Form No: HCJD/C-121.

**ORDER SHEET.**

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

**Writ Petition No. 2967 of 2020**

**Tabarat Ali**

**VS**

**Imran Khizar and others**

| S. No. of order/ proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| **(2)** | **18.01.2022.** | **Raja Mehtab Afzal Dhanial, Advocate for the Petitioner.**<br>**Mr. Adnan Shahzad Mirza, Advocate for Respondent No.1**<br>**Mr. Muhammad Sohail Khurshid, State Counsel.**<br>**Mr. Tanveer Hussain Kiyani, Police Line HQ, Islamabad.** |

Through instant petition, the Petitioner has Impugned Order dated 07.10.2020 passed by the learned Acting District & Sessions Judge, (East)-Islamabad, whereby the Petitioner's Revision Petition filed against Impugned Order dated 04.10.2020 passed by the learned Judicial Magistrate, (East) Islamabad was dismissed.

2. Brief facts of the case are that the Petitioner i.e., the complainant lodged FIR No.220/2020 dated 03.10.2020 under Sections 506-ii and 427 PPC in P.S. Nilore, Islamabad, alleging therein that on 03.10.2020, the Respondent No.1 intercepted Petitioner's motorbike with his car bearing Registration No. PE-788. Further that the Respondent No.1 used abusive language and struck the Petitioner with a baton due to which the Petitioner was injured and that the Respondent No.1 pointed a pistol at Petitioner and threatened to kill him unless he withdrew the litigation instituted by him against the Respondent No.1 and

warned him that if he wanted to save his family he should hand over possession of property.

3. According to the application filed by the IO for physical remand, the Petitioner was arrested the same day and was produced before the Magistrate the next day. The learned Magistrate, however, declined the request of the police for physical remand and sent the accused to judicial custody vide the Impugned Order dated 04.10.2020. Against the said order, Revision Petition was filed before learned Acting District & Sessions Judge, (East)-Islamabad, whereby, same was also dismissed vide Impugned Order dated07.10.2020.

4. According to the Memo of Petition, the physical remand of the accused is necessary for the purpose of affecting recovery of "danda" (baton) and the vehicle bearing Registration No.PE-788, the case property and that if present petition is not allowed and accused / Respondent No.1 is not handed over to police for Physical Remand, Petitioner shall suffer an irreparable loss and his case would be badly affected. Learned counsel for the Petitioner, in his arguments contended that three recoveries were to be made i.e. of pistol, danda, and car and yet physical remand was not allowed. He has relied upon the cases of ***Rana Muhammad Anwar vs. D.I.G. 2004 PCr.LJ 129, Mirdad Khan Vs. Zahir Shah 2000 PCr.LJ 1739 and Iqbal Hussain Vs. The State 1995 PCr.LJ 1835***

5. On the other hand, learned Counsel for Respondent No.1 (Accused) submitted that instant matter has become infructuous as charge has already been framed and trial is underway. Learned Counsel further submitted that both the

learned Courts below have rightly declined physical remand and dismissed the police's request for physical remand of Respondent No.1 as given in para 7 of the Impugned Order dated 07.10.2020. He further submitted that the police has not mentioned that recovery of "danda" is required in the application for physical remand.

6. Learned State Counsel contended that the Investigating Officer's request for allowing physical remand of the accused/Respondent No.1 is genuine. He prayed for accepting this petition.

7. Heard arguments and perused the record.

8. It is observed that the application dated 04.10.2020 made to the learned Judicial Magistrate, East-Islamabad, seeking physical remand is devoid of any reason for such request. The learned Magistrate has noted that despite the accused remaining in police custody for 24 hours, no plausible reason was given in the said application as to why recovery was not affected.

9. The cases of ***Rana Muhammad Anwar vs. D.I.G. 2004 PCr.LJ 129, Mirdad Khan Vs. Zahir Shah 2000 PCr.LJ 1739 and Iqbal Hussain Vs. The State 1995 PCr.LJ 1835*** cited by the learned counsel for the Petitioner are not relevant as those cases pertain to reinvestigation even after submission of report under Section 173, Cr.P.C., which is not the issue in the instant matter.

