


# PESHAWAR HIGH COURT, PESHAWAR

Form "A"

## FORM OF ORDER SHEET

Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or that of parties or counsel where necessary
12.01.2024	<p><b><u>W.P (HCP) No.197-P/2024 with IR</u></b></p> <p><b><u>Present:</u></b></p> <p>M/s Lajbar Khan, Syed Sikandar Hayat Shah &amp; Fida Gul, Advocates, for the petitioner.</p> <p>Mr. Daniyal Khan Chamkani, AAG, alongwith Abdul Salam Khalid, S.P Saddar, Usman Khan, DSP Legal, Kohat and Asif Khan, SHO East Cantt.</p> <p style="text-align: center;">*****</p> <p><b><u>SHAKEEL AHMAD, J.-</u></b> By presenting the instant petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 read with section 491 Cr.PC, the petitioner, namely Eid Rehman s/o Gul Wazir, seeks issuance of direction to the respondents to produce the detinue, namely Aftab Alam Afridi, Advocate before this Court to satisfy as to whether he has been arrested illegally, without lawful authority, without jurisdiction and <i>malafide</i> or not.</p> <p>2. Background facts sans unnecessary details are as follows;</p> <p>Petitioner is the cousin of the detinue, according to him, the detinue was taken into custody by the respondents/police officials from the premises of the Peshawar High Court, Peshawar when he attempted to enter into the High Court main gate on 11.01.2024. The petitioner made his best efforts to get the detinue released from the custody of the police, but all his efforts in this respect proved to be a wild goose chase. The respondents denied the allegations of the petitioner. It was pleaded in the petition that the detinue is a political worker of a known political party i.e. Pakistan Tehreek-e-Insaf (PTI) and is also contesting the upcoming General Elections on the party ticket, scheduled to be held on 08<sup>th</sup> February, 2024. It was also pleaded that the detinue is a practicing lawyer,</p>

	<p>and under these circumstances, the petitioner knocked at the door of the Court.</p> <p>3. After preliminary hearing, vide order dated 11.01.2024, the learned Advocate General, Khyber Pakhtunkhwa was put on notice who accepted the same, he was directed to submit his report in one day, he was also directed to ensure production of the detainee, namely Aftab Alam Afridi before the Court today. In pursuance thereof, the detainee was produced. Mr. Daniyal Khan Chamkani, the learned AAG, put his appearance before the Court and stated that the detainee is not wanted to the local police to be detained in any crime, however, due to misconception/miscommunication of the facts regarding his involvement in a criminal case, he was taken into custody, and pursuant to the order of this Court, the detainee has been produced today. In support of his contention, he produced copy of the order of the learned District &amp; Sessions Judge, Kohat, wherein it was observed that pursuant to the order of this Court in Criminal Miscellaneous Bail Before Arrest No.5068, 5069, 5070, 5071, 5072, 5073, 5074, 5075 &amp; 5076 of 2023, the detainee failed to put his appearance before the Court till 09.01.2024, it was presumed that the said order of this Court has ceased to exist and went on to say that the mistake, if any, committed by the respondents/police officials is bonafide and no malafide is involved in it.</p> <p>4. In response to the arguments of the learned AAG, the learned counsels appearing on behalf of the petitioner argued that vide order dated 19.12.2023, rendered in writ petition No.6009-P of 2023, the respondents had been restrained from taking any adverse action against the detainee and due to the interim order passed in the above referred writ petition, the detainee did not appear before the Court concerned, pursuant to the transit bail granted by this Court.</p>
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	<p>5. Be all that as it may, we find from the record that not only the detainee is a practicing lawyer but is also contesting the upcoming General Elections, scheduled to be held on 08<sup>th</sup> February, 2024, on the ticket of a political party. There is no denial of the fact that he was arrested from outside the main entrance gate of Peshawar High Court, Peshawar. It is also an admitted fact that this Court had restrained the respondents from taking any adverse action against him in the constitutional petition No.6009-P of 2023, as is reflected from the order dated 19.12.2023. Initially, the police denied his arrest, however, on intervention of the learned Advocate General, Khyber Pakhtunkhwa, he was produced before the Court today, pursuant to the order dated 11.01.2024, passed in writ petition No.197-P of 2024. We appreciate the efforts of Mr. Amir Javed, the learned Advocate General, Khyber Pakhtunkhwa that the detainee has been produced before the High Court and order of the High Court has been complied with. He was not wanted to the local police to be detained in any criminal case, but was kept in illegal custody for complete one day and was produced before the Court today, pursuant to the order dated 11.01.2024, passed in writ petition No.197-P/2024.</p> <p>6. To deprive a person from his liberty or to curtail his liberty or movement without any legal justification has been serious consideration for the Courts in Pakistan. The Constitution of Islamic Republic of Pakistan, 1973, grants inalienable rights to every citizen in terms of Article 4 of the Constitution to be dealt with in accordance with law, Article 9 of the Constitution further provides that no person shall be deprived of his liberty, life or property save in accordance with law. The term "life" something more is meant than mere animal existence. The inhibition against its deprivation extends to all those limbs and facilities by which life is enjoyed. Under Article 10 of the Constitution of Islamic Republic of Pakistan, 1973, safeguards as to arrest and detention are provided. Under</p>
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this Article, no person who is arrested is to be detained in custody without being informed, as soon as may be, of the grounds for such arrest/detention, nor shall be deprived of the right to consult and be defended by a legal practitioner of his choice. This Article definitely provides safeguards to every citizen against arbitrary arrest or detention, as observed above, to deprive a person of his liberty is a serious matter being violative of law, justice and fair play and such detention in an Islamic State is detestable and misdeed, which cannot be ignored.

7. As stated by the respondents that the detinue is not required to be detained in any criminal case, he is directed to be set at liberty forthwith and no action detrimental to his life, liberty or property shall be taken in future save in accordance with law. At this stage, we deem it appropriate to quote saying of a Jurist "My son, do not forget my law, but let your heart keep my commands. Let not justice and truth forsake you, bind them around your neck, write them on the tablet of your heart".

8. In view of the above, this petition is converted into contempt of Court petition with the direction to the respondents No.1 & 2 to submit their reply so as to reach this Court within ten (10) days from today, failing which the law shall take its own course, and explain as to why contempt of Court proceedings shall not be initiated against the said respondents for keeping the detinue in illegal confinement for 24 hours. The office is directed to re-list this case for hearing for 18.01.2024.

JUDGE

JUDGE