ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl.Misc. Petition No.1099/T/2024
Imran Ahmad Khan Niazi
Versus
The State and another

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
02.	13.06.2024	**M/s Salman Akram Raja, Barrister Salman Safdar, Muhammad Usman Riaz Gill, Ch. Khalid Yousaf, Zaheer Abbas and Rai Salman Amjad, Advocates for the petitioner.** **Raja Rizwan Abbasi, Advocate for respondent No.2.** **Mr. Ghulam Sarwar Nihaz, Federal Prosecutor General.** **Mr. Adnan Ali, Deputy District Public Prosecutor.**

Through the instant petition under Section 526 of the Code of Criminal Procedure, 1898 (**"Cr.PC"**), the petitioner, Imran Ahmad Khan Niazi, seeks transfer of his appeal pending before the Court of Mr. Muhammad Afzal Majoka, learned Additional Sessions Judge, Islamabad-West to the Court of Mr. Shahrukh Khan Arjumand, learned Sessions Judge, Islamabad-East or to this Court.

2. The record shows that vide judgment dated 03.02.2024 passed by the Court of the learned Judicial Magistrate (Section 30 Cr.PC), Islamabad-East, the petitioner and his wife, Mst. Bushra Bibi were found guilty of the offence under Section 496 of the Pakistan Penal Code, 1860 (**"PPC"**) and sentenced to simple imprisonment for a period of seven years each. They were also liable to pay fine of Rs.5,00,000/- each.

3. On 23.02.2024, an appeal against the said conviction was filed by the petitioner and his wife before the Court of the learned Sessions Judge,

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Islamabad-East against the said judgment dated 03.02.2024.

4. The order sheet of the learned Appellate Court filed along with the instant petition shows that on 29.02.2024, the learned Appellate Court after hearing the preliminary arguments of the learned counsel for the petitioner, requisitioned the record from the learned trial Court and issued notices to the State and the complainant, Muhammad Khawar Farid Manika / respondent No.2. On 11.03.2024, respondent No.2 sought an adjournment to engage the services of a counsel. On 20.03.2024, the request for adjournment made by the learned counsel for respondent No.2 was allowed and the matter was adjourned to 27.03.2024 on which date the learned Presiding Officer of the learned Appellate Court was on leave. On 06.04.2024, partial arguments of the learned counsel for the petitioner were heard. On 09.04.2024, the remaining arguments of the learned counsel for the petitioner as well as the arguments of the learned Assistant District Public Prosecutor were heard. Since the learned counsel for respondent No.2 was stated to be unwell on the said date, the matter was adjourned to 15.04.2024. It is apt to reproduce herein below the second paragraph of the said order dated 09.04.2024:-

> ***"On previous date also counsel for the complainant/respondent No.2 was not available without showing any good/plausible cause and today again adjournment has been sought without tendering any medical treatment record, however, in order to provide a fair opportunity, matter is adjourned with the warning to the complainant/respondent No.2 and his counsel that if they fails to argue the main appeal on next date, then the application for suspension of sentence will be decided after perusing the***

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record and no further adjournment will be granted. Adjourned to 15.04.2024."

5. On 15.04.2024, learned counsel for respondent No.2, after addressing partial arguments, requested for a long adjournment which was opposed by the learned counsel for the petitioner. The matter was adjourned to 24.04.2024 with the direction to the learned counsel for respondent No.2 to conclude his arguments on the said date.

6. On 24.04.2024, learned counsel for respondent No.2, after addressing arguments at some length, again sought an adjournment. The matter was adjourned to 30.04.2024 with the direction to the learned counsel for respondent No.2 to conclude his arguments on the said date.

7. On 30.04.2024, respondent No.2 filed an application seeking the transfer of the appeal from the Court of the learned Sessions Judge, Islamabad-East to some other Court. The ground taken in the said application is that his entire family knows that the learned Judge has sympathies for Pakistan Tehreek-i-Insaf ("PTI") and this would cause him to allow the appeals and acquit the petitioner and his wife. Vide order dated 30.04.2024, the said application was dismissed. Furthermore, the matter was adjourned to 08.05.2024 with a warning to the learned counsel for respondent No.2 that in the event he failed to address arguments on the said date, no further adjournment would be granted and the appeals would be fixed for the announcement of orders. However, on 08.05.2024 the learned Presiding Officer of the Appellate Court was on leave resulting in the matter being adjourned to

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14.05.2024. On 14.05.2024, arguments of the learned counsel for respondent No.2 were concluded but the arguments of the learned counsel for the petitioner in rebuttal could not be heard as the learned Presiding Officer had to attend a seminar. On 15.05.2024, an application for adjournment was filed by the learned counsel for respondent No.2 on the ground that he was on general adjournments from 15.05.2024 to 28.05.2024. The learned Appellate Court adjourned the matter to 23.05.2024 with a direction to the learned counsel for respondent No.2 to address arguments through video link at 01:00 p.m. (Pakistan time) on the said date. It was also ordered that in the event the learned counsel for respondent No.2 is not able to address arguments through video link, he should send his written arguments through email. On 23.05.2024, an associate counsel of the learned counsel for respondent No.2 sought an adjournment on the ground that the learned counsel for respondent No.2 could not be contacted. The learned Appellate Court heard the arguments of the learned Deputy District Public Prosecutor and the learned counsel for the petitioner. The learned Appellate Court fixed 29.05.2024 for the announcement of orders. Respondent No.2 was given the option either to submit written arguments or to appear on the said date at 09:00 a.m. for addressing arguments.

