ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

JUDICIAL DEPARTMENT.

Diary No.18047-2023

Imran Ahmad Khan Niazi

Vs.

The State through Attorney General Office, Islamabad & Another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	26.10.2023	**Office Objection** Barrister Salman Safdar, Mr. Aftab Ahmad Bajwa, Ch. Khalid Yousaf and Ms. Shahina Shahab-ud-Din, Advocates for petitioner. Office has raised objections to the filing of instant petition, which are reflected at Sr. Nos.8 & 37 of the objection sheet. 2. Learned counsel sought permission to remove office objections in the Court, which was allowed. After it was accordingly done, learned counsel submitted that since the matter is of utmost urgency, it may be taken up today. 3. The request of learned counsel is allowed. Office is directed to number the petition and do the needful. **Crl. Rev. No.166/2023** 4. The instant petition calls in question order dated 23.10.2023, whereby the petitioner has been charged by learned trial court in case FIR No.06 dated 15.08.2023 under section 5/9 of the Official Secrets Act, 1923 read with section 34 PPC registered with Police Station Counter-Terrorism Wing, FIA, Islamabad.

5. Learned counsel for the petitioner *inter alia* contended that copies of the relevant documents were provided to the petitioner under section 241-A Cr. P.C. on 17.10.2023, whereas the charge was framed through the impugned order on 23.10.2023. It was submitted that at least seven days gap is to be given between handing over of the documents and framing of the charge and where such is not the case, this is a material irregularity in the trial, which can vitiate the same. It was further submitted that all the documents have not been provided to the petitioner inasmuch as the entire controversy revolves around the 'cypher', copy of which, has not been provided to the petitioner. It was submitted that under section 241-A Cr.P.C., the provision of all the relevant documents is mandatory and again where such is not the case, this can lead to irregularities in the trial. Reliance was placed on cases reported as Sikandar Ali Lashari Vs. The State & Another (2016 YLR 62), The State Vs. Chaudhry Muhammad Usman (2023 SCMR 1676) and Hussain Naqi and 2-others Vs. Special Judge (Central), Lahore and another (1986 MLD 1107). Learned counsel also contended that on 17.10.2023, learned trial court made certain observations, which are uncalled for inasmuch as it was observed that on the next date, charge would be framed positively and no application would be entertained. It was submitted that this amounts to negation of rights of the petitioner and shows utter haste of learned trial court and its bias.

6. Submissions made by learned counsel for the petitioner have been heard and the documents, placed on record, examined with his able assistance.

7. The petitioner is facing trial in the captioned case. In this regards, arrest of petitioner was effected on 15.08.2023 upon registration of above case; physical remand was refused, as the petitioner was already incarcerated on account of conviction in another case; his judicial remand was extended time and again. Report under section 173 Cr.P.C. was filed on 02.10.2023. The matter got adjourned to 04.10.2023 and then to 09.10.2023. The order dated 09.10.2023 reflects that on the said dates, copies of the documents under section 241-A Cr.P.C. were given to the petitioner, however, he though received the same, but did not sign the order sheet acknowledging receipt thereof. The relevant part of the referred order is reproduced as follows:-

> *"At this juncture, Court supplied the copies to accused persons Imran Ahmad Khan Niazi and Makhdoom Shah Mehmood Qureshi and directed that accused persons to put signatures on the margin of order sheet. Mr. Sher Afzal Khan Marwat the learned counsel for accused Imran Ahmed Khan Niazi contended before the Court that accused will not sign any document or order sheet with regard to receiving of copies then accused Imran Ahmad Khan Niazi also denied to put signatures on the margin of the order sheet. Since, the copies have been supplied as per law to the accused person. It is further directed to the accused persons that they will make signatures on interim order on future date even then if the accused persons will be reluctant to make signatures on the interim orders under the law it will be presumed that since they have already received the copies and their respective signatures on the margin sheet will be immaterial and this Court will further proceed strictly in accordance with law for the purpose of framing of charge:.*

