

IN THE HIGH COURT OF SINDH, KARACHI
Cr. Revision Applications No. 35 to 38 of 2025

Applicant : The State, through M/s. Muntazir Mehdi,
 Acting Prosecutor General & Muhammad
 Iqbal Awan, Additional Prosecutor General,
 along with Police Inspector Amir Ashfaque
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Respondent No.1 : Administrative Judge, Anti-Terrorism Courts,
 Karachi (Nemo)

Respondent No.2 : Armaghan @ Army s/o Kamran Asghar
 Qureshi (*present in judicial custody on notice*)

Date of hearing : 18.02.2025
Date of order : 18.02.2025

ORDER

ZAFAR AHMED RAJPUT, J.- By this common order, we intend to dispose of above mentioned four Cr. Revision Applications, as the same being arisen out of common facts and identical impugned orders, have been heard by us together.

2. Cr. Revision Application No. 35 of 2025 has been preferred by the State against the order, dated 11.02.2025, passed on application/Report under section 21-E of the Anti-Terrorism Act, 1997 (“**Act of 1997**”) submitted by the Police Inspector Amir Ashfaque of P.S. AVCC/CIA, Karachi, the Second Investigating Officer (“**Second I.O.**”) of the case, seeking police custody of the Respondent No.2/**accused**- Armaghan @ Army s/o Kamran Asghar Qureshi- in Crime No. 12 of 2025, registered at P.S. Darakhshan, Karachi under section 365, 365-A, P.P.C., read with section 7 of the Act of 1997, whereby the Administrative Judge, Anti-Terrorism Courts, Karachi Division (“**Administrative Judge**”) issued directions for constituting Joint Investigation Team (“**JIT**”). While Cr. Revision Applications No. 36 to 38 of 2025 have been maintained by the State against three orders, dated 10.02.2025, whereby the Administrative Judge declined the request of Second I.O.

for police custody remand of the accused in Crime Nos. 1, 2 & 3 of 2025, registered at P.S. AVCC/CIA, Karachi under sections 324, 353, P.P.C., read with section 7 of the Act of 1997 and sections 23(1)(a)/25 of Sindh Arms Act, 2013 (“**Act of 2013**”), respectively.

3. In compliance of this Court’s order, dated 17.02.2025, the custody of the accused has been produced by the Senior Superintendent, Central Prison & Correctional Facility, Karachi. Mr. Ali Asghar Mahar, Focal Person, Home Department, Government of Sindh, is present along with R&P of the cases/ remand reports and orders, etc.

4. We have heard the Acting Prosecutor General, accused and perused the record as well.

5. Brief facts of the case(s) are that, on 07.01.2025, complainant- Mst. Wajiha Amir w/o. Amir Shuja- lodged F.I.R. No. 12/2025 at P.S. Darakhshan, Karachi under Section 365, P.P.C. for the abduction of her son Muhammad Mustafa, aged 23. The investigation of the said crime was assigned to ASI Iftikhar of the said police station. Subsequently, on 25.01.2025, the complainant received a WhatsApp call demanding Rs. 2 crore as ransom for safe return of her abducted son; hence, sections 365-A, P.P.C. and 7 of the Act of 1997 were added in the F.I.R. and investigation was assigned to Second I.O. who, on 08.02.2025, upon receiving credible spy information regarding involvement of the accused in the said crime obtained Search Warrant from Judicial Magistrate-V, Karachi-South. Thereafter, police conducted raid on the residence of the accused i.e., Bungalow No. 35, street No. 7, Khayaban-e-Momin, DHA-Phase-5, Karachi for his arrest, but he resisted and assaulted with arms on police party inside house. The police party retaliated in defence. The encounter lasted many hours during which DSP, Ahsan Zulfiqar and PC Muhammad Iqbal of P.S. AVCC received firearms injuries

