

Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 8709/2024
(Muhammad Imran vs. Inspector General of Police, etc.)

JUDGMENT

Date of hearing:	20.02.2024
Petitioner by:	Mr. Sajjad Ahmad Jatoi, Advocate
State by:	Mr. Shahid Nawab Cheema, Assistant Advocate General with Abdullah Ahmad Malik, District Police Officer, Chiniot, Abaid Ullah DSP Legal, Ijaz Imran Station House Officer, Waseem Sajjad SI & Farasat Ullah Station House Officer.
Respondent by:	Mr. Sohail Khan Chadhar, Advocate for respondent No.6
Research Assistance by:	Mr. Amad Tahir Ch, Advocate

ALI ZIA BAJWA, J.:- Through the instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, (hereinafter '*the Constitution*') the petitioner sought recovery of the detenu namely Muhammad Azam, his real brother, who was allegedly in illegal detention of respondents No. 2 and 3, i.e. Station House Officers, Police Station Defense-A, Lahore and Police Station Bhawana, District Chiniot.

2. Through the orders dated 07.02.2024 and 09.02.2024, directions were issued to respondent No.2/SHO, Police Station Defence-A, Lahore, and respondent No.3/SHO Police Station Bhawana, District Chiniot to produce the detenu before the Court. On 14.02.2024, SHO Police Station Bhawana, District Chiniot appeared before the Court and filed his report according to which the detenu was arrested on 13.02.2024 and sent to judicial lockup for Test Identification Parade (TIP) in connection with case FIR No.504/2023,

dated 20.10.2023, offence under Section 392 PPC registered with Police Station Muhammad Wala, District Chiniot. Such conduct of the SHO Police Station Bhawana/respondent No. 3 was sufficient to raise eyebrows, as the entire process of arrest and sending the detenu to the judicial lockup for TIP was carried out after the direction was issued by this Court to produce him before it. In reply to the different Court queries, the conduct shown by respondent No.3 was evasive, thus, he was issued a show-cause notice to explain why the contempt proceedings should not be initiated against him. District Police Officer (DPO), Chiniot was also directed to appear before the Court along with the complete record of the aforementioned criminal case. On the next date of hearing, the DPO appeared before the Court and filed his report. The record of the case reflected that Muhammad Aslam ASI arrested the detenu on 13.02.2024 at 6:00 p.m. and produced him before the Area Magistrate on the same day at 8:00 p.m. in a slipshod manner as the case before this Court was fixed on 14.02.2024. It was seemingly done to legalize the custody of the detenu to avoid the legal consequences of keeping someone in illegal custody and to defeat the directions issued by this Court for the production of the detenu. According to the report of DPO, the detenu was lodged in District Jail Jhang on 13.02.2024 but the report of the Superintendent of that jail reflected that the detenu was received in the prison on 14.02.2024 at 7:10 p.m., meaning thereby that on 14.02.2024 the detenu was in the police custody but he was not produced before the Court. When confronted with the aforementioned state of affairs, the DPO pledged before the Court to hold an independent inquiry to expose the illegalities committed by his subordinate police officials.

3. Today, District Police Officer, Chiniot appeared before the Court and stated that during the fact-finding inquiry, it was proved that the detenu Muhammad Azam remained in illegal custody. He further apprised the Court that the detenu has been discharged from the aforementioned criminal case and strict action stands initiated against the delinquent police officials involved in keeping the detenu in illegal custody, which shall be concluded expeditiously. Given the above, the show cause notice issued to the Station House Officer, Police Station Bhawana is hereby withdrawn, leaving the

matter to be dealt with by the internal mechanism of accountability in the police department.

4. The Court is deeply concerned and must carefully consider how the situation described above could have been prevented. Illegal detention represents a major breach of fundamental human rights and freedom. In Pakistan, instances of illegal detention by police and other law enforcement agencies are a concern that undermines the rule of law and the trust of citizens in legal and judicial systems. The Constitution and statutory laws provide several safeguards against illegal detention. Article 4 of the Constitution enshrines the principle of legal protection for individuals. It guarantees and emphasizes that no action detrimental to a person's life, liberty, body, reputation, or property shall be taken except in accordance with the law. This provision is a safeguard against the arbitrary actions by the State or its organs, ensuring that any measure taken against an individual must be justified through established legal procedures and standards. Article 9 of the Constitution focuses on the security of individuals, asserting that no person shall be deprived of life or liberty except in accordance with law. This Article is a cornerstone for the protection of personal freedoms and safety, establishing the legal principle that any deprivation of life or liberty must follow due process and be sanctioned by law. Article 10 of the Constitution provides specific safeguards concerning arrest and detention, detailing the rights of individuals who are arrested or detained. It outlines the procedural rights afforded to such individuals, including the right to be informed of the grounds of arrest, the right to legal representation, and the right to be produced before a court within a specified period. This Article is crucial for ensuring that the process of arrest and detention is carried out transparently and legally, protecting individuals from unlawful or arbitrary detention. In *Ismaeel*¹ the Supreme Court of Pakistan observed that the rights guaranteed under Articles 4, 9, and 10 of the Constitution are sacrosanct and jealously guarded by our Courts. Article 14(2) of the Constitution serves as a critical legal safeguard against the maltreatment of individuals under police custody, stating unequivocally: "No person shall be

