

Form No: HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Misc. No.76558/T/2022

Muhammad Waqar alias Fauji Vs. The State etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with the signature of Judge, and that of parties or counsel, where necessary
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7.3.2023 Ch. Muhammad Ibrahim Goraya, Advocate, for the Petitioner.
Rana Tasawar Ali Khan, Deputy Prosecutor General.
Mr Muhammad Rizwan Waseem, Advocate, for Respondent
No.2.

Tariq Saleem Sheikh, J. – Respondent No.2 lodged FIR No.613/2021 dated 19.12.2021 at Police Station City Shakargarh, District Narowal, against the Petitioner and two others, including Zahid Hussain and Irfan alias Panni, accusing them of the murder of Shahid Naseer. The police investigated the case and submitted a report under section 173 Cr.P.C. before the Magistrate Section-30, Shakargarh, on 12.10.2022. He submitted the case (which was flagged as “*The State v. Fauji Waqar etc.*”) to the Sessions Judge, Narowal. On 20.10.2022, the latter entrusted it to Mr Asif Bashir, Additional Sessions Judge, Shakargarh. On 20.10.2022, Mr Asif was on leave so the police produced the Petitioner in custody before the Duty Judge at Shakargarh. He summoned co-accused Zahid and Irfan to stand trial. By this petition under section 526 Cr.P.C., the Petitioner seeks the transfer of the aforesaid case from the court of Mr Arif Bashir to another court of competent jurisdiction at the District Headquarters Narowal.

2. The Petitioner’s grievance is that the instructions issued by this Court have not been followed for determining the venue of trial in the above-mentioned case.

3. The Petitioner had not impleaded Zahid Hussain and Irfan alias Panni in this petition. This Court admitted them as Respondents No.3 and 4 by order dated 16.2.2022. They were issued notices but have not shown up to oppose this petition.

4. Heard. Record perused.

5. This Court issued the first instructions regarding the trial of sessions cases vide Letter No.2071/RHC dated 29.11.1997, which is reproduced below:

<u>LAHORE HIGH COURT, LAHORE</u>	
	No. 2071/RHC.
From	The Registrar, Lahore High Court, Lahore.
To	All the District & Sessions Judges in the Punjab.
	Dated Lahore the 29th November 1997.
Subject:	<u>TRIAL OF SESSIONS CASES AT THE DISTRICT HEADQUARTERS</u>
Sir,	
<p>The Hon'ble Chief Justice and Judges have been pleased to direct that henceforth all the sessions cases shall be tried at the District Headquarters. The cases in which trial has not yet commenced shall stand transferred to the respective District & Sessions Judges for entrustment to the Additional District and Sessions Judges at the District Headquarters. However, all those cases in which a charge has been framed/trial has commenced shall be finalized in the courts in which they are presently pending.</p>	
<p>(Moazzam Hayyat) Registrar</p>	

6. The above-said directive was followed by Letter No.2102/RHC/MIT dated 11.12.1997, which read as follows:

<u>LAHORE HIGH COURT, LAHORE</u>	
	No. 2102/RHC/MIT
From	The Registrar, Lahore High Court, Lahore.
To	All the District & Sessions Judges in the Punjab.
	Dated Lahore, the 11th December 1997.
Subject:	<u>TRIAL OF SESSIONS CASES AT DISTRICT HEADQUARTERS</u>
Sir,	
<p>In continuation of this Court's Circular Letter No. 2071/RHC, dated 29.11.1997, I am directed by the Hon'ble Chief Justice and Judges to say that bail applications in sessions cases shall be heard at the respective Sub-Divisions only during the stage of investigation, but once the challan, complete or incomplete, is submitted in Court then the bail applications shall be disposed of at the District Headquarters.</p>	
<p>2. It is also clarified that all the Hudood cases under Ordinance VII of 1979 shall be tried at the respective Tehsil headquarters, as before.</p>	
<p>Your obedient servant,</p> <p>REGISTRAR</p>	

7. Thereafter, in supersession of Letter No.2071/RHC dated 29.11.1997, this Court issued the following direction on 25.5.1999:

