

Form No. HCJD/C-121

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Case No. Diary No.68328 dated: 13.05.2024

Riasat Ali vs The State, etc.

Sr. No.	Date of order	Order with signature of Judge, and that of parties or counsel, where necessary.
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OBJECTION CASE

- 02) 16.05.2024 Barrister Shahzad Shabbir for the petitioner.
Sardar Muhammad Ameer Hamza Dogar, Assistant Attorney General for the Federation of Pakistan (on Court’s call) assisted by Nadeem Aamir, Deputy Director (Law), Federal Investigation Agency, Lahore.
Mr. Idrees Rafique Bhatti, Assistant Advocate General, Punjab along with M/s Nuzhat Bashir and Haroon Rasheed, Deputy Prosecutors General for the State (on Court’s call).

Since question of deciding jurisdiction with respect to taking cognizance and conducting trial of the case between the Courts of two districts is involved in the under-objection petition therefore objection raised by the office is **overruled**. Office is directed to allot number to this petition and fix the same for hearing today while issuing cause list in this regard.

Writ Petition No.30611/2024

Learned counsel for the petitioner submits that case arising out of F.I.R. No.145/2024 was registered against the petitioner under Section: 462-J PPC at Police Station: F.I.A., Circle, Gujrat; application for petition for post arrest bail was filed by the petitioner in the case before Sessions Courts, Gujrat, which was entrusted to the Court of learned Addl. Sessions Judge, Gujrat and was dismissed as withdrawn due to territorial jurisdiction *vide* order dated: 06.05.2024 passed by learned Additional Sessions Judge, Gujrat (copy of said application and order are available at Pages No.5 to 8 of instant petition); relevant portion of the order is hereby reproduced as under: -

“In view of above recorded statement of Qasim Ali Advocate learned counsel for the petitioner/accused Riasat Ali in case FIR No.145/2024, offence u/s 462-J, P.S FIA Gujrat, it is noted that the offence of this case had occurred in the territorial jurisdiction of district M.B.Din, so this court has no jurisdiction to entertain instant post-arrest bail petition and petitioner is allowed to file the same before the court of competent jurisdiction. Consequently, this post-arrest bail petition is dismissed as withdrawn.”

Then petitioner filed application for post arrest bail in the case in the Court of learned Additional Sessions Judge, Phalia, which was ordered to be returned due to territorial jurisdiction *vide* order dated: 07.05.2024 passed by learned Addl.

Sessions Judge, Phalia (copy of said application and order are available at Pages No.9 to 11 of instant petition) and relevant portion of the order is hereby reproduced below: -

“5. It is an admitted fact that this FIR has been registered at Police Station FIA, Circle Gujrat by the concerned officer of the FIA authority. The Court of Additional Sessions Judge, Phalia has not been vested with any power to deal with the cases registered at Police Station FIA and is only entertaining and hearing the cases registered at local Police Station. As stated by learned counsel, the Court of learned Additional Sessions Judge, Gujrat was previously dealing with the cases registered at Police Station FIA. Because of bar of territorial jurisdiction relating to cases registered at Police Station FIA, this Court has no jurisdiction to entertain the post arrest bail application. The same may, therefore, be returned to the learned counsel for petitioner, so that the same may be presented before the Court of competent jurisdiction.”

Learned counsel further adds that in aforementioned circumstances, petitioner is unable to find out the Court having territorial jurisdiction to entertain and decide the petition for bail, hence, instant petition has been filed before this Court.

2. Points raised need consideration.

3. **Notice** to the State/respondent No.1.

4. Learned Assistant Attorney General assisted by Deputy Director (Law), F.I.A., Lahore as well as learned Assistant Advocate General, Punjab and learned Deputy Prosecutors General (present in Court) have accepted the notice on behalf of the State and expressed their willingness to argue this petition today; therefore, instant petition is being decided as “Notice Case”.