¹ Ismaeel vs. The State - 2010 SCMR 27

subjected to torture for the purpose of extracting evidence.” Article 14(2) of the Constitution is a testament to the State’s commitment to safeguarding human rights and dignity against the menace of torture. The insertion of Article 10-A within the constitutional framework heralds a pivotal extension of the right to a fair trial and due process, not merely confining its scope to the courtroom but expansively integrating it into the pretrial proceedings, including the investigation phase. This provision, illustrative of the jurisprudential evolution towards safeguarding individual liberties, mandates that the fundamental rights of an accused are zealously guarded from the moment of accusation through to the final adjudication.

5. The statutory regime under Sections 61, 62, and 167 of the Code of Criminal Procedure, 1898 (hereinafter ‘*the Code*’) highlights our legal framework’s commitment to procedural fairness and the protection of rights of accused person following an arrest. These provisions are foundational to the criminal justice system, ensuring that the process from arrest to potential charges is carried out within the bounds of the law, with a continuous emphasis on the rights of the accused and the oversight of judicial authorities. These provisions of the law are pivotal in outlining the procedural rights of the accused and the responsibilities of law enforcement agencies from the moment of arrest through the period of custody until the investigation is completed. Section 61 of the Code stipulates that no individual shall be detained in custody by the police beyond the period of twenty-four hours without being presented before a Magistrate. Section 62 of the Code further complements Section 61 by mandating that the Officer Incharge of a Police Station should report the cases of all persons arrested without a warrant to the authorities as provided therein. Section 62 of the Code, though often overlooked, plays a crucial role in safeguarding individuals from illegal detention by police officials. For better assistance Section 62 of the Code has been reproduced hereinafter:-

“62. Police to report apprehensions. Officers in charge of police station shall report, to the [Zila Nazim, District Superintendent of Police and District Public Safety Commission set up under the Police Act, 1861 (V of 1861)] the cases of all persons arrested without warrant, within the limits of their respective station, whether such persons have been admitted to bail or otherwise.

.....
....."

Rule 26.8 of the Punjab Police Rules, 1934 (hereinafter '*the Police Rules*'), which further reinforces Section 62 of the Code, has been reproduced hereinafter: -

"26.8. Report of arrest: - (1) Under Section 62, Code of Criminal Procedure an officer in charge of a police station is required to report to the District Magistrate, Sub-Divisional Magistrate, or such other Magistrate as the District Magistrate may direct, all arrests without warrant made by himself or in his jurisdiction.

(2) Reports of such arrests shall be made in Form 26.8 (2) whether the person arrested has been admitted to bail or not and may be sent by post."

These provisions are designed to ensure transparency and accountability in the operation of law enforcement agencies, providing a legal framework that mandates that an '*Arrest Report*' must be sent to the concerned authorities during the first twenty-four hours of the arrest of an accused and detention. By stipulating the rights of the detained individuals and the responsibilities of the detaining authorities, Section 62 of the Code serves as a critical mechanism for preventing abuse of power and illegal detentions.

6. The common fallacy that police can retain custody of an accused for twenty-four hours without informing any authority is both incorrect and contrary to the law. This belief undermines the legal safeguards designed to protect the rights of individuals and ensure transparency and accountability within law enforcement processes. The legal framework mandates that police authorities must report arrests and detentions to higher authorities promptly under Section 62 of the Code. This requirement serves as a critical check against arbitrary detention, ensuring that each case is subject to oversight and that the rights of the arrestees are protected. The necessity to report arrest/detention helps to prevent abuse of power, ensuring that the detention of individuals is always justified, documented, and subject to legal scrutiny. It was ruled in *Muhammad Siddiq*² that an arrest report under Section 62 of the Code sent to the quarters concerned, is not a matter of sending greetings to them, but such a report is

² Muhammad Saddiq vs. Province of Sindh through Home Secretary and 2 others – PLD 1992 Karachi 358

sent so that they can scrutinize the arrest made by Police Officer and find out if the action can be justified in law.

