

IN THE PESHAWAR HIGH COURT,
PESHAWAR,
[Judicial Department]

Writ Petition No.5281-P/2023
With CM No.2615-P/2023

Asad Qaiser,
 (Former Speaker National Assembly) of Pakistan,
 s/o Sardar Bahadar,
 r/o Marguz District Swabi.

Petitioner (s)

VERSUS

Government of Khyber Pakhtunkhwa,
 Through Chief Secretary, Peshawar and others.

Respondent (s)

For Petitioner (s) :- M/S Syed Sikandar Hayat Shah
Advocate
 For Respondent (s) :- M/S Amir Javed, Advocate General
Khyber Pakhtunkhwa and Sana
Ullah Deputy Attorney General for
Federation.

Mr. Muhammad Ali, ADPG, for
NAB.

Amicus Curiae :- Barrister Amir Khan Chamkani and
Shabbir Hussain Gigyani, Advocate.
 Date of hearing: 19.12.2023
 Date of announcement: 18/1/2024

JUDGMENT

ISHTIAQ IBRAHIM, J.- By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"), Asad Qaiser, the former Speaker National Assembly of Pakistan (*to be referred hereinafter as the petitioner*), seeks issuance of the following writ:-

*"It is, therefore, most humbly prayed
 that on acceptance of this writ petition,
 the respondents be directed to provide*

him information about criminal cases and inquiries registered and pending against him.

Any other relief, which this honourable court deems just and appropriate in the circumstances of the case and not specifically asked for, may also be granted in favour of the petitioner."

2. During pendency of the instant writ petition, the petitioner also filed Civil Misc. No.2615-P of 2023 on 28.11.2023, seeking therein the following relief:-

"It is, therefore, most humbly prayed that on acceptance of this petition, the respondents be restrained from arresting the petitioner in already registered old FIRs.

Any other relief, which this honourable court deems just and appropriate in the circumstances of the case and not specifically asked for, may also be granted in favour of the petitioner."

Notice of the said application was accepted by the worthy AAG present in the court on the same date and he was directed to file reply to the same.

3. As per averments in the writ petition, petitioner being a senior member of a political party,

namely, *Pakistan Tehreek-e-Insaf* ("PTI"), was elected as Speaker Provincial Assembly Khyber Pakhtunkhwa in the year 2013 and then Speaker National Assembly of Pakistan in the year 2018; that during his political career, the petitioner made endeavors for supremacy of the Constitution and played a vital role in every key legislation of the country; that after removal of the PTI's government in center in the year 2020-2021, leader of the PTI and its workers faced unprecedented crack down, harassment, humiliation through the State Institutions; that false and frivolous criminal cases/FIRs were registered and unfounded inquiries were initiated against the petitioner by the Anti-Corruption Department; that petitioner obtained ad-interim pre-arrest bail in cases FIR No.1 dated 02.06.2023 and FIR No.2 dated 03.08.2023, both registered under sections 409, 162, 163 PPC and section 5 (2) Prevention of Corruption Act at Police Station Lahor, but despite that he was arrested in Islamabad in another criminal case vide FIR No.4 dated 02.11.2023, registered under sections 409, 162, 163 PPC and section 5(2) Prevention of Corruption Act at Police Station ACE Swabi by the Anti-corruption Establishment Khyber Pakhtunkhwa, in which case he applied for his post arrest bail before the court of competent jurisdiction. Petitioner alleged that

he being a citizen of Pakistan, under Article 19-A of the Constitution has inalienable right of access to information, therefore, he approached this court in the instant constitutional petition seeking an appropriate writ to the effect that respondents be directed to provide him information about all criminal cases registered and inquiries pending/initiated against him so that he may be able to get relief from the court of law available to him under the law.

4. This writ petition came up for hearing before the court on 21.11.2023, on which date Mr. Danial Khan Chamkani, worthy AAG and Mr. Muhammad Ali, worthy ADPG for the NAB were directed to submit report/information in respect of cases registered against the petitioner on the next date of hearing i.e. 07.12.2023 and the case was fixed with Writ Petition No.5366-P of 2023, for arguments in light of order dated 29.11.2023, which is reproduced below:-

"It is as important to bring it into limelight which has since been a practice of the prosecution that when an accused is arrested in one of the numerous cases registered against him, such an accused when granted bail, the prosecution before such accused is to be released, re-arrest him in the next case

and so on in grant of bail all the arrest continue. Whether it is unlawful and unwarranted and needs to be deprecated as to maintain the rule and supremacy of law".