at the hands of the accused; however, police party succeeded to apprehend him and securing arms and ammunitions in huge quantity from the house under *mashirnama* of arrest & recovery. Thereafter, police party returned to P.S. and lodged three F.I.Rs. on behalf of the State bearing Crime Nos. 1, 2 & 3 of 2025, referred to above. On the next day i.e. 09.02.2025, police obtained transitory remand of the accused from the Court of concerned Judicial Magistrate and, on 10.02.2025, police produced him before the Administrative Judge for further police custody remand in all four cases with Reports under section 21-E of the Act of 1997; however, the Administrative Judge declined the request of police custody remand of the accused by mentioning that he had complained about maltreatment at the hands of police, and remanded him to judicial custody. On 11.02.2025, the Administrative Judge, passed an order for constituting JIT in Crime No. 12 of 2005.

6. It may be relevant to mention here that in the cases of general jurisdiction under Criminal Procedure Code, 1898 (“**Code**”), where any person accused of an offence is arrested without a warrant, he, under section 61 of the Code, cannot be detained by the police in their custody beyond period of twenty-four hours, in absence of a special order of a Magistrate under section 167 of the Code. Section 167 *ibid*, deals with eventuality when within twenty-four hours of the arrest of an accused person, investigation cannot be completed. It envisages that where investigation could not be completed within twenty-four hours fixed by section 61, and there are reasonable grounds for believing that the accusation or information is well-founded, the officer in-charge of the police-station or the police officer making the investigation shall forthwith transmit the accused to the nearest Magistrate whether such Magistrate has or has no jurisdiction to try the case and then such Magistrate from time to time can authorize the detention of the accused in custody of the police but not beyond maximum period of fifteen days.

The only ground for granting remand by the Magistrate is to see the nature of accusation and grounds to believe that the same are well-founded against the accused. Hence, it is the duty of the Magistrate to study the police diaries and to see for himself as to what are the accusations against the accused and what is the evidence which the police has been able to secure to justify the detention of the accused in police custody, which is generally understood as “Police Custody Remand”. However, in the case of “Scheduled Offences” of the Act of 1997, the Administrative Judge, appointed under section 13 (2) *ibid* is empowered to exercise all powers mandated for “Remand” under section 21E of the Act of 1997, which provision is *in pari materia* with sections 61 and 167 of the Code, and for such purposes the Administrative Judge is deemed to be a Magistrate under section 21E (3) *ibid*.

7. It may be observed that particularly in the case of “Scheduled Offences” of the Act of 1997, police custody remand is a pre-trial step that allows investigating officer to collect evidence and complete his investigation. It is an important part of the criminal justice system because it helps to connect suspects to crimes and build cases for prosecution; it affords investigating officer the opportunity to verify facts, cross-check statements, complete his investigation efficiently and enables him to question the suspect and extract information related to the offense in order to uncover co-accused or criminal networks. Therefore, grant or refusal of police custody remand of an accused must be with judicious application of mind.

8. In the instant case, it is matter of record that the son of the lady complainant was abducted; AVCC/CIA police after obtaining search warrant from the Judicial Magistrate raided on the house of the accused for search and arrest being a suspected accused, who acted within the meaning of “terrorism” as defined under section 6 of the Act of 1997 by offering and involving in the act of serious armed resistance causing bullet injuries to a DSP and a police constable. Police recovered

heavy arms and ammunition, as per details mentioned in the remand reports, from the house of accused, who has previous criminal record. As such, sufficient grounds are available for believing that the accusation or information against the accused is well-founded for justifying his detention in police custody for further investigation by the police in the cases registered against him.

9. It appears from the perusal of the record that the material relating to the case(s) was transmitted by the Second I.O to the Administrative Judge but the latter declined police custody remand of the accused merely on the complaint of the accused regarding maltreatment. The accused also made complaint of maltreatment before us. On our direction, he took his shirt off and there was no visible sign of causing bodily harm to him on upper part of his body; he then stated that he was beaten on his lower part of his body. The MLC issued by the MLO suggests bruises on both buttocks, lateral forehead, left ear, left neck and abrasions below the right ear and elbow of the accused. The MLO has not opined in the MLC if the alleged bruises and abrasions were caused to accused on account of any maltreatment. Second I.O. has stated before us that on 10.02.2025, at about 12:00 noon, he produced the accused before the Administrative Judge for police custody remand who, after keeping him awaited for three hours, verbally directed him for medical examination of the accused; he took the accused to Jinnah Post Graduate Medical Centre, Karachi (**JPMC**) and after his medical examination, he again produced him before the Administrative Judge in the evening, who remanded the accused to judicial custody. He has further stated that the MLO noted certain bruises on the body of the accused, which he received at the time of his arrest on offering resistance; however, there was no element of maltreatment.

