

- a) direct the Respondents to intimate the Petitioners or this Court about lodging of any fresh FIRs against any of the Petitioners and then giving the Petitioners 7 days time before arresting them;
- b) permanently and pending disposal of the main petition restrain the Respondents from arresting, harassing or hounding the Petitioners and from taking any coercive or adverse action against the said Petitioners in any manner whatsoever;
- c) award costs and special costs;
- d) award any relief deemed fit.

3. At the outset, learned counsel for the applicants, *inter alia*, contends that CP.No.D-538 of 2016 was filed by applicants, same was disposed of by order dated 02.03.2016 whereby respondents were restrained from taking any coercive action for the period of ten days. During that period applicants approached this Court by filing pre-arrest bail and ad-interim bail was granted to them; such bail applications are pending. It is vehemently contended that respondents are bent upon to arrest the applicants in order to humiliate and disrespect them on the basis of malafide exercise and ulterior motive; petitions filed by the petitioners (applicants) were almost of similar nature but relief of protective bail is sought by the applicants in this miscellaneous application. In support of arguments learned counsel has relied upon 1995 P.Cr.L.J 1331, as well Indian judgments in cases of Bharat Inder Singh vs. State of Punjab, Raninder Sindh and Anr. Vs. State of Punjab and Ors, Davinder Kaur & Ors.vs. State of Punjab and Rish Sindh vs. State whereby petitioners were granted relief of same nature.

4. Learned Special Prosecutor who was present in other cases filed by the applicants, waived notice and argued that petitioners have filed CP. No.D-1353 of 2016 whereby they are seeking same relief and that petition is pending for adjudication before Divisional Bench of this Court, hence judicial propriety demands that instant Misc. Application be dismissed.

5. Heard and perused the record.

6. No doubt, the High Court enjoys *inherent jurisdiction* under Section 561-A Cr.PC **but primarily** to **'give effect to'** any order under this (Criminal procedure) and to

prevent abuse of process of any court or *otherwise* to secure ends of justice. Such jurisdiction, *however*, should not be normally invoked when another remedy is available else it shall operate as over-lapping or an over-riding provision for all provisions of '**Code of criminal procedure**' which is not the object of such proviso. Reference can be made to the case of Sher Afghan Khan Niazi v. Ali S. Habib (2011 SCMR 1813) wherein it is held that:

'13. There is no cavil to the proposition 'it is generally accepted that the inherent jurisdiction should not normally be invoked where another remedy is available. Inherent powers are preserved to meet a lacuna in the Criminal Procedure Code in extraordinary cases and are not intended for vesting the High Courts with powers to make any order which they are pleased to consider to be in the interests of justice.

7. Counsel for the applicants seriously emphasis that that offence requires adjudication by the independent proceedings before the customs authorities and criminal liability is dependent upon that adjudication, whereas, this proposition is denied by other counsel. At this juncture, it would be proper to refer the order dated 02.03.2016, passed in the petition filed by the present applicants, which is:-

*"In consequent to our directions, the respondents have filed two different statements reflecting that 16 FIRs have been lodged against the petitioner by MCC Appraisement (West) and 03 FIRs have been lodged by the MCC Appraisement (East). Copies of both the statements have been supplied to the petitioner's counsel **so that he can avail his remedy in accordance with law.***

*In the circumstances, we in terms of our order dated 01.03.2016 dispose of this petition by directing the respondents not to take any coercive action against the petitioner for a period of 10 days from today **enabling him to approach the concerned Court and to avail appropriate remedy in accordance with law.** Respondents are also directed to expeditiously complete the process of pending investigations against the petitioner.*

Petition in above terms as jointly submitted is disposed of.

