

ELECTION COMMISSION OF PAKISTAN

PRESENT:

MR. NISAR AHMED DURRANI, MEMBER

MR. SHAH MOHAMMAD JATOI, MEMBER

1. Case No. 16(1)/2021-Law

In Ref: COMPLAINT REGARDING PRE-POLL RIGGING IN TEHSIL BAKA
KHEL DISTRICT BANNU

1. Mohabbat Khan, Land Owner of GPS Musharaf Khan Narmi Khel, Tehsil Baka Khel, District Bannu.

...Complainant No.1

2. Mamoor Khan Wazir, Contesting Candidate, Tehsil Baka Khel, District Bannu.

...Complainant No. 2

2. Case No.23(89)/2021-Law

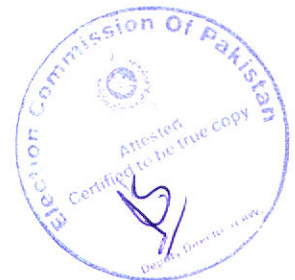
In Ref: COMPLAINT AGAINST MR. MAMOOOR KHAN AND OTHERS
REGARDING PRE-POLL RIGGING IN TEHSIL BAKA KHEL
DISTRICT BANNU

3. Rasool Nawaz S/o Gul Badshah R/o Narmi Khel, Tehsil Baka Khel

....Complainant No. 3

ON COMMISSION 'S NOTICE

1. Capt. Zubair, District Returning Officer/DC, Bannu
2. Eng. Kamran Khan, Returning Officer No.220
3. Najib Ullah, Additional Assistant Commissioner-IV/Returning Officer No.207
4. Imran Shahid, District Police Officer, Bannu
5. Inyat Ullah Wazir, Regional Election Commissioner/DMO, Bannu
6. Habib ur Rehman, District Election Commissioner, Bannu
7. Hidayat Ullah Khan, Contesting Candidate
8. Gul Baz Khan S/o Moeen Ullah, R/o Narmi Khel, Tehsil Baka Khel, Bannu (nominated accused)



9. Shah Muhammad Khan, Provincial Minister for Transport (nominated accused)
10. Mamoon Rashid S/o Shah Muhammad Khan, Contesting Candidate for the seat of Mayor R/o Narmi Khel, Tehsil Baka Khel, District Bannu (nominated accused)
11. Sher Zaman alias Sher R/o Narmi Khel, Tehsil Baka Khel Bannu

....Respondents

For the Complainants 1 & 2	:	Mr. Kamran Murtaza, ASC and Saad Hasan, Advocate alongwith Complainants in-person
For the Complainant No. 3	:	Muhammad Ramzan Chaudhary, Sr. ASC and Rai Tajammal Hussain, Advocate alongwith Complainant in- person
For the Respondents No.1 to 7	:	In-person
For the Respondents No.8-10	:	Muhammad Ramzan Chaudhary, Sr. ASC and Rai Tajammal Hussain, Advocate alongwith Complainant in- person
For the Respondent No. 11	:	<i>Nemo</i>
For Inquiry Committee of ECP	:	Mr. Zafar Iqbal Hussain, Chairman Mr. Khurram Shahzad, Member
Dates of Hearing	:	22-12-2021, 28-12-2021, 04-01-2022 11-01-2022 & 20-01-2022
Date of Order	:	01-02-2022

ORDER

Nisar Ahmed Durrani, Member. — By way of this single order we will decide the above titled three complaints having identical facts/allegations and common grounds arising out of same constituency i.e. Tehsil Baka Khel, District Bannu (hereinafter referred as "Constituency") where the polling for the seat of Tehsil Chairman, Bannu and other categories of seats had to take place on 19.12.2021.

2. Brief facts of the matters in hand are that on the night of 18.12.2021, one day prior to the polling in the Constituency, according to the reports of the District Returning Officer (DRO), Bannu and District Police Officer (DPO), Bannu dated



and snatching of polling material took place and there was worse situation of law and order. These incidents were reported to the DRO by the concerned Returning Officers(ROs) i.e. RO-207, RO-220 through a combined report dated 18.12.2021 with the request to postpone/cancel the election due to deteriorating law and order situation.

