

Crl. Revision No. 56169 of 2023

The State.

Ali Akbar, etc.

18.09.2023. Rana Ahsan Aziz, A.P.G.

Through the instant Criminal Revision filed under Sections 435 and 439 Cr.P.C., the petitioner has challenged the legality and validity of the order dated 12.08.2023 passed by the learned Judge, Anti-Terrorism Court-III, Lahore, whereby the request of the investigating officer for grant of 20-days physical remand of respondent No.1-Ali Akbar was turned down and he was sent to judicial lockup for 14-days. Hence, the instant petition.

2. Heard. Record perused.

3. Shafaqat Ali lodged a written complaint. The First Information Report was registered at Factory Area Police Station on 25.07.2023 under the Sections 302/109/324/440/148/149 of the P.P.C. and 7 ATA against respondent Ali Akbar and others. After that, the investigation of the case was taken up by the police. During the investigation, the Investigating Officer arrested respondent Ali Akbar on 29.07.2023. On 30.01.2023, respondent Ali Akbar was produced before the learned Area Magistrate for interim remand for one day. On 31.07.2023, the Investigating Officer produced respondent Ali Akbar before the learned Judge, ATC No. III, Lahore, and in response to the written request to hand over the accused for 12 days for police remand for investigation, the Judge, ATC No. III, Lahore granted 12 days of physical remand of the accused to the investigating officer. After the expiry of the physical remand period, respondent Ali Akbar was produced before the court. The investigating officer sought the physical remand of respondent Ali Akbar for a confrontation meeting of respondent Ali Akbar with the

accused persons, whose names were disclosed by him, for 20 days. The learned Duty Administrative Judge, ATCs, Lahore, refused to hand over the accused to the investigating officer for further investigation vide impugned order dated 12.08.2023. The learned APG submitted that according to Section 21-E of the Anti-Terrorism Act, 1997, the learned trial court is bound to grant a minimum remand for 15 days when the investigating officer has credible information and reasonable suspicion on the file against the accused and prayed for setting aside the impugned order dated 12.08.2023. The contents of the FIR reveal that respondent Ali Akbar is named in the FIR with the allegation of abetment/facilitator of the incident. During the first physical remand of respondent Ali Akbar, the number plates of the vehicle used in the occurrence and three mobile phones were recovered. In the application for physical remand, the investigating officer had prayed for a physical remand of 20 days of the accused for a confrontation meeting with the accused persons and the arrest of the co-accused. It is an established Principle of Law that remand is not to be granted mechanically at the request of the police; instead, the Magistrate is expected to perform its duty after judicious application of mind. Sub-section (1) of Section 21-E of the Anti-Terrorism Act, 1997 says that when a person is detained for investigation, the investigating officer, within 24 hours of the arrest of the accused, shall produce him before the court and may apply for physical remand of the accused which shall not be less than the maximum period of 15 days and not more than 30 days at one time. Sub-section (1) of Section 21-E of the Anti-Terrorism Act, 1997, reads as under:

“21E. Remand:- (1) Where a person is detained for investigation, the Investigating Officer, within twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Court, shall produce the accused before the Court, and may apply for remand of the accused to police custody, 2[or custody of any other investigating agency joined in the investigation] for

which the maximum period allowed may be not less than 1[fifteen days and not more] than thirty days at one time:

Provided that, where an accused cannot within twenty-four hours be produced before the Court, a temporary order for police custody 1[or custody of any other investigating agency joined in the investigation] not exceeding twenty-four hours may be obtained from the nearest Magistrate for the purpose of producing the accused before the Court within that period.”

The mandate of Sub-section (1) of Section 21-E of the Anti-Terrorism Act, 1997 is that when it is not possible to complete the investigation within 24 hours, then it is the duty of the Police to produce the accused before the court. Police cannot detain any person in their custody beyond that period. Therefore, Sub-Section (1) pre-supposes that the police should have custody of an accused about a specific accusation for which cognizance has been taken and the matter is under investigation. Sub-Section (1) says that if the accused is produced before the court, then the court can give a remand to the police for investigation not less than 15 days and not more than 30 days. But the proviso of Sub-section (2) of Section 21-E of the Anti-Terrorism Act, 1997 does not authorize the police to ask for police custody for a further period after the expiry of the first physical remand for not less than 15 days and more than 30 days. Instead, it gives discretion to the court if further evidence may be available and no bodily harm has been or will be caused to the accused; the court can authorize the detention of the accused person in custody of police for a period to the court's satisfaction. Sub-section (2) of Section 21-E of the Anti-Terrorism Act, 1997, reads as under:

“(2) No expansion of the time of the remand of the accused in police custody 1[or custody of any other investigating agency joined in the investigation] shall be allowed unless it can be shown by the investigating officer to the satisfaction of the Court that further evidence may be available and the Court is satisfied that no bodily harm has been or

will be caused to the accused: Provided that the total period of such remand shall not exceed 1[ninety] days.”

The whole purpose is that the accused should not be detained for more than 24 hours, and subject to the expiry of the first police remand, it can be extended up to 90 as the case may be. Therefore, the reading of sub-Section 2 with the proviso of Section 21-E of the Anti-Terrorism Act, 1997, clearly transpires that the incumbent should be, in fact, under the detention of police for investigation for the period to the court's satisfaction. It is relevant to mention here that if one case is registered against the accused in which, during the investigation, it is found that he has committed more than one offense, then it will be treated as one investigation. For each offense, a separate police remand cannot be granted. If that is permitted, then the police can go on adding some crime or the other of a severe nature at various stages and seek further detention in police custody repeatedly. This would defeat the very object underlying Sub-Section 2 of Section 21-E of the Anti-Terrorism Act 1997.

4. We do not find any legal infirmity or illegality in the impugned order dated 12.08.2023 passed by the learned Duty Administrative Judge, ATCs, Lahore. The petitioner has no case to invoke the revisional jurisdiction of this Court. The petition having no merits is **dismissed in limine**.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Judge

APPROVED FOR REPORTING

JUDGE

JUDGE

This order has been dictated,
pronounced, prepared, and
signed on 18.09.2023.

Nasar Mehmood