8. Order dated 29.05.2024 shows that while the learned counsel for respondent No.2 was addressing arguments, respondent No.2 *"again and again tried to interfere in proceedings and stopped his lawyer from arguing the case."*

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Respondent No.2 expressed his lack of trust on the learned Appellate Court and stated that it is the talk of the town that the petitioner would be acquitted. He also went on to say that last night his daughter had gone to the house of her mother (respondent No.2's former wife) to clean the place. He also alleged that the judgment of the learned Appellate Court had been made public. It appears that this was too much for the learned Sessions Judge, who vide order dated 29.05.2024 sent a reference to this Court under Section 528 Cr.PC for the entrustment of the appeal to any other Court of competent jurisdiction. In the said order, it was also noted that the conduct of respondent No.2 and his counsel was not upto the mark and that they had tried to frustrate the proceedings on one pretext or the other. The matter was adjourned to 05.06.2024 to await orders from this Court.

9. Apparently, after the said reference was sent by the learned Sessions Judge, Islamabad-East, the Hon'ble Chief Justice of this Court on 01.06.2024 transferred the appeals filed by the petitioner and his wife to the Court of Mr. Muhammad Afzal Majoka, learned Additional Sessions Judge, Islamabad-West.

10. The learned Additional Sessions Judge, Islamabad-West instead of taking up the matter for hearing on 05.06.2024 which had been fixed by the learned Sessions Judge, Islamabad-East through his order dated 29.05.2024 took up the matter for hearing on 03.06.2024 on four different occasions. Since no one tendered appearance before his Court, he adjourned the matter to 25.06.2024. It was in these circumstances that the petitioner

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filed the instant petition under Section 526 Cr.PC. seeking an order for the transfer of the appeals back to the Court of the learned Sessions Judge, Islamabad-East with the direction to announce the judgment. In the alternative, it was prayed that the appeals be transferred to this Court.

11. Learned counsel for the petitioner, after narrating the facts leading to the filling of the instant petition, reiterated the prayer sought in the instant petition.

12. On the other hand, learned counsel for respondent No.2 submitted that after the petitioner and his wife were convicted by the learned trial Court, their appeals were heard at length by learned Sessions Judge, Islamabad-East; that after respondent No.2's application for the transfer of the appeals from the Court of the learned Sessions Judge, Islamabad-East was dismissed, respondent No.2 expressed his dissatisfaction with him; and that the order passed by the Hon'ble Chief Justice of this Court in an administrative capacity cannot be challenged either through a writ petition or through a petition under Section 526 Cr.PC. He prayed for the instant petition to be dismissed. In making his submissions, he placed reliance on the law laid down in the judgment reported as Abrar Hassan Vs. Government of Pakistan PLD 1976 SC 315).

14. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 10 above and need not be recapitulated.

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15. The transfer of the appeals to the Court of the learned Additional Sessions Judge, Islamabad-West was made pursuant to a decision taken by the Hon'ble Chief Justice of this Court on a reference made under Section 528 Cr.PC. Learned counsel for the petitioner did not come up with any plausible ground for re-transferring the appeals from the Court of the learned Additional Sessions, Islamabad-West. Indeed Section 526(1) Cr.PC empowers this Court to order a particular case or appeal to be transferred from a criminal Court subordinate to its authority to any other such criminal Court of equal or superior jurisdiction. It also empowers this Court to transfer a particular case or appeal to itself. However, in the case at hand the petitioner has not been able to convince this Court that the Court of the learned Additional Sessions Judge, Islamabad-West would not conduct the proceedings in the appeals in a fair or impartial manner. It has also not been shown as to why it is expedient or how the interest of justice would be served if the appeals are transferred back to the Court of the learned Sessions Judge, Islamabad-East or to this Court. Therefore, the essential prerequisites for the transfer of an appeal in terms of Section 526(1) Cr.PC are not satisfied in the instant case.

16. This Court appreciates the anxiety of the petitioner caused by the delay in the appellate proceedings attributable to respondent No.2. A reference was sent for the transfer of the case on the day on which the judgment in the appeals was to be rendered. The transfer of the appeals to the Court of the learned Additional Sessions Judge,

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Islamabad-West implies that the new Presiding Officer will have to hear the appeals all over again. The appeals are also accompanied with applications for the suspension of the sentence awarded to the petitioner through judgment dated 03.02.2024. Therefore, bearing in mind all the relevant circumstances mentioned herein above, I deem it appropriate to dispose of the instant petition with a direction to the learned transferee Court to decide the applications under Section 426 Cr.PC within a period of ten working days from today and to decide the appeals within a period of thirty days from today. In this regard, report shall be submitted to the learned Member, Inspection Team of this Court.

17. Disposed of in the above terms. Office shall transmit a copy of this order to Mr. Muhammad Afzal Majoka, learned Additional Sessions Judge, Islamabad-West for compliance.

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(MIANGUL HASSAN AURANGZEB)
JUDGE

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