(Emphasis supplied)

It is also a matter of record that CP.No.D-1353 of 2016 is pending wherein directions have been issued to the authorities for production of record against the petitioners

(applicants) and even an opportunity to petitioners (applicants) enabling them to approach proper forum for relief of bail e.t.c. The petitioners *despite* pendency of said petition, have filed the instant petition seeking *almost* similar reliefs. Further it is also settled principle of law that no blanket order can be passed and scheme of Section 498-A Cr.P.C. is that any person who is seeking bail must be involved in an FIR/case because to claim concession of bail one has to own the title of an accused *at least*. It is an undeniable position that through Misc. Application, applicants are seeking protective bail in cases which, per applicants, can be lodged by the respondent without owning the title of an **accused** which, I am quite sure, cannot be legally extended even in name of *inherent jurisdiction* because it shall fail the purpose, object and scheme of Section 154; 156 Cr.P.C; and even that of Section 497/498 of the Cr.P.C. Since the law is that if, *in fact*, an offence is committed then justice requires and demands that it should be enquired into and tried. Even otherwise, one cannot *legally* seek a general quashment order of series of cases because quashment can be *allowed* in exceptional case where from record there appears no case/offence. Exceptional circumstances shall require a reference to **case**, *sought to be quashed*, which is not the case in hand. Further, in the case of *Sher Afghan Khan Niazi supra*, it was held by honourable Supreme Court that:

'8. We have..... In such view of the matter the learned single Judge of the Lahore High Court (Rawalpindi Bench) should have not quashed the F.I.R and an opportunity be afforded to the police to complete its investigation.

The case, *relied upon* by the counsel for the applicants of Liaquat Ali Jatoi vs. The State [1995 P.Cr.L.J 1331] at its relevant page 1333 says:-

"It may be pointed out that so far as the case decided by the Supreme Court is concerned, nothing can be spelt out from the above observations to indicate that even under special circumstances the inherent powers conferred upon this Court under section 561-A, Cr.P.C: cannot be invoked by this Court to grant bail to the applicant. Turning to the case decided by Mr. Justice Abdul Hayee Kureshi the applicant in the present case is not aware whether any other case besides the one which was registered under sections 403, 409, P.P.C. and section 5(2) of. Act II of 1947 against him by the Anti-Corruption Establishment, has been registered for which he may be arrested. The evasive answer given by S.S.P. Khurshid Alam Khan to the learned counsel for the applicant, reference to which has been made in the order passed by me on 15-1-1995, clearly indicates that the applicant may be arrested in

connection with a case of which he has no knowledge. Therefore, in my opinion, the facts of the present case are clearly distinguishable from those of the same reported in P L D 1985 Kar. 660.”

(Underlining is provided for emphasis)

In the above case, the view expressed in the cases of ALIMUDDIN AHMAD vs THE STATE [PLD 1985 Kar. 660] and Ashiq Hussain v. The State (1989 SCMR 392) that:

‘...unless a case is registered against a person, concession of bail cannot be extended in his favour..

...when the High Court had been moved under a specific section for a specific purpose, which in the instant case is section 497 Cr.P.C, and the relief prayed for is refused then the party aggrieved can invoke the jurisdiction of the High Court under section 561-A Cr.P.C....’

8. It is a matter of fact that applicants have been arraigned in about 22 FIRs by different Collectors. Indian judgments relied by learned counsel for the applicants show that in such circumstance writ is remedy.

9. As same issues in C.P. No.D-1353/2016 is pending for adjudication and no blanket order can be passed by this Court in jurisdiction under Section 561-A Cr.P.C which, *if granted*, would operate as a license depriving law enforcing agency to record a report of **offence**; inquire/investigate the **accused** and even a right to prosecution to prove its case before ‘*trial Court*’ if it is so found *deserving*. Thus, I am of the clear view that instant application is not sustainable and is dismissed as such. Needless to add that this order would neither operate as a license for Custom Authority to record F.I.Rs as same cannot be lodged without an **offence** nor it shall prejudice the rights of the applicants against such F.I.R, if so record. Both shall be required to *strictly* proceed in accordance with law.

JUDGE