10. I am guided by the case of ***Mian Ghulam Ijaz Vs. The State PLD 2018 LHR 151***, wherein it was observed by the Honorable Lahore High Court as follows:

*9…. In respect to remands to police custody, guidance has also been provided in Part-B Chapter 11-B Volume-3 of High Court Rules and Orders wherein it has been provided that a Magistrate dealing with remand of accused shall observe the great distinction between remand to police custody and an ordinary remand to the Magistrate's lock-up under Section 344, Cr.P.C. on the adjournment of an inquiry or trial owing to absence of a witness or from any other reasonable cause and emphasis has also been laid that non-completion of inquiry or trial justifies the latter, but the former requires something more,* ***as it is expressly provided by Section 167, Cr.P.C. that non-completion of investigation shall not, in the absence of a special order of a Magistrate, be deemed to be a sufficient cause for detention of an accused person by the police.*** *It has also been provided that ordinarily, when an investigation is incomplete, the proper course is that accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible, and then adjourned for further evidence.* ***A remand to police custody ought only to be granted*** *in cases of real necessity and* ***when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the police in elucidating the case****. In Part-B Chapter, 11-B Volume-3 of Rules and Orders of the Lahore High Court, Lahore the following principles are also laid down for the guidance of learned Magistrates in the matters of granting remands which are reproduced as under:-*

> *(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.*
>
> *(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible.*
>
> *(iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody…*

*10. A Magistrate who grants or refuses remand is under legal obligation to satisfy himself that as to whether remand is to be granted or otherwise as it is* ***the cardinal principle of law that liberty of a person cannot be curtailed*** *as an accused has a legal right to give his point of view before the learned Magistrate when remand is granted and it*

> *is also duty of Magistrate to safeguard the rights of people* ***<u>while it is also a principle of law that remand is not to be granted automatically after police makes such a request</u>****, therefore, due to this reason order passed by Magistrate refusing to grant further physical remand of the accused has been declared as a judicial function in view of Subsections 3 and 4 of Section 167 Cr.P.C."* [Emphasis added].

11. In the case of ***Nisar Ahmed Vs. State, 2011 YLR 2356***, it was held by the Honorable Sindh High Court, that even in a case of remand under Section 167 Cr.P.C., a court is bound to ensure that some substantial material justifying the remand is available or else no one whether his name appears in an FIR or not will be open to be subjected to confinement by remand. The Apex Court in the case of ***Mehar Muhammad Nawaz Vs. Managing Director, Small Business Finance Corporation, 2009 SCMR 187***, while discussing the provision of, *inter alia*, Section 167 Cr.P.C. observed that courts should be mindful of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees that no person would be deprived of life or liberty save in accordance with law whereas Article 10 Constitution of Islamic Republic of Pakistan, 1973, provides safeguard against arrest and detention. In numerous cases, it has been held that, grant of refusal of physical custody of an accused to the police must be made with judicious application mind. Detention of the person without any legal justification would create a sense of injustice and insecurity in society

12. In light of the aforementioned judgments, I find that the learned Magistrate has applied his mind judiciously and has correctly denied physical remand of the Respondent No. 1 as no valid reason was provided by the police in its request for

physical remand. Impugned Order dated 07.10.2020, passed by the learned Acting District & Sessions Judge, (East)-Islamabad, in Revision Petition has correctly observed that the Petitioner failed to point out any illegality or irregularity in the Impugned Order of the learned Magistrate.

13. Moreover, there is force in the contention of the Respondent No. 1 that since it is an admitted position that charge has been framed and trial is underway, the instant petition has become infructuous. This is the difference in this case as opposed to the case of ***Rana Muhammad Anwar vs. D.I.G. 2004 PCr.LJ 129, Mirdad Khan Vs. Zahir Shah 2000 PCr.LJ 1739 and Iqbal Hussain Vs. The State 1995 PCr.LJ 1835***cited by the learned counsel for the Petition and even otherwise the same is not binding upon me.

14. In view of the foregoing, the Impugned Orders dated 04.10.2020 and 07.10.2020, do not call for any interference in exercise of Constitutional jurisdiction as no illegality or irregularity has been committed or pointed out by the Petitioner and even otherwise the matter has become infructuous. The petition is, therefore, **dismissed.**

**(SAMAN RAFAT IMTIAZ)**
**JUDGE**

JUNAID