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Before Habib Ullah Amir, J

Mian GHULAM IJAZ and others---Petitioners

Versus

THE STATE and others---Respondents

Criminal Miscellaneous No.61180 of 2017, heard on 24th August, 2017.

(a) Criminal Procedure Code (V of 1898)---

----S. 167---Remand of accused---Object---Remand of accused to the custody of police for investigation was not to be granted in a mechanical manner; rather be granted by application of judicial mind---Court was to scrutinize acts of police and ensure that there was some evidence collected by police against the accused---Detention of a person without any legal justification would create a sense of injustice and insecurity in the society.

Rashid v. The State and 2 others PLD 1970 Lah. 389; Azad Jammu and Kashmir, Muzaffarabad Ehtesab Bureau through Chairman v. Khalil Ahmed Abbasi PLD 2002 Azad J&K 20; Bashir Ahmed v. The State and 5 others PLD 2012 Lah. 260; Muhammad Siddiq v. Province of Sindh through Home Secretary, Karachi and 2 others PLD 1992 Kar. 358; Adeel and another v. The State 2016 YLR 2212; Haseeba Taimor Afridi v. The State and another 2013 SCMR 1326; Mst. Allah Rakhi v. Senior Superintendent of Police Faisalabad and 3 others 2000 PCr.LJ 1576 and Riaz ul Haq and another v. Muhammad Naveed and another 2005 YLR 805) rel.

(b) Criminal Procedure Code (V of 1898)---

----S. 167---Penal Code (XLV of 1860), Ss. 302, 34 & 109---Qatl-i-amd, common intention, abetment---Remand of accused to police custody---Scope---Petitioners were charged for hatching conspiracy and abetting unidentified accused---Investigating Officer urged for physical remand of the accused-petitioners on the ground that unidentified accused person were to be arrested---Judicial Magistrate turned down the request of the Investigating Officer for further physical remand---Appellant Court while accepting the revision petition allowed the Investigating Officer to get physical remand of the accused person---Validity---Request was made by the Investigating Officer for further physical remand despite the fact that physical remand for nine days was previously given by the Judicial Magistrate---Investigating Officer had requested that investigation was to be finalized in presence of accused and that he intended to arrest unidentified accused persons as petitioners had promised their arrest---Petitioners remained on physical remand with police but there was no progress in investigation and no interim report had been submitted---Judicial Magistrate while refusing remand of petitioners took into consideration that accused-petitioners were ascribed role of abetment only, so nothing was to be recovered from them---Presence

of accused was not necessary for the completion of investigation---Appellate court, held, ignored said aspect of the matter and in an illegal manner passed the impugned order---Petition was accepted by setting aside impugned order in circumstances.

(c) Criminal Procedure Code (V of 1898)---

----S. 167---Remand of accused to police custody---Scope---Accused could not be remanded to custody of police merely on the ground that his presence was necessary to finish investigation or to get from him a confessional statement.

Mst. Kaisari v. Sarkar 1973 PCr.LJ 156 rel.

(d) Criminal Procedure Code (V of 1898)---

----S. 173, proviso [as added by Criminal Law (Amendment) Act (XXV of 1992)]---Investigation---Interim report---Scope---Investigation was to be completed without unnecessary delay and as soon as it was completed, Officer in-charge of the Police Station was required to submit challan through Public Prosecutor but not later than fourteen days---If investigation was not completed within stipulated period of fourteen days from date of recording of FIR then Officer in-charge of Police Station would submit interim report within three days of expiry of period of fourteen days stating therein the result of investigation---Court on the basis of such interim report, would commence trial.

Muhammad Usman Anwar Ch. And Ch. Iftikhar Ahmad for Petitioners.

Asif Javed Qureshi for Respondent No.3.

Ali Hassan, D.P.P. with M. Riaz ASI for the State.

Date of hearing: 24th August, 2017.

JUDGMENT

HABIB ULLAH AMIR, J.---The petitioners have assailed order dated 17.08.2017 of learned Additional Sessions Judge, Lahore whereby he accepted revision petition of respondent No.3, set aside order dated 05.08.2017 of the learned Judicial Magistrate 1st Class, Lahore who turned down request of police for further physical remand.

2. Briefly, the facts giving rise to this petition are that case FIR No.109/16 was registered on 14.12.2016 under Section 302/34, P.P.C. at Police Station City Raiwind, Lahore at instance of Mian Ghulam Nabi/respondent No.3 with the allegation that on 14.12.2016 at about 07:00 P.M. he along with his real brother Muhammad Ameer and other family members including witnesses was present at house when unidentified accused armed with fire arms came to the house of complainant, out of whom two came inside Bethak and the unidentified accused armed with pistol 30-bore made firing at Muhammad Ameer hitting on the right cheek of his brother who after sustaining fire shot injuries fell down and accused succeeded in fleeing away on two motorcycles,

whereafter, injured was being carried to hospital but in the way he succumbed to injuries and in this way case was registered against unidentified accused.