3. On receipt of such reports and deteriorating law and order situation, this Commission in the morning of 19th December, 2021, postponed the polling process in the Constituency till normalization of situation and also constituted a fact finding inquiry committee comprising of Mr. Zafar Iqbal Hussain, Special Secretary, Election Commission, Mr. Khurram Shahzad, ADG (Law), Election Commission and Mr. Khushal Zada, Director Elections, for probing and ascertaining the facts and submission of report to the Commission within seven (7) days.

4. In the meanwhile, two written applications/complaints of Mr. Mamoor Khan Wazir (one of the contesting candidate) and Mr. Mohabbat Khan were also received by this Commission wherein they alleged happening of similar incidents and requested action against the culprits. Mr. Mohabbat Khan in his complaint stated that Mr. Gul Baz Khan (Respondent No.8), brother of Shah Muhammad Khan, Provincial Minister Transport, KPK, along with his armed personnel entered the Polling Station No.338 & 339 GMS/GPS Musharaf Narmi Khel, PS-I & PS-II at 11:15 p.m. night and took away ballot boxes, ballot papers, stamps and all other election material by force and during this period polling staff was made hostage by them and thereafter they were abducted. The contesting candidate Mr. Mamoon Rashid (respondent No. 10 herein) was also waiting outside the said polling station along with armed guards. Mr. Mohabbat Khan in his complaint also mentioned recording of a video proof wherein it can clearly be seen that the election material was being stolen from the polling stations. He requested that strict action against Mr. Gul Baz Khan brother of Provincial Minister and Mamoon Rashid, contesting candidate be taken on account of illegally and forcibly taking over of government property and violating the electoral rules and regulations as well as harassing the female polling staff. Whereas, Mr. Mamoor Khan Wazir, Complainant No.2 (contesting candidate) in his complaint mentioned that Mr. Shah Muhammad Khan, Provincial Minister (Transport) KPK along with his brother Mr. Gul Baz Khan and Mr. Mamoon Rashid son of Provincial Minister Shah Muhammad Khan who was also a contesting candidate, with armed personnel entered the following polling stations in the area of Tehsil Baka Khel on 18.12.2021:-

- PS No.335 GGPS Noor Daraz Cherhi Narmi Khel (Female)
- PS No.334 GGMS Rashid Chiri Narmi Khel (Male)
- PS No.332 GGMS Narmi Khel (Male) PS-I
- PS No.336 GHS Nawab Narmi Khel (Male) PS-II
- PS No.337 GHS Nawab Narmi Khel (Male) PS-II
- PS No.333 GMS Narmi Khel (Female) PS-II
- PS No.338 GMS Musharaf Narmi Khel (Female) PS-I



PS No.339 GPS Musharaf Narmi Khel PS-II
 PS No.353 GHS Mrib Khel Baka Khel (Female) PS-II
 PS No.355 GHS Surat Khan Baka Khel Combined
 PS No.356 GMS Bahader Jan Combined
 PS No.357 GGPS Teela Jan Combine.

5. Mr. Mamoor Khan Wazir further mentioned the video footage in his application/complaint in which Mr. Shah Muhammad Khan, Provincial Minister and his aforementioned accomplices threatened, harassed and abducted the polling staff including the police deployed inside the polling stations and forcibly took away the ballot boxes, ballot paper, stamps and all other election material. That DRO and DPO, Bannu were immediately informed and apprised of these illegal activities committed by Mr. Shah Muhammad Khan, Provincial Minister and his aforementioned accomplices. He requested that immediate and strict action be taken against Mr. Shah Muhammad Khan, Provincial Minister and Mr. Mamoon Rashid, contesting candidate for snatching the election material and violating the electoral rules and regulation.
6. On 19th December, 2021, Provincial Election Commissioner, Khyber Pakhtunkhwa also shared his report regarding the same incidents of kidnapping of polling staff and security personnel in the Constituency with the Secretary, Election Commission.
7. The instant matters were placed before this Commission on 22.12.2021 with the directions of the Commission to the following persons for their appearance before the Commission along with their comprehensive reports:-
 1. DRO/DC, Bannu
 2. DPO, Bannu
 3. Regional Election Commissioner (REC), Bannu
 4. Mr. Najeeb Ullah, Additional Assistant Commissioner IV/Returning Officer No.207.
 5. Kamran Khan, Executive Engineering/Returning Officer No.220
 6. District Election Commissioner (DEC), Bannu
 7. Mohabbat Khan, land owner of GPS Musharaf Khan Narmi Khel, Tehsil Baka Khel, District Bannu.
 8. Mamoor Khan Wazir, contesting candidate, Tehsil Baka Khel, District Bannu.
8. On the said date, the DRO, DPO, RO-207, RO-220, REC and DEC appeared before the Commission and the DRO, DPO, RO-207, RO-220 and REC submitted their comprehensive reports, which were placed on record. The DRO was asked by the Commission that what steps were taken by him as the area was extremely sensitive to which he stated that in view of the sensitivity of polling stations special



