# ORDER SHEET
# IN THE ISLAMABAD HIGH COURT, ISLAMABAD
# JUDICIAL DEPARTMENT

**W.P. No.2733 of 2023**
**Muhammad Ali Wazir**
**Versus**
**Federation of Pakistan and others**

| S. No. of order / proceedings | Date of order/ Proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
|---|---|---|
| | **19.09.2023** | **M/s Attaullah Hakim Kundi and Suleman A. Zeb, Advocates for the petitioner.**<br>**Malik Shaukat Nawaz, learned Assistant Attorney General.**<br>**Ms. Asia Batool, learned Assistant Attorney General.**<br>**Ms. Maimana Khattak, learned State Counsel.**<br>**Mr. Rab Nawaz Khan, Section Officer, Ministry of Interior.**<br>**Mr. Muhammad Ashraf, Inspector / IO, CTD.**<br><br>**Through the instant writ petition the petitioner, Muhammad Ali Wazir, who is a former member of the National Assembly of Pakistan, seeks the grant of protective bail so as to enable him to appear before the learned Trial Court in case FIR No.1398/23 dated 15.08.2023 registered at Police Station Taxila, Rawalpindi under Section 16 of the Provincial Motor Vehicle Ordinance, 1965 and Section 188 of the Pakistan Penal Code, 1860 ("PPC").**<br><br>**2. As per the contents of the instant petition, the petitioner was arrested on 20.08.2023 in case FIR No.555/23 registered on 20.08.2023 at Police Station Tarnol, Islamabad under Sections 506(ii), 395, 353, 341, 440, 188, 148, 149 and 186 of the PPC. Vide order dated 02.09.2023, he was granted post-arrest bail in the said case by the learned Trial Court. Soon after his release from prison, he was re-arrested in case FIR No.466/23 registered on 26.08.2023 at Police Station Bhara** |

UNCERTIFIED COPY

Kahu, Islamabad under Sections 420 and 506 of the PPC and 11N of the Anti-Terrorism Act, 1997.

3. The instant writ petition was taken up for hearing on 11.09.2023 on which date, learned counsel for the petitioner informed the Court that the petitioner's post-arrest bail petition in case FIR No.466/23 had been allowed earlier on the same day.

4. Learned counsel for the petitioner voiced the petitioner's apprehension that he may be arrested by the Police or some other law enforcement agency upon his release. It had come to the petitioner's knowledge that FIR No.1398/23 had been registered against him at Police Station Taxila, Rawalpindi.

5. On 11.09.2023, this Court issued notices to the respondents and fixed the case for 12.09.2023.

6. On 12.09.2023, learned counsel for the petitioner informed the Court that soon after the petitioner's release on bail in case FIR No.466/23, he was re-arrested in some case of which he did not have any knowledge. On Court's call, learned State Counsel as well as the learned Assistant Attorney General tendered appearance. They were directed to produce the list of all the FIRs that had been registered against the petitioner in the Islamabad Capital Territory (**"ICT"**) in which his physical custody was required.

7. On 13.09.2023, the learned State Counsel produced a list of four FIRs which had been registered against the petitioner in the ICT. The learned Assistant Attorney General informed the Court that a letter had been addressed to the Federal Investigation Agency (**"FIA"**) requiring the

UNCERTIFIED COPY

list of cases in which the petitioner had been nominated as an accused.

8. On 18.09.2023, a report was submitted on behalf of the FIA. According to the said report, FIR No.182/23 had been registered against the petitioner on 11.09.2023 at the Cyber Crime Reporting Centre, FIA under Sections 9 and 10 of the Prevention of Electronic Crimes Act, 2016 read with Sections 500, 505 and 109 PPC.

9. On 18.09.2023, learned counsel for the petitioner informed the Court that the petitioner had been arrested in the case FIR No.182/23, and that he had also applied for post-arrest bail. He voiced his apprehension that in the event the petitioner is granted bail, he would be arrested in case FIR No.85/20, dated 10.02.2020 registered at Police Station Tarnol, Islamabad and subsequently transferred to the Counter Terrorism Department, ICT. This Court, vide order dated 18.09.2023, directed the Investigation Officer (**"IO"**) in case FIR No.85/20 to tender appearance and inform this Court whether he intends to arrest the petitioner in the said FIR.

