

Form No: HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT,
Bahawalpur Bench, Bahawalpur
JUDICIAL DEPARTMENT
WP No. 6566 of 2023

Mst. Nasreen Bibi Versus District Police Officer etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
	<u>08-09-2023</u>	Mr. Ghazanfar Ali Khan, Advocate with the petitioner. Jam Sajjad, AAG with Nusrat SHO and Shabbir, SHO. Syed Zeeshan Haider, Advocate for respondent/complainant.

Through this petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 491, Cr.P.C. the petitioner has supplicated for the recovery of her real sons namely Muhammad Saleem and Ali Raza, from the illegal and unlawful custody of respondents No.2 and 3.

2. In compliance with this Court's Order dated 07-09-2023, Nusrat, SHO, Muhammad Shabbir, SI of Police Station Musafir Khana, District Bahawalpur have entered appearance, whereas learned Law Officer has also submitted report on behalf of SHO of the police station Musafir Khana, according to which, Muhammad Saleem and Ali Raza, alleged detenus were arrested in case F.I.R No. 434 dated 23-08-2023 under section 324 P.P.C. registered at Police Station Musafir Khana, District Bahawalpur and their physical remand has been obtained from the court of learned Civil Judge Ist Class/Magistrate Section 30, Bahawalpur.

The instant petition was filed on 06-09-2023 and came up for hearing before this Court on 07-09-2023 in early hours of the day as an urgent case whereas after issuance of order for production of Muhammad Saleem and Ali Raza, detenus before this court, arrest of detenus

has been shown on 07-09-2023 at 11:00 a.m. vide Rapat No.10.

After going through the F.I.R No. 434 of 2023, Police Station Musafir Khana, it manifests that Muhammad Farooq, complainant has only nominated Ali Raza, detenu as the sole perpetrator and no other person was shown as an accused in the F.I.R. However, vide case diary No.2 dated 27-08-2023, supplementary statements of Muhammad Farooq, complainant, Muhammad Waseem and Muhammad Ibrar, PWs have been recorded by Muhammad Shabbir, SI/Investigating Officer wherein the above mentioned PWs have stated that due to the anxiety Muhammad Farooq, complainant had forgotten to nominate Muhammad Saleem son of Abdul Hameed in his application for registration of crime report, who was present in a sugarcane crop near the place of occurrence with common intention, who fled away from the place of occurrence when people attracted at the spot.

3. This Court is of the view that the above-mentioned supplementary statements have been recorded only to justify the illegal confinement of Muhammad Saleem detenu. Moreover, from op-cit supplementary statements no offence is made out against Muhammad Saleem, detenu. It is normal practice of the police that after the arrest of accused persons they are produced before the Court of Area Magistrate on the following day but in the instant case on the same day of arrest i.e. 07-09-2023 both the detenus were produced before the court of Mr. Zulfiqar Ali, learned Magistrate Section 30, Bahawalpur and while passing the order on the application for the grant of physical remand, learned

Magistrate has not applied its judicial and sagacious mind.

This Court while dealing with an identical matter has already issued following directions in case titled as *Qari Muhammad Atta Ullah vs. District Police Officer Sialkot and another*" (**PLD 2022 Lahore 224**). Relevant portion of the supra mentioned judgment is reproduced as under"-

"...14. 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..."

It is evident that the Investigating Officer as well as learned Magistrate have not followed the above-mentioned directions.

4. Another aspect of this case, which cannot be lost sight off is that manual Roznamcha has been written through led pencil not by ballpoint while ignoring the clear direction of this Court in *Qari Muhammad Atta Ullah's case ibid.*

5. Similarly, case diaries in this case have been written on loose printer papers having different colours. It is noteworthy that case diary No.2 dated 27-08-2023 and supplementary statements of the PWs in the same date were subsequently maneuvered because papers of case diary No.2 have different colour than all other case diaries.

