IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
Mr. Justice Umar Ata Bandial, CJ
Mr. Justice Muhammad Ali Mazhar
Mr. Justice Athar Minallah

CRIMINAL M. A. NO. 641 OF 2023 IN
CRIMINAL PETITION NO. 519 OF 2023
(Application for exemption of Filing of Petition through Special Attorney in the matter of arrest of the petitioner from the premises of IHC).

AND CRIMINAL PETITION NO. 519 OF 2023
(Against the judgment dated 09.05.2023 passed by Islamabad High Court, Islamabad in Crl. Misc. No.272-B/2023)

Imran Ahmed Khan Niazi **...Petitioner(s)**

Versus

The State and others **...Respondent(s)**

For the petitioner(s) : Mr. Imran Ahmed Khan Niazi *(in-person)*
(on Court's order)
Mr. Hamid Khan, Sr. ASC
Raja Aamir Abbas, ASC
Mr. Shoaib Shaheen, ASC
Mr. Gohar Ali Khan, ASC
Mr. Salman Safdar, ASC
Mr. Niaz ullah Niazi, ASC
Mr. Ashfaq Ahmed Kharal, ASC
Mr. Muqtedir Akhtar Shabbir, ASC
Mr. Waqar Rana, ASC

For Federation : Mr. Mansoor Usman Awan, AGP
a/w Barr. Maryam Ali Abbasi, Adv.
Mr. Javaid Iqbal Wains, Addl AG
Mr. Rashdeen Nawaz Kasuri, Addl. AG

For NAB : Mr. Asghar Haider, PG NAB
Mr. Muzaffar, DPG
Mr. M. Rafay Maqsood, Sr. Spl. Prosecutor

For ICT : Mr. Jehangir Khan Jadoon, AG
Dr. Akbar Nasir Khan, IGP

Date of hearing : 11.05.2023

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J U D G M E N T

UMAR ATA BANDIAL, CJ: The present Crl. Petition has been filed before this Court by Mr. Imran Khan, Chairman of Pakistan Tehreek-i-Insaf (**"petitioner"**), against the judgment of the Islamabad High Court (**"High Court"**) dated 09.05.2023 (**"impugned judgment"**) wherein his arrest from the premises of the High Court was declared to be 'not *per se* illegal.'

Factual Background

2. The relevant facts giving rise to the present petition are that the National Accountability Bureau (**"NAB"**) had initiated an inquiry against the petitioner in the Al-Qadir Trust case (**"AQT Case"**). Aggrieved by the action being taken by the NAB against him and apprehending his arrest, the petitioner approached the High Court on 09.05.2023 to file a pre-arrest bail application in the AQT Case. Additionally, on that same day another pre-arrest bail application of the petitioner, Crl. Misc. No.272-B of 2023, in a different case was fixed for hearing in the High Court before the Hon'ble Chief Justice at 02:30 pm. Consequently, on 09.05.2023 the petitioner was in the High Court for two purposes: firstly, to enter his personal appearance at the hearing of his pre-arrest bail application No.272-B of 2023 and secondly, to file his pre-arrest bail application in the AQT Case. After the latter application was given a diary number by the Institution Branch of the High Court, the petitioner's bio-metric verification was required before his pre-arrest bail application could be registered in the

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High Court. The petitioner, therefore, reached the High Court prior to his hearing to have his bio-metric data recorded. Whilst he was undergoing the process of bio-metric verification in the bio-metric verification room of the High Court, around 80-100 officers of Pakistan Rangers broke into that room and arrested him. The arrest was carried out on the strength of a warrant issued by the Chairman, NAB against the petitioner on 01.05.2023 in the AQT Case. During the course of effecting the arrest of the petitioner, the door, glass partitions and windows of the bio-metric verification room situated inside the premises of the High Court were broken and a number of lawyers, High Court staff and police personnel were manhandled or injured.

