

ORDER SHEET
IN THE LAHORE HIGH COURT,
Bahawalpur Bench, Bahawalpur
JUDICIAL DEPARTMENT

Crl. Misc. No. 4043-H of 2023

Rashida Bibi

Versus

Station House Officer & another.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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10.10.2023

Mr. Muhammad Din Anjum Samija, Advocate for the petitioner.
 Mr. Sajjad Iqbal, Assistant Advocate General with Hasam Bin Iqbal, DPO, Mian Abdul Rauf, DSP and Muhammad Saleem, SI.
 Mr. Shahid Fareed, Assistant District Public Prosecutor.

Through this petition filed under Section 491 Cr.P.C, the petitioner supplicated for the recovery of her real brother namely Kamran, from the illegal and improper custody of respondents through Bailiff of this Court.

2. After hearing the arguments of learned counsel for the petitioner, a Bailiff was deputed at the expense of petitioner for recovery of alleged detenu and his production before this Court on 09.10.2023.

3. On 09.10.2023, in compliance with this Court's short order dated 06.10.2023, Muhammad Saleem, SI from Police Station City Dunyapur, District Lodhran, produced Kamran (detenu) before this Court. Similarly, Riaz Ahmad, Bailiff submitted report prepared by Junaid Rasheed, Bailiff of this Court who could not appear as his father passed away.

After hearing all the concerned and going through the police record, this Court while declaring the detention of Kamran (detenu) as illegal, set-aside the physical remand granting order dated 07.10.2023 passed by Mr.

Zahid Qayyum, learned Duty Magistrate Section-30, Dunyapur, in case FIR No.772/2023, registered with Police Station City Dunyapur. Besides this, remand granting orders dated 07.10.2023 in two other cases bearing FIR Nos. 236/2023 & 544/2023, registered with Police Station City Dunyapur, passed by Ms. Rafia Qureshi, learned Duty Magistrate Section-30, Dunyapur, were also set-aside and Kamran (detenu) was discharged in all the above-mentioned three cases.

4. As there were so many manipulations in the case diaries of above-mentioned cases, this Court called the District Police Officer, Lodhran, in person for hearing and justifying the illegal acts of his subordinates. It was further mentioned in order dated 09.10.2023 that detailed reasonings qua setting aside physical remand granting orders dated 07.10.2023 and discharge order in the above-mentioned cases will be recorded later on, after hearing the District Police Officer, Lodhran.

5. Today, in compliance with this Court's Order dated 09.10.2023, District Police Officer, Lodhran has entered appearance before this Court and straightaway apprised that he is unable to defend the illegal acts of his subordinates and he has already issued show-cause notices in the name of Muhammad Imran SHO, Muhammad Saleem SI, Muhammad Farooq SI and Iqbal Hussain, ASI, Police Station City Dunyapur.

6. According to the report of Bailiff, on 06.10.2023, he raided at Police Station City Dunyapur in compliance with this Court's order dated 06.10.2023 for the recovery of Kamran (detenu). After reaching Police Station City Dunyapur, he entered Rapat No.17 on 06.10.2023 at

02:50 P.M. According to the above-mentioned Rapat and report of Junaid Rasheed, Bailiff, he found Kamran (detenu) brother of petitioner, detained in police lock up. After checking the register *roznamcha*, he found arrest of detenu incorporated vide Rapat No.12 dated 06.10.2023 at 09:40 A.M. in case FIR No.772/2023, for an offence u/s 381-A PPC, registered with Police Station City Dunyapur, however, he was not nominated in FIR. Upon query, Kamran (detenu) informed the Bailiff that he was arrested eight days ago and until now he has not been produced before any court of law. On demanding the police file, *Moharrar* of said Police Station stated that the same is in the custody of Investigating Officer who has proceeded to the office of SP (Investigation). Police file was not handed over to the Bailiff, however, *Moharrar* of said Police Station informed the Bailiff that Kamran (detenu) is also required in two other cases i.e. FIR No.236/2023 & 544/2023 and today i.e. 06.10.2023 he will be produced before the court of learned Magistrate concerned for the purpose of remand. The Bailiff directed *Moharrar* of said Police Station to inform the SHO about the order of this Court and bound down him to produce the detenu with complete record, Investigating Officer and *Moharrar* before this Court on 09.10.2023. This Court has noticed that despite the above-mentioned clear direction, Muhammad Farooq, SI produced Kamran (detenu) before the court of Mr. Zahid Qayyum, learned Duty Magistrate Section-30, Dunyapur, in case FIR No.772/2023, u/s 381-A PPC, registered with Police Station City Dunyapur, for the purpose of his physical remand. It will not be out of place to mention here that register *roznamcha* (Register No.2) of Police Station City Dunyapur is silent about the fact that on 06.10.2023