On 17.10.2023, the petitioner did sign the order sheet evidencing receipt of the documents. The referred part of the order dated 17.10.2023 is reproduced below:-

> *"Be that as it may, the learned counsel on behalf of both the accused as well as accused themselves are ready to receive those copies which after receiving the same on the last date of hearing were left in the court. On last date, they were not inclined to make signatures on the order sheet regarding receiving of the copies which has been done so. It is appropriate demand that instant matter be adjourned for justified and plausible manner so that grievance of the present accused persons Imran Ahmed Khan Niazi and Shah Mehmood Qureshi could be redressed".*

Reading the above orders conjunctively clearly shows that petitioner was given the requisite documents as appended with report under section 173 Cr.P.C. on 09.10.2023, however, he refused to acknowledge the same and only acknowledged on 17.10.2023. It is pertinent to observe that instant petition assails only order dated 23.10.2023, whereby charge has been framed on account of the fact that 7-days gap has not been provided between handing over of the copies of the documents and framing of the charge. During course of arguments, learned counsel did not advert to order dated 09.10.2023; neither the said order has been challenged before the Court inasmuch as it clearly reflects that the copies of the documents with report under section 173 Cr.P.C. were handed over to the petitioner and his co-accused, which they refused to acknowledge and sign. It is reiterated that no attack whatsoever has been made to order dated

09.10.2023 nor its veracity has been doubted or assailed before this Court. In view of referred facts and circumstances, this Court cannot shut its eyes towards said order and it has to be read together with order dated 17.10.2023. Both orders, when read together, clearly show that almost 14-days period passed between handing over of the copies of the documents to the petitioner and framing of the charge. In any eventuality, where the accused refused to receive copies of the documents and sign the order sheet, does not seem to stall the trial. In case reported as Muhammad Azam Vs. The State (1987 P Cr.LJ 1534), the accused refused to receive documents under section 265-C Cr.P.C. and sign the order sheet, but the trial commenced and continued and only after two months, an application was filed for receipt of the documents which was turned down by learned trial court, but High Court in its revisional jurisdiction, directed copies to be provided on account of the fact that petitioner/accused was illiterate and was not aware of the proceedings. Though it is not really ratio of that judgment, but it is inbuilt that where such eventuality exists that accused refuses to receive the documents forming part of the case of prosecution, the trial court can proceed and documents can be supplied subsequently. In the instant case, trial court did allow period of 13/14 days between handing over copies of the documents and framing of the charge. It is not the sweet-will of the petitioner who is adequately represented by eminent lawyers to refuse to receive copies of documents and later on acknowledge receipt thereof on some subsequent date. The

purpose of the law is that copies of documents appended with report under section 173 Cr.P.C. are to be provided so that accused knows the case against him. The acknowledgment, by way of signatures on the order sheet, is only a proof that compliance was made of section 265-C Cr.P.C. or 241-A Cr.P.C. As noted above, trial court, in the instant case, categorically observed that copies of the documents have been provided to the petitioner on 09.10.2023, but he refused to sign on the advice of the counsel and the said observation has not been challenged till to date before this Court, hence stands accepted as 'correct' by the petitioner.

8. In the referred backdrop, in my opinion, due compliance of section 241-A Cr.P.C. (265-C) has accordingly been made. In this regard, Article 129 of the Qanoon-e-Shahadat Order, 1984 provides certain presumption as to existence of certain facts. It says that court may presume the existence of any fact, which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. In Illustration (e) of the referred Article, it is provided that judicial and official acts have been regularly performed, hence there exists presumption that the trial court did comply with section 241-A Cr.P.C. and also framed charge after due compliance, especially when no rebuttal exists on record on part of petitioner by way of an affidavit or otherwise that order dated 09.10.2023 does not depict the correct position. While interpreting Article 129(e) ibid, the Supreme Court in case reported as Fayyaz Hussain