3. It was around 03:00 pm that the Hon'ble Chief Justice of the High Court was informed of the petitioner's arrest by his learned counsel. As a result, the Hon'ble Chief Justice immediately held court and the Inspector General of Police, ICT (**"IG, ICT"**) and Director General, NAB were also summoned. Arguments of both sides on the legality of the petitioner's arrest were heard at length and the Hon'ble Chief Justice passed the impugned judgment on the same date i.e., 09.05.2023. He held the petitioner's arrest to be 'not *per se* illegal' but declared the mode and manner of the execution of the arrest warrant to be contrary to the honour and dignity of the High Court. The Hon'ble Chief Justice, therefore, directed the Registrar of the High Court to initiate contempt proceedings against the IG, ICT and the Secretary, Ministry of Interior, Islamabad. Since the petitioner's pre-arrest bail application No.272-B of 2023 was

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already fixed for hearing before the Hon'ble Chief Justice, he passed the above impugned judgment in that application. Before us learned counsel for the petitioner have challenged the impugned judgment to the extent of the declaration that the petitioner's arrest from the premises of the High Court was 'not *per se* illegal.'

Crl. Misc. Application No.641 of 2023

4. The present Crl. Misc. Application No.641 of 2023 has been moved by the learned counsel for the petitioner under Order XXXIII, Rule 6 of the Supreme Court Rules, 1980 seeking leave of this Court to hear the attached Crl. Petition filed through a Special Power of Attorney. For the reasons stated in the Crl. Misc. Application, the same is allowed. Accordingly, on the direction of this Court the office registered the Crl. Petition as Crl. P. No.591/2023.

Submissions of Counsel on 11.05.2023

5. Learned counsel for the petitioner reiterated the point that the arrest of the petitioner from the premises of the High Court was illegal as it violated his Fundamental Right under Articles 9 and 10A of the Constitution of the Islamic Republic of Pakistan, 1973 (**"Constitution"**) to access justice and due process. Moreover, it was an attack on the dignity, sanctity and safety of the High Court. They therefore sought directions to the effect that the petitioner's arrest be declared illegal and he be released from custody forthwith so that he

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may be treated in accordance with the requirements of due process.

6. On the converse, the learned Attorney General for Pakistan and the learned Advocate General, ICT attempted to defend the arrest of the petitioner from the premises of the High Court but regretted the damage that had occurred in the High Court due to the execution of the said arrest. The learned Attorney General also informed that an Accountability Court had granted NAB an eight day physical remand of the petitioner that had not yet been challenged by him.

7. Learned counsel for the NAB also addressed the Bench. They informed that the arrest warrant dated 01.05.2023 had been issued by the Chairman, NAB after the inquiry in the AQT Case against the petitioner had been converted into an investigation on 28.04.2023. That one call-up notice had been sent to the petitioner in the AQT Case on 02.03.2023 and no repeat notice was sent thereafter. That on 08.05.2023 the NAB wrote to the Ministry of Interior requesting it to implement the arrest warrant dated 01.05.2023 issued against the petitioner. It was under the Ministry's order that the arrest of the petitioner was carried out in the premises of the High Court on 09.05.2023. That the NAB was in no way involved in executing the warrant of arrest against the petitioner. It was clarified that the NAB has detailed SOPs prohibiting its personnel from arresting accused persons from within court premises.

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8. After hearing the learned counsel from both sides, at about 03:30 pm this Court orally summarised the salient points of the order it would make in the case. Thereafter, with a view to obtain the petitioner's response to the unfortunate events of 09.05.2023, the Bench issued a direction that the petitioner be produced in Court at 04:30 pm. The needful was done and the petitioner was permitted by the Bench to make a statement at the rostrum as to whether he disassociated from or condemned the events of 09.05.2023. In response, the petitioner professed his ignorance about the events that had taken place in the country after his arrest on 09.05.2023. Nevertheless, he assured this Court that he had never espoused violence to his followers and in fact wanted peace in the country. He also expressed dismay at the manner in which his arrest was executed from within the premises of the High Court. Shortly after the petitioner's statement, this Court issued its Short Order on the same day i.e., 11.05.2023 wherein it declared the petitioner's arrest to be invalid and unlawful. However, this Court directed that his custody shall be retained with the ICT police who shall produce him before the High Court on the following day. It was also held that during his incarceration he would be allowed to meet nominated visitors, at the police guest house where he was held, after their clearance by security.