Muhammad Saleem, SI/IO proceeded to the office of SP (Investigation) alongwith the police file of case FIR No.772/2023 u/s 381-A PPC, registered with Police Station City Dunyapur. Moreover, it has been mentioned in physical remand granting order dated 07.10.2023 in case FIR No.772/23 ibid that Muhammad Saleem SI/I.O had proceeded to Lodhran *vide* Rapat No.2 dated 07.10.2023 and file was produced by the proxy I.O Muhammad Farooq as acting SHO, if he had proceeded to Lodhran, then there is no explanation that who wrote the application for grant of physical remand of Kamran (detenu). Similarly, in the remand application, it has nowhere been mentioned that Muhammad Farooq, SI wrote application for grant of physical remand of detenu in case FIR No.772/2023 on behalf of Muhammad Saleem, SI / IO. Furthermore, there is no proof that police file of above mentioned FIR was handed over to Muhammad Farooq, SI for the purpose of obtaining physical remand of Kamran (detenu). Although in the remand granting order dated 07.10.2023, Mr. Zahid Qayyum, learned Duty Magistrate Section-30, Dunyapur has sought explanation from Muhammad Saleem, SI due to non-production of accused before the court within 24-hours, but this Court is of the view that learned Magistrate while granting physical remand has not applied his judicial mind. Record reflects that Kamran (detenu) was shown to be arrested by the Investigating Officer u/s 54 Cr.P.C in the above-mentioned case. The first version of accused recorded vide case diary No.02 dated 06.10.2023 shows that he made extra-judicial confession before the Investigating Officer during police custody which was not a valid ground for the grant of physical remand because confession before the police is not admissible in

evidence in terms of Articles 38 & 39 of The Qanun-e-Shahadat Order, 1984. Reliance is placed upon the case law titled as "Hayatullah vs. The State" (**2018 SCMR 2092**) wherein it has been held by the Hon'ble apex Court as under:-

“...6. While going through the evidence adduced by the prosecution, we observe, with great concern, that inadmissible evidence has been brought on the record in the shape of admission of the appellant before police, memos of pointing out of place of occurrence and place from where the motorcycle was recovered which were already known to the police and the complainant party. Such inadmissible pieces of evidence, according to law, should not be brought on the record. Astonishingly, the whole disclosure was incorporated/dictated by the trial court when witnesses were giving evidence. Neither the prosecutor nor the defence made any objection upon bringing the said inadmissible pieces of evidence on record. The trial court while recording the statement of police officials, who recorded the confession of the appellant Hayatullah about the commission of the crime, had totally ignored Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984 according to which this type of evidence was inadmissible as no new facts were discovered on the admission/disclosure of the appellant. The pointing out of the place of incident and the place of recovery of motorcycle cannot be termed as discovery as a consequence of information received from the appellant within the meanings of Article 40 of the Qanun- e-Shahadat Order, 1984 as the said places were already in the knowledge of the police and the complainant party so it was also inadmissible evidence. The memos about pointing out of place of occurrence without recovery prepared by the investigating officer should not be allowed by the trial court to bring on the record but unfortunately such pieces of evidence were

allowed to be brought on the record although were inadmissible....”

