

ORDER SHEET
THE HIGH COURT OF SINDH KARACHI

C.P. No.D-2900 of 2022

DATE	ORDER WITH SIGNATURE(S) OF JUDGE (S)
-------------	---

1. For order on office objection
2. For hearing of CMA No.12761/2022
3. For hearing of main case.

09.06.2022

M/s. Khawaja Shamsul Islam and Shahzad Mahmood, Advocates for the Petitioners

Mr. Ali Haider Saleem, Addl. P.G.

Mr. Sandeep Malani, A.A.G. Sindh

DSP (Law) Raza Mian & I.O. DSP City Abdullah Lakhair, District Khairpur

On 24.05.2022, this Court had passed the following order:-

“In compliance of last order a report has been submitted, which shows that against the petitioner five FIRs, three by Anti-Corruption Establishment and two by Provisional Police, have been registered. In all the FIRs he has been granted bail except in FIR registered by one Ali Rahber Rind, bearing Crime No.103/2022, u/s 395 PPC read with Section 7 ATA dated 29.12.2021 at Police Station B-Section, District Khairpur, reporting on incident of robbery by the petitioner along with his accomplices after more than five months. Surprisingly, complainant, who is resident of Khairpur Mirs has recognized petitioner a resident of Karachi and no one else. Prima facie, there appears a mischief behind such FIR. Therefore, in order to do complete justice we issue notice to SHO Police Station B-Section, District Khairpur and IO of this case with direction to be present in person alongwith complainant to explain their position. Adjourned to **31.05.2022**; **meanwhile, no FIR against the petitioners save with permission of this Court be registered either by Anti-Corruption Establishment or District Police.**”

Thereafter, on 31.05.2022 another order was passed in the following terms:-

“IO is present has failed to justify application of Section 7 ATA, 1997 in FIR No.103/2022. When asked, even he has failed to find the ATC Act in the Major Acts and show Section 7 to us and what it speaks of. We direct the SSP Khairpur Mirs to withdraw the investigation of this case from this IO and entrust it to a DSP with good reputation to investigate it and submit report on the next date of hearing. Learned counsel for the petitioner in C.P. No.D-3159/2022 has supplied copy of petition to learned Addl: AG Sindh and learned PG Sindh, who seek time to go through the same and file comments.

Adjourned to **09.06.2022**, meanwhile, no harassment shall be caused to family members of petitioners. Learned Prosecutor General Sindh undertakes that property (Tractors) of the petitioner, if any, parked at Panka Farm bearing Plot No.308, adjacent to Steel Mill, Water Filter Plant, National Highway, Opposite Ghousia Hotel, Main Gulshan-e-Hadeed Road, Karachi shall not be removed without due course of law. Ad-interim order passed earlier to continue till the next date of hearing.

Office to place copy of this order in connected aforesaid petition.”

It appears that Petitioner No.1 namely Shahzad Riaz S/o Shaikh Muhammad Riaz has been implicated in numerous FIRs including but not limited to FIR No.29 of 2017 under Sections 109/409/420/467/468/471/34 PPC in which he was granted bail by this Court vide order dated 3.4.2018; FIR No.01 of 2018 under Sections 409/420/467/468/471/34 PPC in which he has been granted bail by the Circuit Court at Hyderabad, vide order dated 4.5.2018; FIR No.1 of 2022 under Sections 409/420/467/468/471/34 PPC in which he was granted bail again by the Circuit Court at Hyderabad, vide order dated 29.4.2022; FIR No.55 of 2022 under sections 365/511/420/406/506-2/34 PPC in which though bail has been granted by the trial Court on 9.5.2022 but the order is yet to be finally signed. It appears that the modus operandi of the Respondents is that as soon as the surety is furnished, he is nominated or arrested in some other FIRs. It is a matter of an admitted position that he has a Civil dispute with one OMNI Group of Companies. After having been subjected to this treatment the Petitioner No.1 and his family has been compelled to file instant petition.

Insofar as the present status of the proceedings is concerned, this Court after going the ordeal of the Petitioner No.1 was compelled to pass an order on 24.5.2022, restraining the Respondents from registering any further FIR without permission of this Court. It further appears that after passing of bail order in respect of FIR No.55/2022 registered at PS Sanghar, he has once again been arrested in another FIR bearing No.103/2022 registered at PS B-Section District Khairpur under Section 395 PPC read with Section 7 of the Anti Terrorism Act, 1997. The said FIR has been placed before us vide statement dated 24.5.2022 filed on behalf of AIG (Legal).

