ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.3146 of 2023
Khayam Riazal
Versus
Additional Sessions Judge / Justice of Peace (East), Islamabad and others

S. No. of order / proceedings	Date of order / Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
09.	16.04.2024	Mr. Muhammad Zafar Khokhar, Advocate for the petitioner. Malik Abdul Rehman, learned State Counsel along with M/s Muhammad Hanif, S.I., Muhammad Hayat, S.I. and Muhammad Ilyas, A.S.I.

Through the instant writ petition the petitioner, Khayam Riazal, impugns order dated 27.09.2023 passed by the learned Additional Sessions Judge / *Ex-officio* Justice of peace (**"JOP"**), Islamabad-East. Vide the said order dated 27.09.2023 the learned JOP dismissed the petitioner's application under Sections 22-A and 22-B of the Code Criminal Procedure, 1898 (**"Cr.PC"**) for the registration of FIR against persons nominated in his complaint dated 15.09.2023. It was alleged in the said complaint that Malik Hayat, Station House Officer of Police Station Phulgaran and several other police officials abducted the petitioner and his grandfather from their house on 12.09.2023 at 11:03 pm.

2. Learned counsel for the petitioner submitted that the impugned order dated 27.09.2023 does not take into account the true import of Section 154 Cr.PC; that the complaint of the petitioner speaks of the commission of cognizable offences by the proposed accused; that the law does not allow

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police officials to refuse the registration of FIR when commission of cognizable offence is reported to them; that veracity of allegation is to be determined after registration of FIR and not before that; that the petitioner has sufficient evidence to prove the allegations levelled in the complaint; that in the police report submitted before the learned JOP instead of responding to the contents of complaint, false allegations have been levelled against the petitioner; and that the impugned order attributes to the petitioner a failure in providing CCTV recordings of safe city cameras which are in the custody of public officials. Learned counsel for the petitioner prayed for the writ petition to be allowed in terms of relief sought therein. In support of his submissions, learned counsel placed reliance on the cases reported as *PLD 2007 SC 539* and *1999 PCr.LJ 1645*.

3. On the other hand, learned State Counsel opposed the petition, and submitted that the learned JOP has rightly dismissed the petitioner's application for the registration of a criminal case because the same consisted of false and concocted allegations; that the petitioner, his father, grandfather and siblings are connected with 82 criminal cases registered in Islamabad; that name of the petitioner's grandfather is included in the Fourth Schedule of Anti-Terrorism Act, 1997 and remained involved in several cases since the year 1982; that objective of the petitioner is to put the local police under pressure and thwart the legal proceedings in the criminal cases against him and his family members; and that according to interpretation inscribed to Sections 22-A and B of

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Cr.PC by the Superior Courts, the learned JOP can look into contents of application for registration of FIR as well as the material produced in support of the allegation made therein and can refuse to issue direction for registration of FIR where application appears to be tainted with malice. Learned State Counsel requested for the instant petition to be dismissed.

4. I have heard the contentions of the learned counsel for the petitioner as well as those of the learned State Counsel and have perused the record with their able assistance.

5. The record shows that on 15.09.2023, the petitioner moved two separate applications: one to the DIG (Operations) Islamabad and second to the Station House Officer, Police Station Phulgaran for inquiry and registration of FIR. The gist of the allegation in the petitioner's application for registration of FIR is that on 12.09.2023 at 11:03 pm the proposed accused some of whom were clad in police uniforms entered his house, broke open the door of his room, abducted him and his grandfather who is aged around 85 years and stole the DVR of the CCTV cameras installed at his house; that Malik Hayat, SHO of Police Station Phulgaran made them sit in his private car; that at 11:45 pm the same night the abductees were allegedly taken inside the building of Police Station Bharakahu where at entrance gate safe city cameras are installed and the cameras are also installed in the room of Police Station where abductees were allegedly confined; that from there the proposed accused, Tanveer Kiani, ASI called the petitioner's father to bring his grandfather's shirt and shoes as the latter was

