Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2666/2022

Junaid Qamar

Versus

Honourable Sessions Judge, West Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	15.07.2022	Mr. Imran Abbasi, Advocate for the petitioner.

AAMER FAROOQ, J. –The petitioner assails orders dated 06.07.2022, passed by respondents No.1&2 respectively.

2. The petitioner apparently was arrested in Islamabad Capital Territory (ICT) within the jurisdiction of Police Station Kohsar, Islamabad by the official of Police Station Murree, Rawalpindi, pursuant to FIR No. 404/22, dated 30.06.2022, Police Station Murree, District Rawalpindi. He filed a petition under section 86 Cr.P.C before respondent No.1, which was dismissed vide order dated 06.07.2022. Subsequently, on 06.07.2022, the petitioner was presented before Judicial Magistrate, West-Islamabad for transitory remand by the arresting officer and he also moved an application before respondent No.2 that his arrest is unlawful, hence he be released forthwith. The petitioner assails his transitory remand and refusal on part of respondent no.2 to declare the arrest of petitioner as unlawful.

3. Learned counsel for the petitioner, *inter alia,* contended that the petitioner was arrested without any warrant in Islamabad Capital Territory, making his

arrest without lawful authority. He contended that under the law, the arrest warrants were *sine qua non* for arrest of the petitioner and, without the same, the police officials of Murree could not have arrested the petitioner. He also submitted that the orders for dismissal of petitions under section 86 Cr.PC as well as granting the transitory remand for one day by respondents No.1&2 are erroneous and in violation of the provisions of Code of Criminal Procedure (Cr.PC), 1898. He also argued that case against petitioner is frivolous and based upon mala fide.

4. Arguments advanced by learned counsel for the petitioner have been heard and documents placed on record examined with his able assistance.

5. The grievance of the petitioner raised in the instant petition is with respect to orders dated 06.07.2022, passed by respondents No.1&2. It seems from the record that petitioner was arrested by the police officials of Murree pursuant to a case registered against him, as mentioned hereinabove. The petitioner moved an application under section 86 Cr.PC, which was dismissed. The reasons which prevailed with respondent No.1 in dismissing the petition under section 86*ibid* is that since no arrest warrant was issued, hence section 86 Cr.PC is inapplicable. It was also observed that the police officials under section 54 read with section 58 Cr.PC are competent to arrest a person without warrant where the offence is cognizable and can pursue him for the said purpose anywhere within Pakistan. The plea of the petitioner,

for his release before respondent No.2 on account of the fact that his arrest was without warrants, was also turned down and one day transitory remand was granted to the police. Section 86 Cr.P.C empowers the Magistrate or District Superintendent to release a person on bail where warrants have been executed by the Court for his appearance before it with direction that the accused shall appear on the date fixed. Under second proviso to section 86 *ibid*, where the offence is non-bailable and no direction has been endorsed under section 76 Cr.PC, the Sessions Judge of Sessions Division, in which a person is arrested, may release the person on an interim bail for sufficient reasons on furnishing of security as the Sessions Judge thinks fit and direct the person to appear by specifying the date before the Court which issued the warrants. The plain reading of section 86 Cr.PC clearly shows that the referred provision is applicable only when there is warrants of arrest, issued by any court of competent jurisdiction; respondent No.1 in holding that section 86 Cr.PC is inapplicable in the facts and circumstances of the case remained within the four corner of the law and there is no transgression or deviation therefrom, making the impugned orders as without lawful authority.

6. Section 54 Cr.PC empowers the police officer to arrest a person without warrant in different circumstances and one of them being where the offence committed is cognizable. The petitioner has been accused of offence under sections 452 and 506

(ii) PPC which are cognizable, hence the police officials of Murree Police Station, Rawalpindi could have arrested the petitioner even in ICT, which is beyond the territorial jurisdiction of Police Station Murree, pursuant to section 58 of the Cr.PC, which empowers the police officer to pursue a person into any place in Pakistan. There is no authoritative pronouncement in Pakistan dilating the scope of section 58 Cr.PC, hence in order to examine the scope and purport of said provision case law from Indian jurisdiction is examined where the parallel provision in Indian Cr.PC is section 48. In *Govind Prasad versus The State of West Bengal (1997 Cri LJ1249)* the Calcutta High Court observed that Section 48 Cr.PC does authorize the police to investigate cases out of designated territorial jurisdiction. Similar view was expressed in *Sachindra Mahawar and others versus State of M.P and others (2000 Cri LJ 637)*. In *Navinchandra N. Majithia versus State of Maharashtra and others (AIR 2000 SC 2966)*, the Indian Supreme Court elaborated the scheme under the Code of Criminal Procedure where arrest has been effected without warrant and detainee is produced before concerned Magistrate/Court of competent jurisdiction:

