Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

W.P. No. 4441 of 2022.

Muhammad Azam Khan Swati.
Versus
Federation of Pakistan through Secretary Ministry of Interior, Pak Secretariat, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02.	**02.12.2022.**	**Dr Babar Awan, Mr Fazal Maula, Mr Hassan Ali Khan and Ms Kalsoom Khaliq, Advocates for the petitioner.** **Mr Munawar Iqbal Duggal, Additional Attorney General.** **Mr Azmat Bashir Tarar, Assistant Attorney General.** **Mr Zohaib Hassan Gondal, State Counsel.** **Mr Rohail Bhatti, S.O. on behalf of respondent No.1**

The petitioner is currently under physical remand of the Investigating Agency with respect to an FIR/Case No.185 of 2022, dated 26.11.2022, lodged against him by Federal Investigation Agency. Apparently, there seems to be other cases lodged against him on the basis of same occurrence i.e. Social Media Tweets against Armed Forces of Pakistan. The other cases are in the Provinces of Sindh and Balochistan. The petitioner in the instant petition seeks direction to respondent No.1 to provide information about the pending cases in the Provinces of Sindh and Balochistan as well as with Federal Investigation Agency with respect to the same cause, as mentioned above.

2. Learned counsel for the petitioner, inter alia, contended that information is required viz-a-viz the

other cases, as it is a fundamental right of the petitioner to defend himself and avail appropriate remedies. In support of his contentions that the Federation can issue directions to the Provinces, placed reliance on Article 149 of the Constitution and contended that liberal interpretation is to be made of the Articles of the Constitution and entries in the Rules of Business, 1973. Reference was also made to case titled "*Sh. Ihsanul Haq Piracha vs. Mr. Wasim Sajjad and others*" [PLD 1986 Supreme Court 200] and Entry-18, Schedule-2 of Rules of Business, 1973.

3. Mr Munawar Iqbal Duggal, Additional Attorney General, inter alia, contended that there is per se no legal right available to the petitioner to seek the information. He contended that the Federal Government is not obliged to obtain information for the petitioner as there does not exist any law or right in favour of the petitioner to do so. He further submitted that neither the provisions of the Constitution nor Rules of Business, 1973 confers any right or any individual to seek the information, which the petitioner so wishes.

4. In rebuttal, Dr. Babar Awan, Senior Advocate Supreme Court contended that Article 10-A of the Constitution confers a right upon the petitioner to seek the information.

5. Rival contentions have been heard.

6. The instant petition is in the nature of Mandamus under Article 199 of the Constitution. In order to exercise jurisdiction in the said type of petition, it is a sine-qua-non that there should exist a legal right in favour of the person who is seeking such relief. Reference is made to the case titled "*The State of Pakistan and another vs. Mehrajuddin*" [PLD 1959 Supreme Court 147], wherein the apex Court observed that an applicant for mandamus must show that he has a legal right to the performance of a legal duty by the party against whom a mandamus is sought. Similar observations were made in the case titled "*Fazal-E-Haq, Accountant General, West Pakistan vs. The State*" [PLD 1960 Supreme Court 295]. In the said case while reiterating the principles for issuance of writ of mandamus, the august Supreme Court also observed that a High Court has no power to exercise suo motu jurisdiction and any such exercise of jurisdiction is misconceived and void. In the case titled "*Nawab Syed Raunaq Ali etc vs. Chief Settlement Commission and others*" [PLD 1973 Supreme Court 236], the august Supreme Court of Pakistan observed that an order in the nature of writ of certiorari or mandamus is a discretionary order and its object is to foster justice and right a wrong. It was also observed that a

person can be permitted to invoke this discretionary power of a Court but it must be shown that the orders sought to be set aside had occasioned some injustice to the parties. In the case titled "*Masudul Hassan vs. Khadim Hussain and another*" [PLD 1963 Supreme Court 203], the Hon'ble Supreme Court laid down the principles for issuance of a writ of mandamus, which are enumerated as follows; -