3. On 05.07.2017 supplementary statement of Mian Ghulam Nabi respondent No.3 was recorded by police who nominated petitioners Ghulam Dastagir etc. with the role that they were seen while hatching conspiracy on 20.11.2016 at about 06:00 P.M. in the house of Ghulam Dastagir and that they had abetted unidentified accused to cause murder of Muhammad Ameer and also that in their presence Ghulam Mohayy-ud-Din petitioner supplied pistol 30-bore and rifle along with bullets to the unidentified accused and promised that motorcycle shall also be supplied to them. They were also seen while providing money to the unidentified accused. The petitioners Ghulam Dastagir, Ghulam Mohayy-ud-Din and Ghulam Mustafa were arrested by police and produced before the learned Magistrate and they remained on physical remand for 9 days while on 05.08.2017 on the request of I.O. that accused had promised to cause arrest of unidentified accused, the learned Magistrate refused to give further physical remand and feeling aggrieved Mian Ghulam Nabi, respondent No.3 impugned order dated 05.08.2017 of learned Magistrate and vide order dated 17.08.2017 the learned Additional Sessions Judge Lahore accepted revision petition set aside order dated 05.08.2017 of the learned Magistrate Lahore and directed that investigating officer may have immediately a re-course to learned Duty Court seized with the jurisdiction for obtaining physical remand of accused, hence this petition.

4. Learned counsel for petitioner contends that order dated 17.08.2017 of learned Additional Sessions Judge, Lahore is against law and also against record while it has failed to appreciate that petitioners had only been ascribed role that they had abetted offence and no recovery was to be effected from them; that it has failed to appreciate that accused were nominated on supplementary statement that too was recorded after 7-months of registration of FIR; that the impugned order has been passed to fill up lacunas in prosecution case and order dated 17.08.2017 is liable to be set aside as the guidelines of the Superior Courts for grant of physical remand have been violated; that it has also failed to appreciate that till now no complete or incomplete report under Section 173, Cr.P.C. has been prepared by the police and in order to substantiate his arguments, learned counsel for petitioners has placed reliance on case law reported as "Dil Muhammad v. The District Magistrate, Quetta and 3 others" (1997 PCr.LJ 1203), "Riaz Ul Haq and another v. Muhammad Naveed and another" (2005 YLR 805), "Mst. Kaisari v. Sarkar" (1973 PCr.LJ 156), "Azad Jammu and Kashmir, Muzaffarabad Ehtesab Bureau through Chairman v. Khalil Ahmed Abbasi" (PLD 2002 Azad J&K 20), "Bashir Ahmed v. The State and 5 others" (PLD 2012 Lahore 260), "Rashid v. The State and 2 others" (PLD 1970 Lahore 389), "Mst. Allah Rakhi v. Senior Superintendent of Police Faisalabad and 3 others" (2000 PCr.LJ 1576), "Haseeba Taimor Afridi v. The State and another" (2013 SCMR 1326) and "Adeel and another v. The State" (2016 YLR 2212).

5. On the other hand this petition is controverted by learned D.P.P. assisted with the learned counsel for respondent No.3.

6. Arguments heard. Record perused.

7. The petitioners Ghulam Dastagir etc. are not nominated in case FIR No.1668/16 dated 14.12.2016, registered under Sections 302, 34 and 109 P.P.C. at Police Station City Raivind, Lahore and for the first time supplementary statement of complainant was recorded by the police on 24.07.2017 after more than 7-months of registration of FIR and in his supplementary statement respondent No.3 recorded that witnesses Zulfiqar Ali and Saif Ullah had seen the petitioners in Bethak of Ghulam Dastagir hatching conspiracy and abetting unidentified accused to kill Muhammad Ameer and it is not denied that except the role of hatching conspiring and abetment, till today no piece of evidence has been collected by police against petitioners and after recording of supplementary statement petitioners were produced by police before learned Magistrate and the I.O. on 05.08.2017 made a request for physical remand of accused on the ground that unidentified accused were to be arrested, therefore, accused were required for investigation, however, the learned Magistrate vide order dated 05.08.2017 turned down the request of the I.O. for further physical remand in the following manner:-

> "Learned counsel for accused contest the remand on various grounds and contended that the sufficient physical remand was also granted. Accused have been implicated on the basis of abetment and there is no justification for further physical remand. There is nothing on the file to connect the accused with the commission of offence and requested for judicial remand of the above said accused. On the other, learned counsel for the complainant argued that sufficient material is available on the police file to connect the accused with the commission of alleged offences. Further physical remand may kindly be granted.

