

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH**  
(Judicial Department)

**WP No.332-B/2024**

**Benazira Bibi**  
**Vs**  
**The State etc.**

**JUDGMENT**

Date of hearing: **10.09.2024**

For petitioner(s): **Mr. Masood Adnan Advocate**

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**Dr. Khurshid Iqbal, J.-**

1. The petitioner asserts that she charged respondent No.2 Zia Ullah and Bin Yamin for committing qatl-i-amd of her son Farid Ullah and making a murderous attempt on her life by way of firing at them with their respective Kalashnikovs. This incident led to the registration of a criminal case vide FIR No.09/2024, dated 09.01.2024, under sections 302, 324, and 34 PPC, at Police Station Shahbaz Khel, District Lakki Marwat. Subsequently, the respondent No.2 filed a pre-arrest bail application before the competent Court of law and also submitted an application to the Deputy Inspector General of Police (DIG), Bannu Region, pleading his innocence by taking the plea of alibi. It is further asserted that the respondent No.2 joined hands with the Investigating Officer (I.O.) and brought on the record statements of irrelevant persons as defence witnesses. As a result, the respondent No.5 (the officer-in-charge of the police station) placed the respondent No.2 in column No.2 of the challan, declaring him innocent and released him upon the execution of a

*Masood*

bond to the of Rs.90,000/-. The petitioner contends that the respondent No.2 is fully involved in the commission of the offence, and sufficient ocular, circumstantial, and medical evidence exists to connect him to the offence. Therefore, the actions and inactions of respondents No.5 and 6 are unlawful and liable to be declared of no legal effect through the exercise of jurisdiction under Article 199 of the Constitution.

2. Arguments heard. Record perused.

3. Under Chapter XIV of the Criminal Procedure Code, 1898 ("the Code"), the first step after a crime is committed or information is received by a police officer about the commission of an offence is investigation, conducted with the object to collect evidence. In cognizable cases, such as the one before us, section 156 of the Code empowers a police officer to investigate such matters. If, upon investigation, the officer-in-charge of a police station or the I.O. finds insufficient evidence or reasonable ground of suspicion to justify forwarding the accused to a Magistrate, such police officer shall, if the accused is in custody, release him upon execution of a bond. The police officer shall also direct the accused to appear, if and when required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or send him for trial. This is the essence of section 169 of the Code. Conversely, if, upon investigation, the police officer finds sufficient evidence or reasonable ground, as aforesaid, he is required to forward the accused in custody to a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or send him for trial. This is the spirit of section 170 of the Code. In both cases, after the investigation is completed, the officer-in-charge of the police station must

*Murphy*

submit a police report under section 173 of the Code to the Magistrate empowered to take cognizance of the case.

4. Equality and fairness, as a matter of right, demand that a person accused of an offence be given a reasonable opportunity to present his defence during the investigation before the I.O. And the I.O. is duty bound to conduct investigations honestly to dig out the truth. The investigation must be fair not only to the prosecution, but also to the accused, as the purpose of the investigation is not merely to connect or disconnect an accused from being guilty. The aim is to ensure that justice is served through a thorough and impartial examination of the evidence. In this context, it would be pertinent to reproduce Rule 25.2 of the Police Rules, 1934, which empowers the I.O. to conduct fair investigation as detailed in sections 160 to 175 of the Code to ascertain the truth of the matter under investigation. It reads as under:

**25.2. Powers of investigating officer. - (1)** The powers and privileges of a police officer making an investigation are detailed in Sections 160 to 175, Criminal Procedure Code. [...]

(2) No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained.

(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.

5. Under the scheme of investigation, the police officer, as noted above, is empowered to release an accused upon the execution of a bond if it appears to him that there is insufficient evidence or reasonable ground of suspicion to

justify forwarding the accused to a Magistrate as per section 169 of the Code. However, of great importance is the fact that these powers are not analogous to those of the trial Court, which evaluates the credibility of evidence. In cases where the prosecution and the defence evidence are in conflict, the trial Court serves as the ultimate forum to weigh palpably both sets of evidence on a judicial scale, determining which to rely on and which to discard. This is why sub-section (3) of section 173 of the Code empowers the Magistrate to make such orders for the discharge of the bond or 'otherwise' as deemed fit after receiving the police report showing that the accused has been released on bond as aforesaid. It follows that the ipse dixit of the police is not binding on the Court, and the Court retains the ultimate authority to determine the fate of the accused, regardless of their names being placed in column No.2 of the challan. And conviction can still competently be recorded if the evidence on record so warrants.

6. In Sheikh Zahoor Ahmed v. The State and others (2023 PCrLJ 1567 [Peshawar]), this Court ruled that although, the officer-in-charge of the police station may act in accordance with section 169 of the Code in cases of insufficient evidence, but the final order of discharge falls within the domain of the Magistrate.