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without a shirt and barefoot when he was picked up; that the abductees allegedly remained confined at the Police Station Bharakahu building till the next morning; that the next morning at 8:15 am on 13.09.2023, they were transported to Police Station Secretariat in police vehicle No.GV-134, taking Kiani Road and Bari Imam route; that later the same day at around 11:30 am to 12:00 noon, the abductees were allegedly made to sit in the police vehicle which kept roaming on roads of the Embassy area, Malpur and Sohan; that while on road, the alleged abductors were stated to have been talking about a *habeas corpus* petition; that near Faizabad, the abductees were shifted in a Corolla car bearing registration No.140, which Muhammad Rizwan, ASI was driving and another police official was present inside; and that near Quaid-e-Azam University the abductees were shifted to yet another white car bearing registration No.5300 and were dropped outside their home at around 8:00 pm on 13.09.2023.

6. In the said complaint, the petitioner further alleged that inside their house Ghaus, ASI and Sikandar were already present who had tried to convince them not to report the incident. It is mentioned in the complaint that he has pictures of raid at his home and video recording of what Ghaus, ASI said after they returned home. He also alleged that when after their abduction, his mother called police rescue help line she was called back and was told that the petitioner and his grandfather were taken into custody under the Fourth Schedule of the Anti-Terrorism Act, 1997. In the said complaint dated 15.09.2023, the petitioner had

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requested for the record of safe city CCTV cameras to be obtained.

7. A copy of police report No.2/38 dated 13.09.2023 from the records of Police Station Phulgaran is on the record, wherein it is *inter alia* stated that on 13.09.2023 at around 7:30 pm the petitioner's grandfather, Muhammad Nazuk, came to the said police station to inquire about status of the complaint lodged by his grandson, Bilal. The report makes mention of several criminal cases in which Muhammad Nazuk is involved. It also states that Muhammad Nazuk was given the information he had asked for whereafter due to his old age and given that it was night time, it was decided that he should be transported back to his home in the company of police officials. The record also shows that on 13.09.2023, the petitioner's father filed a *habeas corpus* petition under Section 491 Cr.PC before the learned Sessions Judge, Islamabad seeking recovery of the petitioner and his grandfather. The Bailiff of the Court in his report submitted that he had visited the Police Station Phulgaran on **14.09.2023** and did not find the petitioner or his grandfather confined therein. The report of the Bailiff shows that police officials present at the police station expressed that they had no knowledge about the whereabouts of the petitioner or his grandfather.

8. The petitioner had also placed on record a copy of order dated 13.09.2023 passed by learned Additional Sessions Judge, Islamabad-East in another petition filed under Section 491 Cr.PC titled "Jabran Abbasi Vs. SHO P.S. Phulgaran". Vide the said order, the SHO, Police Station Phulgaran was

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directed to appear before the said Court on 14.09.2023 along with record of CCTV cameras installed at Police Station Phulgaran. However, on the next date of hearing i.e. 14.09.2023, on the request of the petitioner it was dismissed as withdrawn.

9. Due to the peculiar circumstances of the instant case, this Court, vide order dated 17.10.2023 directed the Senior Superintendent Police (Investigation) to inquire into the matter after viewing the CCTV footages. But on the next date of hearing i.e. 07.12.2023, this Court was informed that the record of the CCTV cameras for the date of the incident was not available as it had been "overwritten". Taking notice of this lapse in the face of request made by the petitioner in his complaint for obtaining the relevant video record, this Court directed that an in-depth inquiry to be conducted.

10. The instant petition was next fixed on 14.12.2023 when learned State Counsel placed on record letter dated 13.12.2023, according to which, Assistant Inspector General of Islamabad Police (Operations) had issued directions to hold an inquiry and submit a report before this Court. On 26.02.2024, Assistant Inspector General of Islamabad Police submitted before this Court a report dated 23.02.2024. The curious findings of the said report are as follows:-

> ***"FINDINGS***
> ***3. During enquiry, the above mentioned record was perused and found that:-***
> - ***Being a first Enquiry Officer, it was prime responsibility of the ASP/SDPO, Bara Kahu, Islamabad to save the CCTV footage of Safe City Cameras inspite of the fact that accused has previous criminal record and applications of 22-A&B were dismissed.***

