

Form No: HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

CrI. Misc. No. 52238-H of 2021

Qari Muhammad Atta Ullah Versus DPO and another

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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01.09.2021

Mr. Shafiq Ahmad Bhutta, Advocate for petitioner.
Mr. Nisar Ahmad Virk, DPG with Imran SHO
concerned.
Muhammad Rasheed Bailiff with report.

It is settled principle of nature that night is followed by dawn; autumn is a passage towards spring; severe humidity is always a prediction of rain; threshold of a Court is a ray of hope for the oppressed and depressed people. The doors of Courts are never closed for the justice seekers; wherein and whenever the same are closed and supremacy of law is ignored; that society could not persist on this planet.

2. Qari Muhammad Atta Ullah petitioner has filed this petition under Section 491 Cr.P.C for the recovery and production of his son namely Hassan Ali from the alleged illegal and improper custody of Station House Officer Police Station Naikapura, District Sialkot through a bailiff of this Court. It is alleged that respondent No. 2 along with some police officials entered in the house of the petitioner on 22.08.2021 at 09.00 p.m. and forcibly took his son Hassan Ali with him, in his official vehicle (*Dala*) without any rhyme and reason. The petitioner along with other respectables of the area visited the police station Neikapura and inquired about the guilt of the detenu but the above said respondent did not tell anything and simply stated that the detenu has been apprehended under some suspicion and will be released

within 1/2 days. It has further been narrated in this petition that after two days, when the petitioner again approached respondent No. 2 for the release of detenu, he demanded illegal gratification of Rs. 2,00,000/-, which the petitioner could not pay due to financial constraint. The petitioner submitted that his son was tortured severely on 28.08.2021. Lastly, vociferously submitted that his son is neither involved nor required in any criminal case, therefore, a bailiff of this Court be deputed for his recovery and production.

3. On the request of the petitioner, a bailiff of this Court was deputed for the recovery and production of alleged detenu namely Hassan Ali before this Court vide Order dated 31.08.2021. In pursuance of that Order and under the authority of the Court, the bailiff Muhammad Rashid raided at Police Station Naikapura and submitted a report which is reproduced as infra:-

“ In compliance with the order dated 31.08.2021, passed by this Hon’ble Court, I reached Police Station Naikapura, District Sialkot at 07.25 p.m. along with the petitioner for the recovery of alleged detenu namely Hassan Ali. Moharrar (Zulqarnain) and other police officials were present there. After necessary introduction, I took Roznamcha into my possession and started searching for the recovery of alleged detenu mentioned above. In the course of searching, I found the above named alleged detenu confined in the lock up of said police station.

2. On my inquiry, alleged detenu stated that he was captured by police on 22.08.2021 from Gunna Kalan Pasrur Road, Sialkot. He further stated that he has not been produced before any court so far. He also complained of torture subjected by the police.

3. On my inquiry, Zulqarnain (Moharrar) has stated that alleged detenu has been arrested today (31.08.2021) by police for investigation in case of stolen Motorcycles. The Moharrar produced no record about the above said situation.

4. I perused the Roznamcha thoroughly but there found no entry qua arrest of the alleged detenu. Notices issued by the Hon'ble Court have been served upon the Moharrar with the direction that all concerned/respondent shall appear in person along with complete record if any, as well as alleged detenu, before this Hon'ble Court on 01.09.2021 at 09.00 a.m. to explain their position.

5. Report is respectfully submitted for kind perusal and appropriate orders.”

4. From the report submitted by the bailiff, it is vivid that the alleged detenu was detained in the Police Station Naikapura; his arrest had not been shown in any record maintained at Police Station. At this stage, learned Deputy Prosecutor General has apprised the Court that in fact the detenu was required in a criminal case FIR No. 237 dated 17.05.2021 under Section 381-A PPC registered at said Police Station on the basis of a supplementary statement, got recorded by the complainant of the said case on 18.08.2021. Pursuant to which, he was arrested on 31.08.2021, however, he conceded that his arrest has not been shown in any record maintained at the police station.

5. This Court further directed the police officials in attendance to produce daily roznamcha of police station, which has been produced after the break and after checking the same, it has been found that there is no entry in the roznamcha qua the arrest of Hassan Ali (detenu). Similarly, no *rapat* has also been written that investigating officer of case FIR No. 237/2021 has departed from the police station along with the police file of this case.