7. Another intriguing aspect of this case is that on 07.10.2023, Iqbal Hussain, ASI/I.O obtained physical remand of Kamran (detenu) alongwith his three co-accused in case FIR No.236/2023 from the court of Ms. Rafia Qureshi, learned Duty Magistrate Section-30, Dunyapur. Similarly, Muhammad Farooq, SI also obtained physical remand of Kamran (detenu) alongwith his three co-accused in case FIR No.544/2023 from the court of above mentioned learned Judicial Officer on 07.10.2023 till 09.10.2023. Ms. Rafia Qureshi, learned Duty Magistrate Section-30, Dunyapur, has also not applied her judicial mind and passed both the supra-mentioned remand orders in a stereotype manner while observing that accused persons were arrested u/s 54 Cr.P.C and investigation is yet to be completed, hence, considering the request plausible, physical remand is granted. It is noteworthy that in all the above-mentioned three cases i.e. FIR Nos.772/2023, 236/2023 and 544/2023, Kamran (detenu) is neither nominated nor he was arrested for the purpose of identification parade.

Mere fact that Kamran (detenu) disclosed to the Investigating Officers of cases bearing FIR Nos.236/2023 and 544/2023 that he is puzzled at the moment and did not remember anything, he be given an opportunity and after remembering, he will disclose the facts, was not a valid ground for granting his physical remand to the police.

I have noticed that case diary No.3 of FIR No.236/2023 is a carbon copy of case diary No.3 of FIR No.544/2023 and both case diaries do not bear dates in the respective columns as well as at the bottom of case diaries.

8. Another crippling feature of this case is that in initial columns of case diary No.3 of FIR No.236/2023, name of Police Station, District, case diary number, FIR number, date, name of Area and offence, name of complainant as well as Investigating Officer and at the bottom, name of Iqbal Hussain, ASI Police Station Dunyapur have been written through pointer whereas it is a carbon copy. Moreover, no original case diary No.3 in case FIR No.236/2023 is available with the file whereas original as well as carbon copies of case diaries No.2 and 4 are available on file with carbon copies. It is crystal clear from the record that manipulations have been made in the above-mentioned case diary.

I have also observed that in case diary No.1 of case FIR No.236/2023, columns regarding the name of complainant in the start and in the body of case diary as well as date and month have been subsequently written with ballpoint whereas remaining writing is a carbon copy. Original case diary No.1 is also missing in the police file. Similarly, names of PWs i.e. Saeed S/O Sajjad Qamar Gujjar and Kaleem Ullah S/O Sardar Muhammad have been filled with ballpoint. It is noteworthy that as per case diary No.2, file of this case was handed over to Iqbal Hussain, ASI by *Moharrar* of Police Station but there is no proof on the whole file that any competent officer had entrusted the investigation of this case to Iqbal Hussain, ASI. When the investigation

of case FIR No.236/2023 was not handed over to Iqbal Hussain ASI by any competent authority, then how he arrested Kamran (detenu) in this case.

I deem it appropriate to mention here that in the end of FIR No.544/2023, it has been mentioned that the investigation of this case was entrusted to Khalid Shahid, SI/Incharge Investigation but all the case diaries in this case have been written by Muhammad Farooq, SI Police Station Dunyapur whereas there is no order for entrustment of investigation to him. I have also noticed that statements of Muhammad Irfan 1058-C and Muhammad Asif 1042-C were allegedly recorded on 07.10.2023 by Muhammad Farooq, SI but name of above-mentioned Investigating Officer as well as FIR number, name of accused and kind of vehicle have also been written with pointer whereas other writing is a carbon copy. It is important to note here that in all three police files, some case diaries are available in original alongwith carbon copies but the original case diaries pertaining to those wherein tempering has been made, are not available, meaning thereby, the Investigating Officers of above mentioned FIRs with their active connivance and to justify the illegal detention of Kamran (detenu) as well as to save the skin of each other, prepared fake and fictitious documents and utilized the same as genuine.

9. Record further reflects that arrest of Kamran (detenu) in case FIR No.236/2023 and 544/2023 has not been incorporated in the register *roznamcha* of Police Station. Moreover, Rapat number, date and time of arrest as well as factum of raid of Bailiff of this Court on 06.10.2023 at Police Station City Dunyapur has not been incorporated in the applications for grant of physical

remand in all the above mentioned three cases. All this has been done just to flout and avoid the consequences of order dated 06.10.2023 passed by this Court for the recovery and production of Kamran (detenu) before this Court on 09.10.2023. It is pertinent to mention here that rules 22.48 and 22.49 of the Police Rules, 1934 are relevant qua Register No.2 which read as under: -

22.48. Register No. II. - (1) The Daily Diary shall be maintained in accordance with section 44 of the Police Act. It shall be in Form 22.48 (1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be despatched to a gazetted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf.

