2013 M L D 1359

[Lahore]

Before Syed Iftikhar Hussain Shah, J

BASHIRAN BIBI---Petitioner

Versus

STATION HOUSE OFFICER, POLICE STATION, KOT SABZAL and 3 others---Respondents

Writ Petition No.1459 of 2013, decided on 12th March, 2013.

Criminal Procedure Code (V of 1898)---

----Ss.498, 61, 167, 46 & 157---Penal Code (XLV of 1860), S.392---Police Rules (1934), R.26-25---Police Order (22 of 2002), Preamble---Constitution of Pakistan, Arts. 199 & 10---Constitutional petition-Detenu-accused, recovery of---Detenu accused who was involved in a criminal case registered under S. 392, P.P.C. was admitted in hospital in injured condition and his arrest was kept pending by the police---Validity---If an accused was apprehended and kept under surveillance then it could not be said that his arrest was not made and was deferred---Accused-detenu was neither produced before the Magistrate within 24 hours of his arrest nor the Investigation Officer had made a request to the Magistrate for examining him at hospital and recording his statement and had kept his arrest pending without any legal justification---Detention of accused-detenu was declared illegal and District Police Officer was directed to proceed against the delinquent police personnel under Police Rules, 1934, Police Order, 2002 and Pakistan Penal Code, 1860---Detenu was the nominated accused and in order to enable him to approach the concerned court, he was granted ad interim protective pre arrest bail---Petition was disposed of.

Miss Kausar Iqbal Bhatti for Petitioner.

Saeed Ahmad Chaudhary, A.A.-G.

Muhammad Aslam Lodhi, Bailiff.

Muhammad Muslim Zia, S.I./S.H.O., Manzoor Hussain, S.I., Muhammad Arif Nadeem, A.S.-I. and Muhammad Zahid No.61/C.

Raheem Bakhsh the alleged dentune in ambulance parked outside the court premises.

ORDER

SYED IFTIKHAR HUSSAIN SHAH, J.---Through this constitutional petition, petitioner Bashiran Bibi has sought the recovery of his son namely Raheem Bakhsh from the illegal and improper confinement of the respondents and his production in the Court.

2. On the application of Mst. Bashiran Bibi petitioner, Bailiff of this Court was deputed to recover and produce Raheem Bakhsh son of the petitioner in the Court, who was allegedly detained by the respondents.

3. The Bailiff has submitted his report stating therein that when he was on his way to Police Station Kot Sabzal for the recovery of the alleged detenue, he was informed about the presence of the alleged detenue at DHQ Hospital Sadiqabad. He visited the said hospital and found Raheem Bakhsh in male ward, who was hand-cuffed and was under the surveillance of Muhammad Idrees constable. The alleged detenue informed the Bailiff that he was arrested by Arif Nadeem, Mumtaz alias Billa and Muslim Zia of Police Station Kot Sabzal and they committed violence on his person. However, according to Dr. Qamar Medical Officer Tehsil Headquarter Hospital Sadiqabad, the alleged detenue was brought in the hospital by Manzoor Hussain, S.-I. on 6-3-2013 at 2-00 a.m. in injured condition. The Bailiff visited Police Station Sabzal, Sadiqabad where S.H.O. of the Police Station informed him that the alleged detenue Raheem Bakhsh was arrested by Manzoor Hussain, S.-I. on 7-3-2013 in case F.I.R. No.67/2013 registered under section 392, P.P.C. He was injured as he had met an accident and his motorcycle had collided with a tree, therefore, vide Rapt No.33 he was admitted in hospital and his arrest was kept pending.

4. Today, the alleged detenue was brought in the Court in an ambulance parked outside the Court premises. Manzoor Hussain S.-I. has submitted reply stating that the alleged detenue was arrested in case F.I.R. No.67/2013 dated 7-3-2013 registered under section 392, P.P.C. at Police Station Kot Sabzal. As the accused was in injured condition, therefore, he was shifted to the hospital but his arrest was postponed.