Question in Issue

9. Before reproducing our Short Order dated 11.05.2023, it is important to note that during the course of the hearing this Court made it abundantly clear to all learned

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counsel who were present that the sole question of law before it was the legality of the mode and manner in which the arrest warrant dated 01.05.2023 was executed inside the premises of the High Court. That this Court was not concerned either with the legality of the arrest warrant or with the proceedings being undertaken by the NAB in the investigation against the petitioner in the AQT Case. That those were matters which may, if at all, be determined by the competent fora in the appropriate proceedings.

Short Order Dated 11.05.2023

10. For ease of reference, the Short Order dated 11.05.2023 is produced below:

> "**O R D E R**
>
> For the reasons to be recorded later, this Misc. Application is allowed, Criminal Petition be numbered accordingly and the same is converted into appeal and disposed of in the following terms:
>
> **i)** The manner of execution of the arrest warrant issued by the Chairman, National Accountability Bureau (**NAB**) dated 01.05.2023 in the Al-Qadir Trust case within the premises of the Islamabad High Court against petitioner is invalid and unlawful. The execution of said warrant violated the petitioner's right of access to justice and the sanctity and safety of the Court as he had already surrendered to the Court for seeking judicial relief against the action taken by NAB in the Al-Qadir Trust case. In this regard, the fundamental rights of the petitioner under Articles 4, 9, 10-A and 14 of the Constitution of Islamic Republic of Pakistan have been infringed.
>
> **ii)** The petitioner is directed to be produced before the Islamabad High Court tomorrow i.e. 12.05.2023 at 11:00 am for hearing of his Writ Petition filed to challenge the NAB action against him in the Al-Qadir Trust Case. The NAB authorities and the ICT Police shall ensure foolproof security to the petitioner until

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his production in the Islamabad High Court in this regard.

iii) The Registrar of the Islamabad High Court is directed to place the matter i.e. the Writ Petition before the Hon'ble Chief Justice of the Islamabad High Court for constituting a Bench for hearing the same.

iv) In order to ensure the security of the petitioner until his appearance in the High Court tomorrow i.e. 12.05.2023 at 11:00 am, he shall remain in the premises where he is presently retained in police custody, namely, the Police Lines Guest House, H-11, Islamabad (**Police Guest House**).

v) Whilst the petitioner is in the Police Guest House, he shall be entitled to meet up to 10 guests, whose particulars shall be provided by him to the concerned Police Officer, subject to security check by the police. These persons shall be allowed to stay with the petitioner as long as desired by him.

vi) This order shall remain valid until the production of the petitioner before the High Court in the aforementioned Writ Petition tomorrow i.e. 12.05.2023 at 11:00 am and shall be subject to any order that is passed by the High Court.

vii) This order shall not cause any prejudice to the proceedings of investigation being conducted by the NAB in the matter of the Al-Qadir Trust."

11. The detailed reasons for allowing the Crl. Petition filed by the petitioner and for issuing the directions noted in the Short Order are set out below.

Dignity, Sanctity and Safety of the Courts

12. It is a well-settled principle that the dignity, sanctity and safety of the courts for the benefit of all concerned stakeholders are inviolable and cannot be compromised. This is because courts of law are sanctuaries which the people approach to seek justice with the assurance that they will be

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able to pursue their relief freely in a safe, orderly and dignified environment. The breach of this assurance undermines the effective dispensation of justice by deterring people from seeking the resolution of their disputes from the courts. Therefore, to safeguard the peoples' right to access the Superior Courts and accordingly to seek justice, Article 204 of the Constitution has conferred this Court (and the High Courts) with the power to punish any person interfering with or obstructing the process of the Superior Courts in any way or prejudicing the determination of a matter pending before them. Article 204 is produced below:

> "**204. Contempt of Court.** (1) In this Article, "Court" means the Supreme Court or a High Court.
>
> (2) A Court shall have power to punish any person who—
> (a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court;
> (b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge of the Court into hatred, ridicule or contempt;
> (c) does anything which tends to prejudice the determination of a matter pending before the Court; or
> (d) does any other thing which, by law, constitutes contempt of the Court.
>
> (3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court."
>
> (*emphasis supplied*)

