

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI, CJ
MR. JUSTICE ABDUL MOBEEN LAKHO

Constitution Petition No.D – 2735 of 2024

<u>Date</u>	<u>Order with signature of Judge</u>
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Priority

1. For hearing of Misc. No.12437/2024 (Stay)
2. For hearing of main case.

12.06.2024:

Mr. Shaukat Ali Shehroze, advocate for the petitioners.

Mr. Khaleeq Ahmed, DAG alongwith Ms. Shireen Hina,
Section Officer, FIA (Policy), Ministry of Interior,
Islamabad.

ORDER

1. Through instant petition, petitioners through attorney have sought following relief: -

“It is most respectfully prayed on behalf of the petitioners above named that this Hon'ble Court may be pleased to restrain the respondents from issuing Interpol Red notices/warrants and taking any further action in connection with the impugned letters against the petitioners as well as to recall/set aside and suspend the operation of Letter No.AA/25(RD)NCB/2024-5312 dated: 29.04.2024 & Letter No.AA/25(RD)NCB/2024-5314 dated: 29.04.2024 issued without following mandatory procedure and adopting legal requirements as required by law.

Any other relief(s) may deem fit and proper under the circumstances of the case.”

2. On 30.05.2024, when the matter was fixed in Court, contention of learned counsel for the petitioners was recorded and Notices were issued in the following terms: -

“3-4. Through instant Petition, the Petitioners who are reportedly residing at Singapore, have filed instant Petition through their attorney, namely, Nudrat Mand Khan who is present in court along with the learned counsel for the Petitioners, and have expressed their grievance against

issuance of two letters dated 29.04.2024, available at [Pages-15-17 of Court File] issued by the Assistant Director, NCB- Interpol addressed to the Section Officer [FIA], Ministry of Interior, [Mol], Islamabad, with a request for issuance of Interpol Red Notices of Proclaimed Offender/Accused Dr.Nasim Shahzad and Muhammad Umar Shehzad in FIR No.14 of 2023 of CBC Karachi, on the grounds that such authority is not vested in the FIA or any other Agency, unless an Order to this effect is passed by the Competent Court of jurisdiction in a criminal case to ensure appearance of any Accused/Proclaimed offender, whereas, according to learned counsel, in the instant case admittedly no Order has been passed by the Presiding Officer of Special Courts (Offences in Banks) - Ministry of Law and Justice. According to learned counsel for the Petitioners, Petitioners will seek remedy against the criminal proceedings before the Competent Court of jurisdiction by filing Transitory/Protective Bail so that Petitioners will be enable to defend their position, however, through instant Petition, the Petitioners have sought a declaration with regard to impugned letters which have been issued without lawful authority in violation of law.

Let pre-admission Notice be issued to the Respondents as well as DAG to be served through first three modes for 12.06.2024, when reply/ objections, if any, shall be filed with advance copy to learned counsel for the Petitioners. In the meanwhile, Respondents are restrained from taking any further adverse/coercive action against the Petitioners pursuant to impugned letters, as referred to hereinabove, till next date of hearing. Learned DAG present in Court in some other cases waives notice of instant Petition, claims its copy and seeks time to file comments. Learned counsel for the petitioner has supplied copy of the same to the learned DAG in Court. Let the reply/comments, if any, be filed before next date with advance copy to the learned Counsel for Petitioner."

3. Pursuant to Court's Notices, Ms. Shireen Hina, Section Officer, FIA (Policy), Ministry of Interior, Islamabad, has shown appearance alongwith learned DAG and has filed parawise comments along with report on behalf of respondents No.1 to 4, which are taken on record, copy thereof has been supplied to the learned counsel for petitioners, who after perusal of the same submits that there is no order of the Court for issuance of Red

Warrant/Notice against the petitioners, who are foreign national, whereas, according to learned counsel for the petitioners, legal requirements, including initiation of proceedings under Section 87/88 Cr. P.C. read with Section 512 Cr. P.C. have not yet been undertaken in the instant matter. However, Assistant Director, NCB-Interpol has issued the impugned two (02) Notices, both dated 29.04.2024 addressed to the Section Officer (FIA), Ministry of Interior, (MOL), Islamabad, requesting for issuance of Interpol Red Notices against the proclaimed Offender/Accused Dr. Nasim Shahzad & Muhammad Omar Shahzad – Case FIR No.14/2023 of CBC Karachi, which is totally illegal and without lawful authority.

4. While confronted with hereinabove factual and legal position, as stated by learned counsel for the petitioners, Section Officer, FIA (Policy), Ministry of Interior, Islamabad, present in Court and the learned DAG could not controvert such position, however, submitted that only a process for issuance of Red Notices has been initiated against the accused absconders, whereas, trial Court has already issued non-bailable warrant of arrest against both the accused, who are petitioners in the instant case. Learned counsel for the petitioners in response to such contention submits that there is no provision under the law for issuance of Red Warrants/Notices without orders of the competent Court of jurisdiction after proceedings under Sections 87/88, read with Section 512, Cr.P.C, therefore, prays that impugned Notices may be declared to be illegal and without lawful authority.

