

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department].

Writ Petition No.2424-P/2021

Mian Humaun Shah son of Mian Fayaz Ali Shah,
 r/o Humaun Shah market GT road, Nowshera cantt.

Petitioner (s)

VERSUS

Naeems Jan son of Naseer Ullah,
 r/o Khwaja Town Pachgi road,
 Peshawar and others.

Respondent (s)

For Petitioner (s) :-	<u>Syed Aziz ud Din Kakakhel, Advocate</u>
For respondents :-	<u>Nemo (case in motion).</u>
Date of hearing:	<u>08.09.2021</u>

JUDGMENT

ROOH-UL-AMIN KHAN, J:-By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, Mian Humaun Shah, the petitioner, seeks issuance of the following writ:-

“To declare the delay in decision of Bail Before Arrest Application and absence of respondent No.1/accused from the court in the said proceedings, as illegal, unlawful, unconstitutional and against the National Judicial Policy (NJP);

To direct the learned Sessions Judge, Nowshera/respondent No.4 to decide the Bail Before Arrest application of

accused/respondent No.1 as early as possible;

and

To direct the learned subordinate criminal courts of the Province to decide all kinds of bail matters within a period provided by the National Judicial Policy (NJP) and the matter of delay in the BBA application of respondent No.1 may also be probed into”.

2. In essence grievance of the petitioner is that on his report case FIR No.984 dated 24.12.2020 u/s 489-F PPC, was registered against accused-respondent No.1 in Police Station Nowshera Cantt. On 26.12.2020, accused-respondent No.1, filed bail before arrest application and ad-interim pre-arrest bail was granted to him on the same date by learned Judicial Magistrate/MOD, Nowshera due to winter vacations. Subsequently, the matter was entrusted to the learned Additional Sessions Judge-II, Nowshera by the learned Sessions Judge, Nowshera. Since 26.12.2020, till date, the BBA application of the accused-respondent could not decided by the court due to absence of accused-respondent No.1 on various dates of hearing as well as his willful and intentional adjournments on one and the other pretext, hence, this writ petition.

3. During the course of arguments learned counsel for the petitioner did not press the petition to the extent of expeditious decision of the pre-arrest bail application of

accused-respondent No.1, as according to him the same has been withdrawn, however, to the extent of the remaining relief, he advanced his submissions and requested for issuance of directions to the learned subordinate criminal courts for expeditious decision of bail matters within the period as provided under the NJP.

4. As regards submission of learned counsel for the petitioner, suffice it to say that the National Judicial Policy (NJP) 2009 provides specific time for decision of the criminal cases and bail matters and guidelines for such disposal. For the sake of convenience and ready reference relevant part of the NJP, 2009, is reproduced below:-

**“EXPEDITIOUS DISPOSAL OF CASES SHORT
TERM MEASURES I. CRIMINAL CASES 1)**

(1) In bailable cases, grant of bail is a statutory right of the accused; therefore, the court before which the accused appears or is brought may immediately release him on bail, subject to furnishing of sureties as provided under section 496 Cr.P.C.

(2) Bail application under section 497 Cr.P.C. with photocopy of the FIR, duly authenticated by the Counsel, should be accepted and the court shall call for record of the case on its own through Naib Court.

(3) In bail matters, notice to State for production of record shall not exceed **beyond 3 days** and all the Provincial Police Officers/Inspectors General of Police shall issue standing instructions to the concerned officers to ensure production of record without delay.

(4) **Bail applications under section 497 of Cr.P.C. shall be decided not beyond a period of 3**

days by the Magistrate, 5 days by Court of Sessions and 7 days by the High Court.

(relaxed by Hon'ble the Chief Justice of this Court vide order dated 5.8.2017, that all the Bail Before Arrest applications shall be decided by the learned Sessions Judge/ Additional Sessions Judge within 15 days).

(i) The Court should consider the principles set forth by the Supreme Court (1996 S.C.M.R 973) while deciding the bail petitions of women having suckling babies.

(ii) To overcome the problem of congestion in Jails, the court should exercise powers under section 497 Cr.P.C. keeping in view the principles of grant of bail including the principle that if the offence does not fall under the purview of prohibitory clause, grant of bail is a rule and refusal is an exception.