Today we have gone through the contents of this FIR registered at PS B-Section, District Khairpur and have confronted learned Addl. P.G. as to how this FIR was registered on 02.05.2022 for an offence committed allegedly on 29.12.2021, and he is not in a position to assist us in any manner and justify the conduct of the police officials. I.O. present in Court is also unable to respond satisfactorily as to our above query. This alone is a ground for

grant of bail as apparently the delay of more than 5 months has gone unexplained. Time and again the Hon'ble Supreme Court has held that no person is to be arrested straightway only because he has been nominated as an accused in an FIR or in any other version of the incident until the Investigation Officer feels satisfied that sufficient justification exists for his arrest. In the case of ***Mst. SUGHRAN BIBI v. The STATE (PLD 2018 SC 595)*** the Hon'ble Supreme Court of Pakistan has held that:-

27. "(vi) Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground, so warrants, the arrest is to be deferred till such time that sufficient material or evidence because available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations leveled against such suspect or regarding the involvement in the crime in issue.

As observed earlier when we have confronted the I.O of the case as to what kind of evidence has been collected against Petitioner No.1, which gives a reason to arrest him, and he was unable to reply to the queries of the court. Even learned APG was unable to satisfy the court.

Besides this, even otherwise, seeing the conduct of the prosecution all along this also appears to be an attempt to implicate Petitioner No.1 in another case, as the allegations on the face of it regarding an attempt of robbery and use of weapons by Petitioner No.1 who happens to be a resident of Karachi; engaged in business and a regular tax payer appear to be another concocted story of the prosecution department.

The only question before us that whether in our Constitutional jurisdiction we can exercise any powers to enlarge him on bail, instead of asking him to approach the trial Court. As already noted, on merits he has made out a case of bail. The facts noted above depict a very sad state of affairs on the part of prosecution and the Respondents. Time and again Petitioner No.1 is being implicated in cases surreptitiously, as and when he is granted bail in one case. This exercise is continuing since long and has resulted in confinement in jail despite being released on bail. The prosecution has purposely adopted this modus operandi and

have withheld proper information and disclosure to the Court as well. This is case of gross violation of fundamental right of a citizen of this Country, and this Court cannot and must not remain aloof and oblivious, by asking him to approach the trial Court. Once such a gross violation of a fundamental right has come to the knowledge of a Constitutional Court, then every effort, as far as possible be made to correct the wrong.

After having perused the record and the above discussion, in our considered view, this case with its peculiar facts appears to be a case wherein the prosecution has prima facie acted with mischief and malafide. They acted discreetly by withholding proper disclosure before the Court as well as acted hand in glove with each other and may be with unknown complainants in keeping Petitioner No.1 behind bars in all this period. It is needless to mention that life and liberty of a person is guaranteed under the Constitution, whether he is an accused or otherwise. The Constitution provides basic fundamental rights to every citizen including an accused and the law as well gives mandatory protection and to be dealt with in accordance with law is an inalienable right of a citizen. Per settled this Court has to jealously safeguard, the fundamental rights as guaranteed by Constitution of Islamic Republic of Pakistan, particularly the right to life and liberty of a citizen, by invoking its extra ordinary constitutional jurisdiction under Article 199 of the Constitution. It is equally well settled that an authority is required to act strictly in accordance with law and to perform its duty in the manner in which it has been authorized under the law, whereas, violation of any statutory provisions, rules or regulations would make such act or the authority as illegal and unwarranted under the law¹. The Courts have to safeguard the fundamental rights of every citizen and to protect the life and liberty from illegal, unauthorized and mala fide acts of omission or commission by an authority or person. In cases where the liberty of a citizen was involved, the action initiated by the police when found to be mala fide the Court should not hesitate to step in and grant relief to the citizens². The Constitution provides safeguards against the violation of the fundamental rights of every citizen to life and liberty from illegal

¹ Shoab Warsi and another v. Federation of Pakistan and others (PLD 2017 Sindh 243)

² Muhammad Aslam (Amir Aslam) and others v. District Police Officer, Rawalpindi (2009 SCMR 141)

and mala fide acts of omission or commission of any governmental authority or person. Therefore, any action without sufficient cause depriving or restricting the liberty of a citizen is not envisaged by the Constitution of this country and any such action taken by the Government or any of its functionary will not be immune from scrutiny of this Court in exercise of its power under Article 199 of the Constitution³. In the present case what we are concerned with is the conduct of the prosecution, whereby, a person has been put behind bars in a discreet and unlawful manner as above, by concealing material facts and by not disclosing true facts. One must not lose sight of the fact that time and again the petitioner in question has been put behind bars in one case or the other, be it under the Anti Corruption Laws of Pakistan Penal Code or The Terrorism Act. While passing this order we have considered and kept in mind all these facts and we may also clarify that while citing this order as a precedent, if need be arises, one must keep in mind the very peculiar and distinctive facts of the petitioner's ordeal, sufferings and the chequered history behind his arrest and release(s).