So far as supplementary statement of complainant is concerned, I have gone through the same wherein the

complainant namely Shahid Sial son of Abdul Latif has stated therein that now he has come to know through reliable source that his motorcycle had been stolen by Hassan Ali, his motorcycle be recovered. There is complete silence qua the source through which petitioner's son namely Hassan Ali has been involved in this case by the complainant. Except the above said supplementary statement, there is nothing on record to suggest that the alleged detenu is involved in the case referred to above. Therefore, custody of the detenu is declared illegal and he is set at liberty by converting this petition into a petition under Section 498 Cr.P.C enabling him to approach the Court of first instance to seek relief of pre-arrest bail, accordingly he is allowed protective bail in the supra mentioned case till 07.09.2021 till court hours i.e. 02:00 p.m., this order shall automatically lapse thereafter.

This Court has noticed with great concern that various police officials/ officers posted at the police stations for gaining some ulterior motive detain innocent persons without showing formal arrest required in the cases and are hesitating to incorporate the arrest in the relevant column/register maintained at the police station. The Court is, therefore, deem it appropriate to draw attention of the police officials to act in accordance with law by strictly adhering to the various provisions of Law.

6. Firstly, I would like to dilate upon the relevant provisions of law for maintaining of daily diary, the arrest of accused and law relating to case diary.

7. The first provision of law relating to general diary is mentioned in section 44 of the Police Act, 1861 which is hereby reproduced as under:-

Section 44 in [The Police Act, 1861

44. Police- officers to keep diary.-- It shall be the duty of every officer in charge of a police- station to keep a general diary in such form shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

More so, section 167 of Police Order, 2002 is also very much relevant in the peculiar circumstances of this case, which is also hereby described for facilitation:-

167. Maintenance of Daily Diary at a police station.—

(1) A register of Daily Diary shall be maintained at every police station in such form as shall, from time to time, be prescribed and to record therein the names of all complainants, persons arrested, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

(2) The District and Sessions Judge of the district may call for and inspect such Diary.

Furthermore, sections 22.48 and 22.49 of Police Rules, 1934 are also pertaining to register No. 2 (*roznamcha*) of the police station. Both the said rules are also hereby mentioned as under for ready reference:-

Rule 22.48 of the Police Rules 1934.

Rule 22.48. Register No. II. - (1) The **Daily Diary** shall be maintained in accordance with section 44 of the Police Act.

It shall be in Form 22.48(1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be dispatched to a Gazetted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf. Shortly before the close of each quarter, books containing the proper number of pages for

the ensuing three months shall be issued to police stations by the Superintendent. The Superintendent shall fix the hours at which station diaries shall be daily closed with reference to the hour of dispatch of the post or messenger.

(2). The daily diary is intended to be complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) All entries in the station diary shall be made by the officer in charge of the police station or by the station clerk. Literate officers making a report shall read the report recorded and append their signatures. Every matter recorded in such diary shall be so recorded as soon as possible; each separate entry shall be numbered and the hour at which it was made shall commence each such entry. If the hour at which the information, or otherwise, containing such entries reaches the police station differs from the hour at which such entry was made, both hours shall be stated. As soon as entry has been made in the diary, a line shall be drawn across the page immediately below it.

(4) The opening entry each day shall give the name of each person in custody, the offence of which he is accused, and the date and hour of his arrest, the name of each accused person at large on bail or recognizance and the date of his release on such security. The last entry each day shall show (a) the balance of cash in hand as shown in the cash account, and (b) the balance of the cattle-pound account.

Rule 22.49 of the Police Rules 1934.

Rule 22.49- Matters to be entered in Register No. II -

The following matters shall, amongst others, be entered

- :
- (a) The number and description of cattle seized in connection with cases or on suspicion with a reference to the case or report.
 - (b) The day, hour and purpose of visits to the police station of persons registered under the Criminal Tribes Act and of convicts released under the Remission Rules or under section 56, Code of Criminal Procedure, together with the names of such persons.
 - (c) The hour of arrival and departure on duty at or from a police station of all enrolled police officers of whatever rank, whether posted at the police station or elsewhere, with a statement of the nature of their duty. This entry shall be made immediately on arrival or prior to the departure of the officer concerned and shall be attested by the latter personally by signature or seal. Note. - The term Police Station will include all places such as Police Lines and Police Posts where Register No. II is maintained.
 - (d) Every police officer of or above the rank of head constable, when returning from duty other than an investigation in which case diaries are submitted, shall have an entry made in the daily diary by the station clerk or his assistant showing the places he has visited and the duties

performed by him during his absence from the police station.

(e) All admission to and releases from the cattle pound with the amounts of fines realised.

(f) The hour of receipt and despatch of all communications, property, cash, etc., giving reference to the number in the correspondence register. Note. - The word "communications" shall be taken to include the reports required by Police Rule 25.57(2)(ii) and Police Rule 27.1(1)(ii), to be sent to Panchayats.

