

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

C.P No.D-3812 of 2020

Date	Order with signature of Judge
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For hearing of main case.

26.08.2020

Mr. Sajjad Gul Malik, Advocate along with the Petitioner.
Mr. Jawad Dero, Additional Advocate General, Sindh.
Mr. Muhammad Nadeem Khan, Assistant Attorney General.
Mr. Muhammad Iqbal Awan, Deputy Prosecutor General.
Mr. Iqbal Raza, DSP, Shahra-e-Faisal, Karachi.
Insp. Sarwar, SHO, P.S Shahra-e-Faisal, Karachi.
SIP Zahid Jadoon, SHO P.S Mehmoodabad.

NAZAR AKBAR, J.- Brief facts of this petition are that the Petitioner/mother of missing person Salman Khan averred that on **09.8.2020** at around **04:00 am** 10 to 12 persons entered into their house, claiming to be Rangers personnel and by putting pressure, demanded original CNIC and mobile phone of abductee/ missing person Salman Khan and took him with them without disclosing any reason. Therefore, on the same day the Petitioner sent letters through TCS to nine different authorities including the Home Secretary, Sindh, Corps Commander, Karachi, D.G Rangers, Sindh, SSP, South, Karachi and SHO, P.S Mehmoodabad. The Petitioner has filed copies of letter and receipts of courier service. Then after failing to get any positive response on the said applications, on **15.08.2020** the Petitioner filed the instant petition. On **18.8.2020** notices were issued to the Respondents and the Petitioner was directed to produce record of employment of the missing person Salman Khan to verify the statement of the Petitioner that her son was working at M/s. Akhtar Textile Industries (Pvt.) Limited and he was on duty on a day before the night he was forcibly taken away by the law enforcement agencies.

2. Today the Petitioner has filed a statement duly signed by the authorized officer of M/s. Akhtar Textile Industries (Pvt.) Limited showing that the detenue/ missing person has been in service and attended the office till the date of his unlawful taking away by the law enforcement agencies. SHO, P.S Mehmoodabad along with his statement has filed copy of FIR No.560/2020 dated **21.8.2020** showing arrest of the missing person Salman Khan in the jurisdiction of P.S Shahra-e-Faisal, Karachi. The time of arrest mentioned in the FIR is **02:00 am** on **21.8.2020** and the memo of arrest shows that even at the time of arrest the detenue/ missing person was carrying his original identity card as well as mobile phone which has been mentioned in the memo of petition. However, CDR of phone number of missing person and/or accused in crime No.560/2020 was neither obtained nor produced with comments.

3. In the above circumstances, we called the SHO, P.S Shahra-e-Faisal, Karachi to ascertain the actual facts and status of enquiry, if at all, conducted subsequent to the lodging of FIR. The SHO, P.S Shahra-e-Faisal, Karachi has appeared and informed the Court that a police mobile on patrolling duty has arrested the detenue and the investigation was handed over to ASI Ali Raza. He further informed that next morning i.e on **22.8.2020** when the detenue was produced before the concerned Magistrate, he has been remanded to jail custody. The total investigation, if at all, has been for a brief period of few hours when he was in the custody of the police from **2:00 am** to the morning when the remand order was passed.

4. All the above admitted facts and circumstances led us to believe that it was a setup case and, therefore, this Court directed the SHO, P.S Shahra-e-Faisal, Karachi to make a statement on oath. In

the witness box SHO, P.S Shahra-e-Faisal, Karachi made the following statement under oath:-

My name is Sarwar. I have been SHO, P.S Mehmoodabad, Karachi on three different occasions and during that period I have come to know about the family of the missing person Salman Khan. I personally know that he has never been involved in any criminal case. However, on one occasion he has informed me that he is member of Jea Sindh, a political party. He has been arrested in the jurisdiction of Shahra-e-Faisal Police Station where I am SHO these days. The police mobile on patrolling duty has arrested him as per FIR No.560/2020 dated 21.8.2020.

5. The above statement of SHO, P.S Shahra-e-Faisal, Karachi, who personally know the entire family of the detenu, strengthened our believe that in all probability the missing person, who himself has informed the SHO that he belongs to Jea Sindh, a political party, was picked up by the law enforcing agencies on suspicion but on investigation neither there was any criminal record against him nor he was found involved in any anti-state activities. Therefore, the agencies released him and Shahra-e-Faisal Police finding him in vulnerable situation booked him in a case under **Section 23(1)(a)** of the Sindh Arms Act, 2013 in which only policemen are witnesses. All this has happened after filing of this petition and after notice of his being missing from his home since **09.8.2020** through TCS to all the law enforcement agencies. This is how the fundamental right guaranteed under **Article 4** of the Constitution to the detenues/ missing person and his family were violated and, therefore, even after having found in jail in criminal case registered by Shahra-e-Faisal Police, this petition is still maintainable in view of the findings of Hon'ble Supreme Court

in the case of Government of Sindh through the Chief Secretary, Karachi and 4 others vs. Raees Farooq and 5 others reported as **1994 SCMR 1283**. The relevant observations of Hon'ble Supreme Court are as under:-

