

ORDER SHEET**IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT****Case No: Crl.Misc.No.27751-B-2023****Muhammad Talha****VS****The State etc.**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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07.06.2023	Malik Imran Khan Thaheem, Advocate for the petitioner. Mr. Bilal Ahmad Sheikh, Advocate for the petitioner with fresh power of attorney. Ch. Ishtiaq A. Khan, Advocate for the complainant. Ch. Muhammad Ishaque, Addl. Prosecutor General with Tanveer, T-ASI. Rana Umair Abrar Khan, Assistant Advocate General.
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This is second petition U/S 497 Cr.P.C., whereby, the petitioner seeks his post arrest bail in case FIR No.177/23 dated 26.01.2023, in respect of an offence U/S 489-F PPC, registered at Police Station, Defence-B, District Lahore. The first one bearing Crl.Misc.No.15118-B/2023 was opted to be withdrawn by the petitioner vide order dated 28.03.2023.

2. On the last date of hearing i.e. 11.05.2023, Malik Imran Khan Thaheem, learned counsel for the petitioner while referring to an order dated 14.03.2023 of another Bench of this Court, whereby, post arrest bail was granted to the petitioner in some other case, requested for transfer of this case to said Bench, however, he was reminded that since the first bail application of the petitioner in this FIR had been dealt with by this Bench, therefore, keeping in view the dictum laid down by the Apex Court in famous Zubair's case (PLD 1986 SC 173), this matter cannot be transferred to any other Bench, upon which learned counsel partially addressed the arguments and thereafter made a request for adjournment to seek instructions from his client, which

was accordingly granted and the matter was adjourned for today.

3. In the intervening period, Mr. Bilal Ahmed Sheikh, Advocate, who was blocked by this Bench due to his unprofessional conduct, filed power of attorney on behalf of the petitioner in the office, however, the office keeping in view dictum in Zubair's Case, fixed the matter before this Bench. Mr. Bilal Ahmad Sheikh, Advocate, while appearing on the rostrum, at the outset, submits that since this Bench has blocked him, therefore, matter may be referred to the Chief Justice for its fixation before anyother Bench. Malik Imran Khan Thaheem, Advocate, counsel for the petitioner, also submits that he has received instructions from his client that he has engaged Mr. Bilal Ahmad Sheikh, Advocate, therefore, he has no objection for his supersession.

4. In normal circumstances, this Bench would not take even a minute to transfer the case but from the above facts it is crystal clear that engagement of Mr. Bilal Ahmad Sh. Advocate in this case is a calculated move on the part of the petitioner to get the case transferred from this Bench to another, which he perceives to be favourable for him. Initially, he tried to get the case transfer on the basis of bail granting order passed by some other Bench in another case but when he failed to achieve desired result, he very tactfully engaged an Advocate, who was blocked by this Bench. On the one hand, this act of the petitioner is coloured with malafide while on the other hand, providing professional services to the petitioner by Mr. Bilal Ahmad Sh. Advocate, despite having knowledge that this Bench has already blocked his name is highly unprofessional. It is not expected from a professional Advocate to play in the hands of a litigant to create a

perception of biasness/impartiality upon a Bench for transferring the case to someother Bench. If this practice is not discouraged with iron hands, then it would become very easy for every litigant to control fixation of cases. It is well settled by now that it is a conscience of a Judge to determine as to recuse himself from a case or not and he cannot be tricked by such tactics. Reliance is placed on case reported as “*Independent Media Corporation ..Vs.. Federation of Pakistan (PLD 2014 SC 650)*”, wherein it has been laid down as under:-

“ 10. In the above context, it may be useful to record that all litigants at times, make attempts to avoid hearing certain Benches but at times such attempt are not well intentioned. There may even be attempts to intimidate or malign judges or institutions of the State and thereby, to undermine such individuals or institutions.