7. Similarly, in Yasir Khan v. Imtiaz and two others (PLD 2013 Peshawar 46), this Court ruled as follows:

The purport of the aforementioned section is essentially to render the police officer, the authority to release an accused, if he considers that no case is made out against him, on his furnishing a bond, with or without sureties, with direction to the released accused to appear as and when he is summoned to appear before the competent Magistrate. Once he is summoned and

appears before the competent magistrate, the 'life' of the personal bond executed by the accused would 'end' and the same shall be subject to the further orders of the said magistrate, as is provided under subsection (3) of section 173 of Cr.P.C. [...]

Once the 'challan' of a case is put before the magistrate, he is required to conduct an enquiry, without recording of evidence, by reviewing the evidence collected by the police officer, during the investigation of the offence and thereafter form an opinion to either discharge the bond and sureties as opined by the police or to proceed against the released accused, if 'prima facie' a triable case is made out.

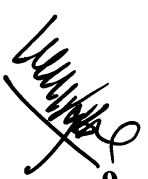
8. Likewise, in *Pordil Khan v. State through Advocate-General, Khyber Pakhtunkhwa, and 11 others* (2016 MLD 314 Peshawar), this Court ruled:

7. By now it is more than settled that this court is not supposed to take the role of Investigation Agency. No doubt, the petitioner is aggrieved of the opinion given by the Investigating Officer but there is no bar on the trial Court to evaluate the material on record to see as to whether the Investigating Authority was justified in thinking that the accused-respondents were innocent on the bases of the said material. Of course, this can be done by the trial Court during the trial. The case is still under investigation as interim Challan has been submitted in the case and in view of the dicta laid down by the apex courts in the cases of "Shehnaz Begum v. The Hon'ble Judges of the High Court of Sindh and Balochistan and another" PLD 1971 SC 677, "Brig: Imtiaz Ahmad v. Government of Pakistan through Secretary Interior Division and 2 others" 1994 SCMR 2142, "Muhammad Latif, ASI Police Station Sadar, Sheikhupura v. Sharifan Bibi and another" 1998 SCMR 666 and "Anwar Ahmad Khan v. The State" 1996 SCMR 24 the High Court has got no jurisdiction to intervene with any criminal case when it is in the phase of investigation.

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8. There is no two opinions about the fact that by placing the names of the accused-respondents in column No.2 of the Challan they have not been exonerated from the charge. No doubt, the respondents/accused have been declared innocent as a result of re-investigation but the case is not cancelled and the trial court has got the power to summon them notwithstanding the facts that they have been declared innocent or for that matter their names have been placed in column No.2 of the challan. Rel. 1985 SCMR 1314 [Raja Khushbakhtur Rehman and another v. The State] and 1988 SCMR 1428 [Waqarul Haq alias Nithoo and another v. The State]. This being position of the case, the withdrawal of pre-arrest bail petition by the respondents/accused from the court of learned Sessions Judge, Charsadda is the result of misconception. As stated earlier, case against them has not been cancelled. They are still accused. How in the given position of the case they could go for withdrawal of the petition for the grant of bail.

10. The matter as it stands, respondents/accused No. 11 and 12 shall adhere to the proper fora for their bail within a fortnight of this order, failing which the law shall take its own course.

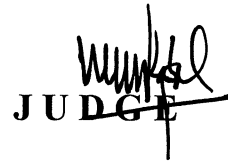
 9. In view of the above legal discourse, we are of the opinion that placing the name of the respondent No.2 in column No.2 of the challan was within the statutory powers of the officer-in-charge of the police station and, thus, no jurisdictional error has been established. The authority now rests with the Magistrate to make such orders, after going through the record, as deemed appropriate: either discharging the bond or otherwise. The release of the accused under section 169 of the Code does not equate to acquittal, and neither the Magistrate, nor is the trial Court bound by the ipse dixit of the police without conducting an independent assessment of the record. As challan has already been submitted in this case, therefore, we leave it to the forum

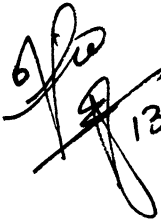
seized of the matter to pass such orders under the law as deemed appropriate in the circumstances of the case.

10. For the aforesaid reasons, we do not see any reason to proceed with this matter. The petition is accordingly dismissed in limine.

**Announced**  
10.09.2024  
(Ghafoor Zaman)

  
JUDGE

  
JUDGE

  
13/9/2024

SCANNED

13 SEP 2024

  
Khalid Khan

(D.B.)  
Hon'ble Mr. Justice Kamran Hayat Miankhel  
Hon'ble Mr. Justice Dr. Khurshid Iqbal