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When the Court came to the conclusion that the action was mala fide and merely to harass the respondents, they were justified in granting relief to the respondents as not only that the grounds for grant of bail which will be discussed later, were available, but also the Court would have been cognisant of the fact that question of liberty of citizens was involved and also to protect such persons from highhandedness and illegal actions perpetrated with mala fide intention. **Under Article 4 every citizen has an inalienable right to be treated in accordance with law and to enjoy the protection of law. Furthermore, under Article 9 no person shall be deprived of life or liberty save in accordance with law. Article 10 provides safeguards against arrest and detention. It provides that no person who is arrested shall be detained in custody without being informed as soon as may be of the ground for such arrest and every person who is arrested and detained in custody, shall be produced before a Magistrate within 24 hours of such arrest excluding the time necessary for journey from the place of arrest to the Court of nearest Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate. These provisions do not apply to preventive detention, but this is not the case here. Article 14 provides that the dignity of man and subject to law the privacy of home shall be inviolable. It in clear terms prohibits that no person shall be subjected to torture for the purpose of extracting evidence. **These provisions which confer fundamental rights on a citizen whenever violated and complaint is made to a High Court about their violation, the Court must step in to investigate such facts under the discretionary jurisdiction conferred on it under Article 199 and pass such order as may be found just, legal and equitable taking into consideration the facts and circumstances of each case.**-----
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8. **It is now settled principle of law that where petition under Article 199 is filed challenging the arrest and detention of any person, the High Court will not straightaway refuse to exercise jurisdiction the moment an information is laid that the detenu is involved in any criminal case registered with the Police.** The High Court has the jurisdiction to examine the facts and information laid before it to determine prima facie that it does not lack bona fides, is not a cooked up or manipulated affairs, the detenu has not

been, illegally detained without a proper and legal remand order where it is required and there appear reasonable grounds for believing that the detenu is involved in the crime charged with. **If once it is conceded that on receipt of information as supplied the High Court should refuse to exercise its Constitutional jurisdiction without examining it, the very provision of the Constitution (Article 199 (1) (b) (i) conferring power of judicial review will be frustrated.** The High Court is competent to examine and satisfy itself that the detenu is not being held in custody without lawful authority **or in an unlawful manner.** This can be achieved only when the Court examines the information, reasons, facts and causes leading to detention.-----
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Such inalienable rights are supposed to be protected even in state of emergency as held by the Hon'ble Supreme Court in the case of Federation of Pakistan and others vs. Shaukat Ali Mian and others reported as **PLD 1999 SC 1026** the Hon'ble Supreme Court has observed as under:-

We may also point out that notwithstanding the imposition of the Emergency and the suspension of Articles 15, 16, 17, 18, 19 and 24 of the Constitution by virtue of clause (1) of Article 233, Article 199 of the Constitution remains available not only for the enforcement of the Fundamental Rights which remain unsuspended but also enforce the rights and obligations as contained, inter alia, in Article 4 of the Constitution which provides as follows:

"4. Right of individuals to be dealt with in accordance with law, etc.--(1)

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.,

(2) In particular--

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law, -

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not require him to do .

'The perusal of the above quoted Article indicates that every citizen and every other person for the

time being in Pakistan is guaranteed as his inalienable right to enjoy the protection of law and to be treated in accordance with law wherever he may be and in particular no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law.--
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6. In view of the facts of the instant case discussed in para-1 to 4 above, it cannot be believed that the Petitioner has filed the instant petition on **15.8.2020** to preempt arrest of her son on **21.8.2020**. Nor it can be appealing for a prudent mind that at **2:00 am** a criminal was roaming with an unnumbered pistol and carrying his original NIC and his own mobile phone. Therefore, we are of the considered view that FIR No.560/2020 has been lodged by police without realizing that the alleged accused's case was already pending before this Court. The very facts that missing person's mobile data has not been obtained by police even after mentioning in the memo of arrest and personal search at the time of his arrest. The recovery of original CNIC and phone by police confirms the allegation of the Petitioner in the memo of petition that the missing person was taken away with cell phone by law enforcing agencies after identifying their target through CNIC.

7. In view of the above facts and circumstances, SSP Operation is directed to hold an inquiry against the complainant and witnesses of arrest of the missing person on **21.8.2020** before registering FIR No.560/2020 and take stern action against the police personnel responsible for adding to the agony of the family of missing person on his release by the agencies. It only reminds me famous couplet of Munir Nizai:-.

"ایک اور دریا کا سامنا تھا منیر مجھ کو
 میں ایک دریا کے پار اترتا تو میں نے دیکھا"

I am sure poor missing person who was labourer/workman in a Textile Mill until **09.8.2020** has never heard of Munir Niazi but this Court knows how the constitutional guarantee can be extended to help common citizen to cross the river of state atrocities by providing him the “protection of Law”.

8. In view of the peculiar facts of this case to guarantee the fundamental right of protection of law, to the Petitioner and her family the SHO, P.S Mehmoodabad, in whose jurisdiction the Petitioner and her family are residing, is directed that he should provide complete protection to the family of the Petitioner and if second time any law enforcement agency takes away the detenu Salman Khan or any of his family member without assigning any reason in violation of **Articles 4, 9 and 14** of the Constitution, we will hold the SSP, DSP and the SHO concerned responsible for kidnapping of the said person, irrespective of the fact that whoever has taken him/her away. To make sure that the Petitioner and her family may not be subjected to any highhandedness as already experienced, the Respondents shall install CCTV cameras at hardly 60 yards residence of the Petitioner on the State expenses. The installation of cameras would protect both the Petitioner’s family and at the same time agencies would always be well-informed about the movement of the Petitioner’s son and other family members. If the CCTV cameras are found not working on any point of time, when again the house of the Petitioner is raided on whatever information, the SHO concerned will be responsible. The SHO, P.S Mehmoodabad, Karachi is further directed to submit report of installation of CCTV Cameras at the home of the Petitioner. Such report through MIT-II should be submitted within one week to this Court for perusal in Chamber, otherwise, contempt notice will be issued to all concerned.

9. Consequently this petition is allowed and FIR No.560/2020 is quashed. The office is directed to issue release writ of Salman Khan, who is presently confined in Landhi Jail in Crime No.560/2020.

JUDGE

JUDGE

Ayaz Gul