arrangements were made. For most sensitive, sensitive and normal polling stations, 10, 8 and 6 security personnel were deputed respectively. No prior information/report in respect of incidents was received and there was no apprehension of such type of incidents. The report submitted by the DPO was perused by the Commission wherein, *inter alia*, he mentioned that an FIR bearing No. 481 dated 19.12.2021, under sections 365/7ATA/171F/148/149 of Pakistan Penal Code has been registered at Police Station Baka Khel against unknown accused; a Joint Investigation Team (JIT) has been constituted in the matter for probing the incidents fairly and on merit; about 18 suspects have been apprehended and interrogated; statements of six police personnel have been recorded under section 161 of Cr.PC; statements of two eye-witnesses Mr. Mohabat Khan and Zer Muhammad Khan under section 164 Cr.PC have been recorded who in their statements have nominated the following persons:-

1. Gul Baz Khan son of Moinullah
2. Gul Muhammad son of Nawaz Khan
3. Mamoon ur Rasheed son of Shah Muhammad Khan
4. Zali Khan son of Ajab Khan
5. Naseer Khan son of unknown
6. Alamgir son of Shad Khan
7. Ameer Zada Mehsud son of unknown
8. Falak Naz son of unknown
9. Mustali Khan son of Ismail
10. Noor Muhammad son of unknown
11. Dil Islam son of Falak Naz
12. Sher Zaman son of unknown
13. Tariq son of Sarwar

The eye-witnesses have mentioned in their statements that Mr. Gul Baz Khan was accompanied by 6/7 persons who were wearing police uniform and 40/50 other unknown persons who forcibly entered the polling stations 1 & 2, GPS Musharaf Narmi Khel and GGPS Noor Daraz Cheri Narmi Khel, aimed their weapons at the polling staff and snatched polling material of all the three polling stations. They i.e. eye-witnesses and polling staff were shifted to some unknown place in various vehicles like Vigo, Hiace and some other types. The DPO further stated that the learned Court has been requested by them for issuance of search/arrest warrants of the accused nominated by the eye-witnesses. A request for provision of geo-fencing has also been made by the SP Investigation to the Regional Police Officer, Bannu on 21.12.2021 for tracing out the unknown accused. Call Detail Record (CDR) data of the nominated accused and other suspects is being obtained to ascertain their alleged presence on the crime scene. After brief hearing of the matters, this Commission issued notice to respondents 8-10 for their appearance on 28.12.2021.



9. On 28.12.2021, DPO submitted his 2nd investigation report in the matter, which was perused by the Commission. In the report, *inter alia*, it was stated that several raids were conducted on the hideouts of the nominated accused persons and only one accused Mr. Sher Zaman Khan was arrested while other 11 accused have got bail before arrest from the Court; six other accused have also obtained bail before arrest from the Court; Presiding Officers of seven polling stations have recorded their statements under section 161 CrPC on 23.12.2021 which stated that they do not recognize any of the accused; Statements of two Presiding Officers and four other persons under section 164 CrPC have been recorded on 24.12.2021, out of which Mr. Rasool Nawaz and Mr. Hizb Ullah have directly nominated Mamoor Khan Wazir and Hidaytullah in the alleged incidents of abduction, etc. and all these six witnesses have stated that Mr. Gul Baz Khan, Mamoon Rasheed, Amir Zada and Sher Zaman were not present at the time and spot of the incident; arrest warrants of absconders have been issued; analysis of CDR data is in process and fresh CDR of 31 accused/suspects as well as of Mr. Mamoor Khan Wazir and Hidayat Ullah has been requested; geo-fencing report is awaited; 25 snatched ballot boxes and miscellaneous unsealed polling bags/material alongwith CCTV cameras have been recovered by the SHO, Baka Khel on 23.12.2021 and 26.12.2021, respectively from two different locations; after raid on the abodes and arrest of some accused in main FIR dated 19.12.2021, main Miran Shah Road was blocked by the agitators to pressurize the Police and District Administration for release of the accused upon which four FIRs bearing Nos. 486, 487, 488, 489 dated 21.12.2021, 23.12.2021 and 24.12.2021 have been registered and 15 accused have been arrested therein.