Vs. Akbar Hussain and others (2004 SCMR 964) observed that presumption of correctness is always in favour, of judicial proceedings and credibility is attached to proceedings before a judicial forum; strong and unimpeachable evidence is required to rebut such presumption. The Court, while doing so, placed reliance on an earlier judgment of the Supreme Court reported as Ghulam Muhammad Vs. Malik Abdul Qadir Khan (PLD 1983 SC 68). In case reported as Chiragh Din Vs. Mumtaz Ali and another (2008 P Cr. LJ 126), the Division Bench of Hon'ble Lahore High Court observed that Superior Courts have consistently held that judicial record and the statement of the judge would be regarded as conclusive and neither the affidavits of bystanders nor counsel, nor any other evidence could be admissible to contradict the judicial record and the statement of the judge. The Division Bench relied upon case reported as Reg. Vs. PestanjiDinsha and another (1873) 10 Bom. H.C.R. 75 , wherein inter alia it was held that statement of the judge must be considered as absolute verity and the same ought to be taken precisely as a record and must be acted upon in the same manner as record of Court. It was also observed that law has made the judge the final authority as to what takes place before him at a trial, and that authority must be recognized.

9. It was also argued by Mr. Salman Safdar, ASC that copy of the cypher has not been provided to the petitioner, despite it being the case of the prosecution that cypher has been retained by petitioner and/or twisted by him and he communicated the contents thereof with

unauthorized persons. Section 241-A Cr.P.C. provides providing of certain documents. Since trial, in question, is a magisterial trial, section 241-A Cr.P.C. is reproduced below:-

> **241A. Supply of statements and documents to the accused**.-(1) In all cases instituted upon police report, except those tried summarily or punishable with fine or imprisonment not exceeding six months, copies of statements of all witnesses recorded under sections 161 and 164 and of the inspection note recorded by an investigation officer on his first visit to the place of occurrence, shall be supplied free of cost to the accused not less than seven days before the commencement of the trial:
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> Provided that, if any part of the statement recorded under section 161 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.
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> (2) In all cases instituted upon a complaint in writing, the complainant shall,__
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> (a) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and
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> (b) within three days of the order of the Court under section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused:
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> Provided that the provisions of this subsection shall not apply in any case in which the complaint has been made by a court or by a public servant acting or purporting to act in the discharge of his official duties".

The bare reading of referred section shows that it is the right of the accused to receive copies of all statements made under section 161 & 164 Cr.P.C. and the inspection notes recorded by the investigating officer and other documents, however, this right is not absolute and is subject to proviso that where disclosure of any information is inexpedient in

the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused. This Court interpreted equivalent of section 241-A Cr.P.C. i.e. section 265 Cr.P.C. in case reported as Tahir Zahoor Ahmad and others Vs. The State and others (2022 MLD 523) and observed as follows:-

"8. The controversy in hand boils down to interpretation of Sections 265C and 265D, Cr.P.C., as petitioners are claiming copies of statements recorded under section 161, Cr.P.C. For ease of convenience, the relevant provisions are reproduced below:-

265-C. Supply of statements and documents to the accused: (1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely-

(a) the first information reports;
(b) the police report;
(c) the statements of all witnesses recorded under Sections 161 and 164; and
(d) the inspection note recorded by an investigation officer on his first visit, to the place of occurrence and the note recorded by him on recoveries made, if any:

Provided that, If any part of a statement recorded under Section 161 or Section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) in all cases instituted upon a complaint in writing-
(a) the complainant shall-
(i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of the evidence which he is likely to adduce at the trial; and
(ii) within three days of the order of the Court under Section 204 for issue of process to the accused, file, in the Court for supply to the accused as many copies of the complaint and any other document -which he has filed with his complaint as the number of the accused and
(b) copies of the complaint, and any other documents which the complainant has filed therewith and the

statement under Section 200 or Section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial.

265-D When charge to be framed: If, after perusing the police report or, as the case may be, the complaint, and all other documents and statements filed by the prosecution, the Court is of opinion that there is ground for proceeding with the trial of the accused it shall frame in writing a charge against the accused.

