

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

Case No. Crl.Misc.No.27670-H/2024

Shahida Bibi

Versus Inspector General of Police, Punjab, 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 Qasim Ali and Muhammad Ashfaq Gujjar,
Advocates for the petitioner.
Rana Umair Abrar Khan, A.A.G. with Shaukat, S.I.

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The legitimacy of the police force in any nation is fundamentally anchored in its perceived impartiality, fairness, and adherence to the principles of justice. Unfortunately, over the past few years, a day seldom goes by without another case of police brutality or abuse of power by police officers being noticed by this Court. The frequency of these occurrences begs the question as to whether this is simply our new norm or whether a public can ever truly feel safe and protected by the law enforcement. The term “abuse of power” encompasses all the ways police officers can abuse their positions by taking advantage of the very people they have pledged to serve and protect. While most Police Officers take that pledge seriously, there are some who abuse the power given them to fulfill selfish personal desire or personal vendetta. The “abuse of power” by a Police Officer, *inter-alia*, includes the use of excessive force, placing a citizen under false arrest, warrantless searches or arrests, successive arrest of an accused in one after the other case and assault upon a citizen. This case is a classic example of abuse of power by the police officers. Initially, the petitioner Mst.

Shahida Bibi, filed a petition¹ complaining illegal confinement of her husband, Muhammad Lateef (the detenu) by the SHO, P.S. Manga Mandi, District Lahore. This Court issued a direction² for production of the detenu in the Court, which was duly conveyed to the concerned quarters but despite this fact Investigating Officer of case³ in order to frustrate the proceedings of this Court, presented the alleged detenu before the learned Area Magistrate and made a request for sending him to judicial lock up for the purpose of test identification parade which was accordingly granted by the said Magistrate. This Court while taking serious notice of the malafide of the Investigating Officer summoned the SSP (Inv) and SP (Inv) Sadar Division, Lahore, who undertook to hold inquiry against the delinquent police official. Since, the custody of the detenu was regulated under the law, as such said petition was disposed of with direction to the petitioner to agitate her grievance before the competent forum.⁴

2. Statedly, the detenu was discharged in case FIR No.1639/2023 dated 02.07.2023, in respect of offence U/S 392 PPC, whereas, he was granted post arrest bail in case FIR No.1048/24, in respect of an offence U/S 401 PPC, both registered at Police Station, Manga Mandi, Lahore vide order dated 03.05.2024. Soon after the release of the detenu from the jail on the same day, respondent No.4 (Sajid Khan, ASI) again forcibly abducted the detenu and confined him at Police Station, Raja Jang, District Kasur, with the active connivance of

¹ Crl.Misc.No.22642-H/2024

² Vide order dated 08.04.2024

³ FIR No.1639 dated 02.07.2023, offence U/S 392 PPC, P.S. Manga Mandi, Lahore

⁴ Vide order dated 09.04.2024

the SHO of said police station (SHO). Being aggrieved, the petitioner rushed to this Court by filing instant petition, seeking recovery and production of the detenu in the Court. Notices were issued to the concerned quarters⁵ and in compliance of said notice SHO submitted a report, according to which the detenu being required in case FIR No.71/24 dated 23.01.2024 in respect of offence under Section 392 PPC registered at Police Station, Raja Jang was arrested and sent to judicial lock up on 08.05.2024.

3. The report submitted by the SHO is sham. The case FIR No.71/24, in which the arrest of the detenu was shown was registered on 23.01.2024. If the report of the SHO is taken on face value, even then the case property which was shown to be recovered at the instance of the detenu, was taken into possession by the Investigating Officer vide case diary No.1 dated 07.04.2024 and admittedly at that time the detenu was in judicial lock up. There is no explanation of the fact that if the arrest of the detenu was required in the aforesaid case, then why his arrest was not shown in jail record at that time. It is settled proposition of law that when an accused is arrested in a case, there is no legal impediment for interrogating him with regard to all the cases registered against him since then. Section 167 Cr.P.C. does not visualize successive and repeated arrest of a person required in more than one cases. An accused required in more than one criminal cases when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations levelled against him in

⁵ Vide order dated 06.05.2024

another case. It is rather desirable that when a person is required or accused in more than one cases or where more than one F.I.Rs. are registered against him is arrested and remanded to physical custody, then he should be interrogated about the allegations against him in all the cases. Instead of acting strictly in accordance with law, the police since long is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand or after release on post arrest bail it again arrests him in another case. It is commonly known that in selected cases, police would arrest the accused on his release in the first case. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be deemed to have been arrested in one case and he cannot be arrested simultaneously in more than one case. Section 167, Cr.P.C. simply says that when a person is arrested or detained in custody, the Magistrate may authorise his detention in such custody for a term not exceeding fifteen days in the whole. The section does not talk of case, it talks of custody only. The longest period for which an accused can be ordered to be detained continuously in police custody by one or more such orders, is only fifteen days. So, the detention of the accused person required in more than one cases already registered against him, for more than fifteen days would be illegal.⁶