5. Brief however necessary facts for deciding instant petition are that case *vide* F.I.R. No.145/2024 dated: 02.05.2024 was registered against present petitioner under Section: 462-J PPC at Police Station: F.I.A., Circle: Gujrat (copy of F.I.R. is available at Page No.4 of instant petition) and place of occurrence in Column No.4 of said F.I.R. has been mentioned as “*Pahrianwali, Mandi Bahauddin*” (پاہڑیانوالی، منڈی بہاؤادین); petitioner filed application for post arrest bail in the case in Sessions Courts, Gujrat, which was entrusted to the Court of learned Additional Sessions Judge, Gujrat however same was dismissed as withdrawn from said Court due to lack of territorial jurisdiction in order to file application for bail before the Court of competent jurisdiction (as detailed above); then, petitioner filed application for post arrest bail before the Court of learned Additional Sessions Judge, Phalia, which was also ordered to be returned to the petitioner due to bar of territorial jurisdiction *vide* order dated: 07.05.2024 passed by learned Additional Sessions Judge, Phalia (as mentioned above); hence, instant petition has been filed before this Court.

6. Learned counsel for the petitioner submits that in aforementioned state of affairs, petitioner is not certain about the Court which has territorial jurisdiction to entertain the application for bail as well as to take cognizance of the offence and conduct trial of the case. Learned counsel finally prays for declaring the relevant Court in this regard.

7. Learned Assistant Attorney General assisted by Deputy Director (Law), F.I.A., Lahore submits that Police Station: F.I.A., Circle: Gujrat has territorial jurisdiction with respect to registration of cases, investigation of cases as well as inquiring into the offences mentioned in schedule of the Federal Investigation Agency Act, 1974, in District: Gujrat as well as in the area of District: Mandi Bahauddin (copy of notification reflecting said jurisdiction has been produced by him, which has been placed on the record); further adds that Federal Investigation Agency is only meant for the purpose of investigating scheduled offences as well as inquiring into the same and the Federal Investigation Agency Act (*ibid*) does not contain any specific provision about the Court for the purpose of trial of the case regarding said offences.

8. Learned Assistant Advocate General, Punjab while supporting aforementioned arguments advanced by learned Assistant Attorney General adds that though offences including mentioned in the schedule of the Federal Investigation Agency Act, 1974 are to be investigated and inquired into by the Federal Investigating Agency only yet said "Act" has not been legislated for the purpose of deciding Court for trial.

9. Learned Deputy Prosecutors General while adopting aforementioned arguments of learned Law Officers further add that Federal Investigation Agency Act, 1974 only deals with investigation as well as inquiry regarding the offences mentioned in the schedule of said act and since any specific provision for trial of cases falling in schedule offences is not mentioned therein hence merely by way of inclusion of any offence in the schedule of the "Act" (*supra*), venue of the trial will not be effected.

10. **Arguments heard and available record perused.**

11. The Federal Investigation Agency was established by way of the Federal Investigation Agency Act, 1974 and as per definition contained in Section: 2 (a) of the Act (*ibid*), "Agency" means the Federal Investigation Agency constituted under Section: 3, furthermore, as per Section: 3 (1) of the Act (*ibid*), the Federal Government may constitute an Agency to be called "the Federal Investigation Agency" for inquiry into, and investigation of the offences specified in the Schedule; for ready reference, both aforementioned sections are hereby reproduced as under: -

“2. (a) “Agency” means the Federal Investigation Agency constituted under section 3;”

“3. Constitution of the Agency. (1) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of the offences specified in the Schedule, including an attempt or conspiracy to commit, and abetment of any such offence.”

Preamble of the “Act” (*ibid*) is also hereby reproduced: -

“Whereas it is expedient to provide for the constitution of Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith;”

Perusal of Section: 3 of the Act (*ibid*) read with preamble clearly shows that Federal Investigation Agency has only been established for the purpose of investigation of and inquiring into the offences specified in the schedule. So, it is crystal clear that Federal Investigation Agency is only an “Investigating Agency” and the Federal Investigation Agency Act, 1974 only deals with investigation of and inquiring into the offences mentioned in the schedule and it is nowhere mentioned in said act that if any offence has been included in the schedule of said act, then any special Court will be established under said act for the purpose of taking cognizance and conducting trial of the case regarding said offence. Perusal of the schedule of the “Act” reveals that offences mentioned in various penal statutes have been included in the same including from Pakistan Penal Code.