11. It is in this context that two instances can be referred to by us. When, I (Jawwad S. Khawaja,J.) was a Judge of the High Court, I received a letter stating therein that I had illicit relations with women folk of the opposite party. The said letter was circulated by me amongst the lawyers of the parties. The persons who purportedly wrote this letter was summoned in Court on the following day. She appeared in court. Her demeanor in Court depicted that she was a simple village woman. She admitted that she wrote the said letter. When asked why she did so, she replied that she did not want the case to be heard by m and was advised by a worldly-wise man in the village to write the letter to me and as a consequence the case would be ordered to be placed before some other Bench. This approach is unfortunate but is prevalent in our society. Judges cannot be tricked by such tactics. If they succumb to such tactics they will thereby empower litigants and enable them to control fixation of cases and constitution of Benches.

12. There is another instance relating to a commercial matter in which a letter was received by me. This letter was purportedly from one of the parties to the case. In the letter it was stated that I had been a lawyer for one of the parties and was, therefore, biased in favour of the opposite side. This letter was also circulated amongst the lawyers of the parties at which point the party who was purported to have written the letter stood up in court and stated that he had not written the letter and in fact he would want the same Bench headed by me to hear the case”.

13. These instances show that there can be reasons, other than those that meet the eye, which may motivate a remark or comment. If judges do not deal firmly with such remarks (where unfounded) this may encourage unscrupulous or uninformed elements into say things which may erode the standing, respect and credibility of the Court. The

hearing of this case at intervals today is significant. Courts are not to succumb to any remark, defamatory or otherwise. It is the conscience of the Judge himself which much determine his decision to sit on a Bench or not.”

5. Similarly, in case reported as “*General R. Parvez Musharraf v. Nadeem Ahmad, Advocate (PLD 2014 SC 585)*” it has been laid down as under:-

“ Judges, it may be noted, do encounter allegations of bias and also receive criticism some of which may be expressed in civil language while others may be through hate speech or outright vilification based on malice. In either even, the Judge by training does not allow such vilification to cloud his judgment in a judicial matter. Even extremely derogatory language used against Judges does not, by itself create bias, as is evident from the negligible number of contempt based on scandalisation of Judges, (none leading to a sentence)cited in the case titled Baz Muhammad Kakar v. Federation of Pakistan (PLD 2012 923). Courts, therefore, cannot decide questions of perceived bias by accepting the individual and personal views of an aggrieved petitioner and thus recuse from a case. It was pointed out to Mr. Pirzada, Senior Advocate Supreme Court that if a subjective perception of bias could be made a basis for recusal of a Judge merely because the petitioner had done things or had taken unconstitutional steps against the former Chief Justice, it would be very simple for any litigant not want his case to be heard by a particular Judge to start hurling abuses at such Judge and thereafter to claim that the Judge was biased against him. For litigants and their Advocates it is important to bear this in mind while urging ‘perception of bias’ against a Judge.”

6. It is also significant to note that the learned counsel, who filed instant second bail application on behalf of the petitioner was not only counsel in the first bail application but also represented him in another case, whereby post arrest bail was granted to him by another Bench, therefore, I have no doubt in my mind that replacing him by Mr. Bilal Ahmad Sh. Advocate is an ulterior and malafide act on the part of the petitioner just to avoid hearing of the case from this Bench. Falling prey of these strategies would not only encourage these type of elements but also bring the judicial system in disrepute, therefore, I am not inclined to succumb to such tactics. Since, Mr. Bilal Ahmad Sh. Advocate has been blocked by this Bench, therefore, he

is not allowed to supersede earlier counsel and his power of attorney in this regard is not accepted. However, keeping in view the principle of natural justice and fair trial as envisaged in Article 10-A of the Constitution, let notice be issued to the petitioner to engage the services of anyother Advocate of his choice.

7. In order to avoid such malpractice on the part of Mr. Bilal Ahmad Sh. Advocate in future, office is directed not to accept his power of attorney in any case, assigned to this Bench, where he is intended to supersede earlier counsel. Relist for 15.06.2023.

(Asjad Javaid Ghural)
Judge

Approved for Reporting

JUDGE

Azam