10. Today, Muhammad Ashraf, Inspector / IO tendered appearance along with the State Counsel. The IO was firm in his view that he would arrest the petitioner in the event he is granted bail in FIR No.182/23. He was asked the reason for not arresting the petitioner during the period of **three years and seven months** after the registration of FIR No.85/20. He came up with no explanation. He, however, submitted that the investigation had been marked to him on 10.03.2023. When asked why he did not feel the need to arrest the petitioner in the **six-month period** since

UNCERTIFIED COPY

10.03.2023, he submitted that on 27.07.2023, the matter had been referred to the Prosecution Branch for a legal opinion on whether the matter should be investigated by the Special Investigation Agency, Cyber Crime, FIA. No reply to the said request for a legal opinion has been given. The IO had nothing to say when asked as to why he did not investigate the matter by questioning the petitioner during the period that he had remained in the custody of Islamabad Police since 20.08.2023.

11. Learned counsel for the petitioner informed the Court that the petitioner had been granted post-arrest bail in case FIR No.182/23 but the petitioner has not been released as yet due to non-submission of the requisite surety bonds.

12. FIR No.85/20 is the only case registered in the ICT in which the petitioner has not been arrested. Learned counsel for the petitioner placed reliance on the order dated 24.05.2023 passed by this Court in writ petition No.1680/2023 titled "Asad Umar Vs. The State", whereby a direction was issued to the respondents in the said case not to arrest the petitioner in two cases which had been registered against him in the ICT for a period of two days after his release from detention.

13. On account of successive arrests of the petitioner in different cases by the Islamabad Police, the petitioner has, in effect, remained incarcerated since his first arrest on 20.08.2023. During this period, he has been granted bail by different Courts on three occasions but the benefit of the bail granting orders was short-lived as he was re-arrested upon his release time and again.

UNCERTIFIED COPY

**14. The device adopted by the State to register several cases against one person and to arrest him again and again on successive basis after he is granted post-arrest bail by the Courts has been deprecated by the Superior Courts ever since the judgment was passed in the case of Abdul Sattar Khan Niazi Vs. The State (PLD 1974 Lahore 324). In the said case, it was held that the law is extremely chary of the deprivation of the liberty of a citizen at the hands of the investigation agencies and lays great stress upon the necessity of imparting information to the accused about the allegations against him. In the said case, it was emphasized that information regarding the registration of a case against the accused must be given to him at the earliest. It was also held that the withholding of information from the accused as to the allegations against him cannot be considered as *bonafide*. The relevant paragraph of the said report is reproduced herein below:-**

> ***"Another aspect of this law thus becomes clear that the duty to furnish to the accused information regarding the allegations against him lies upon the prosecutors and they are required to furnish that information within 24 hours. Can it then be said that it is open to the prosecutors to withhold the information from the accused and still submit that the action taken by them is bona fide and as he is not possessed of the necessary details he should not be allowed to approach a Court of law for the purpose of obtaining bail and that they would succeed in incarcerating him for as long as they wish because after all the information which they expect him to place before the Court is with them and they are in no mood to furnish to him."***

**15. Given the fact that the petitioner has been arrested on one occasion by the Islamabad Police and on one occasion by the FIA immediately after his release on bail, and bearing in mind the law**

UNCERTIFIED COPY

**laid down in the case of Abdul Sattar Khan Niazi (*supra*), the only inference that can be drawn is that there is some sort of coordination between the said two agencies in this respect. I would in this case echo the observations of Mushtaq Hussain J. that the modus operandi of keeping the petitioner incarcerated "is suggestive of pre-planning, scheming and acting under a mandate" and "such an exercise of discretion or authority contains within itself the germs of its own destruction."**

**16. Section 167 of the Code of Criminal Procedure, 1898 ("Cr.PC") provides that whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of 24 hours fixed by section 61 of the Cr.PC and there are grounds for believing that accusation or information is well founded the officer incharge of the police station shall, firstly, transmit to the nearest Magistrate a copy of the entries in the diary relating to the case and shall at the same time forward the accused to such Magistrate. It is then for the Magistrate to authorise the detention of the accused in such custody as he thinks fit. This power, however, does not authorise extension of the detention for a period exceeding fifteen days on the whole. The Magistrate is further required to record the reason for so doing.**

