

Form No.HCJD/C-121
ORDER SHEET
LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR
JUDICIAL DEPARTMENT

Crl. Misc. No.5175/B/2023

Kousar Bibi Vs The State and another

S.No. of Order/ Proceeding	Date of order/ proceeding	Order with the signature of the Judge and that of parties or counsel where necessary
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5.3.2024 Malik Altaf Nawaz, Advocate, for the Petitioner.
Mr. Javed Iqbal, Assistant District Public Prosecutor, with
Muhammad Khan/SP, Ashraf/Inspector, Khalid Aslam/SI,
Fayyaz Mehmood/SI, Ghulam Rasool/SI, and Muhammad
Riaz/SI.

Tariq Saleem Sheikh, J. – Through this application, the
Petitioner seeks post-arrest bail in case FIR No.758/2023 dated 24.9.2023
registered at Police Station Saddar Bahawalnagar for an offence under
section 9(1)-3(c) of the Control of Narcotic Substances Act, 1997
("CNSA").

2. According to the FIR, the prosecution case is that on
24.9.2023 around 12:40 p.m., Muhammad Shakir/ASI (the Complainant)
was present at the Sikandar Canal Bridge, Arifwala Road, alongwith other
officials, including Maria 1142/LC. During this time, they observed a
woman heading towards Kora Khoo, carrying a plastic bag in her right
hand. Upon noticing the presence of police, the woman attempted to flee,
which made the Complainant suspicious. He apprehended her with the
help of his colleagues. The woman identified herself as Kousar Bibi (the
Petitioner). The Complainant inspected her plastic bag and discovered
1420 grams of *charas*, scissors, and *Watak* money totalling Rs. 480/-.

3. On 01.11.2023, the Petitioner’s father, Muhammad Sarwar,
filed a complaint (Tracking No. 4197459) with the Superintendent of
Police, Internal Accountability Branch, Bahawalpur Region. He alleged
that on 07.09.2016, Fayyaz Mehmood, who was serving as Assistant
Sub-Inspector at Police Station Saddar Bahawalnagar at the time,
unlawfully arrested his son Muhammad Mustafa and brother Muhammad
Arshad, and confined them in the police station’s lockup. Sarwar claimed
that he filed a habeas petition in the Sessions Court, which appointed a

bailiff who successfully recovered Mustafa and Arshad. The Sessions Judge was inclined to impose a fine of Rs. 2000/- on Fayyaz Mehmood, who apologized, upon which Sarwar withdrew his petition, and the court set the detainees at liberty.

4. After some time, Fayyaz Mehmood was transferred. Subsequently, he was promoted to Sub-Inspector and recently posted at Police Station Saddar Bahawalnagar again. He harboured a grudge of the 2016 incident. One afternoon, he allegedly sent a man in plain clothes who trespassed Sarwar's house by scaling the wall. Sarwar's family members noticed the intruder and apprehended him after a scuffle, during which he sustained injuries from a falling brick from an under-construction wall. The individual identified himself as ASI Muhammad Murtaza. Sarwar further claimed that shortly afterwards, the local police raided his house and arrested all men and women, including the Petitioner, and also took away cash, cellphones, gold ornaments, motorcycles, a car, and other valuables. Subsequently, they registered seven cases against the arrested persons (allegedly FIR No.758/2023, *supra*, is among them).

5. The Superintendent of Police, IAB, referred Sarwar's above-mentioned complaint to DSP Jawad Sakha. He conducted an inquiry and found the allegations against police officials correct and recommended legal action against them. The concluding paragraph of his report dated 20.12.2023 is as follows:

مقامی پولیس سرکل صدر بہاولنگر نے غیر قانونی طور پر درخواست دہندہ محمد سرور کے گھر ریڈ کیا اور تلاشی کی اور نقدی اور گاڑیاں قبضہ میں لینے کے بعد گھر سے خواتین اور مردوں کو گرفتار کیا اور اپنے اختیار سے تجاوز اور ناجائز استعمال کرتے ہوئے گھر کی عورتوں اور مردوں کے خلاف 7 مقدمات منشیات کے درج رجسٹر کر دیے جو بادی النظر میں بے بنیاد معلوم ہوئے ہیں جس کی وجہ عناد بظاہر مرتضیٰ ASI کا زخمی ہونا ہے۔ فیاض محمود ASI کا سابقہ اس خاندان سے ذاتی عناد اور سیاسی مداخلت ہے درخواست میں لگائے گئے الزامات بر خلاف پولیس ملازمین درست پائے گئے ہیں۔ اندریں حالات تفتیشی آفیسران اور SHOs کو جھوٹے مقدمات کے اندراج کی پاداش میں مقدمہ نمبر 754/23 تھانہ سٹی B ڈویژن کے تفتیشی آفیسر اور SHO، مقدمہ نمبر 576/23 تھانہ ڈونگہ بونگہ کے تفتیشی آفیسر اور SHO مقدمہ نمبر 309/23 تھانہ مدرسہ کے تفتیشی SHO مقدمہ نمبر 552/23 تھانہ سٹی A ڈویژن بہاولنگر کے تفتیشی اور SHO، مقدمہ نمبر 758/23، مقدمہ نمبر 752/23، 753/23 کے تفتیشی آفیسران اور SHO کے خلاف محکمہ کاروائی کی سفارش کی جاتی ہے۔

6. Sarwar had also sent a copy of the above-mentioned complaint to the Inspector General of Police Punjab (IGP), following

which the District Police Officer (DPO) Bahawalnagar conducted an independent inquiry. He found against Sarwar.

7. On 31.1.2024, vide Letter No.379/PCC, the IGP directed that “*de novo* inquiry be conducted at IAB Hqrs”, due to the conflicting findings of the two inquiries mentioned above – one conducted by DSP Jawad Sakha and the other by the DPO Bahawalnagar. The report of this inquiry is awaited.

8. The Assistant District Public Prosecutor has apprised this Court that a cross-version has been recorded in FIR No. 758/2023 following Sarwar’s complaint. However, he has stated that the accused party does not enjoy a good reputation in the locality. They are known as drug dealers and criminals who resist law enforcement when authorities try to take any action against them. Additionally, several criminal cases involving narcotics and other offences are pending against various members of the Petitioner’s family.

9. Although the IGP has directed a *de novo* inquiry into Sarwar’s complaint dated 01.11.2023, the fact is that DSP Jawad Sakha found his allegations correct. The Superintendent of Police, IAB, Bahawalpur Region, endorsed his findings when he forwarded his report to the IGP under the cover of his Letter No.1581/IAB/BWP dated 21.12.2023. The S.P. also enclosed a draft charge sheet against the delinquent police officers with the said letter. It is, therefore, a case of two versions, falling within the ambit of section 497(2) Cr.P.C. Further inquiry is required to determine the Petitioner’s guilt.

10. Admittedly, the Petitioner does not have a criminal record. The list of cases submitted by the Law Officer pertains to the Petitioner’s family members – not her. She cannot be penalized for the wrongdoing of her relatives.

11. In view of the above, this application is **allowed**. The Petitioner is admitted to post-arrest bail subject to her furnishing bail bond in the sum of Rs.500,000/- (Rupees five hundred thousand) with two sureties in the like amount to the trial court’s satisfaction.

12. I need to include an additional note before concluding this order.

13. Pakistan is a signatory to several international conventions related to narcotics control, including the **Single Convention on Narcotic Drugs (1961)**, the **Convention on Psychotropic Substances (1971)**, and the **United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)**.¹ By signing these international Conventions, Pakistan has committed to aligning its domestic narcotics control laws and policies with the objectives and principles outlined therein. This includes promoting adherence to legal and ethical standards, transparency, and accountability in all law enforcement activities related to narcotics control, including the processes of recovery and seizure.

14. The aforementioned Conventions must be read in tandem with international human rights treaties such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, which obligate the States to respect and protect the rights of individuals, including those suspected or accused of drug offences. Law enforcement activities related to narcotics control must be conducted in accordance with these human rights standards, ensuring that individuals are treated with dignity, afforded due process, and protected from arbitrary detention, torture, or other forms of ill-treatment.

15. The United Nations Office on Drugs and Crime (UNODC) has developed guidelines and recommendations to promote transparency and accountability in law enforcement activities, including publishing data on drug seizures, investigations, and prosecutions. The UNODC encourages States to establish independent oversight mechanisms to monitor law enforcement agencies and hold them accountable for their actions.