4. Life and liberty is a fundamental right enshrined in the Constitution of Islamic Republic of Pakistan, 1973 and the same cannot be allowed to be curtailed at the whims of the executive. Successive arrests of an accused in different cases one after

⁶ Mst. Razia Pervaiz and another ..Vs.. The Senior Superintendent of Police Multan and 5 others (1992 P Cr.LJ 131)

another amounts to denial of his fundamental right and this Court being jealous guardian of the rights of a citizen cannot sit as a silent spectator and will step forward to curb such malpractice. It is well settled that where the action and proceedings are not bona fide and with ulterior motive to obtain information about an absconding accused and arrest after arrest is made involving same person in different blind reports lodged much earlier and no explanation is provided for such series of actions in *seriatim* one after the other, the High Court is empowered to afford protection to the citizen against involving frivolous and mala fide actions by imposing conditions on the erring authorities and agencies.⁷ The Courts have to safeguard the fundamental rights of every citizen and to protect the life and liberty from illegal, unauthorized and mala fide acts of omission or commission by an authority or person. In cases where the liberty of a citizen was involved the action initiated by the police when found to be mala fide the court should not hesitate to step in and grant relief to the citizen.⁸

5. It is thus once again reiterated that an accused arrested in one case shall be deemed to have been arrested in all the cases registered against him since then and practice of his arrest after release in one case amounts to denial of his fundamental rights. In future if this practice is not discontinued, the delinquent police official shall be taken to task for denying the basic right of liberty to a citizen. A question may arise in mind that how the police of one police station may have knowledge/information about the registration of case against an accused in

⁷ 1994 SCMR 1283

⁸ 2009 SCMR 141

some other police station or in some other district. Answer of this question has been given by this Court in a celebrated judgment⁹ in a following terms:-

“ In the light of above discussion, it can be said that in this digital age when sharing information is so simple and cheap, its dissemination has become so rapid and effective either through social media account or online information available at respective Police Information System Software, the record of criminal cases of an accused can be obtained easily. Even otherwise, a Crime Investigation Agency (CIA) is in existence, whose primary duty is collection of information relating to investigation of every case registered in the district that does include information of arrest as per Rule 21.35 of Police Rules, 1934 and it also talks about arrest of accused in all cases and not in one. On receiving an information of arrest of an accused CIA is duty bound to inform the Incharge Police Station about any other cases registered against him in the district; therefore, Station House Officer can also develop contact with CIA of other districts or provinces so as to collect information about number of cases registered against him throughout the country.”

6. Herein the instant case, the police cannot even take shelter of ignorance of arrest of the detenu in an already registered case, as the police report itself shows that during the investigation of case FIR No.1048/24, robbed motor-cycle of case FIR No.71/24 was recovered at the instance of the alleged detenu and the same was taken into possession by the Investigating Officer of case FIR No.71/24 vide case diary No.1 dated 07.04.2024 and admittedly at that time the detenu was in judicial lock up but he intentionally avoided to arrest the detenu in the said case. It is important

⁹ Pervaiz Elahi Vs. Care Taker Government of Punjab etc. (PLJ 2024 Lahore 43)

to note that detenu was not nominated in case FIR No.71/24 and he was involved in the said case upon his own disclosure while in police custody which is not admissible piece of evidence. Apparently, Sajid Khan, ASI, P.S. Manga Mandi, who earlier apprehended the detenu and when this Court took notice, he opted to send him on judicial remand and when his illegal exercise of power was brought in the notice of his high-ups by this Court ¹⁰ he nurtured grudge against the detenu and in order to teach him lesson, illegally confined him and when the petitioner filed instant petition, he in order to save his skin, in active connivance with the SHO, P.S. Raja Jang, Kasur created evidence against the detenu and involved him in case FIR No.71/24. Had it not been so, the Investigating Officer of said case, would have arrested the detenu on the very date, when the case property was taken into possession by him. This is very alarming situation. Constitutional Courts are meant to protect the fundamental rights of an aggrieved person(s) including liberty and liberty and redress their grievances. If an aggrieved person knocked the door of this Court against the *malafide* or colourful exercise of authority by the Executive or illegal confinement of his/her dear one, it is the bounden duty of the Court to protect his/her right subject to law. However, if any official/officer complained against, took it on personal level and attempted to teach lesson to the aggrieved person, who approached this Court for redressal of his/her grievance, this Court will not tolerate such practice and the delinquent/responsible officer/official shall have to face the

¹⁰ Vide order dated 08.04.2024

consequences. From the above facts, it has been established on record that Sajid Khan, ASI, P.S. Manga Mandi, Lahore with the active connivance of SHO, P.S. Raja Jang, Kasur, forcibly abducted the detenu Muhammad Latif and when the Court took notice of his illegal confinement, created false and fabricated evidence against him in order to save their skin, therefore, the petitioner is directed to file an application for registration of criminal case against both the aforesaid police officials before the District Police Officer, Kasur, who shall lodge the FIR against them under the relevant provisions of law without wastage of any time, under intimation to the Deputy Registrar (J) of this Court. In order to rule out the possibility of excuse of non-appearance of the petitioner seeking registration of case, in such an eventuality, 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.