10. During hearing on 04.01.2022, complaint filed by Mr. Rasool Nawaz (Complainant No. 3) regarding the subject Constituency was clubbed with the complaints of Complainant No.1 & 2 and were heard. In the said complaint, the complainant alleged that the contesting candidate of JUI (F) Mr. Mamoor Khan (Complainant No. 1) and his father Mr. Hidayat Ullah alongwith 40 to 50 persons attacked the polling station i.e. Government High School Narmi Khel, Bannu on 18.12.2021 at 9:35/10:00 p.m. and snatched the polling material and made polling staff hostage. He further mentioned that he and two eye witnesses i.e. Mr. Abdul Salam and Mr. Hizb Ullah have recorded statements under Section 164 of CrPC before the competent Court and have highlighted role and involvement of Mr. Mamoor Khan (Complainant No. 1) and his father Mr. Hidayat Ullah in the incidents of abduction, snatching material, threatening and harassing the election staff, etc.

11. During hearing, DPO, Bannu submitted his 3rd detailed investigation report in the matter before the Commission, which was placed on record. In his detailed report, DPO, *inter alia*, mentioned that during course of investigation and raids to apprehend the accused, Mr. Khursheed Khan, SHO, Police Station Baka Khel received phone calls on his mobile number from Shah Muhammad Wazir and his



brother Gul Baz Khan who threatened him of dire consequences and directed him not to arrest any of his relative or supporter, on which, a proper report has been entered in Daily Diary number 14 dated 20.12.2021 in Police Station Baka Khel. The call voice recording clips along with video shared by Mohabat Khan on social media were sent to Forensic Science Laboratory (FSL), report of which has been received and placed on record. The report opined that no tampering/editing was found in the said video files. Mr. Shah Muhammad Khan has been charged in case FIR No. 481 dated 19.12.2021, on account of threatening the SHO, Baka Khel and on trying to influence the investigation of case by adding additional sections i.e. 384-506-411 of Pakistan Penal Code and section 25 of the Telegraph Act, to the FIR. The analysis of geo-fencing data transpires that 20 accused were present on all the sites where incidents had taken place. Individual CDRs also indicate the presence of these accused persons at the crime scene and link chart clearly shows communication between the accused persons during the occurrence. There is an aerial distance of 14/15 KMs between Nawab Narmi Khel/Musharaf Narmi Khel and Noor Daraz Cheri Narmi khel/Rasheed Cheri Narmi Khel polling stations and said accused were present on all these different locations during the time of occurrence and were calling each other usually at late hours which clearly indicate their involvement in the incidents. Statements of 37 polling staff have been recorded under section 161 CrPC and as per the statement of polling staff of GPS Musharaf Narmi Khel, eye-witness Mr. Mohabat Khan was present with them at the time of occurrence for arranging food etc, being the resident of that area. Two accused have been arrested till 04.01.2022, whereas, other 25 accused have obtained bail before arrest from the Court. Five accused are still absconding and efforts are underway for their arrest. The JIT has submitted its report. Complete challan under section 173 CrPC has been submitted in the Court on 01.01.2022. Statements of Usman Khalid, Presiding Officer GGPS Pir Khel Kakki has been recorded wherein he has stated that Mr. Mohabat Khan was deputed as Assistant Presiding Officer with him. He did not report for duty on 18.12.2021 and next morning on 19.12.2021, a person reported at polling station for duty and claimed to be Mohabat Khan. Later-on it transpired that he was another person namely Qudrut Ullah instead of Mohabat Khan. Upon proper information, an FIR bearing No. 05 dated 02.01.2022 under sections 170, 419, 420 at Police Station Kakki, Bannu has been registered against Qudrut Ullah who impersonated as Mohabat Khan and efforts are being made for his arrest. Additional SP Bannu has been deputed to affect the arrest of the absconding accused Shah Muhammad Khan, MPA at Peshawar with the assistance of Capital City Police vide letter dated 01.01.2022.