¹ These treaties and conventions, along with the following and others, form the framework for international efforts to combat the production, trafficking, and abuse of narcotics and psychotropic substances:

1. International Narcotics Control Board (INCB) Regulations: These regulations complement the international drug control treaties by providing guidelines for the licit production, distribution, and use of narcotic drugs and psychotropic substances.
2. United Nations Convention Against Transnational Organized Crime, 2000: While not specific to narcotics, this convention includes provisions related to combating drug trafficking as part of its broader aim to address organized crime.
3. United Nations Convention Against Corruption, 2003: This convention includes measures to prevent corruption in law enforcement and judicial systems, which are crucial for effective narcotics control.
4. United Nations General Assembly Special Session (UNGASS) on Drugs: These sessions provide a platform for member states to discuss and develop strategies to address the global drug problem, including measures to reduce demand, prevent drug abuse, and enhance international cooperation.

16. In conclusion, while international Conventions on narcotics control call for strict measures to combat drug trafficking and abuse, it is essential to prioritize human rights, due process, transparency, accountability, and ethical standards. By upholding these principles, governments can effectively address the challenges posed by narcotics while safeguarding individual liberties, promoting the rule of law, and preserving the integrity of law enforcement institutions.

17. In Pakistan, complaints of false implication in criminal cases are quite frequent. Addressing this issue requires multifaceted actions, including legal reforms and increased transparency and accountability in investigations.

18. Videography is a powerful tool in the fight against false implication in narcotics cases, providing objective documentation of police encounters, supporting criminal investigations, and fostering transparency and accountability within law enforcement agencies. By capturing audio and video footage of interactions between officers and individuals suspected of drug-related offences, video recordings offer a reliable record of events that can help prevent wrongful arrests, unjust prosecutions, and violations of individuals' rights.

19. Furthermore, the data collected from video recordings can be harnessed to identify patterns and trends within law enforcement agencies, enabling policymakers to discern areas for improvement in officer training, policies, and procedures. By analyzing the footage, authorities can identify systemic issues, such as biased policing practices or procedural shortcomings, and implement targeted interventions to address them effectively. It is, however, essential to acknowledge the challenges and limitations associated with the use of videography. Privacy concerns may arise, particularly regarding recording bystanders or individuals not involved in the incident. Additionally, there may be technical and logistical challenges related to the storage, access, and use of video footage, which must be addressed through clear policies and procedures.

20. The Supreme Court of India has acknowledged the importance of videography in *Shafhi Mohammad v. State of Himachal Pradesh* [(2018) 5 SCC 311]. It stated:

“We are in agreement with the Report of the Committee of Experts that videography of crime scene during investigation is of immense value in improving administration of criminal justice. A Constitution Bench of this Court in *Karnail Singh v. State of Haryana*, (2018) 5 SCC 311 (2009) 8 SCC 539 : (2009) 3 SCC (Cri) 887, noted that technology is an important part in the system of police administration. It has also been noted in the decisions quoted in the earlier part of this order that new techniques and devices have evidentiary advantages, subject to the safeguards to be adopted. Such techniques and devices are the order of the day. Technology is a great tool in investigation. By the videography, crucial evidence can be captured and presented in a credible manner.”

21. In *Zahid Sarfaraz Gill v. The State* (Criminal Petition No. 1192 of 2023 (decided on 22.11.2023)),² the Supreme Court of Pakistan also underscored the critical importance of video recording during the recovery and seizure process, in cases involving narcotics. It was observed that the ANF personnel or policemen who conduct the operation have cell phones with a built-in camera that they can use to record and/or take photographs of the search, seizure, and arrest. The Supreme Court noted that while section 25 of the CNSA excludes the applicability of section 103 of the Code of Criminal Procedure, which requires the presence of respectable inhabitants during a search, there is no bar on video recording or photography during such operations. Article 164 of the Qanun-e-Shahadat, 1984, explicitly permits the use of evidence obtained through modern devices or techniques, and Article 165 thereof supersedes all other laws in this regard. The Supreme Court emphasized the necessity for officers to use video cameras to record the entire operation, including the presence of witnesses and suspects. This measure, the Court stated, is essential to prevent any allegations of misconduct or foul play during the proceedings, as a deterrent against false accusations and to ensure the integrity of the collected evidence. The relevant excerpt is reproduced below:

“It is time that all institutions act professionally and use all available lawful means to obtain evidence. A credible prosecution and adjudication process also improves public perception. We expect that all concerned will attend to these matters with the attention that they demand because the menace of narcotic substances in society has far-reaching consequences: destroying entire households, creating societal problems and casting a heavy financial burden on the State when drug addicts are required to be treated. Moreover, research indicates that drug addicts resort to all methods to obtain drugs, including committing crimes.”

² https://www.supremecourt.gov.pk/downloads_judgements/crl.p._1192_2023.pdf

22. The Director General ANF has already approved SOPs for recording footage during raids/operations, seizure at airports, seaports, dry ports, international mail offices, courier/parcel offices, permanent checkpoints and random *Nakas*. These were circulated by the Government of Pakistan, Ministry of Narcotics Control, HQ Anti-Narcotics Force, Rawalpindi, vide Letter No. 35(1)ANF/Enf-A/2020-4128 dated 01.06.2020.

23. It is time that the Punjab Police should also be equipped with advance technological tools to foster public trust, facilitate investigations, and support court proceedings. Therefore, the Government is directed to provide body-worn and dashboard cameras to the Punjab Police on a priority basis, preferably within six months. Simultaneously, it shall frame SOPs to preserve and use footage recorded by them.

24. Given the significant technological advancements, most police officers carry smartphones, which they can use to videograph their raids/operations. It is, therefore, directed as follows:

- (i) Henceforth, leaders of every police team shall ensure that all operations are videographed without exception. Specifically, in cases involving recovery of narcotics, they shall record a video of the entire operation unless circumstances beyond their control prevent them from doing so.
- (ii) Reasons for failing to record the recovery proceedings on video must be specifically documented in the case diary.

25. The Punjab Safe Cities Authority has been established under Act I of 2016 for the construction, development and maintenance of an integrated command, control and communication (IC3) system for police in major cities of the province for public safety³ through the use of modern technology, infrastructure and processes. In exercise of the powers conferred on it under section 19 of the 2016 Act, the Authority has framed PSCA Electronic Data Regulations 2016, which cover the whole process of collection, analysis, storage, presentation and use of electronic data. These are supplemented by the Standard Operating Procedures (SOPs) for PPIC 3 Centre, Lahore. While the Authority has currently deployed

³ Preamble of Act I of 2016.

equipment only in a few major cities, there are plans for expansion to more cities in the future. This initiative has proven effective in crime control efforts. In areas where this infrastructure is available, Investigating Officers shall procure CCTV footage from the Authority following prescribed procedures and include it as part of the case record. If such footage is unavailable, the Investigating Officer shall obtain a certificate to this effect.

26. Sections 27 and 33(4) of the CNSA also aim to ensure the fairness and integrity of legal proceedings, safeguarding against false accusations and wrongful convictions. Section 27(1) stipulates that every person arrested and articles seized under a warrant issued under section 20 shall be promptly forwarded to the authority by whom the warrant was issued. Furthermore, every person arrested and article seized under section 20 or section 21 shall be promptly forwarded to (a) the officer-in-charge of the nearest police station and (b) the Special Court having jurisdiction. Section 27(2) states that the authority or officer to whom any person or article is forwarded as aforesaid shall, with all convenient dispatch, take such measures as may be necessary under the law for the disposal of such person or article. Section 33(4) provides that a narcotic drug, psychotropic substance, or controlled substance seized under the CNSA shall be disposed of under section 516 Cr.P.C.

27. A combined reading of sections 27 and 33(4) of the CNSA reveals that the legislative scheme dictates that recovered narcotics should be produced before the Special Court at the time of remand. It has been observed that these provisions are often overlooked or disregarded in practice. All the Special Courts are directed to ensure strict compliance with them.

28. The Registrar of this Court is directed to send copies of this order to the Special Courts in the province, the Chief Secretary, Punjab, and the Inspector General of Police, Punjab, for compliance.

(Tariq Saleem Sheikh)
Judge

Approved for reporting

Judge