non-mentioning of record sometimes gives premium to accused to seek bail successfully, that irks the police to obtain successive remands.

12. So far as the request of learned counsel (s) for the petitioner that the protective bail may be granted in remaining two cases i.e., FIR No. 5/23 P/S ACE, Gujrat and FIR No. 1150/2023 P/S Ghalib Market, Lahore. which was seriously opposed by the learned Additional Advocate General that petitioner is not before the court therefore, he cannot be granted protective bail which was responded by the other side that the petitioner being in jail is in the notice of Court, therefore, he can be summoned before this court or he can be treated like an accused who applies bail for landing into the country in order to surrender before the Court of law and Court usually grants such opportunity as held in case reported as "*SHARJEEL INAM Versus FEDERATION OF PAKISTAN and others*" (2017 YLR 2423). The request of learned counsel (s) for the petitioner is acceded to, petitioner is granted protective pre-arrest bail for approaching to the Court concerned within 10 days after his release from the jail. Earlier the petition for pre-arrest bail of the petitioner in case FIR No. 1150/2023 P/S Ghalib Market, Lahore was dismissed due to non-prosecution; though as per ratio in above Case laws the petition should be considered as pending but as said order of dismissal has not been challenged, therefore, while relying on case laws cited above, it is directed that petitioner shall not be arrested in case FIR No. 1150/2023 P/S Ghalib Market, Lahore who shall approach the concerned Court with a fresh application within a period cited above which shall be decided in accordance with law. The petitioner shall submit personal surety bond in the sum of Rs.50,000/- each in above FIRs, for the satisfaction of Deputy Registrar (JdL.) of this Court.

13. The net result of above discussion is that this writ petition is allowed in the above terms with the direction that petitioner shall not be arrested in any blind or unknown FIRs or in pending inquiries which shall be completed after providing

statement of allegations and opportunity of hearing to the petitioner under the Punjab Anti-Corruption Rules, 2014 or Federal Investigation Agency Act, 1974. The matter for his Stress Nuclear Sestamibi scan and provision of well-ventilated vehicle for transportation to the concerned Courts is forwarded to the Additional Chief Secretary (Home) for decision in accordance with law.

**Muhammad Amjad Rafiq
Judge**

Approved for reporting:

**Muhammad Amjad Rafiq
Judge**

*This order was pronounced on 13.07.2023
however, after dictation and preparation,
it was signed on 14.07.2023.*

*M. Azhar**