

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

Case No. Crl.Misc.No.27821-H/24

Mst. Najma Bibi

Versus

S.H.O., 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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13.05.2024

M/S Israr Hussain and Muhammad Ashfaq Gujjar, Advocates with the petitioner.
Rana Umair Abrar Khan, A.A.G. with Ikram Shehbaz, SHO, Najam ul Hassan, S.I. and Warris Virk, S.I.

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Through this petition under Section 491 Cr.P.C. the petitioner Mst. Najma Bibi, seeks recovery of Mst. Nagina, her daughter in law, from the illegal and unlawful confinement of respondents, *inter-alia*, on the grounds that on 04.05.2024 around 2/3.00 A.M. (night) respondents alongwith other police officials raided at the house of the petitioner and took away the alleged detenu without her involvement in any criminal case; that when the petitioner contacted the respondents for release of the alleged detenu, they demanded illegal gratification of Rs.10,00,000/-, otherwise, threatened to involve her in multiple criminal cases.

2. This Court vide order dated 06.05.2024 directed respondent No.1/SHO, P.S. Daska (SHO) to produce the alleged detenu in the Court.

3. SHO instead of producing the detenu, submitted a report that the alleged detenu was required in FIR No.754/24 dated 29.03.2024, in respect of an offence U/S 392 PPC, registered at P.S. City Daska and has been sent to judicial lock up on 08.05.2024.

4. Learned counsel for the petitioner submits that the SHO has created false evidence against the detenu in order to cover his illegal act; that earlier the petitioner filed Writ Petition No.16520/24 before this Court complaining the highhandedness/harassment of the police authorities to the petitioner and her family members, in which vide order dated 03.04.2024, SHO submitted an undertaking that he will not harass the petitioner in any manner in future, upon which said writ petition was disposed of; that SHO nurtured grudge of filing of said writ petition against the petitioner and in order to teach her lesson illegally and unlawfully confined her daughter in law; that the petitioner has also filed contempt petition against the SHO in this regard.

5. SHO, in attendance, was inquired how the alleged detenu was involved in the aforesaid criminal case, upon which he stated that vide case diary No.2 dated 09.04.2024, accused persons namely Attique Butt, Bilal and Awais during investigation disclosed that earlier they committed the offence of robbery with the help of Khalid, husband of the alleged detenu but after the arrest of said Khalid, they committed the robbery at the pointation of the alleged detenu; that thereafter the complainant in his supplementary statement recorded on 16.04.2024 involved the alleged detenu in the occurrence, as such she was arrested and sent to judicial lock up. This stance of the SHO is self contradictory, if the co-accused made disclosure qua involvement of the detenu in the occurrence then there should not be any need for the supplementary statement of the complainant and the Investigating Officer was required to

proceed further there and then in the light of alleged disclosure but he remained dormant and then after almost seven days of alleged disclosure recorded the supplementary statement of the complainant which sans source of information.

6. On Court's query, he has failed to produce the police record, which contained case diaries but on the contrary produced the incomplete report U/S 173 Cr.P.C. which *prima facie* leads to the conclusion that something is wrong in the bottom.

7. I have also gone through the FIR No.754/24 dated 29.03.2024, in respect of an offence U/S 392 PPC, registered at P.S. City Daska, which was got lodged by the complainant against three unknown persons. The alleged occurrence has taken place in Canal View Town, Daska, District Sialkot, whereas, the alleged detenu is resident of Tehsil Kamonke, District Gujranwala. Interestingly, the rest of three accused are also residents of Tehsil Daska and it seems very ludicrous, how the alleged detenu could point out a house for commission of an offence that was situated in some other district, in particular, when the complainant was previously stranger to her. Similar is the situation with the supplementary statement of the complainant which was recorded after twenty days of the alleged occurrence, wherein he did not disclose his source of information qua the involvement of the alleged detenu in the occurrence. The petitioner has knocked the door of this Court complaining illegal and unlawful confinement of the alleged detenu on 06.05.2024 and this Court required her production in the Court on 10.05.2024 and apparently on receipt of said notice, the SHO in connivance with the Investigating Officer of said

case namely Najam ul Hassan, S.I. , in order to bypass the direction of this Court, produced the alleged detenu before the Magistrate Section-30, Daska on 08.05.2025 for sending her on judicial remand. Perusal of the remand paper shows that it was not forwarded by the concerned, Prosecutor but amazingly the learned Magistrate not only entertained the request of the Investigating Officer, without the same being forwarded by the Prosecutor but also send the alleged detenu to the judicial lock up in a mechanical manner without applying its judicial mind as to whether sufficient material was available against the alleged detenu to curtail her liberty or not.