Shortly before the close of each quarter, books containing the proper number of pages for the ensuing three months shall be issued to police stations by the Superintendent. The Superintendent shall fix the hours at which station diaries shall be daily closed with reference to the hour of despatch of the post or messenger.

(2) The daily diary is intended to be complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) All entries in the station diary shall be made by the officer in charge of the police station or by the station clerk. Literate officers making a report shall read the report recorded and append their signatures. Every matter recorded in such diary shall be so recorded as soon as possible; each separate entry shall be numbered and the hour at which it was made shall commence each such entry. If the hour at which the information, or otherwise containing such entries reaches the police station differs from the hour at which such entry was made, both hours shall be stated. As soon as entry has been made in the diary, a line shall be drawn across the page immediately below it.

(4) The opening entry each day shall give the name of each person in custody, the offence of which he is accused, and the date and hour of his arrest, the name of each accused person at large on bail or recognizance and the date of his release on such security.

The last entry each day shall show (a) the balance of cash in hand as shown in the cash account, and (b) the balance of the cattle-pound account.

22.49 Matters to be entered in Register No.II.--The following matters shall amongst others be entered---

(a) The number and description of cattle seized in connection with cases of on suspicion with a reference to the case or report

(b) The day, hour and purpose of visits to the police station of "Convicts released under the Remissions Rules or under Section 56, Cr. P.C. together with the names of such persons].

(c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal

(d) Every police officer of or above the rank of head constable, when returning from duty other than an investigation in which case diaries are submitted, shall have an entry made in the daily diary by the station clerk or his assistant showing the places he has visited and the duties performed by him during his absence from the police station.

(e) All admissions to and releases from the cattle pound with the amounts of fines realised

(f) The hour of receipt and despatched of all communications, property, cash, etc., giving reference to the number in the correspondence register. [xxx]

(g) Information of the commission of non-cognizable offences (rule 24.3) including reports of enmities likely [to lead to a breach of the peace (Rule 23.32): visits of chaukidars to police stations (rule 21.3 (4)] and demands by the police of one jurisdiction for assistance in extradition cases from the police of another jurisdiction. [Rule 26.10(7)].

(h) All arrivals at, and despatches from, the police station of persons in custody, and all admission to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.

(i) The hour and date of receipt and (separately) of service or execution of each process, and hour and date of return made to such process.

(j) The report regarding property in the store-room required by rules 22.15 and 22.18 (2).

(k) The report regarding excess of expenditure over the permanent advance as required by rule 22.71.

(l) The entrance of persons, by permission, into a tahsil treasury, after office hours.

(m) The deposit in, or removal from, the Post Officer safe in the police station of any article whatsoever, the exact hour being in every case.

(n) A reference to every information relating to the commission of a cognizable offence, and when action is taken under Section 157, Code of Criminal Procedure, the number and date of the first information report submitted.

(o) In Monday's diary a list shall be given of all papers pending for over a week.

10. After going through the above-mentioned three FIRs, it manifests that neither any accused is nominated nor any suspicion has been made against any specific person. According to the assertion of Muhammad Saleem, SI, he arrested Kamran (detenu) u/s 54 Cr.P.C. but it is noteworthy that in crime report, no feature of any accused has been described. Necessary ingredients for the arrest of any person u/s 54 Cr.P.C. are very much missing in this case and same is the situation in other two cases.

To better decide the above issue, it is expedient to go through Section 54 Cr.P.C. which is described as infra: -

54. When police may arrest without warrant.

(1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest:

Firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

Secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Provincial Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police-officer while in the execution of his duty or who has been escaped, or attempts to escape from lawful custody;

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan [****]¹²;

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Pakistan which, if committed in Pakistan, would have been punishable as an offence and, for which he is, under any law relating to extradition or [****]¹³ otherwise, liable to be apprehended or detained in custody in Pakistan;

Eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

¹⁴[**Ninthly**, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.]

