

Order Sheet
IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

CP No. D- 1720 of 2021

BEFORE:

Mr. Justice Adnan-ul-Karim Memon
Mr. Justice Anan Iqbal Chaudhry

Petitioner: Abdul Razzaue through Mr. Irfan Ali Khaskheli, Advocate.

Respondents: Mr. Rafiq Ahmed Dahri, Asstt: A.G. along with Inspector Jan Muhammad Samtio SHO Airport NawabShah, SIP Noor Muhammad on behalf of DIGP Hyderabad.

Date of hearing & decision: 07.12.2021

ORDER

ADNAN-UL-KARIM MEMON, J:- Petitioner has averred that on 16.10.2021 at about 15:20 he along with his brother Abdul Khaliq and cousin Ahmed were present at the mobile shop of his brother Majid (detenue) at Landhi stop Nawabshah when one police mobile and two black colors GLI Cars arrived, out of which five unknown persons having the mask on their faces and duly armed with deadly weapons alighted and taken away his brother Majid Ali in GLI Car; in the evening at 1730 hours the petitioner along with relatives approached SHO PS Taluka Nawabshah, narrated him the incident but he refused to record the statement; therefore, the petitioner on 18.10.2021 filed Cr. Misc. Appl. No. 2878 of 2021 before District & Sessions Judge, Shaheed Benazirabad and on his direction Civil Judge & Judicial Magistrate-II conducted raid but could not recover the detenue; subsequently, the petitioner approached higher authorities, published news in newspapers but failed to know about the whereabouts of the detenue, hence under the compelling circumstances has filed the instant petition seeking direction to official respondents to search, recover and produce the detenue before this court for recording his statement and to take

legal action as per law against the officials who are involved in the heinous offense of kidnapping of petitioner's son.

2. It is, inter-alia, contended by Mr. Irfan Ali Khaskheli, learned counsel for the petitioner that on 16.10.2021 petitioner was available at his shop situated Landhi Nawabshah along with his brother/ alleged detainee, when at about 15:20 pm. one police mobile and two GLI cars came over there, from which five unknown persons with muffled faces, alighted and they by force of weapons kidnapped/ abducted his brother and went away. He further submitted that the petitioner has also filed an application under Section 491 Cr. P.C before the learned District Judge Shaheed Benazirabad and in consequence thereof raid was conducted at PS by the Judicial Magistrate; however, same remained unsuccessful. Learned counsel added that this court vide order dated 23.11.2021 directed for registration of F.I.R, however, the police instead of lodging F.I.R of the petitioner lodged false F.I.R No.80 of 2021 with police station Kadhar District Shaheed Benazirabad for offenses under Section 6/7 ATA & 3/4 of Explosive Act and thereafter lodged his F.I.R No. 93 of 2021 at Police Station Taluka Nawabshah with malafide intention. He emphasized that it was a setup case and, therefore, this Court may take cognizance of the matter. He asserted that this has happened after filing of this petition and after the order dated 23.11.2021 passed by this court; that the fundamental right guaranteed under Article 4 of the Constitution to the detenuess/ missing person and his family were violated and, therefore, even after having found involved in false criminal case registered by Police Station Taluka Nawabshah.

3. We have heard the parties on the subject issue and perused the material available on record.

4. Petitioner has sought indulgence of this Court by way of captioned petition. Today, Inspector Jan Muhammad Samtio SHO Airport Nawabshah present in court has filed progress report in connection with Crime No. 93 of 2021 of PS Taluka Nawabshah under Section 365 PPC and submitted that investigation of the said crime is underway.

5. Primarily under Article 4 every citizen has an inalienable right to be treated under law and to enjoy the protection of law.

Furthermore, under Article 9 no person shall be deprived of life or liberty save under law. Article 10 provides safeguards against arrest and detention. It provides that no person who is arrested shall be detained in custody without being informed as soon as may be of the ground for such arrest and every person who is arrested and detained in custody, shall be produced before a Magistrate within 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of nearest Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. These provisions do not apply to preventive detention, but this is not the case here. Article 14 provides that the dignity of man and subject to the law the privacy of home shall be inviolable. It is clear in its terms that prohibit that no person shall be subjected to torture to extract evidence. These provisions which confer fundamental rights on a citizen whenever violated and complaint is made to this Court about their violation, the Court must step in to investigate such facts under the discretionary jurisdiction conferred on it under Article 199 and pass such order as may be found just, legal and equitable taking into consideration the facts and circumstances of each case. On the aforesaid proposition, we seek guidance from the decision rendered by the Hon'ble Supreme Court in the case of the Government of Sindh through the Chief Secretary, Karachi and 4 others v. Raees Farooq and 5 others (1994 SCMR 1283).

6. It is now settled principle of law that where petition under Article 199 is filed challenging the arrest and detention of any person, the High Court will not straightaway refuse to exercise jurisdiction the moment information is laid that the detinue is involved in any criminal case registered with the Police. The High Court has the jurisdiction to examine the facts and information laid before it to determine prima facie that it does not lack bona fides, is not a cooked up or manipulated affairs, the detinue has not been, illegally detained without a proper and legal remand order where it is required and there appear reasonable grounds for believing that the detinue is involved in the crime charged with. If once it is conceded that on receipt of information as supplied the High Court should refuse to exercise its Constitutional jurisdiction without examining it, the very provision of the Constitution (Article

199 (1) (b) (i) conferring power of judicial review will be frustrated. The High Court is competent to examine and satisfy itself that the detinue is not being held in custody without lawful authority or in an unlawful manner. This can be achieved only when the Court examines the information, reasons, facts, and causes leading to detention. Such inalienable rights are supposed to be protected even in the state of emergency as held by the Hon'ble Supreme Court in the case of Federation of Pakistan and others v. Shaukat Ali Mian and others (PLD 1999 SC 1026).

7. In view of the above facts and circumstances, DIG Hyderabad is directed to hold an inquiry into the matters as discussed supra and arrest of the missing person/detinue and take stern/disciplinary action against the police personnel responsible for such conduct. In the meanwhile, the investigation of the Crime No.80 of 2021 with police station Kadhar District SBA for offenses under section 6/7 ATA, 3/4 of Explosive Act and Crime No. 93 of 2021 at Police Station Taluka Nawabshah be transmitted to Inspector Siraj Ahmed Lashari for fair and impartial investigation. Such compliance report shall be submitted by the DIGP Hyderabad under his signature to the Additional Registrar of this Court.

8. Since this petition has served its purpose, which is disposed of in the above terms.

JUDGE

JUDGE