> *"(i) an applicant for an order of mandamus must show that there resides in him a legal right to the performance of a legal duty by the party against whom the mandamus is sought.*
>
> *(ii) In order that a mandamus may issue to compel something to be done under a statute, it must be shown that the statute imposed a legal duty.*
>
> *(iii) It is only in respect of a legal right that mandamus will issue.*
>
> *(iv) The legal right to enforce the performance of a duty must be in the applicant himself. The Court will* therefore only enforce the performance of statutory duty by public bodies on the application of a person who can show that he has himself a legal right to insist on such performance."

7. The up-shot of the above case law clearly shows that writ of mandamus is only issued where there is a legal right in the performance of duty by a statutory body and the failure thereof could cause injustice to him. For the purposes of present controversy and enforcement of right, reference was

made to Entry No.18, Schedule-2, specially Serial No.18, which provides coordination of policy matters, relating to Rules of Business, 1973. Likewise, reference was also made to Article 149 of the Constitution, which empowers Federal Government to issue directions to the Provinces. Examination of the first provision shows that it does not confer any right in any citizen/individual to seek information regarding pendency of cases. Though reference was made to the case titled "*Sh. Ihsanul Haq Piracha vs. Mr. Wasim Sajjad and others*" [PLD 1986 Supreme Court 200] supra on behalf of the petitioner to claim that while interpreting the provisions of the Constitution broaden interpretation is to be accorded; however, stretching the concepts provided in Article 149 ibid and Rules of Business, 1973 do not entitle the petitioner in any manner to seek such information. Articles 10 and 10-A of the Constitution do not provide rights to the citizens of Pakistan against unlawful arrest and detention and fair trial respectively. In this regard no person can be arrested for an offence without being informed of the grounds of such arrest; it has been propounded by the Hon'ble Supreme Court of Pakistan that on one cause there cannot be more than one FIR registered against a person. Reference is made to the case titled "M*st. Sughran Bibi vs. The State*" [PLD 2018

S.C. 595]. Hence in this behalf perhaps the only first FIR prevails and other cases succumb to the first one and in this regard, the petitioner would be entitled to seek appropriate remedy before the Court(s) of competent jurisdiction inasmuch as since the other cases have been registered against the petitioner beyond the territorial jurisdiction of this Court, no writ can be issued against the Provinces of Balochistan and Sindh. The petitioner shall be well within his rights to move appropriate applications/petitions in the said Provinces, seeking appropriate remedies regarding his protection from arrest and seeking quashing of the cases registered, if they are not prior in time to the case registered in Islamabad Capital Territory by respondent No.2, in which he has been arrested. The legal right claimed by the petitioner in the instant petition to seek information does not exist, as Article 149 of the Constitution and Rules of Business, 1973 are general, empowering the Federal Government to issue directions generally and not person specific. Even otherwise, there does not exist any right in favour of any citizen of Pakistan to seek information about a case registered against him; though the case once registered under Section 154 Cr.P.C. is put on a register prescribed for the said purpose and copy of the case can be obtained but, as noted above, no

right vests in the accused regarding being entitled to information of cases pending against him.

8. It would not be out of place to observe that in order to enforce the principles laid down in Sughran Bibi's case supra a system be evolved either by Ministry of Interior or some other agency or authority to nationally link all the police stations of the Country. Every time FIR is lodged implicating a person the information be uploaded and the same be accessible to every other police station/agency. The authorities may advise any other mechanism for containing such information (about registration of cases on same cause/incident against a person) to cater the mischief which is the subject matter of instant case and to implement Sughran Bibi's case.

9. In view of the foregoing discussion, the petitioner may avail appropriate remedies before the Provinces of Sindh or Balochistan but no writ of mandamus can be issued in his favour against respondents No.1 and 2.

10. The instant petition is ***disposed of*** in the above terms.

(CHIEF JUSTICE)

Approved for reporting.

*Asad K/**