10. Even in such state of affairs, the proper course available to the Administrative Judge was to remanding the accused for a short term to custody of police with direction to I.O. to produce him before MLO and in case there appeared

from MLC that any bodily harm was caused to accused during remand, Administrative Judge was fully competent to take action in accordance with law against the I.O. instead of remanding the accused to judicial custody to frustrate and defeat the investigation of heinous offences. It may be observed that the Magistrates and Administrative Judges are answerable and accountable to the High Court for the illegalities and irregularities done by them in exercising their powers under section 167 of the Code and 21E of the Act of 1997 and the High Court under section 439 of the Code is quite competent to examine the correctness of orders passed by them.

11. It is also matter of record that the Administrative Judge passed the impugned remand orders not on the separate papers but on the Reports submitted by the Second I.O. under section 21-E of the Act of 1997. The orders are not in his handwriting but in typed forms. It can be seen at a glance that the Administrative Judge passed the orders for police custody remand of the accused but, afterward, he by using white correction pen on words “police custody” remand made hand correction “JC” remand without initials. Acting Prosecutor General has orally stated that at the time of remand, the father of the accused was sitting in the chamber of the Administrative Judge for two hours, and it was subsequent act of the latter, who changed his police custody remand orders in JC remand.

12. It is also notable fact of the case that none of the parties made any request for constitution of JIT to probe the case. The Administrative Judge under the law is not vested with the power to pass such order. Under section 19(1) of the Act of 1997, it is prerogative of the Government, if deems necessary, to constitute JIT.

13. For the foregoing facts and reasons, we are of the considered view that the Administrative Judge has failed to appreciate the request of the Second I.O. for grant of police custody remand of the accused, therefore, impugned orders granting

remand of accused in judicial custody instead of police custody are illegal, arbitrary and against the law, which are likely to affect the investigation of the above crimes. We are also of the considered view that by passing impugned order of constituting JIT, the Administrative Judge has exceeded from his jurisdiction. We, therefore, allow all the aforementioned four Cr. Revision Applications by setting aside the impugned orders dated 10.02.2025 and 11.02.2025 passed by the Administrative Judge with direction to I.O. of the cases to produce the custody of the Respondent No. 2/accused today before the Judge, Anti-Terrorism Court No. II, Karachi for passing orders afresh in accordance with law on all four Remand Reports under section 21-E of the Act of 1997 submitted on 10.02.2025 and 11.02.2025, in Crime No. 12 of 2025, registered under sections 365, 365-A P.P.C., read with section 7 of the Act of 1997 at P.S. Darakhshan and Crime Nos. 1, 2 & 3 of 2025, registered under sections 324, 353 P.P.C., read with section 7 of the Act of 1997 and sections 23(1)(a)/25 of the Act of 2013, respectively, at P.S. AVCC/CIA, Karachi.

14. Before parting with this Order, it would be in the fitness of the things to direct the learned Registrar of this Court to place copy of this Order before the Honourable Acting Chief Justice, High Court of Sindh and Home Secretary, Government of Sindh for passing appropriate order, if deem fit and proper in the circumstances of the case, for withdrawing the power of Administrative Judge for Anti-Terrorism Courts, Karachi Division, Karachi from the Court of Anti-Terrorism Court No. I, Karachi (by designation) and assign it to any other Anti-Terrorism Court of Karachi Division under section 13 (2) of the Act of 1997 in public interest and administration of justice.

15. Above are the reasons of our short order dated 18.02.2025.

JUDGE

Athar Zai