So, when in the Federal Investigation Agency Act, 1974, it has not been mentioned that the offences included in the schedule will be tried by any Court established under said Act, then inspite of the inclusion of offence in the schedule of said Act, for the purpose of jurisdiction with respect to taking cognizance of the offence and trial of the case regarding said offence, the parent statute containing said offence will hold the field i.e. the Court established for taking cognizance and conducting trial of the case regarding said offence provided in its parent statute will take cognizance of the offence and conduct trial of the case e.g. offences mentioned in the Emigration Ordinance, 1979 are also included in the schedule of the Act (*ibid*) however same are tried by the Special Court established under Section: 24 of the Emigration Ordinance, 1979, some offences punishable under the Anti-Terrorism Act, 1997 are included in the schedule of the “Act” (*ibid*) but same are tried by Anti-Terrorism Court and of course the offences mentioned in Pakistan Penal Code, which have been included in the schedule of the Act (*ibid*), will be tried by the Court established under the Code of Criminal Procedure, 1898.

The offences relating to electricity contained in Chapter XVII-B of Pakistan Penal Code, 1860 include Section: 462-J PPC also and offences under

Sections: 462-H, 462-I, 462-J, 462-K, 462-I and 462-M have been included in the schedule of the Federal Investigation Agency Act, 1974 *vide* notification dated: 08th November, 2016; in this regard, relevant portion of said notification is hereby scanned below: -

PART II
Statutory Notifications (S. R. O.)
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR
NOTIFICATION
Islamabad, the 8th November, 2016
S.R.O. 1047(I)/2016.—In exercise of the powers conferred by section 6 of the Federal Investigation Agency Act, 1974 (VIII of 1975), the Federal Government is pleased to direct that the following further amendment shall be made in the Schedule to the said Act, namely:—
In the aforesaid Schedule,—
(a) in entry (I), after the figure, letter and comma “462F,” the following shall be inserted, namely:—
“462H, 462I, 462J, 462K, 462L, 462-M”; and

Since as per notification issued by the Government of Pakistan, Ministry of Interior dated: 15th January, 2009 (copy whereof has been placed on the record), District: Mandi Bahauddin falls in the territorial jurisdiction of Police Station: F.I.A., Sub-Circle, Gujrat, therefore, instant case has been rightly registered at Police Station: F.I.A., Sub-Circle: Gujrat.

Now question does arise that whether the place, where case has been registered, will decide the jurisdiction for the purpose of trial of the case or it would be the place of occurrence? Answer of this question is available in Section: 177 of Cr.P.C., which clearly shows that every offence shall ordinary be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed; for ready reference, said section is hereby reproduced as follows: -

“177. Ordinary Place of inquiry and trial. Every offence shall ordinary be inquired in and tried by a Court within the local limits of whose jurisdiction it was committed.”

Of course, in this case, place of occurrence is situated at *Pahrianwali* (پاہڑیانوالی), Tehsil: Phalia, District: Mandi Bahauddin, therefore, the Court having territorial jurisdiction regarding said place will be the competent Court to take cognizance as well as conduct trial of the case.

Another question is also relevant here that apart from territorial jurisdiction, which Court is competent to take cognizance and conduct trial of the case with respect to offences relating to electricity contained in Chapter XVII-B of Pakistan Penal Code, in this regard, Section: 462-G (a) PPC clearly shows that the “Court” means the Court of Session designated as Electricity Utilities Court

empowered to take cognizance of an offence under this Chapter; for ready reference, same is hereby reproduced below: -

“462-G

(a) “Court” means the Court of Session designated as Electricity Utilities Court empowered to take cognizance of an offence under this Chapter.”

