

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**(JUDICIAL DEPARTMENT)**

**Writ Petition No. 2078 of 2021**

Inayatullah

***Versus***

SHO, FIA Corporate Crime Circle, Islamabad.

**Writ Petition No. 3109 of 2021**

Masood Jillani

***Versus***

Director General, FIA, Islamabad and others.

**Writ Petition No. 3162 of 2021**

Rana Farhan Ismail

***Versus***

Director General, FIA, Islamabad and others.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(04)	23.11.2021	Mr. Adil Aziz Qazi and Mr. Abdul Rehman Sheikh, Advocates for the petitioners in their respective writ petitions. Mr. Nazar Hussain Shah, Assistant Attorney General. Malik Khizar Hayat, Additional Direction (Law), F.I.A Fazal Akbar, Deputy Director (Law), FIA. Asfandiyar, S.I, Corporate Crime Cell, FIA.

By way of this single order, I  
intend to decide the above captioned  
three writ petitions, having common  
questions of law and facts.

02. The petitioners are seeking quashing of FIR No. 03/2021, dated 26.04.2021, offence under Sections 420, 468, 471, 477-A, 109, 34 P.P.C. read with Section 5(2)47 PCA, 1947, registered at Police Station F.I.A. Corporate Crime Circle, Islamabad.

03. It is alleged that the petitioners / accused in connivance with co-accused made fraudulent allotment of plot in Capital Development Authority, file of the plot was prepared / duly constructed in back dates. All process / procedure adopted in CDA from scratch was fraudulent, bogus and with malafide intentions for the purpose of pecuniary advantages, and by flouting all rules, regulations, SOP, CDA Property Manual, the accused persons caused a loss of millions to national exchequer for pecuniary advantages, hence the instant FIR.

04. learned counsel for the petitioners *inter alia* contends that the petitioners are innocent; instant FIR has been registered with malafide intentions and by ulterior motives just in order to extract undue benefits from the petitioners, in order to harass and humiliate them; allotment letters which are alleged to be forged and unlawful are still intact and have not been cancelled by the competent authority, therefore it cannot be alleged that a crime has been committed until and unless the same have been cancelled by the competent authority / CDA; if at all any allotment has wrongly been made by the department, the CDA ordinance and bye-laws duly provide a procedure to cure the mistake, and instead of applying the relevant law on the subject, criminal proceeding have been initiated at the behest of some influential persons which is unjustified and unlawful; the impugned FIR is against the law and facts, same is

outcome of the abuse of process of law which is unprecedented, result of colorable exercise of authority tainted with malafide, ulterior motives, a device of exploitation without jurisdiction; there is no apparent compliant in the impugned FIR; there is no mentioning of amount of loss if so occurred to public exchequer; there is no direct or indirect evidence available against the petitioners; no credible, tangible, cogent or confidence inspiring evidence is available on record to connect the petitioners with the commission of offence; no report under Section 173 Cr.P.C has yet been filed by the respondent / FIA before the Court of Competent jurisdiction; FIR has been registered in violation of Federal Investigation Agency (Inquiry and Investigation) Rules, 2002, as no sanction from competent authority before conducting an inquiry or registration of FIR has obtained by FIA;

FIR registered against the petitioners is based on ulterior motives and have prayed for quashing the same.

05. Learned Assistant Attorney General has controverted the arguments advanced by learned counsel for the petitioners and has stated that challan / report under Section 173 Cr.P.C has been submitted in the learned trial Court; FIR has been registered after conducting an inquiry; sufficient evidence is available against the petitioners, fate of the case will be decided after recording of evidence by learned Trial Court in accordance with law and has prayed for dismissal of instant petitions.

06. Arguments advanced by learned counsel for the petitioner / accused and learned Assistant Attorney General have been heard and record has been perused with their able assistance.

07. Though the ground of registration of FIR is violation of Federal

Investigation Agency (Inquiry and Investigation) Rules, 2002, that no one has obtained sanction from the competent authority prior to the conducting of an inquiry or registration of FIR, has been mentioned in writ petitions, but learned counsel for petitioners have vehemently argued the said ground at the time of arguments.

08. In this regard, dictum has been laid down by the Hon'ble Federal Shariat Court and upheld by the apex Court through following judgments;

i. **Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad Vs. Zafar Awan (PLD 2005 Supreme Court 19).**

ii. **Federation of Pakistan through Secretary Ministry of Law, Justice and Parliamentary Affairs Government of Pakistan, Islamabad Vs. Zafar Awan,**

**Advocate, High Court (PLD 1992 Supreme Court 72).**

iii. **Zafar Awan Vs. The Islamic Republic of Pakistan (PLD 1989 Federal Shariat Court 84).**

whereby, it has been held that Rule 5 of Rules *ibid* is no more available to take refuge. It is specifically mentioned in the judgments *supra* that if Federal Government fails to bring amendment as directed, those provisions shall cease to hold the field after the period specified in all the three judgments i.e. PLD 2005 Supreme Court 19, PLD 1992 Supreme Court 72 and PLD 1989 Federal Shariat Court 84.

