

Crl. Rev. No.64149 of 2023

Mansha Ali

The State, etc.

04.10.2023. M/s Ch. Ishtiaq Ahmad and Zarish Fatima advocate for the petitioner.

Mr. Tariq Siddique, APG, with Nawaz Inspector and Tanveer. S.I.

Through the instant Criminal Revision filed under Sections 435/439-A of Cr.P.C. read with section 561-A of Cr.P.C., the petitioner has challenged the legality and validity of the order dated 27.09.2023 passed by the learned Administrative Judge Anti-Terrorism Courts, Lahore, whereby the request of the investigating officer, of case FIR No. 2598, dated 14.09.2023, registered under Section 427, 324, 186, 353, 148, 149 PPC, 7-ATA and Section 35 LDA, for physical remand of the petitioner was accepted and physical remand of 14-days of the petitioner was allowed.

2. Learned counsel for the petitioner submitted that a series of cases were registered against the petitioner and others on the same date and time, wherein the police sought remand after one another. Learned counsel further submitted that this is the 2nd physical remand of the petitioner after the expiry of the first physical remand of four days, which the lower court granted without mentioning any valid reason and progress.

3. On 03.10.2023, this Court issued notice to the investigating officer of the instant case to appear alongwith record. Today, the investigating officer has appeared along with the record.

4. In the instant case, the accused was arrested and produced before the learned Magistrate on 23.09.2023. On 23.09.2023, in response to the written request to hand over the accused for police

remand for investigation, the learned Magistrate granted four (4) days of physical remand of the accused to the investigating officer. During the investigation conducted by the investigating officer, one Kalashnikov was recovered at the pointing of the petitioner on 26.09.2023. Upon recovery of Kalashnikov, offence under section 7-ATA was added on the order of Superintendent Police. After that, Inspector Muhammad Nawaz, the investigating officer, produced the petitioner before the learned Administrative Judge Anti-Terrorism Courts, Lahore, and through the public prosecutor, sought physical remand of the petitioner for 30 days. Learned Administrative Judge Anti-Terrorism Courts, Lahore, allowed physical remand for 14 days vide impugned order dated 27.09.2023. By that time, the petitioner had already undergone the initial period of four (04) days of remand in the instant case when police custody was sought by the second investigating officer for further investigation from the Administrative Judge Anti-Terrorism Courts, under Section 21-E of the Anti-Terrorism Act, 1997, in the instant case. The forwarding note of the public prosecutor reads as follows:-

“This is second request of I.O for physical custody. In this case on 26-9-23 offence u/s 7-ATA has been added. I.O is advised to collect the evidence regarding application of 7-ATA. Klashankove has been recovered on the pointation of accused. The I.O requested for further physical custody for further investigation. Therefore, the request of I.O is forwarded to court.”

The note forwarded by the Public Prosecutor reveals that the investigating officer requested a physical remand of the petitioner for further investigation. The investigating officer submitted a request to the learned Administrative Judge Anti-Terrorism Courts, Lahore, for grant of physical remand of the petitioner for thirty days, as provided under Section 21-E of the Anti-Terrorism Act, 1997. The learned Administrative Judge Anti-Terrorism Courts,

Lahore, considered the request of the investigating officer for remanding the accused petitioner to physical custody and remanded the accused petitioner to physical custody. As is mandated under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan, under Section 67 of the Code of Criminal Procedure, and Section 21-E of the Anti-Terrorism Act, 1997 for getting authorization from the Court for detention, either in judicial custody or police custody. Section 21-E of the Anti-Terrorism Act, 1997 is the law that regulates and empowers the learned Administrative Judge Anti-Terrorism Courts to authorize the detention of the accused either in police custody or in judicial custody, as the case may be. It is too well settled that while passing an order of remand, either judicial custody or police custody, as mandated in Section 21-E of A.T.A. since the said detention deprives the personal liberty guaranteed under Article 10 (2) of the Constitution of the Islamic Republic of Pakistan, such order of remand shall not be passed mechanically. The learned Administrative Judge must apply his mind to the entries in the police file, representation of the accused, and other facts and circumstances, and only on the satisfaction that such remand is justified then the learned Administrative Judge Anti-Terrorism Courts will pass such order of remand. At this juncture, it is relevant to mention here that there cannot be any detention in police custody if more offences, either severe or otherwise, are added during the investigation and come to light at a later stage. If on record after the expiry of the initial period of four (04) days in physical custody in connection with the case investigation, the collection of evidence was completed, keeping in view the allegations leveled against the accused, then physical remand would be declined. If the investigation was not complete after the expiry of the initial remand, the Magistrate can act as provided under Sub Section (2) of Section 21-E of A.T.A. and remand him to such custody as mentioned therein during the second period. But the

proviso of Sub-section (2) of Section 21-E of the Anti-Terrorism Act, 1997 gives discretion to the court that 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 investigating officer is present in the court with the record of case FIR No.2598/2023 dated 14.09.2023 registered under sections 324/427, 186/353, 148/149 PPC, 7-ATA, and 35 of the LDA Act. On perusal of the record with the able assistance of the Additional Prosecutor General, it reveals that after getting custody of the petitioner on physical remand vide order dated 27.09.2023, the investigating officer has not carried out the investigation till 30.09.2023, and wrote one case dairy on 01.10.2023 with no progress. The police file is silent from 27.09.2023 to 30.09.2023, and from 02.10.2023 to date, the investigating officer has not conducted the investigation. The investigating officer present in Court on the Court's query submitted that recovery has already been affected by the petitioner, and he is not required for further investigation. Even the learned Administrative Judge Anti-Terrorism Courts, Lahore, also overlooked sub-section 2 of section 21E of the Anti-Terrorism Act that while granting further remand of the accused in police custody, same cannot be granted, unless the

investigating officer can show 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. On perusal of the remand order dated 27.09.2023, it reveals that no plausible reasons were given for granting the accused's physical remand to the investigating officer. The court has no reason for granting physical remand of the accused for 14 days.

5. For the reasons above, the instant petition is accepted, and the impugned order dated 27.09.2023 passed by the learned Administrative Judge Anti-Terrorism Courts, Lahore, is set aside. The investigating officer present in Court is directed to produce the petitioner before the Trial Court today for lodging him into judicial lockup.

6. These are the detailed reasons for acceptance of the instant petition.

(Asjad Javaid Ghural)
Judge

(Aalia Neelum)
Judge

Approved for Reporting

Judge

Judge

*This order has been
dictated, pronounced on
04.10.2023 and signed
after its completion on
09.10.2023.*

Ikram