6. I deem it appropriate that before issuance of directions in this case, the relevant law with respect to case diary shall be gone through. Rules 25.53, 25.54 and 25.55 of Police Rules, 1934 are significant, which are hereby reproduced as infra:-

25.53. Case diaries. - (1) Section 172(i), Code of Criminal Procedure requires that a case diary shall be maintained and submitted daily during an investigation by the investigating officer. In such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by Section 172(i), Code of Criminal Procedure.

(2) Case diaries shall be as brief as possible; shall not be swollen with lengthy explanations and theories, and shall be written either in English or in simple Urdu.

such incidents of the investigation shall be included as have a bearing on the case.

(3) Detailed lists of stolen property, or of property seized in the course of a search, shall be entered in the first case diary submitted after the facts relating to such property were reported to, or discovered by, the investigating officer.

(4) The fact that copies of the record prepared under the provisions of section 165 or 166, Code of Criminal Procedure, have been sent to the nearest Magistrate empowered to take cognizance of the offence shall also be noted.

25.54. Record of case diaries.- (1) Case diaries shall ordinarily be submitted in Form 25.54(1) and each sheet shall be numbered and stamped with the station stamp. Two or more copies, as may be ordered, shall be made by the carbon copying process by the officer conducting the investigation. The officer writing a case diary shall enter in such diary a list of the statements, recorded under section 161, Criminal Procedure Code, which are attached to such diary and the number of pages of which each such statement consists.

(2) They shall be sent from the scene of investigation to the police station without delay.

(3) On arrival at the police station the number and date of each case diary shall be recorded on the reverse of the police station copy of the first information report, and the date and hour of receipt shall be entered on each copy of the diary.

(4) The original shall be dispatched with as little delay as possible to the inspector or other superior officer as may be or copies, Orders for the disposal and record of case diaries space provided in the form on both the original and the copy or copies. Orders for the disposal and record of case diaries in the headquarters office are contained in Rule 11.70. Also see Rule 27.38.

(5) A copy of every case diary shall be retained at the police station, a separate file being maintained for each case. Such files shall be destroyed in accordance with the periods fixed in sub-rule 27.39(5).

(6) Copies of all orders received at a police station in connection with case diaries and the replies thereto shall be made on blank sheets of paper and shall be attached to the case diary to which they refer.

25.55. Files of case diaries. - (1) When a case is sent for trial the police station file of case diaries shall be forwarded with the chalan to the magistrate, and on completion of the trial shall be returned to the police station for record.

(2) Such files when received back at the police station also files of other cases in which the final report has been submitted, shall be filed at the police station in an annual bundle A in accordance with the serial number of their first information report.

(3) Copies of case diaries in pending cases shall be kept in files at the police station in a separate bundle B in accordance with the numbers of their first information reports.

(4) A list shall be kept in each bundle A and B of all the files contained therein, merely quoting the numbers of their first information reports. Should it be necessary to remove a file from the bundle the fact will be noted in the list.

More so, section 172 is also relevant in this case, which is described below:-

Sec. 172 of Criminal Procedure Code.. Diary of proceedings in investigation.—(1) Every police officer making an investigation under this Chapter shall day by day enter his proceedings in the investigation in a diary, setting forth the time at which the information reached him the time at which he began and closed his investigation, the place or places visited by him, and a statement of the circumstances ascertained through his investigation.

(2) An Criminal Court may send for the police-diaries of a case under inquiry or trial in such court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. Neither the accused nor his agents shall be entitled to call for such diaries, nor shall he or they be entitled to see them merely because they are referred to by the Court, but, if they are used by the police-officer who made them to refresh his memory or if the Court, uses them for the purpose of contradicting such police-officer, the provisions of the Evidence Act, 1872 section 161 or section 145, as the case may be shall apply..."