13. The purpose behind Article 204 that is highlighted above was acknowledged and explained by this Court in the case of **Baz Muhammad Kakar Vs. Federation of Pakistan** (PLD 2012 SC 923) in these words:

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> "21. ...The concept of "contempt of Court" has been subject of varying discussion. To some, it is to uphold the majesty of law and the dignity of courts and protect their image in the eyes of the members of the public, whereas others have taken the view that it is merely not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice. Therefore, the law empowers the courts of law to prevent by summary proceedings any attempt to interfere with the administration of justice... The object of contempt proceedings is not to afford protection to the Judges personally from imputations to which they may be exposed as individuals, but to keep the course of justice free and to ensure that law and order prevail in the courts..."
>
> (*emphasis supplied*)

14. In the present case, the petitioner was arrested from a court office situated inside the High Court premises. Whether such action violated the dignity, sanctity and safety of the High Court in a manner that undermined its decorum; and whether it infringed the petitioner's Fundamental Right of access to justice are the issues that this Court has to examine. Two judgments of the Superior Courts provide guidance on the inviolability of the dignity, sanctity and safety of the courts. The first was delivered by this Court in **Suo motu action in re: Crl. Misc. No.96 in Crl. Orig. Petition No.38 of 2008** (2009 SCMR 780) and the other was rendered by the Lahore High Court in **State Vs. Niaz Mohammad** (PLD 1976 Lah 10).

15. In the case of **Suo motu action** (*supra*) this Court had passed a restraining order preventing the officials of NAB from harassing the employees of the petitioner Steel Industry. However, despite such an order being in field the officials of the NAB arrested the accountant of the petitioner from the Bar

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Room located in the premises of this Court and in doing so manhandled, dragged and beat him up. This Court initiated contempt proceedings against the NAB officials and expressed its serious reservations on the manner and mode of arrest:

> "6. ...but the acts of dragging, manhandling and beating the accused in the Bar Room situated in the Court premises, misbehaving with the Advocates and the media personnel can by no stretch of imagination be regarded as innocent and bona fide acts rather it appears to be a flagrant attempt to undermine and lowering authority of the Court besides disturbing its decorum..."
>
> (*emphasis supplied*)

Ultimately, this Court dropped the proceedings on account of the unconditional apology tendered by the contemnors. Likewise, in **Niaz Mohammad** (*supra*), on the date of the hearing of the pre-arrest bail application filed by the accused he was arrested from the Lahore High Court premises by police officers before the learned Single Judge could hear and decide the matter. Thereafter, another learned Single Judge, who was assigned to deal with the case subsequent to the arrest of the accused, commenced contempt proceedings against the concerned police officers and also underscored the duty of the police force to respect the authority of the courts and to facilitate the obedience of their orders:

> "The jurisdiction of this Court to grant bail before arrest in appropriate cases is indubitable, wherefor, the right of a person, who apprehends arrest and considers himself entitled to the grant of bail before arrest to present an application for this purpose before the Court is equally beyond doubt. It is the established practice of this Court and, therefore, law unto it that and applicant for bail before arrest should be present when the case comes up for hearing. In any case the

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> right of an applicant to be present and even to make his own submissions before the Court can hardly be denied or underestimated. Any attempt to create circumstances, in which an applicant, who is present in the Court compound for the aforesaid purpose is unable to prosecute his application for any action whereby the application for bail before arrest is made infructuous by arresting the man from such compound before the Court has been able to consider the application and pass an order upon it, is undoubtedly an interference with the proper working of this Court, an unwarranted intervention in the exercise of its lawful jurisdiction and an obstruction of its process... Members of the police force, particularly in matters connected with the dispensation of criminal justice by superior Courts are bound not only to respect its authority and orders but to facilitate the exercise of the former and obedience to the latter..."
>
> (*emphasis supplied*)