<u>LAHORE HIGH COURT, LAHORE</u>	
No.7886/RHC/MIT 25th May 1999	
From	Abdus Salam Khawar, Member Inspection Team, Lahore High Court, Lahore.
To	All the District & Sessions Judges in the Punjab.
Subject:	<u>TRIAL OF SESSIONS CASES AT SUB-DIVISIONAL HEADQUARTERS</u>
<p>In supersession of the Letter No. 2071/RHC dated 29.11.1997, I am directed by the Hon'ble Chief Justice and Judges to say that ordinarily the trial of sessions cases (except Hudood cases) shall be conducted at the district headquarters. However, accused will be given the option of the trial at the Sub-Division at the time of his appearance before the Magistrate for purpose of Section 190 Cr.P.C. Such an option shall be duly recorded by the learned Magistrate. In case there is more than one accused and all the accused do not agree to the trial at Sub-Division, the District & Sessions Judge shall, at his discretion, decide the place of trial.</p> <p>2. As regards the bail petitions filed during the investigation the Circular letter No. 2012/RHC/MIT dated 11.12.1997 shall be followed. Accordingly, the bail applications in the sessions cases shall be heard at the respective Sub-Divisions only during the stage of investigation, but once the accused has opted to have his trial at the Headquarters or Sub-Division, thereafter, bail application shall only be entertained by the Trial Court. Furthermore, it is clarified that all the Hudood cases under Ordinance 7 of 1979 shall continue to be tried at the respective Tehsil Headquarters as before. All concerned be informed accordingly.</p> <p>3. Kindly acknowledge receipt of this letter.</p> <p style="text-align: right;">Your obedient servant,</p> <p style="text-align: right;">(Member Inspection Team)</p>	

8. According to the above instructions, sessions cases (excluding Hadood cases) should normally be tried at the District Headquarters. Nonetheless, when the accused appears before the Magistrate for the purpose of section 190 Cr.P.C., he should give him the choice of a trial at the sub-division. If there are multiple accused and they all do not consent to the trial at the sub-division, the Sessions Judge shall decide the place of trial at his discretion.

9. In the present case, on 12.10.2022, the police produced the Petitioner before the Magistrate in custody while Zahid Hussain appeared on his own because he was on bail. The Magistrate observed that the case was

exclusively triable by the Court of Session and mechanically forwarded it to the Sessions Judge, Narowal, for “appropriate orders”. As per Letter No. 7886/RHC/MIT dated 25.5.1999, reproduced above, he was obligated to ask the accused whether they preferred that their trial be held at the District Headquarters or the Sub-Division when they appeared before him. He was required to document the fact that he had provided such an option to the accused. Nothing on the record indicates that he gave the Petitioner and his co-accused that choice.

10. The file was placed before the Sessions Judge, Narowal, on 17.10.2022. However, it does not appear from the record that the Petitioner or his co-accused attended his court. He unilaterally entrusted the case to Mr Asif Bashir, Additional Sessions Judge, Shakargarh, who fixed 20.10.2022 as the hearing date before him. On the said date, Mr Asif was on leave. The Duty Judge took up the case and issued a summons to Zahid and Irfan. The Petitioner was produced before him in custody. The Duty Judge also did not inquire whether he wanted the trial to be held at the District Headquarters or the Sub-Division.

11. Letter No. 7886/RHC/MIT dated 25.5.1999 gives the accused a valuable right to choose the place of trial which cannot be denied to him. If the complainant party has any issue, it has a legal remedy under section 526 Cr.P.C.

12. Since Respondents No.3 and 4 have not contested this petition, the Petitioner’s request must be granted. Accordingly, the case titled “*The State v. Fauji Waqar etc.*” is withdrawn from Mr Asif Bashir and transferred to the Sessions Judge, Narowal.

13. Respondent No.2 prays that the transferee court may be directed to decide the case as soon as possible. The Deputy Prosecutor General has no objection. Therefore, the Sessions Judge, Narowal, is directed to proceed with the case expeditiously and ensure its conclusion within six months from the date of receipt of a certified copy of this order.

14. **Disposed of.**

(Tariq Saleem Sheikh)
Judge

Naeem

Approved for reporting.

Judge