Arguments heard record perused.

> I.O. seeks further physical remand for the purpose of investigation. Perusal of the record reveal that sufficient physical remand of (09 days) has already been granted to the I.O. but no progress has been made despite of lapse of sufficient days of physical remand, the request of I.O. is not plausible for further physical remand, hence the request of further physical remand is turned down and accused person is sent to judicial lockup be produced before Court on 19.08.2017 along with complete police report under Section 173 Cr.P.C."

8. Section 61 Cr.P.C. provides that 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 Cr.P.C. exceed twenty-four hours exclusive of the time necessary for journey from the place of arrest to the Magistrate's Court while Section 167 Cr.P.C. reads as under:-

> **"Procedure when investigation cannot be completed in twenty-four hours**. (1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer incharge of the police-station or the

police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the [nearest Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

[Explanation:- For this purpose of this section, in the cases triable by the Executive Magistrates, the expression 'nearest Magistrate' means the Executive Magistrate and in all other cases, the Judicial Magistrate.]

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has not jurisdiction to try the case or [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Provincial Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

[(4) The Magistrate giving such order shall forward a copy of his order, with his reasons for making it, to the Sessions Judge.]

[(5) Notwithstanding anything contained in sections 60 and 61 or hereinbefore to the contrary, where the accused forwarded under subsection (2) is a female, the Magistrate shall not, except in the cases involving Qatl or dacoity supported by reasons to be recorded in writing, authorize the detention of the accused in police custody, and the police officer making an investigation shall interrogate the accused referred to in subsection (1) in the prison in the presence of an officer of jail and a female police officer.

(6) The officer incharge of the prison shall make appropriate arrangements for the admission of the investigating police officer into the prison for the purpose of interrogating the accused.

(7) If for the purpose of investigation, it is necessary that the accused referred to in subsection (1) be taken out of the prison, the officer incharge of the police station or the police officer making investigation not below the rank of Sub-Inspector, shall apply to the Magistrate in that behalf and the Magistrate may, for the reasons to be recorded in writing, permit taking of accused out of the prison in the company of a female police officer appointed by the Magistrate:

Provided that the accused shall not be kept out of the prison while in the custody of the police between sunset and sunrise.']

9. In respect to remands to police custody, guidance has also been provided in Part-B Chapter 11-B Volume-3 of High Court Rules and Orders wherein it has been provided

that a Magistrate dealing with remand of accused shall observe the great distinction between remand to police custody and an ordinary remand to the Magistrate's lock-up under Section 344, Cr.P.C. on the adjournment of an inquiry or trial owing to absence of a witness or from any other reasonable cause and emphasis has also been laid that non-completion of inquiry or trial justifies the latter, but the former requires something more, as it is expressly provided by Section 167, Cr.P.C. that non-completion of investigation shall not, in the absence of a special order of a Magistrate, be deemed to be a sufficient cause for detention of an accused person by the police. It has also been provided that ordinarily, when an investigation is incomplete, the proper course is that accused person to be sent up promptly with such evidence as has been obtained and for the trial to be commenced at once by the Magistrate and proceeded with, as far as possible, and then adjourned for further evidence. A remand to police custody ought only to be granted in cases of real necessity and when it is shown in the application that there is good reason to believe that the accused can point out property or otherwise assist the police in elucidating the case. In Part-B Chapter, 11-B Volume-3 of Rules and Orders of the Lahore High Court, Lahore the following principles are also laid down for the guidance of learned Magistrates in the matters of granting remands which are reproduced as under:-

> (i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.
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> (ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible .
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> (iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.
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> (iv) Where the object of the remand is merely the verification of the prisoner's statement, he should be remanded to magisterial custody.
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> (v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.

10. A Magistrate who grants or refuses remand is under legal obligation to satisfy himself that as to whether remand is to be granted or otherwise as it is the cardinal principle of law that liberty of a person cannot be curtailed as an accused has a legal