Barrister Amir Khan Chamkani and Mr. Shabbir Hussain Gigyani, Advocate, were appointed as *Amicus Curiae* to assist the court on the aforesaid legal point. The case along with connected matters was posted to 12.12.2023 with direction to the respondents that no adverse action shall be taken against the petitioner(s) in all cases registered against him till 29.11.2023. On 12.12.2023, due to absence of the worthy Advocate General KP, case was adjourned to 14.12.2023 and from 14.12.2023 it was adjourned to 19.12.2023 due to strike of the lawyers' community.

5. We have heard the arguments of learned counsel for the parties and worthy *Amicus curiae*.

6. Main thrust of the arguments of learned counsel for the petitioner was that petitioner being a senior member of a political party, namely, PTI is being hounded by the Law Enforcing Agencies in various frivolous criminal cases and inquires for the sole reason to refrain him from carrying out his political activities which action of the respondents is against the mandates of Articles 4, 10 and 10-A of the

Constitution which deals with right of individuals to be dealt with in accordance with law, safeguards as to arrest and detention and right to fair trial, respectively. Learned counsel further contended that under Article 19A of the Constitution every citizen shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restrictions imposed by law.

7. Though writ sought by the petitioner in the petition in hand is very simple and straightforward. He seeks that respondents be directed to provide him information of all criminal cases and inquires registered, pending and initiated against him, however, while hearing this and connected identical matter, this court deemed it appropriate to render an authoritative judgment on the legal point of arrest and re-arrest of a citizen in various criminal cases registered against him before his arrest.

8. Record depicts that prior to the instant writ petition, the petitioner along with others had filed Writ Petition No.4679-P of 2023 before this court wherein he had sought issuance of an appropriate writ to the effect that the respondents be directed to provide him details/information of all criminal cases/FIRs registered against him. The writ petition (ibid) was

disposed of vide order dated 25.10.2023, in the following terms:-

“On 24.10.2023, keeping in view the prayers of the petitioners, the learned AAG was directed to furnish details/report qua the FIRs/cases registered against them by 25.10.2023. Today, the learned AAG produced before the court a detailed report of respondent No.2 (Inspector General of Police Khyber Pakhtunkhwa, Peshawar), wherein it has categorically been mentioned that except Mardan Region, where the petitioners are booked in case FIR No.235 dated 09.05.2023 u/s 341/342/379/427/436/148/149/395/109 PPC, section 7 ATA, PS Lahor (Swabi) and FIR No.732 dated 07.08.2023 u/s 120-B/188/148/149/505 PPC, PS Swabi, no other FIRs/cases have been registered or any enquiry pending against the present petitioners in other regions of the Province. The said report also reveals that in both the above referred FIRs, the petitioners have been granted bail by the courts of competent jurisdiction vide orders dated 22.09.2023 & 14.09.2023, respectively.

Learned counsel appearing on behalf of petitioners was also provided the copy of aforesaid report of respondent No.2 for the information of petitioners. On this, the learned counsel expressed his satisfaction.

In such view of the matter, we understand the instant petition has served out its purpose and is disposed of accordingly.”

9. Record reveals that after disposal of the writ petition (*supra*), the petitioner was arrested in case FIR No.4 dated 02.11.2023, registered under sections 409, 162, 163 PPC and section 5(2) Prevention of Corruption Act at Police Station ACE Swabi, however, he was granted bail vide order dated 23.11.2023 by the court of competent jurisdiction but before release of the petitioner in the case (*ibid*), he was again arrested in case FIR No.286 dated 09.05.2023, registered under sections 120B, 121-A, 123, 123-A, 124-A, 144, 145, 147, 148, 149, 341 PPC and 16 MPO at Police Station Prang Charsadda. Chapter-V of the Code of Criminal Procedure, 1898 (“Cr.P.C.”), particularly, its section 46 deals with arrest, escape and re-taking of a person whose arrest is required, which for the sake of convenience and ready reference is reproduced below:-

“Arrest how made:- (1) In making an arrest the police-officer or other person making the same shall actually touch or confined the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) Resisting endeavour to Arrest:- If such person forcibly resists the endeavour to arrest him or attempts to evade the arrest, such police-officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of person who is not accused of an offence punishable with death or imprisonment for life.