16. In both of the above-cited cases this Court and the Lahore High Court were either hearing the matter or the matter had been listed for hearing. In the present case the petitioner was at the stage of completing the process of the High Court for registration of his pre-arrest bail application in the AQT Case in that court. His application for pre-arrest bail had been issued a diary number by the Institution Branch of the High Court but the final step i.e., the bio-metric verification had not yet been completed. However, in our considered view by filing the pre-arrest bail application, by receiving a diary number on the application, by having his bio-metric conducted and by filing a separate application for early hearing, the petitioner on 09.05.2023 essentially surrendered before the High Court to invoke its jurisdiction and also initiated the process to have his pre-arrest bail application fixed for hearing before the High

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Court on the very next day i.e., 10.05.2023. Having surrendered before the High Court to invoke its jurisdiction, the petitioner's arrest from the High Court premises preemptively blocked his recourse to the judicial relief of pre-arrest bail and thereby violated his Fundamental Right of access to justice. Indeed, such action also interfered with the working of the High Court, intervened in the exercise of its lawful jurisdiction and obstructed its process. The manner and mode in which the arrest was executed, namely, the breaking of the door, glass partitions and windows of the bio-metric verification room and the manhandling and injuring of a number of lawyers, High Court staff and police personnel undermined and lowered the authority of the High Court and disturbed its decorum. As a result thereof, the Short Order dated 11.05.2023 declared the arrest of the petitioner to be invalid and unlawful for violating the dignity, sanctity and safety of the High Court.

17. As is evident from the cases of **Suo motu action** and **Niaz Mohammad** (*supra*) the route that the Superior Courts have traditionally adopted in dealing with like matters is to initiate contempt proceedings against the responsible officials. It is this route that the High Court also took in the impugned judgment dated 09.05.2023. Nevertheless, with the development of the jurisprudence on Fundamental Rights, in particular the right of the people to access justice, such an approach has become inadequate because the contempt route focuses on the violation of the court's dignity, sanctity and

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safety and not on the injury inflicted on the aggrieved person. Moreover, contempt is a discretionary jurisdiction with the court being the sole authority to decide whether to launch contempt proceedings against the contemnors or not. This was recognised by this Court in **Masood Alam Rizvi Vs. Muhammad Saeed** (2009 SCMR 477):

> "9. Assuming a case for initiating contempt proceedings was made out against the petitioners, even then in view of the settled law, that a matter of contempt is between the Court and the alleged contemnor, it was upto the Court either to take any appropriate action against the alleged contemnors or drop the matter..."
>
> (*emphasis supplied*)

Therefore, if a Superior Court for any reason refrains from exercising its contempt jurisdiction, the drawback is that the aggrieved person, who is directly injured by the unlawful actions of the law enforcement agencies, is left without redress. On the other hand, even if contempt is initiated by a court it may very well be, as has happened in the impugned judgment before us, that the unlawful arrest of a person is validated because the court is focused on the breach of its dignity, sanctity and safety rather than on the violation of that person's Fundamental Rights.

Fundamental Right of Access to Justice

18. It is precisely to cater for the above-mentioned concerns that our Short Order dated 11.05.2023 declared the arrest of the petitioner to be invalid and unlawful for violating his Fundamental Right of access to justice. The said right is

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now well-enshrined in the jurisprudence of this Court and forms an integral part of Article 9 (Life and liberty of person) and Article 4 of the Constitution (Right of persons to be dealt with in accordance with law, etc.). In fact, a person's Fundamental Right of access to justice has been strengthened by the insertion of Article 10A (Right to due process) into the Constitution by the Eighteenth Amendment (2010). For the sake of convenience, the afore-mentioned Articles are produced below:

> "**4. Right of individuals to be dealt with in accordance with law, etc.** (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. [W]herever he may be, and of every other person for the time being within Pakistan.
>
> (2) In particular—
>
> (a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;
> (b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and
> (c) no person shall be compelled to do that which the law does not require him to do.
>
> **9. Security of person.** No person shall be deprived of life or liberty save in accordance with law.
>
> **10A. Right to fair trial.** For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process."