Furthermore, it has been clearly mentioned in Column No.8 of Schedule-II of Cr.P.C. that said offences are triable by the Court of Session designated as Electricity Utilities Court and relevant portion from the same is reproduced as under: -

CHAPTER XVII-B. OFFENCE RELATING TO ELECTRICITY							
1	2	3	4	5	6	7	8
Section	Offence	Whether the police may arrest without warrant or not	Whether a warrant or a summons shall ordinarily issue in the first instance	Whether bailable or not	Whether compoundable or not	Punishment under the Pakistan Penal Code	By what Court triable
462-H	Abstraction or tampering etc. with transmission	May arrest without warrant.	A warrant shall not ordinarily issue in the first instance	Not bailable	Not Compoundable	Rigorous imprisonment for three years or with fine upto ten million rupees or with both.	Court of Sessions designated as Electricity Utilities Court
462-I	Abstraction or tampering etc. distribution or auxiliary.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for three years or with fine upto three million rupees or with both.	Ditto
462-J	Interference, improper use or tampering etc. with electric meter by domestic consumer, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment upto two year or fine upto one million rupees or with both.	Ditto
462-K	Interference, improper use or tampering etc. with electric meter by industrial or commercial, consumer, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment upto three year or with fine upto six million rupees or with both.	Ditto
462-L	Interference, improper use or tampering etc. with electric meter by agricultural consumer, etc.	Ditto	Ditto	Ditto	Ditto	Imprisonment for two year or with fine upto two and half million rupees or with both.	Ditto
462-M	Damaging or destroying the transmission lines, distribution lines, electric meters etc.	Ditto	Ditto	Ditto	Ditto	Rigorous imprisonment for seven years and with fine not less than three million rupees.	Ditto

Therefore, the Court of Session designated as Electricity Utilities Court under Section: 462-G (a) PPC would be competent to take cognizance of the offences and conduct trial of the cases regarding said offences. It is also relevant to mention here that this Court vide notification bearing No.325/JOB(I)/VI.F.6 dated: 25.10.2019 has already authorized all the District and Sessions Judges in the Punjab to hear and dispose of all such cases falling under Section: 462-G (a) of Criminal Law (Amendments) Act, 2016 with retrospective effect from 01.02.2016 and they have been further authorized to nominate one or two Additional District and Sessions Judges for said purpose till the establishment/constitution of regular new Electricity Utility Courts; relevant portion of said notification is hereby reproduced as under: -

“The Hon'ble Chief Justice and Judges have been pleased to authorize all the District and Sessions Judges in the Punjab to hear and dispose of all such cases themselves and also authorize to nominate one or two Additional District and Sessions Judges, where required in view of the pendency of cases to hear and dispose of all such cases falling under Section 462G(a) of Criminal Law (Amendments) Act, 2016 with retrospective effect from 01.02.2016, till the establishment/constitution of regular new Electricity Utility Courts.”

And in the light of said notification, District & Sessions Judge, Mandi Bahauddin has issued order vide Endst. No.1053/XV.B dated: 30.10.2019 while nominating Additional District & Sessions Judge-I, Phalia for aforesaid purpose, which is hereby reproduced below: -

“O R D E R

In compliance of directions of the Hon'ble Lahore High Court, Lahore, contained in Notification No.325/JOB(I)/VI.F.6, dated 25.10.2019, in supersession of all previous orders in this regard, the following Courts working in this District are hereby nominated to hear and dispose of all such cases falling under section 462G (a) of Criminal Law (Amendments) Act, 2016, till the establishment of/constitution of regular new Electricity Utility Court:-

<i>Cases Pertaining District Headquarter MANDI BAHAUDDIN.</i>	
<i>Sr. No.</i>	<i>Name of Judicial Officer</i>
<i>01</i>	<i>Mr. Iftikhar Hussain, Addl: District & Sessions Judge, Mandi Bahauddin.</i>

<i>Cases Pertaining to Sub-division PHALIA</i>	
<i>Sr. No.</i>	<i>Name of Judicial Officer</i>
<i>01</i>	<i>Addl: District & Sessions Judge-I, Phalia</i>