Section *ibid* provides that in making an arrest, the Police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. Under sub-section (2) of section 46 Cr.P.C. if such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest. Under sub-section (3) of section 46 Cr.P.C., nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or imprisonment for life. Similarly, section 54 Cr.P.C. provides mechanism of arrest of a person in cognizable offence in different circumstances which is reproduced below:-

“S.54. When police may arrest without warrant:- (1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest:-

Firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned.

Secondly, any person having in his possession without lawful excuse, the burden

of proving which excuse shall lie on such person, any implement of house-breaking;

Thirdly, any person who has been proclaimed as an offender under this Code or by order of the Provincial Government;

Fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;

Fifthly, any person who obstructs a police-officer while in the execution of his duty or who has escaped, or attempts to escape from lawful custody.

Sixthly, any person reasonably suspected of being a deserter from the armed forces of Pakistan.

Seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in any act committed at any place out of Pakistan which, if any law relating to extradition or otherwise, liable to be apprehended or detained in custody in Pakistan.

Eighthly, any released convict committing a breach of any rule made under section 565 sub-section (3).

Ninthly, any person for whose arrest a requisition has been received from another police officer, provided that the requisition specifies the person to be arrest and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition.

Section 54(1) Cr.P.C. provides that any police officer may, without an order from a Magistrate and without a warrant, arrest; firstly, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned. Section 54 Cr.P.C. conferred sufficient powers to police officer, but such powers can be exercised only in those cases where a police officer is possessed of some evidence indicating involvement of a person under the four situations mentioned in Section 54 (1) of Cr. PC. But in most of the cases it is noticed that the police officer arrested the person without collecting any material connecting with commission of the offences. Under the provisions contained in the Cr. PC that once a person concerned or suspected to have committed a cognizable offence is arrested by a police officer it is expected of him that he would complete the investigation without any loss of time and at least complete the investigation within twenty-four hours of his arrest as laid down in section 61 Cr.P.C. which for the sake of convenience and ready reference is reproduced below:-

"S.61 Persons arrested not to be detained

more than twenty-four hours:- 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 to the Magistrate's court."


Under Section 62 of Cr.P.C. every public officer Incharge of police station is required to report to the Zila Nazim, District Superintendent of Police and District Public Safety Commission set up under the Police Act, 1861, simultaneously the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise. Provided that in the application of this section to the districts where the local Government elections have not been held or the Zila Nazim has not assumed charge of office, any reference in this section to the Zila Nazim shall be read as reference to the District Coordination Officer in relation to such districts. Section 62 Cr.P.C. read as under:-

"S.62. Police Officer to report apprehensions:- Officer in charge of Police Station shall report to the Zila Nazim, District Superintendent of Police and District Public

Safety Commission set up under the Police Act, 1861 (V of 1861) the cases of all persons arrested without warrant, within the limits of their respective station, whether such persons have been admitted to bail or otherwise.

Provided that in the application of this section to the districts where the local Government elections have not been held, or the Zila Nazim has not assumed charge of office any reference in this section to the Zila Nazim shall be read as a reference to the District Coordination Officer in relation to such districts.

Provided further that the aforesaid proviso shall cease to have effect and shall be deemed to have been repealed, at the time when local Governments are installed in the district as aforesaid.



It is the responsibility of the concerned Magistrate to scrutinize the report of arrest made by the police officer and find out if the action can be justified in law. Section 167 of Cr. P.C authorizes the detention of any person by the police beyond 48 hours upto maximum of fifteen days subject to the orders of a Magistrate in cases where police is unable to complete the investigation within twenty-four hours of the arrest. Section 167 Cr.P.C. is reproduced below for ready reference:-

167. 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 that accusation or information is well-founded, the officer in charge 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.

(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 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 sent 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 specifically 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 section 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 subsubsection (1) in the prison in the

presence of an officer of jail and a female police-officer.

(6) The officer in charge 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 in charge 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.