12. Learned Counsel on behalf of Respondents 8-10 also submitted joint statement/reply on their behalf whereby they attacked the complaints of Complainants 1 & 2 having been filed with mala fide intentions just to oust Mamoon Rasheed from the contest. It was a pre-planned attack by the Complainants on the polling staff on seeing his defeat. Complainant Mohabat Khan is not a trust worthy person as he has



cheated by impersonation and an FIR has been registered against him. They were not at the place of occurrence as per the statements of the Presiding Officer Sidra Wazir and Faryal Gohar. The statements of Rasool Nawaz and Gul Badshah under section 161 CrPC support their stance. As per the statement of Mr. Abdul Salam recorded under section 164 CrPC, Mamoor Khan Wazir and others are involved in these incidents of abduction, etc. Complaints of Complainants 1 & 2 are not with free consent but with ulterior motives and just providing a shelter to their unlawful acts. They requested for withdrawal of the notices issued to them and requested for action against the real culprits i.e. Mamoor Khan Wazir and Mohabat Khan.

13. On 11.01.2022, Mr. Zafar Iqbal Hussain, Special Secretary/Chairman, Inquiry Committee submitted Inquiry report, which was placed on record. In the report, following recommendations were made by the Committee:-

"Recommendations

29. The Committee in light of all the available record, makes following recommendations:-

1. The Police may be directed to investigate the case by all angles and arrest the culprits. The Police can take help from the statements of Presiding Officers recorded during the proceeding of inquiry. As it is crystal clear that local persons are involved in the crime committed in Baka Khel.
2. The Provincial Government KPK may also be put on notice by the Hon'ble Commission for clarification that why the requisite security as per the contingency plan was not provided for the polling stations.
3. Disciplinary as well as criminal proceedings may be initiated against Mr. Mohabat Khan and Mr. Qudrat Ullah.
4. The deployment of Pakistan Army at the polling stations during Re-Poll is also recommended."

Office was directed to provide copy of the report to all the concerned persons for filing of their comments/objections on it, if any, on or before the next date of hearing.

14. On 20.01.2022, DPO, Bannu appeared and submitted his latest investigation report, which was placed on record. In his report he stated that accused have obtained bail before arrest from the Court and next date of confirmation is 25.01.2022; proclamation proceedings against accused Usman Ayoub and Anis-ul-Rehman have been initiated; statements of remaining polling staff under section 161 CrPC have been recorded on 14.01.2022; Mr. Mohabat Khan and Hameed Ullah alias Qudrut Ullah have been sent to jail on 08.01.2022 and 03.01.2022, respectively. Out of



total 41 accused, 32 are on bail before arrest, 5 are under arrest, 2 are absconding and 2 are proclaimed offenders.

15. The learned counsel for the complainants No. 1 & 2 reiterated the contents of written complaints. He maintained that CDR and geo-fencing data is sufficient evidence against Mr. Shah Muhammad Khan, his son Mamoon Rasheed and other accomplices showing their involvement in the incidents. He further maintained that the cross complaint of Mr. Rasool Nawaz primarily relies on the statements of two Polling Officers and four private persons recorded u/s 164 Cr.PC which have been recorded after six days of the incident which appears to be an afterthought attempt and also an effort to mislead the investigation as the location of both these persons i.e. Mamoor Khan Wazir and Hidayat Ullah was 25/30 KMs away from the crime scene as per CDR data analysis. He further contended that credible evidence is available on the record to proceed against the involved persons. The statements of eye-witnesses Mr. Mohabat Khan and Zer Muhammad were recorded under section 164 Cr.PC on 20.12.2021, soon after the incident. He also appreciated and supported the inquiry report submitted by the Inquiry Committee and the investigation carried out by the police. He prayed that immediate and strict action may be taken against Mr. Shah Muhammad Khan, Provincial Minister, his son Mamoon Rasheed, contesting candidate and other culprits for illegally taking over of government property (polling material), kidnapping the polling staff and police personnel including lady polling staff under the relevant rules in the interest of justice.