**17. The Hon'ble Lahore High Court while interpreting Section 167 Cr.PC, held in the case of Razia Pervez Vs. The Senior Superintendent of Police (1992 PCr.LJ 131), that the said Section does not visualize successive and repeated arrests of a person required in more than one**

UNCERTIFIED COPY

case. It was also held that an accused required in more than one criminal case when arrested will be deemed to have been arrested in all the cases registered against him, and that there is no legal bar for interrogating an accused person with regard to the allegations against him in another case. It was also explained that it was desirable that when a person required or accused in more than one case or where more than one FIR is registered against him is arrested and remanded in physical custody then he should be interrogated about the allegations against him in all the cases.

18. As far back as in 1992 i.e., more than thirty years ago, the Hon'ble Lahore High Court observed that instead of acting strictly in accordance with the law, the Police since long is following the illegal practice of showing the arrest of the person in one case and on the expiry of remand it again arrests in another case. It was also observed that it was commonly known that in selected cases, the Police could arrest the accused on his release on bail in the first case.

19. More importantly, in the case of Razia Pervez (supra), it was held that if the accused has remained with the Police pursuant to a remand granted under Section 167 Cr.PC, then the Magistrate will be justified in refusing further physical remand of the accused in another case. The Hon'ble Lahore High Court also warned that whenever the Police indulges in these tactics of arresting the accused successively in different cases, it is not taken in good taste by the public and the Courts.

20. Recently, vide order dated 13.07.2023 passed by the Division Bench of the Hon'ble

UNCERTIFIED COPY

**Lahore High Court in writ petition No.45360/2023, titled "Pervez Elahi Vs. Caretaker Government of Punjab", it has been held that once an accused is arrested, he can be put into investigation for all cases registered against him and if investigation cannot be completed within the stipulated period during physical remand, it can be continued during the judicial custody of the accused in jail with all just and legal exceptions and with the permission of the Magistrate.**

**21. In the case at hand, the IO came up with no explanation as to why he had not conducted the investigation in the case FIR No.85/20, dated 10.02.2020 while the petitioner was in the custody of Islamabad Police since 20.08.2023. He came up with lame excuses such as the investigation being marked to him in March, 2023 and the matter having been referred for a legal opinion to the Prosecution. The only thing that he was firm about was the need to arrest the petitioner and that too when he is released on bail in case FIR No.182/23 dated 11.09.2023.**

**22. In view of the above, the instant petition seeking protective bail is allowed so as to enable the petitioner to appear before the Trial Court in (i) FIR No.1398/23 registered at Police Station Taxila, Rawalpindi, (ii) FIR No.85/20 registered at Police Station Tarnol, Islamabad. The respondents are restrained from arresting or aiding in the arrest of the petitioner upon his release from custody pursuant to the post-arrest bail granting order dated 18.08.2023 passed by the learned Judge, Prevention of Electronic Crimes Court, Islamabad; the said restraint will operate for a period of one week from today i.e. upto 26.09.2023 so as to enable him to appear**

UNCERTIFIED COPY

**before the learned Trial Courts for obtaining pre-arrest bail. Office is directed to serve a copy of this order on the (i) Secretary, Ministry of Interior, (ii) the Inspector General of Police, Islamabad, and (iii) the Director General, FIA.**

**23. Before parting with this order, I feel the need to observe that the principles of law enunciated by the Hon'ble Lahore High Court in the cases of Abdul Sattar Khan Niazi (*supra*) and Razia Pervez (*supra*) appear to have been brushed aside by the Islamabad Police. The practice of successive arrests deprecated by the Superior Courts is being carried out with impunity in the Federal Capital. The Secretary, Ministry of Interior is being placed under a continuing obligation to conduct inquiry against all those delinquent officials / officers in the service of Pakistan, who indulge in the malpractice of successive arrests of citizens in stark violation of the law laid down by the Superior Courts.**

**(MIANGUL HASSAN AURANGZEB)**
**JUDGE**

***Ahtesham****

***APPROVED FOR REPORTING***

UNCERTIFIED COPY