The provision of Section 167 Cr. P.C. being in the nature of an exception and also amounting to put restriction on the right of personal liberty granted under the constitution has to be very strictly construed and unless all the requirements of section are complied with a remand cannot be granted. Production of an accused person under custody of a police officer along with entries made by them in the diaries, before a Magistrate is mandatory requirements of law. The purpose behind production of a person before the Magistrate for obtaining remand is that he can notify to the Magistrate if any excess has been committed against him by the police officer in violation of provision contained in section 50 or 53 of Cr.P.C. or

any other illegal action taken by police for the purpose of extorting confessions or any other act. Similarly, section 167 Cr.P.C. does not visualize successive and repeated arrest of a person required in more than one cases. An accused required in more than one criminal case when arrested will be deemed to have been arrested in all the cases registered against him. There is no legal bar for interrogating an accused person with regard to the allegations against him in another case. It is rather desirable that when a person required or accused in more than one cases or whether more than one FIRs are registered against him is arrested and remanded to physical custody then he should be interrogated about the allegations against him in all the cases. Reliance in this regard can be placed on case titled, **"Mst. Razia Pervez and another Vs the Senior superintendent of Police Multan and 05 others" (1992 P Cr LJ 131).**

10. In the instant case we have noticed that instead of acting strictly in accordance with law, the Law Enforcing Agencies are following the illegal practice of arresting the petitioner after his release on bail in other criminal cases registered against him prior to his arrest. It is nowhere stated in the Criminal Procedure Code and Police Rules that a person required in more than one case when arrested will be

deemed to have been arrested in one case only and he cannot be arrested simultaneously in more than one case. Section 167 Cr.P.C. simply says that whenever a person is arrested or detained in custody, the Magistrate may authorize his detention in such custody for a term not exceeding fifteen days in the whole. The section does not talk of "case". It speaks of custody only. The longest period for which an accused can be ordered to be detained continuously in police custody by one or more such orders is only fifteen days. So, the detention of the accused person required in more than one case already registered against him, for more than fifteen days would be illegal. It would be quite in accordance with law that when a person required in more than one criminal case is arrested in one case, he shall be deemed to have been arrested in all the cases registered against him.

11. Moreover, Rule 26.8 of Chapter-XXVI of Police Rules, 1934, provides that under section 62 of the Code of Criminal Procedure an officer in charge of a Police Station is required to report to the District Magistrate, sub-Divisional Magistrate or such other Magistrate as the District Magistrate may direct, all arrest without warrant made by himself or in his jurisdiction. Sub-rule (2) of Rule 26.8 of the Rules (ibid) speaks that reports of such arrests shall be made

in Form 26.8(2) whether the person arrested has been admitted to bail or not and may be sent by post. The Form No.26.8(2) of the Rules *ibid* is reproduced below:-

Form No.26.8(2)

Police Station (Name)

Report of Arrest
(Under section 62 Criminal Procedure Code)

He the honour to report that _____ son of _____ caste
_____ resident of _____ has been
apprehended (or detained as the case may be) this day at
_____ O'clock as he is accused of _____

Dated _____

The _____

Sub-Inspector

Besides rule 23.17 of the Police Rules 1934, information sheets in Form 23.17(1) shall be used by an officer for the double purpose of obtaining and communicating information about residents of other police station jurisdictions who are known or believed to have visited his police Station jurisdiction with criminal intent. Under sub-rule (2) of rule 23.17 of the Rules *ibid*, information sheets shall be issued by an officer in charge of a police station as a means of ascertaining the antecedents of person who are genuinely believed to have committed an offence whether or not they have been or are to be arrested.

12. It would not be out of context to refer here section 551 of the Cr.P.C. which deals with the powers of superior officer of Police. According to section 551

Cr.P.C. Police officer superior in rank to an officer-in-charge of a Police Station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his Station.

13. Under Article 4 of the Constitution, to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan; that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law; that no person shall be prevented from or be hindered in doing that which is not prohibited by law; and no person shall be compelled to do what the law does not require him to do. Under Article 9 of the Constitution, no person shall be deprived of life or liberty, save in accordance with law. Similarly, Article 10 of the Constitution also deals with the safeguards as to arrest and detention, according to which no person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds of such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice and that 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.

14. Through Constitution (Eighteenth Amendment) Act X of 2010, Article 10-A was inserted in the constitution which deals with right to fair trial. For the sake of convenience and ready reference, Article 10-A is reproduced below:-

“Right to fair Trial:- For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.”