After having glance of above-mentioned relevant provisions of law, it is crystal clear that case diary should be written in the light of form 25.54 (1) of Police Rules, 1934 and each sheet shall be numbered and stamped with the stamp of police station. Furthermore, two carbon copies shall be made by the Investigating Officer. He is duty bound that number and date of each case diary shall be recorded on the reverse of F.I.R and original case diary shall be dispatched without any unnecessary delay to the Inspector or other Superior Officer at headquarter. I have observed that almost in all criminal cases case diaries are being written by the Investigating Officers on loose printed papers, for the reason, the same are easily changeable. To curb down the issue of illegal practice qua changing of case diaries, a proper mechanism should be framed in future.

7. In the eventuality of above-mentioned circs, I am quite confident that arrest of Muhammad Saleem and Ali Raza detenus was made subsequently after passing of this Court's order dated 07-09-2023. For the reasons, Muhammad Shabbir, SI has not written Rapat number, date and time of arrest in application for obtaining physical remand of the detenus and learned Magistrate Section 30, Bahawalpur has also not taken care of it. Learned Magistrate is directed to remain careful in future. Resultantly, I set aside the order dated 07.09.2023 about granting the physical remand of Muhammad Saleem and Ali Raza, detenus while exercising my power under section 561-A Cr.P.C. read with Rule 3 Part-F, Chapter 4, High Court Rules and Order Volume 5.

In the light of above, as no plausible evidence is available against Muhammad Saleem, detenu, for the reasons, he is discharged from the case F.I.R No. 434 dated 23-08-2023 under section 324 P.P.C., Police Station Musafir Khana, District Bahawalpur whereas Ali Raza, detenu is hereby granted protective bail for five days i.e. till 13-05-2023 subject to his furnishing bail bonds in the sum of Rs.500000/- with one surety in the like amount to the satisfaction of Deputy Registrar (Judl.) of this Bench, to approach the learned Court concerned for availing the remedy of bail before arrest in terms of section 498 Cr.P.C.

8. Before parting with this order, I would like to issue a direction in the name of District Police Officer, Bahawalpur to get lodge F.I.R against Nusrat SHO, Muhammad Shabbir, SI/I.O and Moharrar of the Police Station Musafir Khana, District Bahawalpur under section 155-C of Police Order, 2002 due to the defiance

of directions issued by this Court in case titled as “*Qari Muhammad Atta Ullah vs. District Police Officer Sialkot and another*” (**PLD 2022 Lahore 224**), within a period of five days after receipt of certified copy of this Court’s order under intimation to the Deputy Registrar (Judicial) of this Bench.

9. Office is directed to send a copy of this order to the Inspector General of Police (Punjab), Lahore, Director General Anti-Corruption Establishment (Punjab), Lahore and Director General, FIA, Islamabad with the direction to frame proper mechanism keeping in view the guidelines mentioned below:-

- i. As far as the printing format of case diary (Zimini) is concerned, there should be F.I.R number and serial number of case diary, mentioned at the bottom page of case diary (Zimini).
- ii. There should be register of the case diary duly signed by the SHO at the time of issuance of case diaries papers.
- iii. There should be case diary register published by police department with serial number and should be allocated to police stations in District.
- iv. Serial numbers of case diaries should be mentioned on the reverse of FIR alongwith entry of the same in Roznamcha.
- v. The format of remand paper should be in format as mentioned in police rules and same should reflect the serial number of case diary about the arrest of accused by the Investigating Officer.
- vi. The interim as well as final report under section 173 Cr.P.C. submitted by police should also indicate the serial numbers of papers used for the purpose of case diary by the Investigating Officer.

vii. Moreover, copy of record of case diary should be sent to the Mohafiz Office concerned within 24 hours.

Needful shall be done within a period of three months after receipt of certified copy of this Court's order with proper implementation of supra mentioned directions/guidelines under intimation to this Court through Deputy Registrar (Judl.) of this Court.

10. The foregoing are the reasons of the short order dated 08-09-2023, whereby this petition was disposed of.

(Muhammad Tariq Nadeem)
Judge

Approved for reporting

Judge

Announced on 08-09-2023, Dictated on 10-09-2023

, prepared on 13-09-2023 and signed on 14.09.2023

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