7. Section 167 of the Code further addresses the situation where the investigation cannot be completed within twenty-four hours, granting the investigating officer the authority to seek an extension of the detention period. This provision of law lays down the procedure for such an extension to be granted by the Magistrate. The provision that mandates the transfer of custody of an accused to a Magistrate within twenty-four hours of arrest is a significant safeguard designed to minimize the risk of illegal detention by the police. This legal requirement ensures a critical layer of judicial control, preventing the prolonged, unauthorized holding of accused without formal charges or legal justification. By involving the judiciary at this early stage, it reinforces the principle that detention must always be subject to legal review and approval.

8. The overall incharge of a criminal case is an Area Magistrate who, even during the progress of an investigation, gets many opportunities to go through the record of an investigation conducted by the police.³ The Area Magistrate acts as a pivotal character in our criminal justice system, therefore, his supervisory role ensures that police investigations adhere to the principles of justice, transparency, and fairness, which are fundamental to maintaining public trust in the criminal justice system. He plays a crucial role in safeguarding the rights of the accused and the complainant, ensuring that investigating agencies do not infringe upon fundamental rights and investigations are conducted in a manner that upholds lawfulness. This involves ensuring that investigations are conducted fairly, transparently, and within the legal framework.

9. When faced with the decision of granting physical or judicial remand for TIP, a Magistrate must approach the matter with the utmost diligence, keeping his eyes and ears open, and not in a perfunctory manner. A Magistrate is tasked with carefully considering the facts, the law, and the circumstances of each case before making a decision that could significantly

³ Khizer Hayat and others vs. Inspector General of Police (Punjab), Lahore and others - PLD 2005 Lahore 470

impact an individual's liberty and rights. The Magistrate should actively seek to understand the nuances of the case, including the evidence presented, the conditions under which the arrest was made, and the arguments from both the prosecution and the accused. It requires a thorough and thoughtful examination of all aspects of the case to ensure that any decision to grant remand is justified, lawful, and in accordance with settled principles governing the subject. A perfunctory approach, in contrast, implies a superficial or automatic decision-making process that neglects the careful consideration required in such matters. Such an approach might lead to unjust outcomes, including the unwarranted deprivation of liberty, the potential for abuse in custody, and the undermining of the public trust in the legal system. Therefore, a Magistrate's role in remand proceedings is critical in safeguarding against arbitrary detention and ensuring that the rights of the accused are protected. By acting judiciously and an open-minded assessment of the evidence and legal arguments, Magistrates uphold the principles of justice and fairness that are foundational to any criminal justice system.

10. In the present case when the accused was produced before the Magistrate, for sending him to judicial lockup, he passed an order mechanically, without the careful and thoughtful consideration that is required for such a significant order which curtails the liberty of an individual. The order of the Magistrate has been reproduced as *infra*:

13.02.2024 ملزم بحراست پولیس حاضر

تفتيشى آفيسرمۇھ رېكارڈ حاضر 08:00PM

ملزم کو برائے بھیجے جانے حوالات جوڈیشل برائے شناخت پریڈ پیش کیا گیا ہے۔ ملزم کا چہرہ ڈھانپ کر پیش کیا گیا ہے، حسب استدعا پولیس ملزم کو برائے شناخت پریڈ جوڈیشل حوالات بھیجا جاتا ہے اور تفتیشی آفیسر کو ہدایت کی جاتی ہے کہ متعلقہ مسٹریٹ صاحب سے برائے شناخت رجوع کر کے تاریخ مقرر کروائے۔

سنایا گیا

11. The Magistrate's order, which authorized the incarceration of the detenu for TIP, lacks a detailed justification or rationale based on the evidence available on the police file, therefore, it is a non-speaking order. A speaking order in judicial proceedings is essential and refers to a judgment or decision delivered by a court that comprehensively outlines the reasons behind the court's conclusions. Speaking orders provide a clear and detailed explanation of the reasoning behind a decision. An order being a 'speaking one' is also essential for the parties involved in the case to understand the basis of the findings of the court. This is also crucial if a party wishes to challenge the decision, as it provides a clear framework for the grounds of appeal. Without a reasoned judgment, it would be difficult to identify any potential errors in law or fact to challenge the same. Moreover, while dealing with the question of sending an accused to prison for TIP, a Magistrate has a crucial responsibility to thoroughly review the case diaries to determine the necessity of acceding to the request of the investigating agency. This process is not a mere formality, but a substantive judicial duty aimed at safeguarding the rights of the accused while balancing the requirements of the investigation. The order of the Magistrate, in the present case, has no reference to the case diaries and material available on the record warranting sending of the detenu to judicial lock-up for TIP. Had the Magistrate adequately assessed the facts and circumstances of this case, he would have been in a better position to protect an innocent person from police oppression.