What is significant in Article 10-A is the phrase and expression “Fair trial” and “Due process”. No doubt, it is the role of the law enforcement Agencies to hold people accountable for crimes they have committed and ensure that justice is done and seen to have been done. Similarly, it is also their responsibility to maintain law and order situation for the betterment of society and to create deterrence against the crimes so that the crimes should be curbed. Simultaneously, a grave responsibility is also attached to them because convicting a person for an offence and potentially taking away his liberty is one of the most serious steps

which are only justified after the person has been given opportunity of fair trial which is a best device of separating the guilty from the innocent and protection against the injustice. The fair trial is also recognized internationally as a foundation of freedom and justice and fundamental human right. So far as the phrase and expression "Due process of law" is concerned, it means a legal requirement that the State organs must respect all legal rights that are owed to a person. Due process balances the powers of law of the land and protects the individual person from it. It is analogous to the concept of natural justice and procedural justice. After incorporation of Article 10-A in the constitution, a "fair trial" and "due process" has become a fundamental right of every person. Protection of law and or to be treated in accordance with law has now become an inalienable right of every citizen of Pakistan. No action detrimental to the life, liberty, body, reputation or property of any citizen under the Constitution is permissible save and except in accordance with law. All citizens of Pakistan under the law are entitled to have equal treatment as well as protection. Under the law, one cannot be denied and or deprived of his legitimate right by violating law of natural justice. "Fair trial" includes all stages starting from registration of case, arrest, investigation, inquiry

if any directed to be conducted in that case and trial. An accused person has indefeasible right of full opportunity to prove his innocence. Where law provides a particular mode of a particular thing to be done in a particular manner, same should be done in such manner or should not be done at all. In case titled, **“Federation of Pakistan through Secretary Finance, Islamabad vs E-Movers (Pvt) Limited (2022 SCMR 1021),** the hon’ble Supreme Court while dilating upon the scope and meaning of “due process” has observed that:-

“The Constitution of the Islamic Republic of Pakistan ('Constitution') is the fountainhead of the rule of law in Pakistan. To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. The rule of law constitutes the bedrock of governance. When the law stipulates that something has to be done in a particular manner that is how it should be done. And any person who exercises authority must do so in accordance with law. The right to be treated in accordance with law was invigorated and bolstered when the Constitution was amended to provide an additional Fundamental Right by adding Article 10A to the Constitution stipulating that, 'For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process. The due process requirement

must be met in the determination of rights and obligations. The Constitution does not define due process. Therefore, it would not be appropriate to limit its scope by defining it. But this does not mean that the due process requirement is a meaningless concept. Rather due process incorporates universally accepted standards of justice and is not dependent upon any law or laws. It is an all encompassing expression which may not be curtailed with reference to particular laws. Due process is to be understood holistically by keeping in mind the entire Constitution, which excludes arbitrary power, authoritarianism and autocratic rule." (underlines and bold are ours for emphasis).

15. For what has been discussed above, we are firm in our view to hold that Constitution, the Code of Criminal Procedure 1898 and Police Rules, 1934 provide pyramid to the powers of the Police officer and arrest of a particular individual in a particular area of the province and is to be reported to the concerned as provided by Police Rules and the Cr.P.C. In other words, a person once arrested is deemed to be arrested in all cases registered against him prior to his arrest. Arrest of an accused persons involved in so many criminal cases of the same province after his release on bail in another case amounts to colorful exercise of powers which cannot be countenanced at any cost.

Courts are the guardians of the fundamental rights of citizens which also includes liberty of citizen. To control executive action, so as to bring it in conformity with the law, the power has been conferred on the High Court to exercise it under Article 199 of the Constitution. Repeated arrest of the petitioner in different cases amounts to violation of his fundamental rights and whenever the executive acts are in violation of law, an appropriate order can be passed by the High court by invoking the jurisdiction under Article 199 of the Constitution so as to relieve the citizen of the effects of the said illegal action as held by the Hon'ble supreme Court in case titled **"Muhammad Bashir Vs Abdul Karim"** (PLD 2004 Supreme Court 271),

that:

"It is well settled by now that "Article 199 casts an obligation on the High Court to act in aid of law, protect the rights of the citizens within framework of the Constitution by the executive authorities, strike a rational compromise and a fair balance between the rights of the citizens and the actions of the state functionaries, claimed is to be in the larger interest of society. This power is conferred on the High Court under the Constitution and is to be exercised subject to constitutional limitations. The Article is intended to enable the High Court to control executive action so as to bring it in conformity with the law. Whenever the executive acts in

violation of law, an appropriate order can be granted, which will relieve the citizen of the effects of illegal action. It is an omnibus Article under which relief can be granted to the citizens of the country against infringement of any provision of law or of the constitution. If the citizens of this country are deprived of the guarantee given to them under the Constitution, illegally or, not in accordance with law, then Article 199 can always be invoked for redress."

