

**IN THE COURT OF SYED FAIZ-UL-HASSAN, JUDGE ANTI-
TERRORISM COURT D.G.KHAN DIV.**

Present: - Syed Saleem Bahar DDPP for the state,
Accused Toor Khan, Musarrat Hussain, Imran Yousaf, Abdul Rafi, Muhammad Hussain (FIR No.735/23 P.S. City Jampur).
Accused Asad Khalil, Muhammad Shahid, Irshad Hussain, Muhammad Ahsan, Muhammad Akram, Zia ur Rahman. Fazal Hussain and Sardar (FIR No.246/23 P.S. City Fazil Pur)
Accused Zeshan Sami, Haseeb, Muhammad Asad, Hamad, Shafiq, Rashid, Ghulam Yasin, Sajjad and Sana ullah (FIR No.429/23 P.S City Rajanpur)
Accused Ahmad Bakhsh (FIR No.132/23 P.S. Rojhan)
All the accused persons are under custody.

ORDER:-

19.05.2023

Through this single order, request made by the police of P.S City Jampur in FIR No.735/23, P.S City Rajanpur in FIR N.429/23, P.S. City Fazil Pur in FIR No.246/23 and police of P.S. Rojhan in FIR No.132/23 P.S. Rojhan of district Rajanpur shall be disposed as common question of law and facts is involved therein. As per narration of the FIRs, nominated and unknown accused persons gathered at different public places, blocked the road, caused damage to private vehicles, raised slogans against the government and created terror and harassment amongst the public at large.

2. It is submitted by learned Prosecutor that the accused are involved in cases of serious nature; that they are involved in anti-state activities; that the accused persons blocked the roads for several hours and created insecurity and unrest; that they also terrorized the general public as well. He requested that physical custody of the accused persons is required for affecting the recoveries and further interrogation, hence request made by the police being justified be allowed.

3. On the contrary learned counsel appearing on behalf of some of the accused persons and rest of the accused themselves assisted the Court. They took stance that they have no nexus with the cases in hand; that they were earlier arrested by the police in pursuance of detention orders passed by the concerned Deputy Commissioner; that on behalf the accused their detention orders were challenged before the Hon'ble Lahore High Court Multan Bench through writ petition No.6976 of 2023 titled Sardar Sarfraz Ahmad versus Government of Punjab and six others; Writ petition No.6978 of 2023 titled Abdul Basit versus Government of Punjab and six others, Writ petition No.6974 of 2023 titled Khalid Ahmad versus Government of Punjab and six others; that Hon'ble High Court declared the detention orders illegal, without any lawful justification and ineffective upon the rights of detainees; that when the accused were released in compliance of above referred orders, they were again apprehended by the police just to frustrate the authoritative judgments passed by the Hon'ble Lahore High Court. It is further contended that re-arrest of the accused in all the above referred cases is neither warranted nor justified, which be declared as such.

4. Arguments heard and record perused.

5. It is an admitted fact that accused in almost all the cases are not nominated in FIRs. It is further on record that accused were detained by the orders of Deputy Commissioner under section 3 of the Maintenance Public Order Ordinance, 1960 and sent to jail, much prior to their nomination in this case. It is also on record that Hon'ble Lahore High Court Multan Bench in above referred judgments dated 16.5.2023 declared the detention order passed by Deputy Commissioner being ineffective and unlawful qua the rights of detained persons. It is apparent that after release of accused person in compliance of Court orders, the local police devised a new technique and nominated the present accused on 17.5.2023 that too without any source of their identification or information. This act on part of local police smacks malafide. This Court is of the view that Police intends to

Contd. Order on remand dated 19.5.2023

frustrate the order passed by Hon'ble High Court by nomination of accused persons through subsequent supplementary statement and to keep them behind the bars for indefinite period. Such like act on part of local police is neither commendable nor it can be endorsed. Their act also amount to excesses of authority, which infringes the fundamental rights of the persons produced before the court qua their right to life and liberty as well.

6. As regards allegations contained in FIR, it is mentioned that the accused gathered at the stated places, blocked public roads, caused damage to private vehicles, raised slogans against the government, which created insecurity and terror amongst the public at large. This Court has perused the available record with the assistance of learned Prosecutor and IOs of the cases as well. Neither any detail of alleged damaged vehicles is part of the file nor did any private person come forward to voice grievance against the present accused persons. Moreover, in this modern era, almost every person particularly the police officials/offices carry smart phones, which is utilized to preserve evidence for its production before the Court. In all the cases, not a single video clipping or other evidence is collected or produced before the Court to show that any such occurrence or damage, as claimed by the prosecution took place.

7. Right to assembly, speech and expression is guaranteed by the Constitution of Pakistan, 1973. If any person aggrieved by any act/omission on part of State functionary exercises such right peacefully; he cannot be made subject matter of criminal cases/proceedings. The act of terrorism is defined in section 6 of Anti-Terrorism Act 1997. **Proviso to clause (c) of sub-section 1 clarifies that nothing therein contained shall apply to democratic and religious rally or a peaceful demonstration in accordance with law.** As discussed earlier, the investigating agency did not collect evidence at the time of nominating the

accused through supplementary statement and subsequently as well regarding their participation in the occurrence qua alleged loss to the private property or violent demonstration/protest, hence as per observation of this Court; no offence as mentioned in the FIRs are made out.

8. For what has been discussed above, this Court concludes that accused have subsequently been nominated just to keep them behind the bars despite their release orders passed by the Hon'ble Lahore High Court, hence, the request made by the police for physical remand of the accused is declined and they are discharged forthwith from these cases if not required in any other case. Record be consigned.

Announced:-
19.5.2023

(Syed Mujeeb)

SYED FAIZ UL-HASSAN
JUDGE ANTI-TERRORISM COURT
DERA GHAZ KHAN DIVISION

on account of some software problem, some words are conjointly printed, however these words are easily understandable, and does not effect merits of case.