ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Crl. Rev. No.155-2023

Makhdoom Shah Mahmood Qureshi

Vs.

The State & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	23.10.2023	Syed Muhammad Ali Bukhari, Advocate for petitioner. Mr. Munawwar Iqbal Duggal, Additional Attorney General and Mr. Ahsan Raza Kazmi, Deputy Attorney General.

Through the instant petition, the petitioner has challenged order dated 09.10.2023 passed by learned trial court.

2. Learned counsel for the petitioner *inter alia* contended that an application was moved before learned trial court for conducting trial of the petitioner in regular court premises, which though, has been adverted to yet no finding has been handed down on the same by learned trial court. It was contended that in the notification of jail trial, name of petitioner has not been mentioned. Reference was made to case law reported as Ch. Ghulam Muhammad etc. Vs. The State (PLD 1967 Supreme Court 175), Muhammad Azam Vs. The State (1987 P. Cr.LJ 1534), Mian Muhammad Idress and others Vs. The State and others (2004 P. Cr.LJ 1163), Ch.

Zahur Illahi Vs. The State (PLD 1978 Kar. 342), Akhlaq Ahmed Vs. Government of Punjab and 2 others (1991 MLD 739).

3. Learned Additional Attorney General *inter alia* contended that since co-accused of the petitioner namely Imran Ahmad Khan Niazi is facing jail trial in the same case, hence it ought to be in the same premises in the case of petitioner. It was submitted that earlier notification was issued by Ministry of Law and Justice due to administrative error, omitted the same but on realizing the fact, notification has been issued appropriately on 13.10.2023.

4. Submissions made by the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The petitioner, along with other co-accused, is facing trial in case FIR No.06 dated 15.08.2023 under sections 5/9, Official Secrets Act, 1923 read with section 34 PPC registered with Police Station Counter Terrorism Wing, FIA, Islamabad.

6. The Ministry of Law and Justice ordered jail trial of co-accused of the petitioner vide notification dated 03.10.2023, however, in the same, name of the present was missing. In the referred backdrop, the applicant/petitioner made an application for conducting trial in open court, as is the mandate of section 352 Cr.P.C. and that in-camera trial is to be avoided. Reference was made to case law cited at bar by learned counsel

for the petitioner. There is no cavil with the legal principles laid down in the case law relied upon by learned counsel for the petitioner, however, since petitioner is facing trial with another accused and due to security concerns for latter, trial is being held in jail, therefore, there cannot be two separate trials in the same case (Section 239 Cr.P.C.). In this regard, omission of the name of the petitioner in the earlier notification dated 03.10.2023 seems to be an administrative error inasmuch as after realizing the same, amendment was made in the earlier notification on 13.10.2023. The referred error does not vitiate the proceedings before issuance of notification dated 13.10.2023. It is relevant to observe here that jail trial is not akin to trial in-camera. Trial of the co-accused is being conducted in jail solely due to security reasons inasmuch as Imran Ahmad Khan Niazi is the Head of one of the largest political parties in the country and he and his family had expressed great concerns for his life; in this regard, his transportation to the court, on every date of hearing, can jeopardize his security. Moreover, under section 531 Cr.P.C., no order or proceedings are to be set aside on account of the fact that they were conducted at a wrong place unless it is pointed out that there was failure of justice. Reference is made to case law mentioned below in footnote [1] There is no

[1] The Crown Vs. Muhammad Khan (PLD 1951 Lah. 254); Mawa Din Vs. The State [PLD 1963 (W.P.) Lahore 239]; Abdullah Vs. Raja Hashim [PLD 1962 (W.P.) Karachi 793].

such allegation on part of the prosecution that on account of omission to mention his name in notification issued by the Ministry of Law and Justice, there was or is failure of justice.

7. During course of proceedings, learned counsel for the petitioner pointed out that petitioner and his co-accused are locked up in the cage and the court room, in which, court proceedings are being conducted, is very small and there is no space even for the lawyers to sit. In this regard, it is observed that dignity of a man is one of his fundamental rights; facing a trial or a charge does not amount to conviction. Even if, there is conviction, that does not call for violation of dignity of any person. Keeping in view the referred principle, the superior courts of the country have held that no accused person shall be brought to the court handcuffed. The jail authorities shall ensure that dignity of the petitioner and his co-accused is not violated in any manner and Jail Superintendent shall also ensure that court proceedings are conducted in a room, which has ample space. In this behalf, it is reiterated that jail trial is not akin to trial in-camera and for all purposes, is an open trial. The jail authorities and appropriate government shall ensure that keeping in view dictates of security, maximum number of persons should be accommodated to witness the trial proceedings and it should, in every sense, be open and fair trial.

8. Order dated 09.10.2023 does not warrant any interference. The instant criminal revision is disposed of in above terms.

(CHIEF JUSTICE)

Zawar