It is also noteworthy that Rule 26.1 of the Police Rules, 1934 is also relevant for the arrest of any person under section 54 of the Code of Criminal Procedure, 1898 which reads as under:-

26.1. General powers of arrest:-Section 54, Code of Criminal Procedure, authorizes any police officer to arrest without a warrant any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned. The authority given under this section to the police to arrest without a warrant is, however, permissive and not obligatory. Whenever escape from justice or inconvenient delay is likely to result from the police failing to arrest, they are bound to do so; but in no other cases. The law allows a police officer to apply to a magistrate for a warrant or a summons instead of making

the arrest immediately, and this discretion shall be exercised whenever possible and expedient.

The law also allows a police officer in any bailable case to take security under Section 170, Criminal Procedure Code from an accused person to appear before a magistrate without first arresting him.

I have also noticed that not a single complainant or PW of above-mentioned cases has got recorded his statement against the detenu. Mere his extra judicial confession before the investigating officer of case FIR No. 772/2023 during police custody was not sufficient ground for his arrest, as it was not an admissible piece of evidence. Similarly, there was no evidence against Kamran (detenu) in other two cases. It has been well settled by now that arrest of accused cannot be made if some sufficient incriminating material is not available against him. In this respect guidance is being sought from the case law titled as "Shahzada Qaiser Arfat alias Qaiser vs. The State and another" (**PLD 2021 SC 708**) wherein it has been held as under:-

"5. No doubt, a police officer has, under section 54 of the Cr.P.C., the power to arrest a person who has been involved in any cognizable offence or against whom a complaint has been made or credible information has been received or a reasonable suspicion exists of his having been so concerned. Having the power to arrest is one thing but the justification for the exercise of that power is quite another. A police officer that makes arrest of a person must be able to justify the exercise of that power in making the arrest apart from his having the power to do so. He cannot make arrest of a person, only because he has the power to do so. He must also show sufficient grounds for making the arrest. Article 4(1)(j) of the Police Order, 2002 states this legal position when it prescribes that it is the duty of every police officer to

"apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient grounds exist". And Rule 26.1 of the Police Rules, 1934 explains this by providing that the authority given under Section 54 of the Cr.P.C. to the police to arrest without a warrant is permissive and not obligatory. As per the said Rule whenever escape from justice or inconvenient delay in completion of the investigation or commencement of the trial is likely to result from the police failing to arrest, they are bound to do so, but in no other cases. "Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest."³ The investigating officers should not mechanically make the arrest of a person accused of having committed a cognizable offence, rather they must exercise their discretion in making the arrest of such person judiciously by applying their mind to the particular facts and circumstances of the case and consciously considering the question: what purpose will be served and what object will be achieved by arrest of the accused person?..."

Further, reference can also be made to the case titled "*Khawaja Salman Rafique and another vs. National Accountability Bureau through Chairman and others*" (**PLD 2020 SC 456**), wherein, in paragraph No.72 of which, the Hon'ble Supreme Court of Pakistan has observed as infra:-

"...72. Arrest of any person is a grave matter. Capricious exercise of the power to arrest has deleterious consequences, thus highlighting the need to exercise it with care, caution and sensitivity. Arrest of a person has to be justified not only by

referring to prima facie evidence and adequate actionable material sufficiently connecting the person with the offence/crime complained of, but also by showing that in the given circumstances, there were no other less intrusive or restrictive means available. The power of arrest should not be deployed as a tool of oppression and harassment...”

In the light of above discussion, I am quite confident to hold that there was no sufficient evidence against the detenu for causing his arrest in the above-mentioned three cases. Moreover, both the learned Judicial Magistrates while granting physical remands in the above-mentioned cases have not applied their judicial mind sagaciously and they have also ignored the directions issued by this Court in case titled as “*Qari MUHAMMAD ATTA ULLAH Versus DISTRICT POLICE OFFICER, SIALKOT and another*” (**PLD 2022 Lahore 224**), therefore, they are directed to remain careful in future.