(iii) In case bail is rejected, the court should take all possible measures for disposal of the case to reduce the chances of filing of bail petitions before the higher courts. However, where the accused desires to move the higher court, the trial court should provide attested copies of all the relevant documents to avoid the chance of requisitioning of original record from the trial court which hinders the disposal of case.

(5) Applications for cancellation of bail under Sub-section (5) of section 497 Cr.P.C. should be decided **within 15 days by** the courts including High Court.

Grant of bail or otherwise is the discretion of a court and should be exercised diligently and once a bail is granted it should not be withdrawn unless an opportunity is given to the accused.

(6) In Criminal Cases it is the duty of the police/investigating agency to submit Challan (Police Report) within a period of 14 days as contemplated in section 173 Cr.P.C. In case of non-completion of investigation, an interim report shall be submitted and in such cases, the court shall not grant remand beyond 15 days period.

The prosecution should strictly follow the Order passed by the Supreme Court of Pakistan in the case of Hakeem Mumtaz Ahmad and other vs the State (PLD 2002 SC 590) and it should be ensured that in future challans of criminal cases are submitted within the stipulated period of 14 days as provided under section 173(1) Cr.P.C failing which action should be taken against the concerned officers for non compliance.

(7) Non-completion of investigation and non-submission of Challans in statutory period is a major cause of delays in disposal of cases. Since, Police plays crucial role in administration of justice, therefore, the District Police Officers may be asked to ensure that the police should conclude investigation and submit Challans within the prescribed period of 14 days. They may be asked that the SHOs who fail to comply with this statutory provision should be treated as inefficient officer under the Police Order and the court may also lodge complaint under section 166 PPC against him. The DPOs should also submit list of cases in which Challans are still pending for want of investigation for inspection and passing appropriate orders by the District and Sessions Judge.

(7-A) Challan of case should be submitted after full preparation and after ensuring that all witnesses will be produced as and when required by the courts.”

5. The NJP 2009 also provides specific time period, mechanism and guidelines for decision of the civil matters as well, and having binding effect should be strictly followed and

complied with by all the courts of the country. The delay in disposal of criminal cases, particularly, in bail matters is mostly observed by this court due to non-cooperation of relevant stakeholders of justice sector. At numerous occasions the courts have tried its leveled best to realize strict compliance of the NJP to the justice sector stakeholders for fulfilling their legal obligations towards the expeditious disposal of bail applications, but sometime of no fruitful result. In case of lawyers, the Bar Council being the Regularity Authority of legal fraternity may make adherence towards showing their interest in the early disposal of bail applications. In case, particularly, when the BBA matter is unnecessarily adjourned by the accused or by the complainant, the concerned court shall submit report qua reason of delay to Hon'ble the Chief Justice of this Court through the Additional Registrar (Judicial) and shall also provide detail of order-sheets. We do not want to lay more stress on the duties and responsibilities of the stakeholders of justice sectors except to point out the leading judgment, handed down by Hon'ble Supreme Court of Pakistan in case titled, **“Nazir Ahmad and another vs the State and others” (PLD 2014 Supreme Court 241)**, wherein the principle of propriety and practice in connection of such like acts have been enunciated. On existence of NJP 2009, there remains hardly any need to discuss the code of conduct and etiquettes of legal concerned persons, however, can emphasize that members of the legal fraternity are expected to come forward for curbing the imperil and threats to the legal

profession because it is the only segment of the society to maintain the rule of law and supremacy of the Constitution and high standard of legal profession. The learned Sessions Judges are also under laden duties to strictly observe the NJP, 2009 and in case of non-cooperation of any stakeholder of justice sector, report the matter to Hon'ble the Chief Justice of this Court through the Registrar.

6. With the above observation this writ petition is disposed of accordingly. The Additional Registrar (Judicial) of this court shall communicate copy of this order to all the Sessions Judges of the Province to ensure the strict compliance of principles enunciated in NJP, 2009.

Announced:

8.09.2021

M.Siraj Afridi PS

Senior Puisne Judge

JUDGE

**DB of Mr. Justice Rooh ul Amin Khan Hon'ble Senior Puisne Judge; and
Hon'ble Justice Ms. Musarrat Hilali**