(g) Information of the commission of non-cognizable offences (rule 24.3) including reports of enmities likely to lead to a breach of the peace (rule 23.32); visits of chaukidars to police stations [rule 21.3(4)] and demands by the police of one jurisdiction for assistance in extradition cases from the police of another jurisdiction [rule 26.10(7)]

(h) All arrivals at, and dispatches from, the police station of persons in custody, and all admissions to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.

(i) The hour and date of receipt and (separately) or service or execution of each process; and hour and date of return made to such process.

(j) The report regarding property in the store-room required by rules 22.15 and 22.18(2).

(k) The report regarding excess of expenditure over the permanent advance as required by rule 22.71.

(l) The entrance of persons, by permission, into a tahsil treasury after office hours.

(m) The deposit in, or removal from, the post office safe in the Police Station of any article whatsoever the exact hour being given in every case. Note. - Every such entry shall contain detail of the article deposited or removed and shall be signed by the Sub or Branch Postmaster effecting the deposit or removal.

(n) A reference to every information relating to the commission of a cognizable offence, and action is taken under section 157, Code of Criminal Procedure, the number and date of the first information report submitted.

8. As discussed earlier, neither any *rapat* has been incorporated in register No. 2 nor any number of FIR was disclosed by Zulqarnain (Moharrar) of police station to the bailiff but he simply stated that detenu has been arrested on 31.08.2021 by the police for investigation in case of stolen motorcycles and produced no record about the above said situation. It is pertinent to mention here that if the Hassan Ali (detenu) was arrested in case FIR No. 237/2021 dated 17.5.2021 under section 381-A, PPC

registered with Police Station Naikapura then why the bailiff was not informed about the FIR number and similarly why the police file of the said case was not handed over to the bailiff, this fact shows that the SHO, Ahmad Bilal, ASI/I.O and Zulqarnain (Moharrar) of P.S. Naikapura District Sialkot with their active connivance has fabricated the record subsequently. The police file/case diary is not a personal property of the investigating officer as per law and that should be retained at the police station except when the investigating officer proceeds for the purpose of investigation. Rules 25.53, 25.54 and 25.55 of Police Rules, 1934 deals with the case diary which are also reproduced as under:-

25.53. Case diaries. - (1) Section 172(i), Code of Criminal Procedure requires that a case diary shall be maintained and submitted daily during an investigation by the investigating officer. In such diary shall be recorded, concisely and clearly, the steps taken by the police, the circumstances ascertained through the investigation and the other information required by Section 172(i), Code of Criminal Procedure. (2) Case diaries shall be as brief as possible; shall not be swollen with lengthy explanations and theories, and shall be written either in English or in simple Urdu. Only such incidents of the investigation shall be included as have a bearing on the case. (3) Detailed lists of stolen property, or of property seized in the course of a search, shall 716 Punjab Police Rules, 1934 Volume 3, CHAPTER 25 1. Rule 25.50 not printed in 1977 Edition of Punjab Police Rules and all subsequent Rules in chapter 25 renumbered accordingly. be entered in the first case diary submitted after the facts relating to such property were reported to, or discovered by, the investigating officer. (4) The fact that copies of the record prepared under the provisions of section 165 or 166, Code of Criminal Procedure, have been sent to the nearest Magistrate empowered to take cognizance of the offence shall also be noted.

25.54. Record of case diaries. - (1) Case diaries shall ordinarily be submitted in Form 25.54(1) and each sheet shall be numbered and stamped with the station stamp. Two or more copies, as may be ordered, shall be made by the carbon copying process by the officer conducting the investigation. The officer writing a case diary shall enter in

such diary a list of the statements, recorded under section 161, Criminal Procedure Code, which are attached to such diary and the number of pages of which each such statement consists. (2) They shall be sent from the scene of investigation to the police station without delay. (3) On arrival at the police station the number and date of each case diary shall be recorded on the reverse of the police station copy of the first information report, and the date and hour of receipt shall be entered on each copy of the diary. (4) The original shall be dispatched with as little delay as possible to the inspector or other superior officer as may be or copies, after the time of dispatch has been entered in the space provided in the form on both the original and the copy or copies. Orders for the disposal and record of case diaries in the headquarters office are contained in Rule 11.70. Also see Rule 27.38. (5) A copy of every case diary shall be retained at the police station, a separate file being maintained for each case. Such files shall be destroyed in accordance with the periods fixed in sub-rule 27.39(5). (6) Copies of all orders received at a police station in connection with case diaries and the replies thereto shall be made on blank sheets of paper and shall be attached to the case diary to which they refer.