It is also held that arrest of any person cannot be made without any evidence. This Court has also observed that in such like cases police oftenly arrest the accused on the ground that the complainant has strong suspicion or firm belief against him. Similarly, using the term that the complainant has come to know through reliable source (without disclosing that source) or land lord’s clue (زیندارہ گویا) that any person is involved in the commission of crime, is also not a legal evidence and arrest cannot be made solely on this ground.

After going through the evidence on files of above-mentioned FIRs, it divulges that neither any reasonable complaint has been made nor credible information has

been received and no reasonable suspicion exists against Kamran (detenu) to justify his arrest therein. Moreover, all the police files are silent that the detenu was arrested for the purpose of identification parade.

11. It is also necessary to mention here that police file was not handed over to the Bailiff of this Court rather it was stated by the *Moharrar* that police file was with the Investigating Officer of the case who was not available at Police Station at the time of Bailiff's raid. After going through the register *roznamcha* of Police Station City Dunyapur, it is crystal clear that no *Rapat* has been incorporated regarding departure of Muhammad Saleem, SI/IO from the Police Station alongwith police file of above-mentioned case for any purpose. It has been directed by this Court in case titled as "*Qari MUHAMMAD ATTA ULLAH Versus DISTRICT POLICE OFFICER, SIALKOT and another*" (**PLD 2022 Lahore 224**) as under: -

"To curb down the illegal practice of police officials qua the arrest and production of accused before learned Area Magistrate, the Court would like to issue following directions:-

- i) Whenever, a person is arrested in any case, his arrest be incorporated forthwith in computerized as well as manual *roznamcha* with date and time;
- ii) Similarly, when an accused is taken out from the police station for any purpose, a *rapat* should be written in this regard, vice versa on his return this practice should be adopted;
- iii) To make the process of entry in *roznamcha* transparent, it is ordered that entries in manual *roznamcha* (register No. 2) be made through ball-point.
- iv) More so, when the accused will be produced before the learned Area Magistrate for the physical or judicial remand, date and time of arrest must has been mentioned in the application for obtaining remand and in case of failure, learned Area Magistrate should refuse to entertain request of remand.

v) Police file/ case diaries should be retained at police station as provided in Rule 25.55 (3) of Police Rules, 1934 and whenever the investigating officer will proceed along with police file of case from police station for the purpose of investigation or any other purpose that facts should be incorporated in the roznamcha (register No. 2) and on return the same practice be also adopted, other than this, police file must be retained at police station.

Any defiance of supra mentioned directions, would amount to contempt of court and delinquent official/officers will also be proceedable under section 155-C of Police Order, 2002.

In the eventuality of above-mentioned circs, I am quite confident to hold that Kamran (detenu) was illegally detained by Muhammad Saleem SI, Muhammad Farooq SI and Iqbal Hussain ASI as there is no evidence which could connect him with the commission of crime. Resultantly, while exercising my powers under Section 561-A Cr.P.C. as well as in terms of Rule 3 Part F, Chapter 4 of the High Court Rules & Orders Volume-5, I have already discharged Kamran (detenu) in all the above-mentioned three cases while setting aside physical remand granting orders dated 07.10.2023 passed by Mr.Zahid Qayyum, learned Duty Magistrate Section-30, Dunyapur as well as Ms. Rafia Qureshi, learned Duty Magistrate Section-30, Dunyapur through short order dated 09.10.2023. Above are the detailed reasonings of my short order dated 09.10.2023.