In case of Muhammad Aslam (Amir Aslam) and others Vs District Police officer Rawalpindi (2009 SCMR 141), the august apex court was pleased to observe as under:-

"The courts have to safeguard the fundamental rights of every citizen and to protect the life and liberty from illegal, unauthorized and mala fide acts of omission or commission by an authority or person. In cases where the liberty of a citizen was involved the action initiated by the police when found to be mala fide the court should not hesitate to step in and grant relief to the citizens."


16. From the above it is clear that superior courts have held that the liberty of every citizen of this country is to be protected and guaranteed under Articles 4, 9, 10-A and 15 of the Constitution. In fact, it is the duty of the State to jealously safeguard the liberty of every citizen wherever he may be. The Constitution provides safeguards against the violation of fundamental rights of every citizen to life and

liberty from illegal and mala fide acts of omission or commission of any governmental authority or person. Therefore, any action without sufficient cause depriving or restricting the liberty of a citizen is not envisaged by the Constitution of the country and any such action taken by the Government or any of its functionaries will not be immune from scrutiny of this court in exercise of its powers under Article 199 of the Constitution.

17. We also deem it necessary at this juncture to refer to one of the conclusions drawn by the Hon'ble Supreme Court in its authoritative judgment rendered in "Mst. Sughran Bibi vs the State" (PLD 2018 Supreme Court 595), wherein the mechanism of arrest of an accused person charged in FIR has been dealt with. Relevant part of the judgment is reproduced below:-

"Ordinarily no person is to be arrested straightaway only because he has been nominated as an accused person in an FIR or in any other version of the incident brought to the notice of the investigating officer by any person until the investigating officer feels satisfied that sufficient justification exists for his arrest and for such justification he is to be guided by the relevant provisions of

the Code of Criminal Procedure, 1898 and the Police Rules, 1934. According to the relevant provisions of the said Code and the Rules a suspect is not to be arrested straightaway or as a matter of course and, unless the situation on the ground so warrants, the arrest is to be deferred till such time that sufficient material or evidence becomes available on the record of investigation prima facie satisfying the investigating officer regarding correctness of the allegations leveled against such suspect or regarding his involvement in the crime in issue.



18. Accordingly, this writ petition is disposed of in the terms that the respondents are directed to provide information to the petitioner of all cases registered and inquires pending against him. The respondents are also refrained from repeated arrest of the petitioner after his release in cases already registered against him prior to his arrest and likely of all other residents of Khyber Pakhtunkhwa.

19. Copy of this judgment be sent to all the learned Sessions Judges of the respective Districts through the office of the Registrar of this court for wide circulation amongst the Judicial Officers for information and strict compliance, in violation of such directives, the delinquent Official/Officer(s) of the

relevant department(s) of the respondents shall be dealt
with according to law.

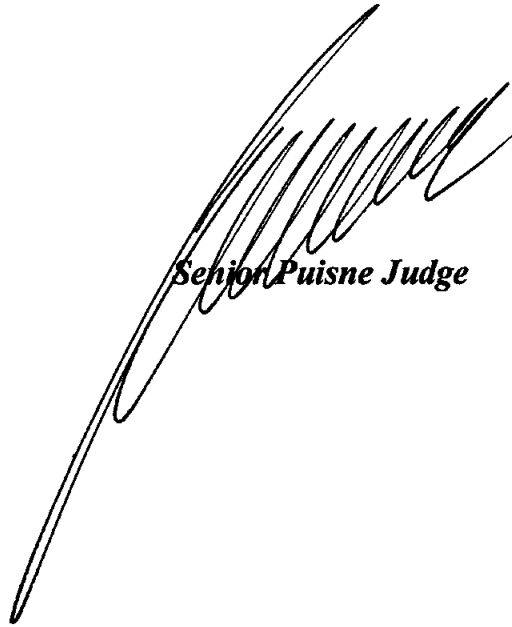
Announced:

18th July 2024

M. Straj Afridi CS



Chief Justice



Senior Puisne Judge

DB of Hon'ble Mr. Muhammad Ibrahim the Chief Justice
And Hon'ble Mr. Justice Ishtiaq Ibrahim, Senior Puisne Judge