<i>Cases Pertaining to Sub-division MALAKWAL</i>	
<i>Sr. No.</i>	<i>Name of Judicial Officer</i>
<i>01</i>	<i>Addl: District & Sessions Judge-I, Malakwal</i>

2. It is pertinent to mention here that 03. Courts of Addl: District & Sessions Judges are working at Headquarter M.B.Din, with the bifurcation as (I)-Model Criminal Trial Court, (II)-Model Civil Appellate Court and third one dealing with all the miscellaneous cases, sessions cases and Gender Base Violence cases (with heavy pendency). Though the Court of Mr. Iftikhar Hussain, learned Addl: District & Sessions Judge, M.B. Din is working as Model Civil Appellate Court but keeping in view the pendency of cases and having no other option, the said Court is nominated to hear and dispose of cases falling under section 462G (a) of Criminal Law (Amendments) Act, 2016- pertaining to headquarter Mandi Bahauddin.

3. All the cases related to above said section, pending before the Courts are withdrawn there from and transferred/entrusted to the above mentioned nominated Courts according to their respective sub-divisions, headquarter, forthwith. The Ahlmads of Transferring Courts are directed to hand over the files to learned Transferee Courts in bulk. The cause list shall be generated by the learned Transferee Court.”

Said order was further modified to the extent of Headquarter Mandi Bahauddin vide order No.62/XVB dated: 10.01.2022 and relevant portion of the same is reproduced as under: -

“In partial modification of this office order bearing Ends. No. 1759/XV-B dated 15.12.2021 as well as for smooth functioning of Sessions Courts, Mandi Bahauddin, and in the public interest it is order that all cases falling under section 462G (a) of Criminal Law (Amendments) Act, 2016, pertaining to Headquarter Mandi Bahauddin, till establishment of/constitution of regular new Electricity Court, shall be dealt with by the court of undersigned instead of the Court of Mr. Waris Ali, Additional District & Sessions Judge, Mandi Bahauddin, for the time being till further order.

This order shall apply on pending cases (except part heard cases) as well as fresh cases.”

Since place of occurrence in this case falls in the territorial jurisdiction of Sub-Division: Phalia, therefore, learned Additional Sessions Judge-I, Phalia being Electricity Utility Court is competent to take cognizance of said offence and conduct trial of the instant case regarding said offence under Section: 462-G (a) PPC.

It is by now well settled that the Court competent to take cognizance of the offence and conduct trial of the case, is competent to entertain and decide the petition for bail as well in said case; therefore, in this case, learned Additional Sessions Judge-I, Phalia/Electricity Utility Court (as mentioned above) is competent to entertain petition for bail and decide the same in accordance with law.

It is relevant to mention here that when there will be any doubt regarding jurisdiction to inquire into or try any offence, then “High Court” under Section: 185 (1) Cr.P.C. will decide that which Court will inquire into or try the offence; for ready reference, Section: 185 (1) Cr.P.C. is reproduced below: -

“185. High Court to decide, in case of doubt, district where inquiry or trial shall take place. (1) Whenever a question arises as to which of two or more Courts subordinate to the same High Court ought to inquire into or try any offence, it shall be decided by that High Court.”

Therefore, while exercising powers vested under Section: 185 (1) of the Code of Criminal Procedure, 1898, this Court decides that the Court (if otherwise competent to take cognizance) in whose territorial jurisdiction, occurrence has been committed i.e. the place of occurrence is situated, will take cognizance of the offence and conduct trial of the case and in this case, said Court would be the Court of learned Additional Sessions Judge-I/Electricity Utility Court, Phalia.

12. In view of what has been discussed above, instant petition stands **disposed of** with the clear observation that learned Additional Sessions Judge-I, Phalia being Electricity Utility Court will take cognizance of the offence, conduct trial of this case as well as entertain and decide application for bail in the case accordingly. Registrar of this Court will send copy of this order to all the learned Sessions Judges in the Punjab as well as to Head of Federal Investigation Agency in the Punjab.

(Farooq Haider)
Judge

APPROVED FOR REPORTING

(Farooq Haider)
Judge