16. Learned Counsel for the Complainant No. 3 (Rasool Nawaz) as well as respondents No.8-10 (Shah Muhammad Khan, Gul Baz Khan and Mamoon Rasheed) denied all the allegations against them and repeated the contents of complaint and reply filed on respondent's behalf. Learned counsel has fully supported the recommendations made by the Inquiry Committee and has also supported the stance of the Committee which recommended disciplinary and criminal proceedings against Mr. Mohabat Khan and Mr. Qudrat Ullah because Qudrat Ullah is the person who performed duty in place of Mohabat Khan as Assistant Presiding Officer and filed complaint against the respondents as Mohabat Khan. He further stated that respondents are not involved in the snatching of election material as in the reports of the ROs, DRO, DPO and the Inquiry Committee, it is clearly mentioned that some unidentified muffled armed persons stormed polling stations situated in the Constituency and snatched polling material, abducted polling staff and police personnel. He prayed that notice issued to respondents may be withdrawn and proceedings may be initiated against real culprits, i.e. complainants and their allies in the interest of justice. He has further stated that legal proceedings against Mamoor



Khan Wazir and Mr. Mohabbat Khan may be initiated for filing a false, frivolous and concocted complaint against the respondents.

17. We have heard the arguments of the parties and have perused all the available record. The incidents which took place on 18.12.2021 in the Constituency are admitted. On receipt of letters from the DRO on 18.12.2021 and 19.12.2021, an FIR No. 481 dated 19.12.2021, u/s 365, 171F, 148, 149, 384, 506, 411, 120B of Pakistan Penal Code and 7ATA was registered at Police Station Baka Khel against unknown persons/accused for snatching polling material and kidnapping 28 female and 22 male polling staff as well as 06 policemen (total 56 persons on official duty) from nine (09) polling stations of the Constituency. The investigation so far made by the police in the subject matters, highlights the following facts:-

1. The FIR was registered against unknown persons however, after statements of two eye witnesses Mohabbat Khan and Zer Muhammad, 14 accused were nominated in the case, Later-on, on source reports, other accused were nominated in the case.
2. The real son of Mr. Shah Muhammad Khan was contesting election for Tehsil Mayor. Hence, he was directly involved in the entire election campaign.
3. The vans which were used for attacking on the polling stations, had posters of Mr. Mamoon Rashid (contesting candidate) on them as per the statements of Mr. Hamza Ali Khan, ASI.
4. All the polling stations attacked on the night before elections i.e. 18-12-2021, were situated in Baka Khel, hometown of Mr. Shah Muhammad Khan. Polling station GHS Narmi khel is adjacent to his house and *hujra*. However, he and his family members did not bother to inform local police, DRO or this Commission about the incidents. He and his family members remained silent and did not complain to Police, DRO or Commission despite the fact that his son was contesting election and such incidents could have affected the election process next morning.
5. Shah Muhammad Khan managed to send six persons to ATC court after a lapse of six days to counter statements under section 164 CrPC made by eyewitnesses Mohabbat Khan and Zer Muhammad who claimed that Minister's elder brother Gul Baz and son Mamoon Rasheed were leading the attackers on polling station Musharraf Narmikhel. One of the female polling officer namely Faryal Gohar had earlier stated in her own handwriting that no attacker was identified but she and the other lady polling officer Sidra Wazir claimed before the Hon'ble Judge that Gul Baz



and Mamoon Rasheed were not among the attackers. Rest of the four private persons nominated opponent Mayor candidate Mamoor Khan and his father Hidayatullah were leading the attackers. Investigation cleared them as their mobile phone location was in their native town Janikhel which is 25/30 KMs away from the crime scene and it is also unthinkable that they would dare to attack polling stations in the vicinity of accused provincial minister at night.