> *"117. Undoubtedly, as pointed out by the Appellant, he came to be detained on the basis of an arrest carried out by the police officer from the State of Maharashtra in connection with FIR No. 84 of 2018 disclosing the commission of cognizable offences. The arrest is apparently effected in view of the powers available Under Section 48 of the Code of Criminal Procedure. Finding that an order Under Section 167 was required to produce the Appellant before the competent Court in Maharashtra, he produced the Appellant-in-person*

before the nearest Magistrate in Delhi and the Magistrate passed an order which we have found to be an order of remand Under Section 167. The High Court came to be concerned with the validity of the remand order and detention of the Appellant. A writ of habeas corpus does lie in certain exceptional cases even by way of challenging the orders of remand. If there is non-compliance with Article 22(1) and the person is detained it is an aspect which has to be borne in mind by the Magistrate when ordering remand. Detention is the result of an arrest. Article 22(1) applies at this stage after arrest. If fundamental rights are violated in the matter of continued detention, the Magistrate is not expected to be oblivious to it. It is in this sense that the High Court has found violation of Article 22(1) inter alia and the Magistrate over-looking it as rendering the transit remand illegal. As far as the arrest being made in violation of Section 41(1)(ba), undoubtedly, it is a matter which related to the legality of the arrest itself which is the stage prior to detention. The High Court finds that the Magistrate had not applied his mind to the question as to whether the arrest was in compliance with Section 41(1) (ba) of Code of Criminal Procedure.

121. The scheme of the law (Code of Criminal Procedure) is that when a person is arrested without warrant in connection with a cognizable offence, investigation is expected to be completed within 24 hours from his arrest. If the investigation is not completed, as is ordinarily the case, the Accused must be produced before the Magistrate who is nearest from the place of arrest irrespective of whether he is having jurisdiction or not. The Magistrate on the basis of the entries in the case diary maintained by the officer is expected to apply his mind and decide whether the Accused is to be remanded or not. If the police makes a request for police custody which is accepted then an order is to be passed and reasons are to be recorded Under Section 167(3). Police custody is an important tool in appropriate cases to carry on an effective investigation. It has several uses. It includes questioning the Accused with reference to the circumstances, and obtaining if possible, statements which are relevant in the future prosecution. Custodial interrogation in some cases is clearly a dire need to give a prosecution and therefore the courts a complete picture. The contention of the Appellant that it is always open to Magistrate to order only judicial custody and even exclusively with 90 days of judicial custody alone, an application for default bail would lie cannot be disputed. Whatever be the nature of the custody as long as it falls within four walls of Section 167, if the requisite number

of days are spent in police/judicial custody/police and judicial custody that suffices."

7. In order to safeguard the interest of a person so arrested, the police officer under section 60 Cr.PC without unnecessary delay is to present a person arrested before the Magistrate having jurisdiction in the case or before office incharge of a police station. Under section 61 *ibid,* no person is to be detained by the police officer who has been arrested without warrant for a period longer, under all circumstance of the case is reasonable and in absence of the order of Magistrate under section 167 Cr.PC for more than twenty four hours exclusive of the time necessary for the journey from the place of arrest to the Court of Magistrate. Since the competent Magistrate in the case or incharge of the police station is of Murree, the arresting officer of Police Station Murree presented the petitioner before respondent No.2 being the Magistrate within whose jurisdiction the petitioner was arrested on 05.07.2022 with the plea that transitory remand be granted which accordingly was done vide impugned order dated 06.07.2022. As is apparent from the record, the petitioner was presented within 24-hours, hence there does not seem to be any violation of the above-mentioned laws and the order granting transitory remand also meets the requirement of the relevant laws.

8. In view of the foregoing, learned counsel for the petitioner failed to point out any illegality or

transgression in jurisdiction of respondents No.1&2, warranting interference by this Court.

9. For the above noted reasons, the instant petition is without merit and is accordingly **dismissed** in ***limine.***

(AAMER FAROOQ)
JUDGE

M. Shah/*

Approved for Reporting