12. Before parting with this order, it is vivid that Muhammad Saleem SI, Muhammad Farooq SI, and Iqbal Hussain, ASI have illegally detained Kamran. Similarly, Muhammad Saleem, SI retained the police file with him without any justifiable reasoning in defiance of clear directions issued by this Court in "*Qari Muhammad Atta Ullah's*" case *supra*. Therefore, *prima facie*, Muhammad Saleem, SI, Muhammad Farooq, SI and

Iqbal Hussain, ASI Police Station City Dunyapur with their active connivance have prepared forged documents and utilized the same in the courts to obtain physical remand of Kamran (detenu). In this way, they have committed offences u/s 342, 420, 468 & 471 PPC, read with Article 155-C of Police Order, 2002. The District Police Officer, Lodhran is directed to get register an FIR against the above-mentioned police officials forthwith under the above said provisions of law on the application of Kamran (detenu) under intimation to the Deputy Registrar (Judicial) of this Bench. To eliminate the excuse for non-registration of FIR on the ground that in case Kamran (detenu) has not appeared before the police for getting registration of case, the District Police Officer, Lodhran is directed to get FIR registered against the above-mentioned delinquent police officials through any of his subordinates who must be fully conversant with the facts of instant case, as this case is mostly reliant upon the documentary evidence in the shape of above-mentioned three FIRs, case diary No.2 of FIR No.772/2023, case diary No.3 of FIR No.236/2023 and case diary No.3 of FIR No.544/2023. In the last two cases, clear tempering has been made in case diaries. After the registration of FIR, Investigating Officer of that very case is directed to take into possession copy of above-mentioned three FIRs, case diary No.3 of FIR No.772/2023, carbon copy of case diary No.1 of FIR No.236/2023, carbon copy of case diary No.3 of FIR No.236/2023, carbon copy of unscaled site-plan of place of recovery of amount from Nisar Ahmad, co-accused in case FIR No.236/2023, case diaries No.1, 2 and 3 of FIR No.544/2023, similarly, carbon copy of statements of Muhammad Irfan 1058-C and Muhammad Asif 1042-C

u/s 161 Cr.P.C in case FIR No.544/2023, copy of all the Rapats entered in Register No.2 of Police Station City Dunyapur on 06.10.2023. Investigating Officer is also directed to get the comparison of handwritings of case diaries of above-mentioned cases from the handwriting expert of PFSA because the case diaries in all the above-mentioned three cases seem to be of one handwriting. He is further directed to get the comparison of handwritings of all three delinquent police officials with the handwritings of case diaries of their respective cases.

A direction is issued to the Office to retain copies of all the case diaries of the abovesaid three cases in the judicial file of this case so that no further manipulation/tempering could be done by the police officials.

13. Further, before parting with this Order, I would like to issue following directions: -

- (i) No arrest shall be made on the ground that complainant has a strong suspicion or firm belief that any person is involved in any case; similarly, complainant has come to know through reliable source (without disclosing that source) or landlord's clue (زمیندارہ گوچ) that accused is involved in the occurrence because the abovesaid terms cannot be taken as legal evidence, however, arrest can be made if any corroborative and convincing evidence is available against the accused.
- (ii). No police officer shall investigate any criminal case until and unless investigation is entrusted to him. Similarly, he shall not conduct the investigation of any case of his own accord. Either the investigation should be entrusted to him in terms of Police Order, 2002 or in case of transfer of any Investigating Officer from the police station then same should be entrusted to him by the

competent authority with written order. Factum of entrustment of investigation to any Investigating Officer shall be entered in register *roznamcha* (register No.2) of the police station and this fact should also be mentioned in case diary also.

- (iii) While seeking remand, the Investigating Officers shall briefly describe the evidence against the accused in the remand applications and while entertaining the remand applications, the learned Area Magistrates shall apply their judicial minds and then pass speaking orders for grant of physical or judicial remand.
- (iv) It is also directed that in future remand application shall be prepared in the light of Police Rules, 1934 and Rapat No. date as well as time of arrest of accused must be mentioned therein, in case of failure, the learned Magistrate concerned, should refuse to entertain the remand application.

14. Office is directed to send a copy of this Court's order to all the learned Sessions Judges of the Province of Punjab, Inspector General of Police, Punjab, Lahore, Director General, Federal Investigation Agency, Islamabad, Director General, Anti-Corruption Establishment Punjab, Lahore, all Regional Police Officers and District Police Officers of Punjab for the compliance of supra-mentioned directions of this Court.

15. With these observations, instant petition is hereby disposed of.

**(Muhammad Tariq Nadeem)
Judge**

Approved for reporting

Judge

*Announced, dictated and
signed on 10.10.2023.*

Ejaz*