12. It has also been noticed by this Court that the detenu was produced before the Magistrate after court hours. The practice of presenting the accused before a Magistrate outside of regular court hours has been deprecated by the Courts. The principle here is that the accused should be produced before the Magistrate within official court hours to ensure the proceedings are conducted transparently and within the formal legal framework. Presenting an accused after court hours could necessitate conducting these proceedings at the Magistrate's residence or another unofficial location, a practice that constitutional Courts have explicitly criticized for lacking transparency and formal procedural safeguards. The request of the investigating agency regarding remand should be entertained

in open court during court hours unless there are extraordinary compelling reasons and circumstances for doing so in any other place than the open courtroom. Such reasons must be reflected in the order of the Magistrate. Reliance can be placed on Ghulam Sarwar and another vs. The State – 1984 P.Cr.L.J. 2588. Moreover, the practice of presenting an accused before a Magistrate at a location other than the court premises, particularly after court hours, significantly impairs the accused's access to legal representation. When an accused is produced at a Magistrate's residence or any other unconventional location, it inherently restricts his ability to secure an advocate's presence which is violative of Articles 10 and 10-A of the Constitution.

13. Unfortunately, there exists a tendency amongst Magistrates to accede to requests for TIP without sufficient scrutiny of the underlying reasons presented by the police. Such a practice not only undermines the sanctity and the rigorous standards required for the deprivation of an individual's liberty but also potentially compromises the integrity of the judicial process. The decision to send an accused to judicial lock-up for TIP should neither be taken lightly nor should it be the product of a perfunctory endorsement of the police's request. It is incumbent upon the Magistrates to safeguard the rights of the accused while balancing the needs of the State to prosecute offenders.

14. Before drawing the curtain on this judgment, it would be prudent to outline the fundamental rights of an individual arrested and investigated by the police.

I. Upon apprehension and during subsequent detention, it is incumbent upon the detaining authority to promptly apprise the accused of the grounds for such arrest, in accordance with the principles of due process and legal transparency. Communicating the grounds for arrest and the details of accusations allows the accused to understand the allegations he is facing and offer an adequate defense. Such practice ensures that arrests are not made without sufficient cause or

used as a tool of oppression, thereby safeguarding the liberty of citizens and the rule of law.

- II. An accused should be allowed to contact his family after his arrest. The ability to communicate with family ensures that the accused can alert others about his situation, potentially mobilizing support and advocacy on his behalf. This can be crucial for safeguarding their rights, especially in jurisdictions or situations where the risk of violation of the law is high. In essence, the right of an accused to contact his family immediately after arrest is a crucial safeguard against arbitrary and illegal arrest.
- III. An accused has an undeniable right to have legal advice instantly after his arrest. Police authorities have a crucial obligation to facilitate an accused to contact his lawyer following arrest. This duty is rooted in the principles of due process and the right to a fair trial, as recognized by Articles 10 and 10-A of the Constitution. Providing an accused individual with access to legal representation is a cornerstone of a fair, just, and humane legal system. This access is not merely a procedural right but a foundational element that ensures the integrity of the criminal justice system.
- IV. The arrest report concerning an accused must be dispatched following Section 62 of the Code, together with Rule 26.8 of the Police Rules, to avoid instances of illegal detention. If the investigation extends beyond twenty-four hours, it is mandatory to bring the accused before a Magistrate to seek authorization for any further extension of custody under Section 167 of the Code.
- V. Upon the presentation of an arrested individual before the concerned Magistrate, it becomes the Magistrate's solemn duty to safeguard the accused's fundamental rights, a

custodianship that forms the foundation of judicial integrity and fairness. In our criminal justice system, the role of the Magistrate is both significant and pivotal.

VI. An accused must not be subjected to torture to elicit evidence or confession as prohibited under Article 14 of the Constitution, which advocates for fairness, equality, and dignity in the treatment of an accused. Ensuring compliance with this provision safeguards the accused from inhumane treatment and upholds the fundamental principles of justice and human dignity.

VII. The safeguarding of the aforecited rights of an accused in custody must not only be ensured by the police officials but also be properly documented in the police record to reflect such efforts.

15. This judgment serves as an earnest reminder to the Magistrates and police authorities of the grave responsibility they carry on their shoulders to safeguard the fundamental rights of those accused held in custody. Every accused person, irrespective of the charges against him, is entitled to fundamental rights which must be protected and respected throughout the criminal justice system.

16. **Disposed of.**

(ALI ZIA BAJWA)
Judge

The order was pronounced and dictated on 20.02.2024 and after completion, it was signed on 19.03.2024.

Judge

Approved for Reporting

Judge

Athar*