The bare perusal of section 265C ibid shows that at least seven days, before framing of charge, free of cost, four types of documents are to be provided to the accused namely; First Information Report; police report; statement of all witnesses recorded under sections 161 and 164, Cr.P.C. and inspection note recorded by the Investigation Officer on his first visit to the place of occurrence and note recorded by him on recoveries made, if any. The said section is subject to proviso which entitles the court not to provide any statement recorded under sections 161, Cr.P.C. or 164, Cr.P.C., if disclosure of the same to the accused, would be inexpedient to the public interest".

It seems from the record that all documents, which are part of report under section 173 Cr.P.C. have been supplied to the petitioner. If any document is not part of the challan/report under section 173 Cr.P.C., which according to the accused, is a fundamental document, the effect whereof can be examined by the trial court subsequently. The accused can also request for summoning of a particular document, if he feels that it is a fundamental document. The referred proposition was faced by the Supreme Court in case reported as The State Vs. Chaudhry Muhammad Usman (2023 SCMR 1676). The Supreme Court interpreted and elaborated section 94 Cr.P.C. in the following manner:-

> *"A bare reading of Section 94 shows that there is no limitation as to the stage of the inquiry or trial when a court can, in the exercise of its power under this Section, make an order for the production of any document. The only condition for the exercise of the power under Section 94 is that the production of the*

> *document must be necessary or desirable for the purposes of the inquiry or trial before the court. The word 'whenever' in Section 94 clearly indicates that a court can exercise the power of requiring the production of any document under this Section at any stage of the inquiry or trial.*
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> 7. Further, Section 94 does not restrict as to whose point of view, whether of the prosecution or the accused, the required document may be necessary or desirable for the purposes of the inquiry or trial. A court being a neutral arbiter does not act for either the prosecution or the accused but for the dispensation of justice. And for the dispensation of justice, the court is to ascertain the truth in respect of the matter under inquiry or trial before it. The production of a document that would facilitate the court in this regard is to be considered necessary or desirable for the purposes of the inquiry or trial. It is immaterial whether the production of such a document would support the prosecution case or the defence of the accused. Therefore, any party may at any stage of the inquiry or trial apply to the court, under Section 94, for the production of a document and is entitled to its production if it satisfies the court that the production of that document is necessary or desirable for the purposes of such inquiry or trial".

The other case law cited by learned counsel for the petitioner is not relevant in the facts and circumstances of instant case.

10. Learned counsel for the petitioner contended that trial court has made certain observations vide order dated 17.10.2023 which are prejudicial and reflects haste in which the court is proceeding. The reading of the observations shows that trial court has apprehension that petitioner and his co-accused might delay the proceedings and in that regard, has kind of warned the petitioner. Such like observation might not be made, but it does not make the trial court *per se* minded to proceed in haste or shows bias of any kind. This Court, already in a case titled Imran Ahmad Khan Niazi Vs. District Election Commissioner (Crl. Rev. No.108-2023), in which, the

petitioner was under trial and had raised allegations of bias against the Judge, observed as follows:-

> "13. As mentioned above, though the learned counsel for the petitioner has not agitated the bias per se but on account of the fact that almost day-to-day proceedings were conducted by him questions the undue haste and the manner in which the same was conducted. In **Nawaz v. Ghulam Qadir (1975 P.Cr.L.J. 676)** where the applicant sought transfer of the case from one Court to another on the allegation of political enmity; the request was turned down on the basis that no such evidence was available. Similarly, in **Abdul Ghafoor v. the State (1993 P.Cr.L.J. 1784)** again where the transfer of a case was sought on the basis of political affiliation of the Presiding Officer with one of the parties; the request for transfer was turned down. Likewise, in the same case the request for transfer on the basis of undue haste by the Trial Court was turned down as not applicable in the facts and circumstances viz nothing existed on the record to the effect. The Hon'ble Lahore High Court in a fairly recent decision in **Abdul Razzaq. V The State and 2 others (2022 P.Cr.L.J. 741)** by following the case law on the subject laid down the principles for transfer or otherwise of a case under Section 526 Cr.P.C. from one Court to another which are as follows:
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> "Following are the principles settled on the question of transfer of a case from one Court to another:
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> (a) A case should not be transferred from the Court of competent jurisdiction unless the allegations are supported by strong reasons or convincing evidence.
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> (b) If such applications are allowed, it would impliedly mean that the allegations against a Judge have been deemed to be correct and such situation will certainly lower the image, dignity and honour of judiciary in the eyes of public at large. Transfer of a case is to be allowed only in exceptional circumstances where the grounds urged are based on strong reasons and evidence. If this practice is not followed strictly, the parties are likely to take undue advantage by filing application for transfer of their cases on flimsy, frivolous and baseless grounds.
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> (c) While considering a transfer application, it must be kept in mind that the parties should not be allowed to pick and choose the Court of their own choice or liking.
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> (d) Interference in the working of the trial Courts on fallacious grounds would give rise to a sense of insecurity amongst the Judicial Officers and in such

