

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
C.P.No.S- 929 of 2017

1. For orders on CMA 6077-18.
2. For orders on o/objection.
3. For hg of main case.

04-06-2018

M/s Qurban Ali Malano and Farman Ali Kanasero Advocate alongwith petitioner.

It is contended by learned counsel for petitioner that they have lodged three FIRs bearing crime Nos. 43 of 2015, 08 of 2017 and 09 of 2018 against accused persons for committing murder of their father, uncle and relatives. In FIR No.43 of 2015, petitioner is complainant/ eyewitness. It is further contended that two witnesses in the above FIRs have been murdered and cases are pending trial before ATC, Khairpur, but trial has not yet commenced and not a single witness has been examined. Petitioner apprehends that all the witnesses would be murdered including complainant as private respondents as well as accused persons nominated in the above FIR are influential persons and are relating to a big tribe, whereas petitioner are educated persons and two of them are working in judiciary as judges. It is further contended that this court passed order dated 15.3.2016 in C.P.No.D-869 of 2016 with regard to arrest of absconding accused, but after that order again another witness was murdered by the same accused persons, who are yet absconders. It is further contended that under these circumstances, one police picket was established near to village of petitioner, however, same is on link road and not in the village of petitioner and two murders were committed when the witnesses were on their routine work and way towards city or village.

At the outset, I would insist that though every single citizen is *legally* entitled for protection / security which *otherwise* is guaranteed in Chapter-II of the Constitution. This may be assured *least* by creating a sense by taking measures in *general*. However, when it comes to a protection for a witness of a *heinous* crime, the measures must always be shown *specific* and *categorical*. Needless to say that unless the witness deposes in Court his statements), recording during course of investigation, shall be of no avail. This has been the reason that *Law Enforcing Agencies* continue under legal obligation to keep their such *witnesses* protected / secured till the time their evidences is recorded else the failure of prosecution is *destined*.

The law relating to provide a *protection / security* to a witness is *now* recognized all over the world and even there is *federal* enactment with name of “***The witness protection, security & Benefit Act, 2017***” (Act XXI of 2017). The object whereof is detailed as:

An Act to provide for a witness protection, security and benefit program.

Whereas it is expedient to provide for protection of witnesses **and devise robust protection, security and benefit Programme and for matters ancillary thereto.**”

However, since after 18th Amendment, the affairs of provinces are to be dealt with *independently* by the Provinces. Thus, the Province of Sindh was / is also required to come forward with necessary legislation which *however* is not on surface. Regretfully, I would admit that the *picture*, so appearing from instant petition, is not the new. The *dare* of one to seek justice from the court of law, if starts, killing of witnesses without their safe excess to Court of Law, would ultimately result either in keeping the *aggrieved* mum or to take the law into their *own* hands. Either of two, shall

make the concept of society fail which would not only be a denial to *guarantee*, provided by Chapter-II of Constitution but what *Safe Criminal Administration of Justice* demands. Such practice rather a *negligence* on part of quarter concerned cannot be allowed to continue.

Needless to say that since, it is ultimate responsibility of the police to ensure protection / security to witnesses when it is matter of record that negligence in providing necessary protection resulting into killing of further *innocents* (witnesses) therefore, till such time a *mechanism / law* is not enacted the IGP Sindh shall ensure introduction of a *Unit* which shall directly deal with such like complaints and would be responsible of any harm, if falls upon such a witness. Such report be furnished before this Court within one month from date of receipt of the order.

Accordingly, in view of above circumstances, Sardar Ali, Ghulam Asghar, Ayaz Ali, Qurban Ali, Sikandar Ali and Ghulam Ali (complainant, eyewitnesses/Mashirs of FIR No. 43 of 2015 of P.S, Agra), Mushtaque Ali Qurban Ali and Ghulam Asghar (complainant, eyewitnesses/Mashirs of FIR No. 8 of 2017 of P.S.Sobhodero) and Saleem Raza, Ghulam Asghar and Qurban Ali (complainant, eyewitness/Mashirs) shall be given complete police protection unless their evidence is recorded. Meanwhile, DIGP, Sukkur Range shall submit comprehensive protection plan with regard to safety of above named complainant/witnesses/mashirs even their families shall be provided protection. Protection shall not remain only in papers, but this protection shall be provided at their village as well as in their personal work by presuming that custody of above named witnesses has been handed over to them. In case of any harm to any witness, SSP and SHO concerned would be booked under Pakistan Penal Code. Police picket shall

be shifted to their village and special commandos shall also be provided for their security.

With regard to arrest of absconding accused persons, there is already one judgment in the field passed by this court, that is Nasrullah v. The State (PLD 2016 Sindh 238), wherein police officers are responsible to take all the measures with regard to arrest of absconding accused by freezing their accounts, by attaching their properties as well as their bank accounts and CNICs and DIGP, Sukkur with the help of NADRA and cellular companies shall ensure the arrest of absconding accused and in case of any apprehension that they would abscond away from country, their names shall be placed in ECL. Such report shall also be placed before this Court on date of hearing.

Besides, trial court shall ensure that on date of examination of witnesses, police escort shall be provided to the witnesses from their home to the court until their evidence is recorded.

The Trial court shall ensure to conclude the trial of above FIRs within stipulated period, as provided under ATA, 1997. If circumstances, so justifies any permissible course be adopted whereby evidence could be recorded without putting the lives of *witnesses* in jeopardy.

To come up on **11.6.2018 at 11:30 a.m** for compliance report by DIGP, Sukkur. In case security is not provided or complete plan of security is not placed on record effectively, DIGP, Sukkur shall appear in person.

JUDGE