

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Justice Qazi Faez Isa, CJ  
Justice Muhammad Ali Mazhar  
Justice Musarrat Hilali

**Criminal Petition No.188-P of 2023**

[Against the judgment dated 10.11.2023 passed by the Peshawar High Court, Peshawar in CrI. Misc. (BA) No.3997-P/2023]

<i>Kashif</i>		<i>...Petitioner(s)</i>
	<b><i>Versus</i></b>	
<i>Imran and another</i>		<i>...Respondent(s)</i>
For the Petitioner(s)	:	Mr. Shabbir Hussain Gigyani, ASC
Complainant	:	In person
For the State	:	Mr. Altaf Khan, Addl. AG KP
Date of Hearing	:	17.01.2024

**O R D E R**

**Qazi Faez Isa, CJ.** Learned counsel states that FIR No.1154 was registered at Police Station Kalu Khan on 20 December 2022 wherein a group of unknown persons were mentioned for committing dacoity in the complainant's house. Learned counsel submits that the two persons whose description was provided in the FIR did not match the description of the petitioner and that he was falsely implicated as he was already in the illegal detention of the Police.

2. Pursuant to notice issued on 5 December 2023 the complainant is present and seeks time to engage a counsel. This is a bail matter where the accused is in Jail and sufficient notice has been given, therefore, the complainant's request for adjournment cannot be accommodated. The learned Additional Advocate General ('AAG') opposes bail.

3. The FIR states that three sub-machine guns (SMGs)/7.62 bore weapons and one 9 mm pistol, gold ornaments and mobile phones were stolen when the dacoity was committed. In view of the fact that the description of the petitioner was not mentioned in the FIR, this brings into question the identification parade. And none of the stolen goods were recovered from the petitioner which makes this case one of further inquiry. Therefore, the petitioner is granted bail in the sum of fifty thousand rupees (Rs.50,000) upon provision of bail bonds and one surety in the said amount to the satisfaction of the Trial Court by

converting this petition into an appeal and allowed by setting aside the impugned order.

4. During the hearing the Investigating Officer ('IO') was asked whether he had inquired from the complainant or the owner of the stolen firearms to produce their licences and we were told that this was not done; a sad reflection on the manner in which the investigation was carried out. We then asked the complainant whether the stolen firearms were licensed and he produced photo copy of a piece of paper, which is reproduced hereunder:

'TO WHOM IT MAY CONCERN

Mr. Haleem Khan s/o Hakeem Khan r/o Bali Khel Ismaile, District Swabi, CNIC No. 16202-0972044-7 to carry his own Weapon 7.62 Bore (Rifle) No. 2523103 for his self protection. He may be provided all legal help when needed in the jurisdiction of his fields. He will not display the weapon nor shall violate the provisions of section 144 Cr.PC.

(N.B not transferable not to be photo stated
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Validity 03 months with effect from the date of issue 23 June 2014
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(Muhammad Saeed) PSP  
Deputy Inspector General of Police,  
Mardan Region-I, Mardan

No.1891/PA  
Dated 23.6.2014'

We cannot ignore the above document, which had been produced before us in Court, which purports to be a license of a sub-machine gun (SMG) which is a prohibited bore weapon. Notifications are also issued by the government exempting the requirement of obtaining licenses or permitting licenses for prohibited bore weapons to certain categories of persons, including Chief Justices, Judges, Ministers, Parliamentarians, as mentioned in Schedule I of the Arms Rules, 1924.

5. The above has raised the following questions:

- (1) Under what legal authority had the Deputy Inspector General of Police, Mardan Region-I, Mardan issued the said document which purports to be a license to carry an SMG, which is a prohibited bore weapon?
- (2) Whether licenses of SMG and other prohibited bore weapons can be issued?

- (3) If the answer to the above is in the affirmative, the applicable law and procedure, and the person(s) who can issue exemptions/licenses?
- (4) The number of licenses, including permits, issued with regard to SMGs and other prohibited bore weapons.
- (5) The approximate number of SMGs and other prohibited bore weapons in private use in the country?
- (6) Whether exempting certain categories of persons or granting them the right to obtain licenses for SMGs and other prohibited bore weapons accords with Article 25 of the Constitution, which mandates that all citizens are equal before the law?
- (7) Whether enabling the easy availability of SMGs and other prohibited bore weapons accords with Article 9, the Fundamental Right to life guaranteed by the Constitution?

6. The office is directed to make a separate file and title it 'Sub-Machine Guns and other Prohibited Bore Weapons' and register it as a constitution petition under Article 184(3) of the Constitution with regard to paragraph 4 onwards. The matter prima facie is one of public importance with regard to the enforcement of Fundamental Rights, including Articles 9 and 25 of the Constitution, therefore, it be placed for consideration of the Committee constituted under Supreme Court (Practice and Procedure) Act, 2023.

7. In the meanwhile notices be issued to the Secretary Interior, Home Secretaries and Inspector Generals of Police of the provinces, each of whom should separately submit their replies to the noted questions within one month. Notices be also issued to the Attorney-General for Pakistan and the Advocate-Generals of the provinces in terms of Order XXVIIA of the Civil Procedure Code, 1908.

Chief Justice

Judge

ISLAMABAD  
17 January 2024  
Syed Farhan Ali

Judge

Approved for reporting