8. The liberty and dignity of a person have always remained sacrosanct and have been placed atop the fundamental/ human rights pedestal. Islam has conferred upon human being the highest level of dignity amongst all of Allah's creation and secured and protected for them complete liberty within the prescribed limits.¹ Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.² Life bereft of liberty would be without honour and dignity and it would lose all significance and meaning and the life itself would not be worth living. This is why "liberty" is called the very quintessence of a civilized existence...³ Even Article 9 of the Constitution of Islamic Republic of Pakistan, 1973 guarantees that no person shall be deprived of life and liberty save

¹ See Kh. Salman Rafiq Case (PLD 2020 SC 456)

² Article (9)(1) of the International Covenent on Civil and Political rights.

³ AIR 2011 SC 312

in accordance with law. Protection against arbitrary arrest and detention is part of the right to liberty and fair trial.⁴ Here in the instant case, it is an admitted fact that the alleged detenu was not named in the crime report of the aforementioned criminal case. She was involved in the case subsequently on the so-called disclosure of the co-accused before the police. According to Article 38 of the Qanun-e-Shahadat Order, 1984, admission of an accused before police cannot be used as evidence against the co-accused.⁵ Even otherwise, it is well settled by now that confession of an accused before the police is inadmissible in evidence as far as admission of his own involvement in the alleged offence concerned, thus his statement vis-à-vis involvement of the co-accused is ordinarily twice removed from admissibility or reliability.⁶ I am of the considered view that the so-called disclosure of the co-accused, which even not produced before the Court, was insufficient to curtail the liberty of the alleged detenu, which is her inalienable right enshrined in the Constitution.

Second piece of evidence created by the SHO & Investigating Officer, in order to justify the arrest/detention of the alleged detenu is supplementary statement got recorded by him almost twenty days of the alleged occurrence but he did not disclose his source qua involvement of the alleged detenu in the alleged occurrence. Moreso, as has been discussed supra, the alleged detenu is resident of Tehsil Kamonke, District

⁴ See What Is A Fair Trial: A Basic Guide to Legal Standards and Practice, published by Lawyers Committee for Human Rights, USA (2000)

⁵ Raja Muhammad Younis Vs. The State (2013 SCMR 669).

⁶ Alam Zeb V. The State and others (PLD 2014 SC 760)

Gujranwala, whereas, the alleged occurrence has taken place in Tehsil Daska, District Sialkot and there is a complete silence in the statement of the complainant, how she could point out her house for the purpose of robbery, in particular, when she was earlier stranger to her. It is well settled by now that any statement or further statement of the first informant recorded during the investigation by police would neither be equated with First Information Report nor read as part of it.⁷ The Apex Court in a plethora of judgments observed that supplementary statement recorded subsequently to the FIR can be viewed as improvement.⁸ Although in order to strengthen the case against the alleged detenu recovery of one pair of gold earrings was shown against her but neither the weight of alleged recovered gold ornaments was mentioned nor its complete description was disclosed to connect her with the alleged crime. Moreso, occurrence has taken place on 29.03.2024 and the alleged recovery was shown to be effected from the handbag of the alleged detenu on 08.05.2024 i.e. after almost 1 ½ months and it is beyond comprehension that an accused of robbery kept the case property in her hand bag for such a long period. Apparently, the SHO in active connivance with the Investigating Officer manipulated forged and fabricated evidence in order to avoid the consequences of illegal detention. Unfortunately, learned Magistrate Section-30, Daska has also not applied its judicial mind and acceded the request of judicial remand of the alleged detenu, which was even not forwarded

⁷ Falak Sher .vs. The State (1995 SCMR 1350)

⁸ 1993 SCMR 550, 1998 SCMR 685, 2011 SCMR 379, 2011 SCMR 161 & 2003 SCMR 426

by the concerned Prosecutor, resulting into grave miscarriage of justice.