It is equally well settled that the right of access to justice is a well recognized invaluable right enshrined in Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973, and is equally found in the doctrine of due process of law such right includes the right to be treated according to law, the right to have a fair and proper trial.

In the case of ***Benazir Bhutto V. Province of Punjab (PLD 1998 SC 388)***, it has been observed by the Hon'ble Supreme Court that:- *while interpreting fundamental rights, the approach of the Court should be dynamic progressive and liberal keeping in view the ideas of the people, socio-economic and politico culture values which in Pakistan are enshrined in the Objective Resolution so as to extend benefit of the same to the maximum possible. It has further been observed that the Constitution is to be interpreted in a liberal and beneficial manner which may engulf and incorporate the spirit behind the Constitution and also the fundamental rights guaranteed by the Constitution. (PLD 1998 S.C 388.*

In another case of ***Arshad Mehmood v. Government of Punjab (PLD 2005 SC 193)***, the Hon'ble Supreme Court of Pakistan has held that the constitution is a living document which portrays the aspiration and genius of the

³ Abdul Rasheed Bhatti v Government of Punjab (PLD 2010 Lahore 468)

*people and aims at creating progress, peace, welfare, amity to the fundamental rights of the citizens. Approach of the courts should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid. In the case of **Mushtaq Ahmed Mohal V. Hon'ble Lahore High Court 1997 SCMR 1043** it has been observed that an Article relating to fundamental rights has to be construed liberally so that its benefit/protective umbrella may be extended rather than to restrict it.*

Coming back to the instant case admittedly series of FIRs has been registered against Petitioner No.1 by the Sindh Police and Anti-Corruption Department to accomplish some alleged wish of some unknown superiors, which is apparent from bare perusal of the subject FIRs. From the face of FIR bearing crime No. 103 of 2022, it appears that there is a delay in the lodgment of FIR about 5 months, for which no plausible explanation has been furnished by the complainant and even he had not disclosed in the FIR that how he knew the Petitioner previously and presently when originally he/petitioner No.1 is resident of Karachi and also having business at Karachi. The unusual allegation is that he robbed a cash amount of Rs.10,000/= and one Nokia Mobile Phone from the complainant from the link road toward Khairpur. As to invoking section 7 of ATA on 31.5.2022 the Instigation Officer was confronted on this and he was unable to satisfy as to why and in what manner this provision could be invoked in an alleged attempt of dacoit. It has been alleged by the Petitioner No.1 that he has enmity with one Anwar Majeedullah, Chairman OMNI Group and he has also alleged that he is a de facto Chief Minister of Sindh and on his direction, the series of FIRs have been registered against him. It has been further pleaded that after release in one FIR / case, he is booked in other; and this has continued endlessly; hence the life and liberty of the petitioner No.1 is at stake.

Therefore considering the peculiar facts of this case coupled with the conduct of the prosecution as discussed hereinabove, we are constrained to exercise our Constitutional Jurisdiction as apparently we have come to the conclusion that the prosecution has not acted in accordance with law; rather has violated it, by arresting the Petitioner time and again in a discreet manner, and therefore, by exercising this Constitutional jurisdiction and powers under Article 199 of the Constitution, we grant post-arrest bail to Petitioner Shahzad Riaz S/o Shaikh Muhammad Riaz in FIR

No.103 of 2022 registered at PS B-Section, District Khairpur, under Sections 395 PPC and Section 7 of the Anti Terrorism Act, 1997, on his furnishing solvent surety in the sum of Rs.50,000/- (Rupees Fifty Thousand Only) and P.R. bond in the like amount to the satisfaction of the Nazir of this Court. Once the surety is furnished, the Nazir shall issue a proper release order and direct the concerned prison authorities to release him forthwith and the Petitioner be presented before this Court on the next date of hearing. We further direct the Superintendent Jail, District Sanghar not to hand over the custody of the Petitioner to any other authority in any purported FIR.

The interim orders passed on 24.5.2022 and 31.5.2022 shall continue till the next date. Let Copy of this order be issued to all concerned.

To come up on 16.06.2022 at 11:30 A.M.

JUDGE

JUDGE