

**ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI**

CP No.D-831 of 2013
CP No.D-834 of 2013
CP No.D-8010 of 2019
CP No.D-975 of 2020
CP No.D-8309 of 2019
CP No.D-2123 of 2020

Date	Order with signature of Judge(s)
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1. For orders on CMA No.23349/2021.
2. For hearing of CMA No.30688/2019.
3. For hearing of CMA No.30265/2019.
4. For hearing of main case.

20.09.2021

For the Petitioners

Dr. Shah Nawaz Memon, advocate.
Ms. Dil Khurram Shaheen, advocate.
Mr. Shahid, advocate.
Mr. Manzar Hussain Memon, advocate.

For the Respondents

Syed Mohsin Imam, advocate.
Mr. Ashiq Ali Anwar Rana, advocate.
Mr. Khalid Rajpar, advocate.
Mr. Aamr Raza, advocate.
Mr Muhammad Taseer, advocate.
Mr. Zakir Laghari, advocate.
Mr. Kafeel Ahmed Abbasi, Deputy Attorney General and
Barrister Hussain Bohra, Assistant Attorney General.

Admittedly, these petitions primarily seek to vitiate criminal proceedings, pending trial before the competent court/s, and have *inter alia* obtained the concession of *bail* as an interim measure, before the civil tax bench of this Court. The crux of the petitioners' case is that notwithstanding the registration of criminal proceedings, vide the respective FIRs, and submission of *challans*, it was incumbent upon this Court to determine the viability of the criminal proceedings and regulate the custody of the accused, while exercising jurisdiction under Article 199 of the Constitution.

CP D 831 of 2013 has been filed by a company assailing an FIR and seeks protective orders also in respect of its directors and officers, not even party hereto. On 01.03.2013 ad-interim orders were obtained, whereby the respondents were restrained from undertaking any arrest in respect of the FIR, and said unsecured restraint continues till this day. Similarly, in CP D 975 of 2020, 8309 of 2019, 8010 of 2019 and 834 of 2013, respective FIRs have been impugned and similar unsecured restraints upon arrest has been obtained which subsists to this date.

In CP D 2123 of 2020, an FIR has been challenged. We have been informed that the *challan* has already been filed before the trial court, however, custody of the petitioner/accused is being regulated by virtue of bail granted in these proceedings. Learned counsel for respondents have informed us that after obtaining the concession of bail the petitioner remains absent from the trial court. It is pertinent to note that even today

the petitioner, along with the petitioners in the remaining petitions, remains absent from proceedings without intimation or justification.

This Court has disapproved of such unmerited recourse to writ jurisdiction in *Syed Jawad Arshad vs. Federation of Pakistan & Others*¹ (“*Arshad*”) and held, in view of a preponderance of binding authority², that the ordinary course of criminal proceedings could not be allowed to be deflected by resort to writ jurisdiction as the statutory fora are competent to determine the viability of the relevant criminal proceedings and regulate the custody of the accused. It is observed that the ratio of *Arshad* is squarely applicable herein.

In view hereof and in *mutatis mutandis* application of the reasoning and rationale so assigned in *Arshad*, it is found that no case has been set forth before us to merit the invocation of the discretionary³ writ jurisdiction of this Court; hence, the subject petitions, along with listed applications, are hereby dismissed. The office may place a copy hereof in each listed petition.

JUDGE
JUDGE

Khuhro/PA

¹ Judgment dated 03.09.2021; CP D 1083 of 2020.

² *Muhammad Abbasi vs. SHO Bhara Kahu & Others* reported as PLD 2010 Supreme Court 969; Per Hamoodur Rehman J. in *Ghulam Muhammad vs. Muzammal Khan & Others* reported as PLD 1967 Supreme Court 317; Per Aslam Riaz Hussain J. in *Abdul Rehman Bajwa vs. Sultan & Others* reported as PLD 1981 SC 522; Per Muhammad Afzal Zullah J. in *Abdul Aleem vs. Special Judge (Customs) Lahore & Others & Others* reported as 1982 SCMR 522; *A Habib Ahmed vs. MKG Scott Christian & Others* reported as PLD 1992 Supreme Court 353; Per Chaudhry Ijaz Ahmed J. in *Haji Sardar Khalid Saleem vs. Muhammad Ashraf & Others* reported as 2006 SCMR 1192.

³ Per Ijaz Ul Ahsan J. in *Syed Iqbal Hussain Shah Gillani vs. PBC & Others* reported as 2021 SCMR 425; *Muhammad Fiaz Khan vs. Ajmer Khan & Another* reported as 2010 SCMR 105.