9. For the reasons enumerated above, the detention of the alleged detenue namely Mst. Nagina Ashraf is hereby declared illegal and result of mis-use of authority by the SHO & Investigating Officer. The evidence so far collected against her is insufficient to curtail her liberty even for a minute, therefore, instead of making her ball of ping pong for approaching the Court of first instance for her release on bail, this Court while exercising its jurisdiction under Section 561-A Cr.P.C. , granted her post arrest bail subject to furnishing of bail bonds in the sum of Rs.10,000/- with one surety in the like amount to the satisfaction of the Trial Court. She shall be released from the jail forthwith, if not required in any other case.

10. Having said so, the way and the manner the police officials abducted the alleged detenue by trespassing into her house at mid-night without any search warrants, confined her for a number of days and then created false and frivolous evidence against her in order to justify their act requires serious attention. Apparently, the SHO nurtured grudge against the petitioner for filing of harassment petition against him and in order to teach her lesson and made her example for the rest of aggrieved persons, he took the law into hands and abducted the alleged detenue, in the mid-night and confined her in unlawful custody. When the petitioner again approached to the Court seeking recovery of alleged detenue, then in order to cover his illegal act, he in active connivance with the Investigating Officer, involved her in the aforesaid

criminal case. District Police Officer, is directed to suspend the SHO, P.S. City Daska namely Ikram Shehbaz and Syed Najam ul Hassan, SI, for misusing their authority forthwith, initiate departmental proceedings against them and conclude the same within three months from the date hereof under intimation to the Deputy Registrar (J) of this Court. He shall also ensure that no posting will be given to both the officials till the conclusion of the departmental proceedings. Besides above, SHO and Investigating Officer are also liable to face criminal case, therefore, petitioner is directed to move written application for abduction/ illegal confinement of the alleged detenu to the DPO, Sialkot, who shall ensure registration of case against them under the relevant provisions of law forthwith. To eliminate the excuse for non-registration of FIR on the ground that the petitioner has not appeared before the police for getting registration of case, in case of his failure, the DPO is directed to get FIR registered against the above-mentioned delinquent police officials through any of his subordinates not below than the rank of DSP.

11. Before parting with this order, following directions are issued to all the concerned for strict compliance in the future:-

- (i) Liberty of a person is a fundamental right enshrined in the Constitution and no one can be allowed to curtail the same on the basis of malafide and colourful exercise of authority.
- (ii) Supplementary statement recorded by the complainant for involving a particular accused in an incident, without disclosing

the source of information, is not *per se* admissible piece of evidence, as such while recording such statement, the Investigation Officer should insist upon the complainant to disclose his source of information.

(iii) Investigating Officer should not cause arrest of the accused straightaway upon the supplementary statement of the complainant, rather he is duty bound to first collect incriminating piece of evidence in support of such statement and then proceed in accordance with law.

(iv) The request of the Investigating Officer for physical/judicial remand of such accused, must have been accompanied with the opinion of the concerned Prosecutor qua sufficiency of the material against him.

(v) Any request sans of the opinion of the concerned Prosecutor shall not be entertained by the Area Magistrate or the Court as the case may be.

(vi) The Area Magistrate or the Court, as the case may be, shall not grant physical/judicial remand in a mechanical manner, rather record its reasons for according such request.

(vii) If the supplementary statement of the complainant is bereft of source of information for involvement of an accused, the Area Magistrate or the Court as the case may be, may require the presence of the complainant before dealing with such request.

13. Copy of this order shall be circulated amongst all the concerned for compliance through Registrar of this Court.

Disposed of.

**(Asjad Javaid Ghural)
Judge**

Approved for Reporting

Judge

*Azam**