That Articles 4, 9 and 10A of the Constitution guarantee a person his/her Fundamental Rights of access to justice and fair trial/due process was recently acknowledged by this Court in **Chairman, NAB Vs. Nasar Ullah** (PLD 2022 SC 497):

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> "7. ... Even before the addition of Article 10A in the Constitution, the right to a fair trial and due process was well-entrenched in our jurisprudence and considered to be a part of the right of access to justice enshrined in the constitutional right to be dealt with in accordance with law guaranteed by Article 4 and the fundamental right to life and liberty guaranteed by Article 9 of the Constitution..."
> (*emphasis supplied*)

The Fundamental Rights of access to justice and fair trial/due process are ordinarily invoked to rectify the illegalities and defects committed during criminal trials and/or proceedings pertaining to the determination of civil rights/obligations. However, these rights apply equally to bail applications as the latter are directly connected to the liberty of persons. It may be noted that liberty is a Fundamental Right granted by Article 9 of the Constitution which is primarily enforced through bail applications. There can be no denial that the relief of pre-arrest bail is a judicial remedy availed by accused persons under Section 498 of the Cr.P.C. Therefore, the right of an accused person to seek this remedy must be construed in a manner that safeguards and advances his/her Fundamental Right of access to justice in consonance with the observation of this Court in **Taj Wali Shah Vs. Bakhti Zaman** (2019 SCMR 84) that:

> "12. ... In fact, any right vested in a person to seek his remedy under the law should be liberally construed, as this would bolster his recognised fundamental right of access to justice..."

19. In this regard, judicial support for an accused person to have unimpeded access to the courts for seeking the

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relief of pre-arrest bail is recognised in the case of **Niaz Mohammad** (*supra*). However, the blocking or interruption of such access by police officers in that case was regarded as '*an interference with the proper working of th[e] Court, an unwarranted intervention in the exercise of its lawful jurisdiction and an obstruction of its process*.' Nonetheless, it may be observed with confidence that on a fair interpretation of Fundamental Rights, in particular the right of access to justice, it becomes clear that the protection of such rights of the people is a constitutional obligation of the courts that prevails over their duty to defend the dignity, sanctity and safety of their premises. This view is most clearly reflected in the case of **Syed Ali Musa Gillani Vs. State** (Crl.O.P. No.81 of 2012) wherein this Court vide judgment dated 12.10.2012 did not proceed in the contempt petition filed by the accused against the officers of the Anti Narcotics Force (as the same was not pressed) but did grant the accused pre-arrest bail observing that:

> "19. ...We however would deprecate the conduct of the investigating agency for arresting the petitioner, Syed Ali Musa [G]illani, at the doorstep of the Supreme Court Building when he was to appear for his pre arrest bail. Such conduct amounts to depriving an aggrieved person from access to justice."
>
> (*emphasis supplied*)

20. In arriving at its aforesaid conclusion, this Court treated the Fundamental Right of access to justice to encompass in it the right to invoke the court's jurisdiction for appropriate relief. Assuring a person unimpeded access to the court when he/she has commenced the process of availing a

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judicial remedy effectively blocks preemptive executive action that attempts to curtail that person's liberty and his/her right of access to justice. Indeed, one of us (Mr. Justice Athar Minallah) whilst sitting as a Judge of the High Court in **Sharjeel Inam Vs. Federation of Pakistan** (2017 YLR 2423) acknowledged the adverse effects of limiting the ambit of access to justice to only that class of persons who are able to approach the courts. In that case the petitioner had invoked the constitutional jurisdiction of the High Court to seek protective bail so that he could approach the competent court for suitable relief. Allowing the petition, the High Court held:

> "10. In the instant case, the petitioner is merely seeking protective bail and he has shown his bona fides by surrendering himself before this Court. The learned counsel for the petitioner has made a statement before us that the latter could not land at Karachi due to serious threats to his life... We are of the opinion that access to a competent Court is a fundamental right guaranteed under the Constitution. We feel that refusal to grant protective bail would tantamount to denial of the right of access to justice. Access to justice is fundamental to, and an integral part of the rule of law..."
>
> (*emphasis supplied*)

Likewise in **Azmat Ullah Vs. Federation of Pakistan** (2023 P Cr. LJ 290) the Lahore High Court, whilst hearing the accused's application for protective bail in its constitutional jurisdiction, undertook an extensive review of the said judicial relief and laid down, *inter alia*, the following principles governing the same:

> "13. Life and personal liberty are the most prized possessions of an individual and life is not worth living without honour and dignity...