5. Heard the learned counsel for the petitioners as well as learned DAG and the Section Officer appearing on behalf of the respondents No.1 to 4, perused the record with their assistance as well as relevant provisions of law relating to issuance of non-bailable warrants of arrest declaring the accused nominated in FIR as absconders / pro-claimed offenders and issuance of Red

Warrants/Notices through concerned Ministry to secure appearance of absconding accused after his arrest, in Court. Prima-facie, the proceedings initiated by the respondents/NCB-Interpol, FIA, Islamabad, in the case of petitioners for issuance of Red Warrants/Notices have been initiated in the absence of any order from the competent Court of jurisdiction while filing an application to this effect, seeking permission for issuance of Red Warrants/Notices in accordance with law and the procedure to be adopted for such purpose. It is admitted position that no order has been passed by the learned trial Court in terms of Sections 87/88 read with Section 512, Cr.P.C. against petitioners in the above case. It has been further noted that alongwith comments filed by the respondent, a copy of letter dated 08.05.2011 issued from Ministry of Interior, Government of Pakistan has been attached, which is reproduced hereunder for relevance to the proceedings under consideration:

No.6/30/2011-FIA
GOVERNMENT OF PAKISTAN
MINISTRY OF INTERIOR

Islamabad, the 6th May, 2011

- | | |
|---|--|
| 1. The Home Secretary,
Government of Punjab,
Lahore | 9. The Provincial Police Officer,
Punjab, Lahore. |
| 2. The Home Secretary,
Government of Sindh,
Karachi. | 10. The Provincial Police Officer,
Sindh, Karachi. |
| 3. The Home Secretary,
Government of
Balochistan, Quetta. | 11. The Provincial Police Officer,
KPK, Peshawar. |
| 4. The Home Secretary,
Government of KPK,
Peshawar. | 12. The Provincial Police Officer,
Balochistan, Quetta. |
| 5. The Chief Secretary,
Gilgit-Baltistan,
Gilgit. | 13. The Inspector General of
Police, Azad Jammu &
Kashmir, Muzaffarabad. |
| 6. The Chief Secretary,
Azad Jammu &
Kashmir, Muzaffarabad. | 14. The Inspector General of
Police, Gilgit-Baltistan, Gilgit. |
| 7. The Chairman,
National Accountability
Bureau, Islamabad. | 15. The Director (NCB) FIA
Headquarters,
Islamabad |
| 8. The Director General,
FIA Headquarters,
Islamabad. | |

**SUBJECT: ISSUANCE OF RED WARRANT/NOTICE AND
EXTRADITION ORDER**

I am directed to say that the Minister for Interior has directed that no Red Warrant/Notice and Extradition Order shall be issued without approval of the Minister vide Ministry of Interior letter No.6/3/2011-FIA dated 28-03-2011.

2. *It is requested that requests for issuance of Red Notice to the accused person may please be routed through the Ministry of Interior, Islamabad for approval and onward processing by the NCB-INTERPOL in future.*

3. *It is further requested that the following documents in duplicates (two separate sets) dully attested by the concerned D.P.O. may please be furnished to this Ministry alongwith request, otherwise no action will be taken on incomplete documents: -*

<i>i.</i>	<i>Red Notice application form indicating date of birth on the format of the INTERPOL duly filled by District Police Officer etc.</i>
<i>ii.</i>	<i>Copy of FIR in English translation</i>
<i>iii.</i>	<i>Statement of witnesses u/s 161 Cr.P.C.</i>
<i>iv.</i>	<i>Summary/History of the case in English</i>
<i>v.</i>	<i>1st warrant for arrest of accused U/S 204 CrPC- issued by the Court.</i>
<i>vi.</i>	<i>Proclamation order against accused U/S 87, 204 Cr.P.C by the court to be published in the Newspaper for appeared before the court within one month.</i>
<i>vii.</i>	<i>Perpetual warrant of arrest under u/s 512 Cr.P.C issued by the court.</i>
<i>viii</i>	<i>PISCES verification/travel history.</i>
<i>viii</i>	<i>Photograph (4x4)</i>
<i>ix.</i>	<i>Verisys information (CNIC)/copy of CNIC or CNIC No.</i>

Sd/-
(ABDUL HANAN)
Section Officer (FIA)
Tele: 051-9207862"

6. The legal position as stated above is duly acknowledged by the Ministry of Interior in aforesaid letter, therefore, there seems no ambiguity as to adopt the legal course and procedure prescribed by law to secure the appearance of absconding accused person(s) before the trial Court.

7. In view of hereinabove facts and circumstances of instant case, the impugned letters are without lawful authority, hence of no legal effect. However, respondents are at liberty to pursue the matter before the relevant forum/Court and after obtaining the appropriate orders may take further step to secure the production of the absconding accused persons before the Court, in accordance with law. The petitioners are also at liberty to seek appropriate remedy by approaching the relevant forum/Court to join the trial in accordance with law.

8. Instant Constitution Petition stands disposed of in the above terms along with listed application.

CHIEF JUSTICE

JUDGE

NadeemPA
FarhanPS