

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1240/2020
Moteen Shahid
Vs
The State etc

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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01.	27.04.2020	Mr. Basharat Hussain Raja, Advocate.
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Through the instant writ petition, petitioner (Moteen Shahid) has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 read with Section 561-A of the Criminal Procedure Code ("Cr.P.C") for quashment of FIR No.137, dated 16.03.2020 under Sections 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979, registered at Police Station Koral, Islamabad.

2- Precisely, facts necessary for the disposal of instant writ petition, are that on 16.3.2020 during routine patrolling, police party headed by Afzel ASI, Police Station Koral, Islamabad, received a spy information that notorious liquor seller Shahid Mehmood is extracting liquor through a distillery installed in his residential house, situated in Satti Town; upon the said information at about 05:20 PM a raid was conducted by the said police party pursuant to which one Zaheer was apprehended at the spot while two namely Shahid and Mateen (present petitioner) succeeded to escape and several plastic cans containing 420 litre liquor were recovered from the spot and consequently

FIR No.137, dated 16.03.2020 under Sections 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979, was registered at Police Station Koral, Islamabad, sought to be quashed through the instant writ petition.

3- Learned counsel for the petitioner contends that the occurrence as alleged in the FIR took place on 16.03.2020, at about 05:20 PM and as per contents of FIR, petitioner along with co-accused Shahid Mehmood succeeded to escape leaving the vehicle along with liquor; that the allegation is totally concocted and frivolous because on that very day, petitioner was behind the bars in another case FIR No.675, dated 16.03.2020 registered under Section 13(2-a) of the Punjab Arms (Amendment) Ordinance, 2015 and that it is beyond the imagination that the petitioner could be present at the two places simultaneously, so the instant FIR is liable to be quashed on this sole ground.

4- Heard and record perused.

5- It is settled principle that powers bestowed under Article 199 of the Constitution and Section 561-A of the Criminal Procedure Code for quashing of FIR/criminal proceedings are required to be exercised in exceptional and rare cases. The exercise in routine may result in devastating the proceedings conducted by the Investigating Agency. In case of availability of efficacious alternate remedy, normal course would not be allowed to be deflected. The jurisdiction is preserved only for extra ordinary situation and not as a matter of routine. Guidance in this respect is taken from the law

laid down by the Hon'ble Apex Court in cases reported as "*Muhammad Farooq Vs. Ahmed Nawaz Jagirani and others*" (PLD 2016 SC 55), *Dr. Sher Afgan Khan Niazi Vs Ali S. Habib* (2011 SCMR 1813) and "*Bashir Ahamd Vbs Zafar Ul Islam* (PLD 2004 Supreme Court 298).

6- In order to evaluate the material, being made basis to agitate '*plea of alibi*' would, of course, require factual inquiry, not permissible under the constitutional jurisdiction. The argument advanced by the learned counsel for the petitioner might be of the worth consideration but this Court is bound to adhere to the law on the subject strictly. To give findings on any plea is the prerogative of the court of competent jurisdiction where petitioner can raise all his grounds including the one, being pressed through the instant writ petition. The petitioner, as stated, is on pre-arrest bail by the court of competent jurisdiction which is fixed for 29.04.2020 and therefore, required to pursue the matter before the learned trial Court.

7- The Criminal Procedure Code envisages two modes for acquittal from a criminal case, one is the ultimate decision of the court of competent jurisdiction after going through the prescribed procedure of trial and the second one is if someone feels that he is wrongfully and illegally engaged in the criminal proceedings then he has an option to file application under section 249-A of the Criminal Procedure Code for early acquittal. Guidance in this respect is taken from the case law reported as PLD 2013 SC 401

**{Director-General, Anti-Corruption Establishment,
Lahore and others. Vs. Muhammad Akram Khan and
others}** wherein it was held that:-

“The law is quite settled by now that after taking of cognizance of a case by a trial court the F.I.R. registered in that case cannot be quashed and the fate of the case and of the accused persons challaned therein is to be determined by the trial court itself. It goes without saying that if after taking of cognizance of a case by the trial court an accused person deems himself to be innocent and falsely implicated and he wishes to avoid the rigours of a trial then the law has provided him a remedy under sections 249-A/ 265-K, Cr.P.C. to seek his premature acquittal if the charge against him is groundless or there is no probability of his conviction.”

8- In view of above, the instant writ petition being pre-mature due to having alternate efficacious remedy, is not maintainable. It is accordingly **dismissed in-limine**, however, the petitioner shall be at liberty to avail all remedies available to him under the law, if so advised.

**(FIAZ AHMAD ANJUM JANDRAN)
JUDGE**

Imran