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> 15. The Code of Criminal Procedure, 1898 (Cr.P.C.), does not contain any provision for protective/transitory bail but the High Courts in our country have invoked section 561-A, Cr.P.C. and Article 199 of the Constitution to accommodate the accused to enable them to approach the concerned court for a remedy...
>
> 17. The concept of protective/transitory bail must be examined in the constitutional context of liberty, dignity, access to justice and fair trial elaborated above - and the right to be treated in accordance with law. Refusal to grant protective bail denies these rights to the accused person..."
>
> (*emphasis supplied*)

21. The above-cited dicta show that the High Courts in the country have routinely afforded the relief of protective bail to accused persons to enforce their Fundamental Rights of access to justice and liberty by ensuring their unobstructed access to a competent court. In the present case if the petitioner's arrest from the High Court's premises is endorsed, his application for pre-arrest bail filed in the AQT Case before that court will be rendered futile notwithstanding the fact that he surrendered before the High Court and invoked its jurisdiction. This will not only deprive the petitioner of his right to access a competent court to safeguard his Fundamental Right of liberty but will also invite police officials/investigating agencies to treat court premises as hunting grounds for capturing accused persons, especially when the latter seek judicial oversight of their pending arrests. It would encourage police high-handedness and thereby expose courts to executive machinations in the future. Such a narrow interpretation of the Fundamental Right of access to justice cannot be approved by this Court and so is categorically rejected. Accordingly, the

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petitioner's arrest from the bio-metric verification room of the High Court is declared to be invalid and unlawful on the touchstone of violating his Fundamental Rights under Articles 4, 9 and 10A of the Constitution.

Directions Issued in the Short Order

22. In the facts and circumstances of the case and to remedy the injustice that had been visited upon the petitioner this Court took the decision to reverse the clock and ordered the police to produce him before the High Court so that his pre-arrest bail application in the AQT Case may be heard by the High Court for decision. This Court is of the considered view that only such a course of action will caution the police officials/investigating agencies to abstain from similar conduct in the future that infringes both the dignity, sanctity and safety of the courts and the Fundamental Right of the citizens of Pakistan to enjoy liberty in accordance with law. At the same time to ensure the petitioner's safe transportation to the High Court the next morning, this Court directed the ICT Police to retain his custody at his present place of confinement. The text of the Short Order dated 11.05.2023 affirms the above purpose of this Court:

> "**iv)** In order to ensure the security of the petitioner until his appearance in the High Court tomorrow i.e. 12.05.2023 at 11:00 am, he shall remain in the premises where he is presently retained in police custody, namely, the Police Lines Guest House, H-11, Islamabad (**Police Guest House**)."
>
> (*emphasis supplied*)

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Likewise, to facilitate his legal defence before the High Court, this Court allowed the petitioner to meet up to 10 guests, including members of his legal team, whilst in police custody.

23. To counter the afore-stated directions that this Court was inclined to pass in its order, the learned Attorney General submitted that an intervening event had taken place i.e., an Accountability Court had granted an eight day physical remand of the petitioner to the NAB which order had not yet been challenged by him. However, this contention of the learned Attorney General is not relevant in the present context because this Court has not adjudicated on any order issued by the Accountability Court in respect of the petitioner. Only the execution of the arrest warrant dated 01.05.2023 has been scrutinised and declared illegal. As a direct result thereof, the petitioner's pre-arrest bail application filed in the AQT Case stands revived before the High Court. That direction does not in any way interfere with the remand order passed by the Accountability Court which merely has been made subject to the High Court's determination of the pre-arrest bail application.

Conclusion

24. In light of the above discussion, the present Crl. Petition is converted into appeal and disposed of in terms of the directions issued in our Short Order of even date. Copies of these detailed reasons shall be forwarded to the concerned

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Departments of the Federal and Provincial Governments for their information.

Sd/-
Chief Justice

Sd/-
Judge

I concur with the reasons in paragraphs 11 to 24 but I would record my own reasons separately.

Sd/-
Judge

Islamabad
11.05.2023
Naseer/Meher LC

APPROVED FOR REPORTING.

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