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- ***Previously no SOP/mechanism was issued regarding Electronic Data Analysis & Privacy protection procedures to save the said data for long lasting time and before registration of FIR, due to which CCTV footage of said incident could not be saved for further compliance of hounourable court.***
- ***On 14.12.2023, Standing Order No. 15/2023 issued by ICT Police duly approved by W/ICCPO to regulate the use of electronic data for lawful purposes, collected and disseminated through devices and infrastructure (copy enclosed).***
- ***Keeping in view of the above, ASP/SDPO/Bhara Kahu, showed irresponsible attitude during the course of inquiry. In this regard, an explanation has been issued to the ASP/SDPO Bhara Kahu, Islamabad due to his inefficiency and negligence."***

11. Since it was a matter which involved an allegation by a citizen about commission of an offence by use of state resources and where crucial evidence was apparently allowed to lapse, the Secretary, Ministry of Interior and Inspector General of Islamabad Police were directed to appear before this Court. On 05.03.2024, the Inspector General of Islamabad Police appeared before this Court and expressed his intention to probe into the matter at the appropriate level.

12. On 15.04.2024, a letter dated 08.04.2024 issued by the Assistant Inspector General of Islamabad Police has been placed on record of this Court which shows that Senior Superintendent of Islamabad Police (Investigation) has been deputed to hold inquiry into the matter. Today, learned State Counsel informed the Court that the said inquiry is still underway.

13. A comparative reading of Sections 154 and 22-A (6) Cr.PC show that word "shall" has been used in Section 154 of Cr.PC, while the word "may"

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has been used in Section 22-A (6) Cr.PC, which manifests the intention of legislature that the learned JOP has been given the discretion to pass an order for the registration of FIR or to decline such a request. Now, the functions performed by the learned JOP are not executive, administrative or ministerial, inasmuch as the learned JOP does not carry out, manage, or deal with matters in a mechanical manner. Instead since the learned JOP is required to entertain applications, examine record and after hearing the parties pass orders and issue directions with due application of mind, his functions are *quasi-judicial* in nature.[1]

14. In exercise of his functions and discretion, the learned JOP is expected to maintain a balance between on one hand the requirement to discourage registration of false and malicious FIRs and on the other hand to maintain a check on the neglect, failure or excesses committed by the police authorities. In the present case, the impugned order dated 27.09.2023 passed by learned JOP is eminently based on two observations one that when the Bailiff visited the Police Station Phulgaran on 14.09.2023 the petitioner and his grandfather were not found confined there and secondly, that the petitioner did not produce CCTV footages in support of his allegation. Now, in the petitioner's application dated 15.09.2023, it was mentioned that they were released from abduction at 8:00 pm on 13.09.2023 therefore, the question of Bailiff finding them confined in Police Station Phulgaran on 14.09.2023 does not arise. Additionally, in the said complaint

[1] Younas Abbas and others v. Additional Sessions Judge, Chakwal and others (PLD 2016 SC 581)

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dated 15.09.2023, the petitioner had requested the police authorities to obtain the relevant safe city CCTV camera records. Therefore, the attribution of fault to the petitioner on this count is something this Court does not *prima facie* feel inclined to agree with. Consequently, the impugned order dated 27.09.2023 does not appear to have taken into account the contents of the petitioner's complaint and does not show proper application of mind to the peculiar circumstances of the matter.

15. In view of the above, instant petition is allowed and the impugned order dated 27.09.2023 passed by learned JOP is hereby set-aside. The petition under Sections 22-A and 22-B Cr.PC filed by the petitioner shall be treated as pending. The matter is remanded to the learned Sessions Judge, Islamabad (East) who is expected to decide the same himself. Before parting with the matter, it is also directed that the inquiry initiated pursuant to the letter dated 08.04.2024 issued by the office of the Capital City Police Officer shall continue and a report in this regard be submitted to the Registrar of this Court within one month, for my perusal in Chambers.

(MIANGUL HASSAN AURANGZEB)
JUDGE

Ahtesham (U)

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