7. It goes without saying that one of the cardinal principle of criminal law and jurisprudence is that an accused person is presumed to be innocent until proven guilty by the Court of law. However, on the one hand, soon after lodging of the crime report or supplementary statement, as the case may be, the complainant insisted upon the arrest of the accused and on the other hand, it has been observed by this Court that the Investigating Officer seems more eager to cause arrest of such accused, without determining the veracity of the allegations. It is well settled that mere lodging of an information does not make a person an accused nor does a person against whom an investigation is being conducted by the

police can strictly be called an accused.¹¹ It is, therefore, desired that on receiving an information qua the involvement of a person in a cognizable offence, police should not straightway cause his arrest, rather first determine the veracity of the allegations and if after investigation, it arrived at a conclusion that sufficient incriminating material is available against the person complained against, then proceed further in accordance with law. If a person is unjustly deprived of his liberty, compensation will be required to be paid to him or her by the delinquent police officer.¹² In Sughran Bibi case¹³ the Apex Court, *inter-alia*, declared that “ *Ordinarily no person is to be arrested 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 and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations levelled against such suspect or regarding his involvement in the crime in issue.*”

This judgment of the Apex Court is binding on

¹¹ Brig.(Retd.) F.B. Ali and another ..Vs.. The State (PLD 1975 SC 506)

¹² Haider Ali and another ..Vs.. DPO Chakwal and others (2015 SCMR 1724)

¹³ PLD 2018 Supreme Court 595

every organ of the State as per Article 189 of the Constitution and any deviation from the said judgment alone is sufficient to infer the malafide and ulterior motive on the part of a person doing so. Life and liberty of a person is a cherished right guaranteed under the Constitution and the same cannot be allowed to be circumvented at the whims of the executive. 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.¹⁴

8. In the present case, as has been discussed supra, *prima facie*, the police officials in order to justify illegal detention of the detenu, involved him in case FIR No.71/24, on the basis of his so-called confession before the police, which is not admissible piece of evidence and unfortunately the Area Magistrate while dealing with the request of Investigating Officer for judicial remand of the detenu has failed to take into consideration, this legal aspect of the case and granted the request in a mechanical manner, which cannot be subscribed by this Court. The evidence so far collected against the detenu Muhammad Latif is insufficient to curtail his liberty, therefore, instead of requiring him to approach the Court of first instance for his

¹⁴ (PLD 2020 SC 456)

release on bail, this Court while exercising its jurisdiction under Section 561-A Cr.P.C., is granting him 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. He shall be released from the jail forthwith, if not required in any other case.

9. In order to curb practice of arresting an accused in different criminal cases, one after the other, after his release on bail, following directions are issued to all the concerned:-

“(i) If an accused is arrested in a criminal case, he shall be presumed to have been arrested in all criminal cases registered against him wherein his arrest was required.

(ii) If arrest of the accused was required in any case already registered against him but could not be made for any reason, Investigating Officer is bound to make a written request to the Area Magistrate or the Court, as the case may be, explaining the reasons for such omission and seeking permission for the arrest of the accused.

(iii) The request of the Investigating Officer must be endorsed by an opinion of the concerned Prosecutor qua sufficiency of the material for the arrest of an accused.

(iv) Area Magistrate or the Court, as the case may be, shall not accord approval of such arrest in a mechanical manner, rather record reasons in writing for granting such permission.

(v) If according to the opinion of the Area Magistrate or the Court, as the case may, sufficient incriminating material is not

available against an accused, it may defer such arrest till the time of availability of such evidence.

(vi) At the time of dealing with such request of arrest, Area Magistrate or the Court, as the case may be, must keep in mind the binding dictum of the Apex Court laid down in Sughran Bibi Case¹⁵ and the right of fair trial and due process enshrined in Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973.

(vii) Any deviation from the above directions would entail penal consequences, provided under the law.”

Copy of this order shall be circulated amongst all concerned through the office of Registrar.

Disposed of.

**(Asjad Javaid Ghural)
Judge**

Approved for reporting

Judge

*Azam **

¹⁵ PLD 2018 SC 595