right to give his point of view before the learned Magistrate when remand is granted and it is also duty of Magistrate to safeguard the rights of people while it is also a principle of law that remand is not to be granted automatically after police makes such a request, therefore, due to this reason order passed by Magistrate refusing to grant further physical remand of the accused has been declared as a judicial function in view of Subsections 3 and 4 of Section 167 Cr.P.C. In this regard I am fortified by judgment reported as "Rashid v. The State and 2 others" (PLD 1970 Lahore 389). The basic object of Section 167(3) Cr.P.C. is that a Magistrate shall not record order of remand in a mechanical manner while it is also requirement of law that a Magistrate shall apply judicial mind and it is also necessary that a Magistrate has to scrutinize acts of police and ensure that there is some evidence collected by police against accused as detention of person without any legal justification would create a sense of injustice and insecurity in society and mischief which cannot be imagined. Reliance is placed on case law reported as "Azad Jammu and Kashmir, Muzaffarabad Ehtesab Bureau through Chairman v. Khalil Ahmed Abbasi" (PLD 2002 Azad J&K 20). In judgment reported as "Bashir Ahmed v. The State and 5 others" (PLD 2012 Lahore 260) it has been laid down that before granting of remand a Magistrate is under legal obligation to satisfy himself if in the circumstances of case remand is to be granted or not as liberty of accused cannot be compromised merely on the formal request of police and it is sacred duty of Magistrate to safeguard the fundamental rights of life and liberty of a person. A Magistrate is expected to act stringently in matters of grant of remand and it will always be in the interest of justice that remand of an accused person either to police or judicial custody during the investigation is granted for the minimum possible time required for completing the investigation of a case expeditiously. Reliance is placed on case law reported as "Muhammad Siddiq v. Province of Sindh through Home Secretary, Karachi and 2 others" (PLD 1992 Karachi 358), "Adeel and another v. The State" (2016 YLR 2212), "Haseeba Taimor Afridi v. The State and another" (2013 SCMR 1326), "Mst. Allah Rakhi v. Senior Superintendent of Police Faisalabad and 3 others" (2000 PCr.LJ 1576), "Riaz ul Haq and another v. Muhammad Naveed and another" (2005 YLR 805).

11. Bare reading of Section 167, Cr.P.C. shows that I.O. of a case, if he is not below the rank of S.I. shall forthwith transmit to Magistrate a copy of entries in prescribed diary relating to the case and at the same time shall forward the accused to such Magistrate and Magistrate by understanding that there are grounds for believing that the accusation or information is well-founded, only then he may authorize detention of accused in custody of police for a term not exceeded 15-days in the whole by giving reason. Under the law remand to police cannot be granted on the ground that persons of accused is necessary to finish investigation or to get forcible statement from the accused nor remand can be granted on the whims and wishes of complainant and in this case request was made by the I.O. for further physical remand despite of fact that 9-days physical remand was given previously by the learned Magistrate and it was request of the I.O. that investigation was to be finalized in presence of accused that unidentified accused were to be arrested and under the law accused cannot be remanded to custody of police merely on the ground that his presence is necessary to finish investigation or to get from him a confessional statement. Reliance is placed on case law reported as "Mst. Kaisari v. Sarkar" (1973 PCr.LJ 156).

12. It is also the requirement of law that every investigation is to be completed without unnecessary delay and as soon as it is completed, officer incharge of police station is required to submit Challan through Public Prosecutor but not later than 14-days and if investigation is not completed within stipulated period of 14-days from date of recording of FIR then officer in-charge of police station within 3-days of expiration of such period, forward to Magistrate through Prosecutor an interim report stating therein the result of investigation so that Court would commence trial on the basis of such interim report, unless for reasons to be recoded, Court decides that trial should not so commence. A Magistrate can grant further time to police on application of police showing reasons for grant of further period to complete investigation and such further time could be granted by Magistrate on cogent grounds with direction to police to complete investigation within said period. Investigation should be completed within time fixed by law and should not be left at the mercy of police to their own sweet will to complete the same and if police fails to discharge duty, then Magistrate shall check police and compel it to submit challan or interim challan so that case should proceed expeditiously. In this case it was the request by the I.O. to learned Magistrate that petitioners were required for finalization of investigation and that he intended to arrest unidentified accused as petitioners had promised their arrest, however, petitioners remained on physical remand for 9-days, but till when the petitioners remained on physical remand with police there was no progress in investigation and till now no interim report has been submitted.

13. The learned Magistrate while refusing request of investigating officer for further physical remand of petitioners took into consideration that accused were ascribed role of abetment only, so nothing was to be recovered out of their possession and that the presence of accused was not necessary for the completion of investigation, whereas the learned Additional Sessions Judge, totally ignored this aspect of matter and in an illegal manner passed impugned order by direction police to approach the learned Magistrate Lahore for further physical remand of petitioners and being so, the order dated 17.08.2017 of the learned Additional Sessions Judge, Lahore whereby revision petition has been accepted and I.O. is directed to immediately have a recourse to the learned Duty Court seized with the jurisdiction for obtaining further physical remand, is liable to be set aside.

14. For what has been discussed above, this petition is accepted, order dated 17.08.2017 passed by learned Additional Sessions Judge, Lahore is set aside and revision petition of respondent No.3 filed against order dated 05.08.2017 of learned Magistrate Lahore is dismissed.

JK/G-16/L Order accordingly.

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