25.55. Files of case diaries. - (1) When a case is sent for trial the police station file of case diaries shall be forwarded with the chalan to the magistrate, and on completing of the trial shall be returned to the police station for record. (2) Such files when received back at the police station also files of other cases in which the final report has been submitted, shall be filed at the police station in an annual bundle A in accordance with the serial number of their first information report. (3) Copies of case diaries in pending cases shall be kept in files at the police station in a separate bundle B in accordance with the numbers of their first information reports. (4) A list shall be kept in each bundle A and B of all the files contained therein, merely quoting the numbers of their first information reports. Should it be necessary to remove a file from the bundle the fact will be noted in the list

9. After going through the supra mentioned provisions of law, it is crystal clear that the police is duty bound to incorporate the arrest of the accused in any case forthwith in register No. 2 with date and time. Similarly, investigating officer is also duty bound to incorporate the *rapat* regarding his departure about obtaining remand, investigation or any other purpose from the police station and same practice will be adopted after his returned and

he will sign against *rappat number*. A person will be deemed to be arrested in a case if his arrest is incorporated in register No. 2, otherwise, it will be construed that he is not arrested.

10. Insofar as the police file/ case diary is concerned that is not personal property of the investigating officer. According to Rule 25.54 (3) of the Police Rules, 1934, on returning of investigating officer from the investigation of the case at police station the number and date of each case diary shall be mentioned on the back side of FIR available at the police station in the relevant FIR register.

11. Likewise, by virtue of Rule 25.54 *ibid* a copy of case diary shall be retained at police station, a separate file shall also be maintained by each case, which file shall be destroyed in accordance with law within the stipulated period fixed in Rule 27.39 (5) and according to Rule 25.55 (3) copies of case diaries in pending cases shall be kept in files at the police station in separate bundle (B) in accordance with law with the number of their information reports. In the light of supra mentioned facts, I have reached at irresistible conclusion that SHO of police station Naikapura, Ahmad Bilal, ASI/I.O and Zulqarnain (Moharrar) have exceeded their powers and jurisdiction and committed gross misconduct which clearly fall within the ambit of offence under section 155(c) of Police Order, 2002. DPO, Sialkot is directed to get lodge an FIR under the said provision of law against them, under intimation to Deputy Registrar (Judicial) of this Court.

12. This Court is also conscious of the fact that after the amendment in Rule 22.3 and 22.4 of Police Rules,

1934, computerized entries are made in police station and manual *roznamcha* is not properly maintained. It has already been directed in case reported as Asmat Parveen vs. The State PLD 2021 Lahore 105) by this Court that manual *roznamcha* shall also be maintained as per previous routine in accordance with law. I have also observed that in manual *roznamcha* (register No. 2) entries are made through led pencil, so that the entries be rubbed and changed.

13. This Court has also observed in some cases that when a bailiff reached at a police station and arrest of alleged detenu was not entered in *roznamcha*, the police obtained judicial remand from the court of learned Area Magistrate for the purpose of identification parade.

14. To curb down the illegal practice of police officials qua the arrest and production of accused before learned Area Magistrate, the Court would like to issue following directions:-

- i) Whenever, a person is arrested in any case, his arrest be incorporated forthwith in computerized as well as manual *roznamcha* with date and time;
- ii) Similarly, when an accused is taken out from the police station for any purpose, a *rapat* should be written in this regard, vice versa on his return this practice should be adopted;
- iii) To make the process of entry in *roznamcha* transparent, it is ordered that entries in manual *roznamcha* (register No. 2) be made through ball-point.
- iv) More so, when the accused will be produced before the learned Area Magistrate for the physical or judicial remand, date and time of arrest must has been mentioned in the application for obtaining remand and in case

- of failure, learned Area Magistrate should refuse to entertain request of remand.
- v) Police file/ case diaries should be retained at police station as provided in Rule 25.55 (3) of Police Rules, 1934 and whenever the investigating officer will proceed along with police file of case from police station for the purpose of investigation or any other purpose that facts should be incorporated in the *roznamcha* (*register No. 2*) and on return the same practice be also adopted, other than this, police file must be retained at police station.

Any defiance of supra mentioned directions, would amount to contempt of court and delinquent official/officers will also be proceedable under section 155-C of Police Order, 2002.

15. All the learned Sessions and Special Judges of the province are duty bound to check register No. 2 in the light of Rule 167 of Police Order, 2002.

16. Office is directed to send a copy of this Order to all learned Sessions and Special Judges, I.G (Punjab) Police, and all the DPOs of the province, for strict adherence of the supra mentioned directions.

17. With the observations made above, this petition is disposed of.

(Muhammad Tariq Nadeem)
Judge

Khurram

Approved for reporting

JUDGE