

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.1591/2019

Yasir Arfat Butt

Versus

Station House Officer, Police Station Industrial Area and another

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	24.06.2019	Sardar Nisar Ahmad, Advocate for the petitioner Mr. Sadaqat Ali Jahangir, learned State Counsel with S. Ashiq S.I.

Through the instant writ petition, the petitioner, Yasir Arfat Butt, seeks quashment of F.I.R. No.158, dated 13.04.2019, for offences under Sections 11-F and 11-N of the Anti Terrorism Act, 1997 ("A.T.A.") registered at the instance of the complainant, namely, Abdul Ghafoor, Inspector, at Police Station Industrial Area, Islamabad.

2. Learned counsel for the petitioner contends that prior to the registration of the above-said F.I.R., the petitioner was arrested under Section 3 West Pakistan Maintenance of Public Ordinance, 1960 ("M.P.O.") in order to avoid any untoward incident and to maintain law and order situation in Islamabad; that the petitioner was illegally detained in custody for fifteen days by the police without having any incriminating and supportive evidence against him; that neither does the petitioner has any affiliation with any proscribed organization, nor did he indulge in any pre-judicial activities as alleged in the F.I.R.; that the accused/petitioner has been falsely implicated in the F.I.R.; that there is no substance in the allegations contained in the F.I.R.; that it would be futile to proceed with the case before the learned trial Court; that even otherwise, the complainant's story does not constitute the alleged offences i.e. Sections 11-F and

11-N of the A.T.A.; and that from the contents of the FIR, none of the provisions of the A.T.A. are applicable. Learned counsel for the petitioner has prayed for the instant writ petition to be allowed and for the F.I.R. in question to be quashed.

3. Learned State Counsel vehemently opposed this petition by stating that the petitioner has been directly nominated in the F.I.R. with an active role of having affiliation with the proscribed organization (*Tanzeem Jamat-ud-Dawa*); that the said organization was banned due to its involvement in terrorist activities; that the petitioner was one of members of the said organization and has played an important role in generating funds for the said organization; that the F.I.R. in question may not be quashed as the alternate remedy is available under the law before the learned trial Court by filing an application under Section 265-K Cr.P.C.; and that it would be appropriate for the learned trial Court to adjudicate upon the matter as interference at this stage is not warranted. Learned State Counsel has prayed for the writ petition to be dismissed.

4. I have heard the contentions of the learned counsel for the parties.

5. Brief facts as stated in the F.I.R. are that the accused/petitioner, on account of being involved in suspicious activities, was arrested for a period of fifteen days under Section 3 of the M.P.O. During his detention, information was provided that the accused/petitioner was an active member of the said *Tanzeem Jamat-ud-Dawa*, and played an important role in generating/raising the funds for the said organization. He is also alleged to have persuaded other people to participate in such activities. It was further reported in the F.I.R. that the said organization

was proscribed/banned on account of its terrorist activities under the Anti Terrorism Act, 1997. Pursuant to the above-said information, investigation was conducted and the evidence collected showed the petitioner's affiliation with the said organization. Furthermore, during investigation, fire armed weapon, banners showing the name of the proscribed organization, i.e. *Jammat-ud-Dawa*, amount/funds (which the petitioner collected for the said organization) etc., were recovered from his possession. The petitioner, despite the fact that *Tanzeem Jamat-ud-Dawa* was banned, tried to make it functional through a campaign, and thus, committed offence under Sections 11-F and 11-N of the Anti Terrorism Act, 1997.

6. The record shows that the office of the Senior Superintendent of Police (Operations) Islamabad, vide letter dated 15.03.2019, made a request to the District Magistrate, I.C.T. Islamabad, for the detention of the accused/petitioner for a period of fifteen days as he was alleged to have been affiliated with *Jammat-ud-Dawa*, a banned organization under Section 3 of the West Pakistan Maintenance of Public Ordinance, 1960 ("M.P.O."). On the same very day, i.e. 15.03.2019, the District Magistrate Islamabad Capital Territory, Islamabad, while acceding to the request/report of the Senior Superintendent of Police, Islamabad, ordered that the accused/petitioner be detained for a period of fifteen days under Section 3 of the M.P.O. In compliance with the said order, the petitioner's custody was placed under the supervision of the Superintendent of District/Central Jail, Rawalpindi.