09. It has also been held in aforementioned judgments that:

***"It is narrated from the Holy Prophet that the previous nations were destroyed because they had different laws for high ups and the influential and others for the masses".***

10. It has also been held that:

***"The provision of the sanction of the President, the Governor of a Province or any other executive authority is, therefore, repugnant to Qur'an and Sunnah of the Holy Prophet and it is, therefore, desired that the President shall take steps so that the above laws are suitably amended before the 1st of January, 1990 failing which the provision requiring the previous sanction or a sanction of the President or a Governor of a Province or any executive authority shall cease to have effect."* (Emphasis supplied)**

11. The decision of Hon'ble Federal Shariat Court and the Hon'ble Supreme Court was also upheld by the Hon'ble Supreme Court in Shariat Review Petition decided on 11.10.2004, whereby it was held that:

***"The review petitions being devoid of force are dismissed. However, necessary amendments be made up to 31<sup>st</sup> March 2005, failing which these provisions of law will cease to have effect."***



12. FIA / respondent has also placed on record the letter dated 26.04.2017, whereby decision of Ministry of Interior has been communicated to FIA, which is reproduced for ready reference;

**Most Immediate**

**NO. 1/5/2013-FIA  
GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR**

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***The Director General FIA  
FIA Headquarters,  
Islamabad.***

***Subject: AMENDMENT IN FIA (INQUIRY & INVESTIGATION) RULES, 2002.***

***I am directed to refer to FIA letter No. APS/DIR-ADMN/SIU-ENQ/46-2013/2015/5520, dated 10-09-2015, on the subject and to state that in light of directions contained in Federal Shariat Court appeals 16, 17 of 1989 where the sections of FIA (Inquiry & Investigation) Rules 2002 seeking permission for initiating action against officers of higher grades (21&22) were considered discriminatory and struck down. The same was upheld by Supreme Court of Pakistan.***

***2. It was clarified by MOI vide letter dated 14-02-2011 (copy enclosed) that the Federal Investigation Agency is authorized to initiate inquiries / cases / sanction of prosecution without any prior permission from any Authority.***

***3. This issues with approval of the competent authority.***

***(Tariq Aleem Gill)  
Deputy Secretary (FIA)***

13. The challan / report under Section 173 Cr.P.C has been submitted in the learned trial Court.

14. The petitioners have alternate and efficacious remedy of filing petition U/S 265-K Cr.P.C for acquittal at any stage in the learned Trial Court.

15. It has also been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Col. Shah Sadiq Vs. Muhammad Ashiq and others"** **(2006 SCMR 276)** that:

***"The learned High Court erred in law in accepting constitutional petition by quashing the F.I.R. at the initial stage which was not in consonance with the law laid down by this Court in the following judgments:--***

***(i) Ghulam Muhammad v. Muzammal Khan and 3 others PLD 1967 SC 317;***  
***(ii) Mohsin Ali and another v. The State 1992 SCMR 229; (iii) Abdul Rehman v. Muhammad Hayat Khan and others 1980 SCMR***

**311; (iv) Marghoob Alam and another v. Shamas Din and another 1986 SCMR 303; (v) Sheikh Muhammad Yameen v. The State 1973 SCMR 622; (vi) Bashir Ahmad v. Zafar-ul-Islaam and others PLD 2004 SC 298; (vii) Kh. Nazir Ahmad's case AIR 1945 PC p.18; (viii) Shahnaz Begum v. The Honourable Judges of the High Court of Sindh and Balochistan and another PLD 1971 SC 677; (ix) Brig. (Retd.) Imtiaz Ahmad v. Government of Pakistan through Secretary, Interior Division, Islamabad and 2 others 1994 SCMR 2142.**

16. Guidance in this respect is also taken from the law laid down by the Hon'ble Supreme Court of Pakistan in a case titled as "**Director General, Anti Corruption Establishment, Lahore and others Vs. Muhammad Akram Khan and others**" (PLD 2013 SC **401**), wherein it is held that:

***“The law is quite settled by now that after taking of cognizance of a case by a trial court the FIR registered in that case cannot be quashed and the fate of the case and of the accused persons challenged 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 rigorous 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.”***

17. It has also been held by the Hon’ble Supreme Court of Pakistan in a case titled as **“Mst. Kaniz Fatima Vs. Muhammad Salim” (2001 SCMR 1493)** that:

***“Where a particular statute provides a self-contained machinery for the determination of questions arising under the Act and where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief any indulgence to the contrary by the High Court is bound to produce a sense of distrust in statutory Tribunals***

***and constitution petition without exhausting remedy provided by the statute would not lie in the circumstances”.***

The same principle has been enunciated in a case titled as

**"Muhammad Abbasi Vs. S.H.O.**

**BharaKahu and 7 others” (PLD**

**2010 Supreme Court 969)**, wherein

it is held that:

***“In our view where alternate remedy is more convenient, beneficial and likely to set the controversy at naught completely, jurisdiction under Article 199 cannot be exercised”.***

18. In another case titled as **"Rana**

**Aftab Ahmad Khan Vs.**

**Muhammad Ajmal and another”**

**(PLD 2010 Supreme Court 1066),**

it is held that:

***“We have considered the above and are constrained to hold that the constitutional jurisdiction (reference Article 199) of the High Court in all the cases cannot be invoked as a matter of right, course or routine, rather such jurisdiction has certain***

***circumventions which the Court is required to keep in view while exercising the extraordinary discretionary power”.***

19. For what has been discussed above and the laws laid down by the Hon’ble Supreme Court of Pakistan, writ petitions are not maintainable and the same are **dismissed** being meritless, with no order as to costs.

**(TARIQ MEHMOOD JAHANGIRI)**  
**JUDGE**

Bilal /-

**Approved for reporting.**