

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Qazi Faez Isa
Mr. Justice Syed Mansoor Ali Shah

Criminal Petition No. 624/2021

(Against the order dated 04.06.2021 of the Peshawar High Court, Peshawar passed in Cr. Misc. (Bail Application) No. 1665-P/2021)

Gul Rehman. ... *Petitioner*

Versus

The State through AG, KP, Peshawar. ... *Respondent*

For the Petitioner: Malik Nasrum Minallah, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Shumail Aziz, Additional Advocate
General, Khyber Pakhtunkhwa

Date of Hearing: 07.07.2021

ORDER

Qazi Faez Isa, J. The petitioner seeks bail in FIR No. 201 registered at police station Jaloza, District Nowshera on 3 May 2021 under sections 15 and 17 of the Khyber Pakhtunkhwa Arms Act, 2013 when he was found carrying an unlicensed pistol, a shotgun, a rifle and considerable quantity of their bullets and cartridges.

2. The learned Mr. Nasrum Minallah submits that the maximum punishment in respect of the said provisions of law is seven years imprisonment; that the petitioner is a local resident and there is no chance of him fleeing; that the investigation report (*challan*), which is to be submitted within the time mandated in the proviso to section 173 of the Code of Criminal Procedure (**'the Code'**), has still not been submitted nor for that matter an interim report and that the prohibition contained in section 497 of the Code is not attracted.

3. The learned Additional Advocate General, Khyber Pakhtunkhwa (**'AAG'**) was asked why the investigation report (*challan*) had still not been

submitted after a period of over two months and he states that this is a perennial problem in the province. However, the learned AAG opposes the bail contending that the petitioner was caught red-handed.

4. We have heard the learned counsel. Admittedly, the investigation report (*challan*) has still not been submitted despite the accused being in custody, and thus available for investigation. The petitioner is a local of a known address and the offence attracts a maximum punishment of seven years and the prohibitory clause is not attracted. The trial has still not commenced and will not commence till the prosecution submits the investigation report (*challan*). Therefore, the petitioner is admitted to bail in the said FIR subject to furnishing bail bond in the sum of one hundred thousand rupees with one surety in the like amount to the satisfaction of the Trial Court. Accordingly, whilst setting aside the impugned order, this petition is converted into an appeal and allowed.

5. We have repeatedly taken notice of the delay in the submission of investigation reports (*challans*) in the province of Khyber Pakhtunkhwa and this case is yet another example of the law enforcers disobeying the law of Pakistan as contained in the Code. The Code's section 173(1) and its proviso are reproduced hereunder:

173. Report of police-officer.- (1) Every investigation under this Chapter shall be completed, without unnecessary delay, and, as soon as it is completed, the officer incharge of the police-station shall, through the Public Prosecutor,

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the Provincial Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case and stating whether the accused (if arrested) has been forwarded in custody or has been released on his bond and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the Provincial Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

Provided that, where investigation is not completed within a period of fourteen days from the date of recording of the first information report under section 154, the officer incharge of the police station shall, within three days of the expiration of such period, forward to the Magistrate through the Public Prosecutor, an interim report in the form prescribed by the Provincial Government stating therein the result of the investigation made until then and the court shall commence the trial on the basis of such interim report, unless, for reasons to be recorded, the court decides that the trial should not so commence.

6. In this case, no in-depth investigation is required because, as per the police who are the complainant of the case, the petitioner was caught with the said weapons and their ammunition. Belated submission of investigation reports, and for no ostensible reason, undermines the rule of law and is a good indicator of bad governance. Just a couple of days earlier in another bail matter (Criminal Petition No. 616/2021 titled *Shahzad Khan v The State through Advocate General Khyber Pakhtunkhwa*) we had also noted the abject neglect of the prosecution in not having submitted the investigation report (*challan*) even after a lapse of seven months, constraining us to direct that a copy of the order be sent to the Provincial Police Officer, the Secretary, Home and Tribal Affairs Department and the Advocate General, Khyber Pakhtunkhwa. However, we feel that the matter of non-submission or inordinately late submission of investigation reports needs to be critically examined and redressed by the concerned, particularly as despite the orders of this Court this practice continues and results in lawlessness.

7. Due to the neglect of the police-prosecution in not submitting investigation reports (*challans*) trials cannot commence; trials which would probably conclude by the time the matter of bail comes before this Court. Therefore, either the accused is kept from being punished for the crime committed by him or he is unable to secure his freedom on being acquitted; in either eventuality a wrong signal is sent out, which is that either the judiciary is unnecessarily releasing the accused on bail or keeping innocent persons incarcerated for no good reason. Moreover, the focus shifts away from the early conclusion of trials to incidental matters, such as pursuing the remedy of bail by the accused and the resources of

the State and in most cases also those of the complainant's, expended in opposing bail. Court time is also wasted in attending to bail matters which would have been better spent in attending to the trial and appeals.

8. The intolerable state of affairs noted in the aforesaid paragraphs must come to an end. The law, that is, section 173 of the Code, and the observations this Court made are repeatedly being disobeyed in the province. Whenever citizens violate the law they have to face consequences but the State, with all the resources at its command, is getting away with violating the law far too often. Therefore, we are now constrained to direct that the Chief Secretary Khyber Pakhtunkhwa to arrange and chair a meeting in which the Provincial Police Officer, the Secretary, Home and Tribal Affairs Department, the Director, Public Prosecution and the Advocate General of the Khyber Pakhtunkhwa participate to once and for all resolve this endemic problem. Pursuant to such meeting, a report signed by all the said officers to be submitted to this Court for our consideration in Chambers within one month from the receipt of this order. Failing to submit report or one which does not resolve the problem may constrain us to take notice and pass appropriate orders. The office is directed to send copies of this order for information and compliance to the above-named.

Judge

Judge

Bench-III
Islamabad
07.07.2021

Approved for Reporting
(Farrukh)