7. The record further shows that during the investigation, the petitioner's affiliation was found to be with said banned organization, which resulted in

the lodging of the F.I.R. in question against him. Recovery memo appended with the record shows that the panaflex banners of Jammat-ud-Dawa (two in numbers), endowment box (from which Rs.500/- was found) and mobile number (0321-5006644) allegedly used for the purpose of collecting funds so as to make the said organization functional, were recovered from the petitioner. Undoubtedly, in order to prevent any person from acting in any manner prejudicial to public safety or the maintenance of public order, the District Magistrate, I.C.T. Islamabad, has the power to arrest and detain a suspected person under Section 3 of the M.P.O. Vide notification dated 05.03.2019, the Ministry of Interior, Government of Pakistan, declared the *Jammat-ud-Dawa* as proscribed organization. As the recovery of panaflex banners showing the name of *Jammat-ud-Dawa*, endowment/donation box etc from the petitioner *prima facie* shows his affiliation with the said organization, which was proscribed by the federal government, vide its notification dated 05.03.2019. The contention of the petitioner that he has falsely been involved in this case and no incriminating material was recovered to connect him with the commission of alleged crime, has no force. Consequently, I have not been convinced to quash the F.I.R. in question. Undoubtedly, determination of guilt or innocence of accused depends upon the totality of facts and circumstances and the same could be revealed during the course of trial. Reference in this regard may be made in the case of Sheikh Mahmood Saeed Vs. Amir Nawaz Khan (1996 SCMR 839).

8. In the case of The State Vs. Asif Ali Zardari and another (1994 SCMR 798), it has been held *inter-alia* that ordinarily High Court does not quash proceedings under Section 561-A Cr.P.C. unless trial Court

exercised its powers under Section 249-A or 265-K Cr.P.C. which are incidentally of the same nature and in a way akin to and co-related with quashment proceedings as envisaged under Section 561-A Cr.P.C. However, in exceptional cases, High Court can exercise its jurisdiction under Section 561-A Cr.P.C. if the facts of the case so warrant to prevent abuse of the process of any Court or otherwise to secure the ends of justice. In the case at hand, the allegations levelled in the F.I.R. *prima-facie* constitute a cognizable offence under the law, which require proper trial after evaluation of evidence available on record. In the case at hand, I do not find any exceptional circumstances to interfere in the matter at this stage.

9. In the case of Muhammad Khalid Mukhtar Vs. The State through Deputy Director, F.I.A. (C.B.A.), Lahore (PLD 1997 SC 275), it was held as follows:-

"The powers under section 561-A, Cr.P.C. can be exercised to prevent abuse of process of any Court or to secure the ends of justice. Such powers cannot be exercised mechanically or in every case where there is allegation of false implication or of the evidence being false. Exercise of such powers cannot further the ends of justice, if an exercise is undertaken at pretrial stage to determine whether the prosecution evidence likely to come on record is true or false. In the case of Raja Haq Nawaz v. Muhammad Afzal and others (PLD 1967 SC 354), it was held that quashment of proceedings at an early stage gives an unfortunate impression of stifling of criminal prosecutions, by exercise of an extraordinary power which is given for the dispensation of complete justice, in the forms provided by law. Similar view was taken in the case of Gian Chand v. State (1968 SCMR 380), where it was observed that determination of the guilt or innocence of an accused, depends on totality of facts and circumstances revealed during the trial, and when such a stage had not been reached, the application for quashment of the proceedings in the trial Court, was rightly rejected."

10. In the case of Ghulam Muhammad Vs. Muzammal Khan (PLD 1967 SC 317), it was held as follows:-

"The inherent jurisdiction given by section 561-A is not an alternative jurisdiction or an additional jurisdiction but is a jurisdiction preserved in the interest of justice to redress grievances for which no other procedure is available or has been provided by the Code itself. The power given by this section can certainly not be utilized as to interrupt or divert the ordinary course of criminal procedure as laid down in the procedural statute."

11. In the given circumstances and in view of the case law referred to herein above, I am of the view that the petitioner may avail the legal remedy before the learned trial Court at the first instance. The petitioner shall be at liberty to approach the learned trial Court by filing an application under Section 265-K Cr.P.C. on which an appropriate order may be passed by the learned trial Court.

12. For what has been discussed above, the instant petition, being devoid of merits, is accordingly dismissed.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Qamar Khan*