5. Rule 26-25 of The Police Rules 1934 relates to the arrest of sick or wounded person, which is as under:--

"(1) If wounded, or seriously ill, and in need of medical attendance, a person accused of a non-bailable offence, or unable to furnish bail in a bailable offence, shall, if possible, be conveyed to the prison hospital at the district headquarter or to a neighboring dispensary.

(2) The police shall take measures to ensure his safe custody in hospital and the magistrate having jurisdiction shall be asked to grant a remand, and, if necessary, to examine such person.

(3) If such person cannot be moved without risk of his life, the magistrate having jurisdiction shall be asked to record his statement at the place where he is lying."

6. The law does not authorize any police personnel to keep the arrest of a person pending for more than 24-hours. Section 61 of the Criminal Procedure Code, 1898

reads as under:--

"No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest of the Magistrate's Court."

7. Article 10 of the Constitution of Islamic Republic of Pakistan, 1973, provides safeguards as to arrest and detention.

"(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before a Magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the Court of the nearest Magistrate, and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.

(3) Nothing in clauses (1) and (2) shall apply to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall be made except to deal with persons acting in a manner prejudicial to the integrity, security or defence of Pakistan or any part thereof, or external affairs of Pakistan, or pubic order, or the maintenance of supplies or services, and no such law shall authorize the detention of a person for a period exceeding [three months] unless the appropriate Review Board has, after affording him an opportunity of being heard in person, reviewed his case and reported, before the expiration of the said period, that there is, in its opinion, sufficient cause for such detention, and, if the detention is continued after the said period of three moths, unless the appropriate Review Board has reviewed his case and reported, before the expiration of each period of three months, that there is, in its opinion, sufficient cause for such detention."

8. The perusal of record reveals that Raheem Bakhsh was apprehended allegedly in injured condition on 7-3-2013 and was sent to the hospital where he was kept under surveillance. If an accused is apprehended and kept under surveillance then it cannot be said that his arrest has not been made. Section 46 of the Code of Criminal Procedure, 1898 provides that if a police officer touches or confines the body of an accused or accused submits to the custody by words or means, he would be deemed to have been arrested. In this case the police apprehended the detenue and kept him in hospital under surveillance, so it cannot be said that the arrest was not made and was deferred. Eve otherwise the claim of the police is that he was involved in the commission of heinous offence so neither the investigation could have been postponed under the proviso (B) of section 157, Cr.P.C. nor arrest could have been deferred under Chapter 26-2 of Police Rules, 1934.

9. Manzoor Hussain, SI was legally bound to produce the alleged accused/detenue before the Magistrate within 24 hours of his arrest and if the detenue was unable to move then, he should have made a request to the Magistrate having jurisdiction to grant remand and if necessary, to examine him under Sub-clause (2), Rule 26-25 and if the accused had any risk of his life, the aforesaid Sub-Inspector should have made a request to the Magistrate to record his statement at Police Station in the light Sub-clause (3) of Rule 26-25 of the Police Rules, 1934. The aforesaid police officer neither produced the accused before the Magistrate nor had made a request to the Magistrate for examining him at hospital and recording his statement and had kept his arrest pending without any legal justification in spite of the fact that he was hand-cuffed and was put under the surveillance of constable namely Muhammad Idrees. They detention of Raheem Bakhsh is declared as illegal, he is set at liberty.

10. The District Police Officer Rahim Yar Khan is directed to proceed against the delinquent police personnel under Police Rules, 1934, Police Order, 2002 and Pakistan Penal Code, 1860 and submit his report within a week positively through the Deputy Registrar (J) of this Court.

11. As Raheem Bakhsh, the detenu is the nominated accused of F.I.R. No.67/2013 supra, therefore, in order to enable the detenu to approach the concerned Court, he is granted ad interim protective pre arrest bail till 19-3-2013 subject to his furnishing bail bonds in the sum of Rs.50,000 with one surety in the like amount to the satisfaction of the Deputy Registrar (J) of this Court. This order for protective pre arrest bail will automatically elapse after working hours on 19-3-2013.

Disposed of accordingly.

AG/B-10/L Order accordingly.

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