eventuality the Judicial Officers may not be able to work with required vigor.

(e) Vague and general allegations cannot be made the ground of transfer.

(f) The Judges should equally be protected from frivolous transfer applications in order to achieve transparent even-handed justice so that one of the litigants should not be in a position to overpower the Judge which might ultimately result in tilting scale of justice under fear and malignity.

(g) Suspicion or artificial and baseless apprehensions are not sufficient to seek transfer ofcase. Any bald statement containing allegation is not sufficient to allow the transfer."

14. The Court highlighted that the transfer should be allowed only in exceptional circumstances where the ground urged or is based on strong reasons or evidence. It was also observed that if the transfer is made in routine or casual manner that would destroy the dignity of the Court and would be a ploy by a party to drag the matter and malign the Judiciary. The Hon'ble Supreme Court of Pakistan in **Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57)** observed that the basis of disqualification of a Judge on personal bias or prejudice of such a nature as would necessarily render a Judge unable to exercise his intention impartially in a particular case and this must be shown as a matter of fact and not merely as a matter of opinion. It is settled principle that mere wrong order or orders by a Presiding Officer would not suffice as a ground for transfer or show his bias towards a party. In **Independent Media Corporation v. Federation of Pakistan (PLD 2014 SC 650)** it was observed that the Courts are not to succumb to any remarks defamatory or otherwise. It is the conscious of the Judge himself to determine his decision to sit on a Bench or not. In **Pervez Musharaf v. Nadeem Advocate (PLD 2014 SC 585)** the Hon'ble Supreme Court of Pakistan observed that a Judge by training does not allow any vilification to cloud his judgment in a judicial matter and even extremely derogatory language used against Judges does not, by itself create bias. In **Kanwar Naveed Jameel and 5 others v. Province of Sindh etc. (PLD 2022 Sindh 499)** the Division Bench of Sindh High Court held that it is well settled by now that it is for a Judge to himself to determine whether to recuse from the case or not. There is ample case laws that where it is apparent that perception of bias/ impartiality is being created by a litigant or a counsel to divert a case from a Bench which he perceives as unfavourable to a Bench which he perceives as more favourable. To succumb to such tactics would not only send the

> message that the Judges can be cowed into submission by such tactics, it would also erode public confidence in the Courts and at the same time it would increase the work load of the Bench to whom the case is passed on".

In view of above, referred observation does not and cannot make the trial court biased in any manner, however, there is no denying that fair trial and due process is a fundamental right of the petitioner which ought not be bulldozed in any manner. To assail any order of trial court within legal parameters is the right of the petitioner and trial court has to decide the same in accordance with law. The mandates of Article 10-A of the Constitution are to be observed by the trial court on every step of the trial and no court can vitiate the same. The mere fact that short adjournments are being granted or the trial is proceeding on day-to-day basis would not mean denying dictates of Article 10-A of the Constitution *per se* as long as every right of the petitioner remains intact and every objection is dealt with in accordance with law.

11. In view of foregoing, no interference is warranted with order dated 23.10.2023, however, instant petition is disposed of with direction to trial court to ensure due compliance of Article 10-A of the Constitution.

(CHIEF JUSTICE)

Approved for reporting

Zawar