6. As per video clip of arrested accused Nasir Nasveer, that Sher Zaman finalized the plan of attacking polling stations at wazir house Bannu city under the supervision of Shah Muhammad and Gul Baz and went to petrol pump and constituted many groups to implement the plan and attacked the polling stations.
7. As per video submitted by the police, accused Gul Baz khan used abusive language against police officers and Shah Muhammad pressurized local police to release his friends by blocking main Bannu-Miranshah road for four days.
8. As per the CDR accused Shah Muhammad threatened SHO Baka Khel on call and tried to pressurize that his friends should not be troubled in this case as it will affect his elections.
9. According to the FIR No. 71 lodged in 2013 under section 82, 83(1)F, 83(3)B of ROPA 1976 and 171-F of PPC, accused Shah Muhammad who was the candidate of Provincial assembly was charged in a similar case of snatching election material and attacking polling stations during the National and Provincial Assembly election
10. Shah Muhammad was also placed in IV Schedule of ATA for his involvement in terrorist activities and being charged in ATA FIRs. He managed to get his name struck off from IV Schedule from Home Department KP. Intelligence agencies have hinted at his active relations with local terrorists groups.
11. The statements of Mahabat Khan and Zer Muhammad clearly mentioned Gul Baz and his nephew Mamoon Rasheed for leading attacks on polling stations in Baka Khel on 18-12-2021.
12. Name of Gul Baz was included in the source report showing names of accused involved in this case.



13. Police constable Shafiullah belt No.274, who was deputed on security duty at polling station GMS Narmikhel, nominated Gul Baz in his statement under section 161 CrPc. He has remained Detective Foot Constable (DFC) in PS Baka Khel and presently Maddad Moharrir in the same police station and personally knows all well known people of the area.
14. Gul Baz's involvement in the case is evident from the fact that he led roadblocks on main Bannu-Miranshah for four days to pressurize police for releasing his arrested cronies. He also delivered anti police speeches.
15. Geo fencing and CDR data confirmed the presence of Gul Baz on the crime scenes during the commission of offence.
16. Gul Baz also made two threatening calls to SHO Bakakhel to not to take action against his friends in this case.
17. Gul Baz has remained involved in murder and terrorism cases along with Shah Muhammad and was placed on IV schedule of ATA. Shah Muhammad Khan, Respondent No.9 and Gul Baz, Respondent No.8 were directly charged in criminal cases of the similar nature in 2013 (FIR No.71, dated 11.05.2013) and 2018 (FIR No.08, dated 07.07.2018) and both were also placed under IV Schedule of ATA due to terrorist activities. On 26.07.2017, name of Gul Baz Khan was removed from Schedule-IV of ATA-1997. In 2009 an FIR (FIR No.26, dated 28.09.2009 u/s 302/324/427/120-B/3-4 Exp/7ATA/148/149 PPC) was also registered against these two accused. All this show that the said respondents are habitual offenders.
18. Technical analysis of CDR and geo-fencing data reveals that Gul Baz, Respondent No.8 and other accused (29 in total) were present including Muhammad Junaid S/o Shah Muhammad Minister Transport on various polling stations at the time of occurrence, and were frequently calling each other at unusually late hours which show their presence on crime scene and involvement in the crimes.
19. Contact No.0335-8443843 has been mentioned in the Nomination Form of Mamoon ur Rasheed, Respondent No.10 whereas geo-fencing/Link Chart shows that Cell 0335-8443843 is registered against the name of Mr. Anis-ur-Rehman, which was used by Mamoon ur Rasheed. According to investigation report this number remained powered off since night of 18.12.2021. The said data also reveals that 09 other accused have also been



identified/found present on other cellular sites where incident had taken place including Anis-ur-Rahman S/o Jalil Khan (owner of SIM No.0335-8443843 used by Mamoon Rasheed.

