

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

Criminal Petition No.1188/2016

(On appeal from the judgment dated 2.11.2016 passed by the Lahore High Court, Bahawalpur Bench, Bahawalpur in CrI.Misc. No.1850/B/2016)

Muhammad Noman

... Petitioner

VERSUS

The State and another

... Respondent(s)

For the petitioner:

Mr. Azam Nazeer Tarar, ASC
Syed Rifaqat Hussain Shah, AOR

For the respondent/State:

Ch. Muhammad Sarwar Sindhu,
Addl.PG,Pb
Maqbool Ahmad, Inspector, CID
Muhammad Ali, SI/SHO

Date of hearing:

12.1.2017

ORDER

Dost Muhammad Khan,J-. Brief facts of the case are that, according to Crime No.44/16, registered by Police Station CTD, Multan on 9.5.2016 at 4:30 pm, Noor Hassan ASI/CTD Bahawalpur alleged in his written complaint, sent to the Police Station that he was conducting raid near Toll Plaza, Bahawalpur when a secret informer told that five persons carrying handbags, were proceeding towards the Railway Bridge on river Sutlaj and appeared to be suspected militants,

thus, he bolted towards the spot with the police party and near Railway Bridge, river Sutlaj they spotted the gang, who attempted to flee away however, their attempt was foiled. On their arrest, they disclosed their names as (i) Abdul Hameed (ii) Sikandar Ilyas (iii) Usman Arif (iv) Muhammadullah while the fifth was the petitioner. From each one of the accused, one handbag each was recovered, containing explosive substances, time-bombs, arms & ammunition and some literature. Each bag was inscribed with the slogan, "الله اكبر". Full detail of the explosive substances, time-bombs, pistols, arms & ammunition of different kinds is mentioned in the report thus, they were charged for crimes u/S.9-ATA, S.7-ATA, S.4 Explosive Substances Act, S.13-2(A)/20, Arms Ordinance, 1965 and amended Ordinance, 2015.

We have heard the learned ASC for the petitioner, Ch. Muhammad Sarwar Sindhu, learned Additional Prosecutor General, Punjab and have also put queries to Maqbool Ahmed, Inspector CTD and Muhammad Ali, SI/SHO, who in quick succession conducted investigation.

2. Learned counsel for the petitioner argued with a considerable vehemence that the petitioner was arrested on 6.4.2016, which fact is evident from the application of brother of the petitioner namely, Muhammad Salman Arif, who has alleged therein that on the night between 3/4 April, twenty to twenty five persons, dressed in black uniform, entered their house Survey No.55-A, New Muslim Town, Lahore without any lawful authority and took away the petitioner along with cell phones and three licensed guns/rifles, ATM Card and cash

amount. It is further stated in the application that he immediately called Emergency Response Force at 1:05 hrs, which reached at the spot after 1 ½ hrs.

3. This application of brother of the petitioner was duly entered by Rescue Police-15 in *daily diary* vide serial No.564 on the same date, with the exact time, certified copy of which is available at Pg.24. It was further urged that the petitioner is a businessman and a tax payer and record to this effect has been annexed with this petition and has never been reported to be a militant himself or in anyway belong to any militant group, nor has been found to be a facilitator. Learned ASC elaborating his point of view further referred to filing of "Habeas Corpus" petition before the Justice of Peace, though with some delay but explaining the same he urged that the petitioner's brothers and mother were searching about the petitioner and have made several complaints/applications to different authorities including the SHO, PS Muslim Town, Lahore, RPO, Lahore and SSP as well, however, no inquiry/investigation was conducted about the incident of abduction of the petitioner from his house because of *malafide* intention of the police. We put questions to the SHO, Muslim Town that when such a report was made with Rescue Police-15 and he was also approached in this regard, why he did not investigate into the incident, as to whether the same had indeed taken place in that manner or it was a false information, given by the brother of the petitioner, however, he admitted that he did not perform his duties under the law and also could not offer any explanation for this negligent omission, as the written complaint submitted to him by the brother of the petitioner about the abduction of the petitioner from his house, was not inquired

into or investigated in any manner whatsoever, rather the same was deliberately suppressed.

4. We also put questions to the Investigating Officer of this case, as to whether the petitioner was found connected with any militant group or had been found financier or provided any other facility to such gang, his answer was a big, "NO". He was also put a question that, when the incident of abduction of the petitioner, from his house was brought to his notice by the petitioner himself and his brother through a written application, whether he took a little pain to inquire from the Rescue Police-15 about the said incident or from the SHO of Muslim Town, Lahore, his reply was also in the negative. He was further asked, as to why this aspect of the matter was not inquired into/investigated, he was unable to offer any explanation, much less plausible.

5. True that the country is confronted with a formidable terrorist activities from one end to the other so much so, that twice the Armed Forces were called in aid of the civil administration/government to suppress this grave mischief of a considerable magnitude, in which Army Officers/soldiers as well as the personnel of other Law Enforcing Agencies have suffered casualties in thousands, while the public was the major victim besides the public and private properties were extensively damaged through explosive substances planted or through suicidal attacks, however, this should not, in any manner, distract the Court of Law from doing justice in a given case, when, the investigation/inquiry carried out is neither satisfactory nor it is free from malice and the citizens' implication in

such nature of cases is not free from reasonable doubt, thus, they cannot be left at the mercy of the police's traditional chicanery indulging in such like tactics, not authorized by the law.

6. While dealing with the liberty of the citizen at bail stage or otherwise, the Courts are required to take extra degree of care and caution so that actual terrorists/militants, challenging the writ of the State, may not go scot free, nor innocent citizens are grilled and put behind the bars, painting him/them as terrorists or belonging to militant gangs/groups because, in the present situation prevailing throughout the country, chances could not be ruled out of false implication of innocent citizens for ulterior motive, in some rare cases.

7. It is essential and obligatory duty of the superior police officers of the rank of SP, SSP and above that, when the accused make such allegations, supported by record of the Police itself, they have to take charge of the investigation and to dig out the truth because it is the duty of the Police as a whole, irrespective of rank and file to bring the correct and true facts/materials before the Court of Law so that the actual criminals are punished, sans innocent citizens.

8. In the present case, the facts and circumstances would show, that the investigation was one-sided and the other aspects of vital importance were not touched much less investigated into without any explanation offered by the investigating officer present in court, therefore, the case of the petitioner squarely falls within sub section (2) of S-497 Cr.P.C being susceptible to further inquiry. Therefore, in our considered view, the petitioner is found entitled to grant of bail as a matter of right and not as a matter of grace.

Accordingly this petition is converted into appeal and the same is allowed.

9. These are the detailed reasons for our short order of today which is reproduced below: -

“For the reasons to be recorded later, petitioner is admitted to bail subject to furnishing solving bonds in the sum of Rs.200,000/- (two lac) with two PR bonds in the like amount to the satisfaction of the trial court.”

Judge

Judge

Islamabad, the
12th January, 2017
Nisar/-

Approved For Reporting.