20. JIT recommended to insert section 120(b) PPC in the above said case. Being conspirator/architect of the incident Shah Muhammad Wazir has been held responsible for the said incident.
21. Complete Challan of the investigation has been submitted in the competent court after completion of investigation on the basis of private eyewitnesses' statements, statement of kidnapped police and forensic data analysis against Shah Muhammad, Respondent No.9 and other accused. Five accused have been arrested 32 have obtained bail before arrest while four are still absconding.
22. An FIR No.05, dated 02.01.2022 u/s 170/419/420 PPC PS Kakki Bannu has been registered against eyewitness Mahabat Khan, Assistant Presiding officer Polling Station GPS Pir Khel Kakki PS-II (Complainant No.1) for sending another person Hameed Ullah alias Quadrat Ullah for polling duty in his own place without seeking permission from RO on the complaint of Khalid Usman, Presiding Officer. Hameed Ullah alias Quadrat Ullah has been arrested and sent to Jail while Mahabat Khan (Complainant) has also been sent to jail after cancellation of his BBA on 08.01.2022.
18. From the perusal of above mentioned facts available on record it is clear that Mr. Gul Baz (Respondent No.8), Mamoon-ur-Rasheed (Respondent No.10), Shah Muhammad, Provincial Minister Transport (Respondent No.9), Muhammad Junaid S/o Shah Muhammad Minister Transport and other accused were involved in the above said incidents of abduction, snatching of polling material which are subject matter of the instant matters and fall within the definition of corrupt practices as provided in Chapter-X of the Elections Act, 2017.
19. Under Article 140(A)(2) & 219(d) of the Constitution of Islamic Republic of Pakistan and section 219(4) of the Elections Act, 2017, it is the fundamental duty of the Election Commission to conduct the election to the local governments institutions within one hundred and twenty days of the expiry of the term of the local governments of a Province. Under Article 218(3) of the Constitution it is also duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against. The Chapter-X of the Elections Act, 2017, prescribes certain punishments for the offences of corrupt



practices. The relevant provisions from Chapter-X attracting in the instant case are reproduced as under:-

Section 167 of the Elections Act, 2017.

167. Corrupt practice. – A person is guilty of the offence of corrupt practice if he –

- (a) is guilty of bribery, personation, exercising undue influence, capturing of polling station or polling booth, tampering with papers, and making or publishing a false statement or declaration;
- (b) calls upon or persuades any person to vote, or to refrain from voting, for any candidate on the ground that he belongs to a particular religion, province, community, race, caste, bradari, sect or tribe;
- (c) causes or attempts to cause any person present and waiting to vote at the polling station to depart without voting; or
- (d) contravenes the provisions of section 132.

Section 170

170. Undue influence. – A person is guilty of exercising undue influence if he –

- (a) in order to induce or compel any person to vote or refrain from voting, or to offer himself as a candidate, or to withdraw his candidature or retire from the contest, at an election, directly or indirectly, by himself or by any other person on his behalf –
 - (i) makes or threatens to make use of any force, violence or restraint;
 - (ii) inflicts or threatens to inflict any injury, damage, harm or loss;
 - (iii) calls down or threatens to call down divine displeasure or the displeasure or disapprobation of any saint or pir;
 - (iv) gives or threatens to give any religious sentence;
 - (v) uses or threatens to use any official influence or governmental patronage;
 - (vi) maligns the Armed Forces of Pakistan; or
 - (vii) prevents any woman from contesting an election or exercising her right to vote.
- (b) on account of any person having voted or refrained from voting, or having offered himself as a candidate, or having withdrawn his candidature or having retired, does any of the acts specified in clause (a).
- (c) directly or indirectly, by himself or by any other person on his behalf –



- (i) uses any place of religious worship, or any place reserved for the performance of religious rites, for the purpose of canvassing for the votes or not to vote at an election or for a particular candidate; or
- (ii) for any of the purposes specified in sub-clause (i) by words, spoken or written, or by signs or visible representation, publishes anything or does any act prejudicial to the glory of Islam or the integrity, security or defense of Pakistan or any part of Pakistan; or
- (d) by abduction, duress or any fraudulent device or contrivance—
 - (i) impedes or prevents the free exercise of the franchise by a voter; or
 - (ii) compels, induces or prevails upon any voter to vote or refrain from voting.

Explanation. — In this section, —harm includes social ostracism or excommunication or expulsion from any caste or community.

Section 171 of the Elections Act, 2017.

171. Capturing a polling station or polling booth.— A person is guilty of capturing a polling station or polling booth if he —

- (a) seizes a polling station or a polling booth or a place fixed for the poll or makes polling authorities surrender the ballot papers or ballot box or both and does any other act which affects the orderly conduct of elections;
- (b) takes possession of a polling station or a polling booth or a place fixed for the poll and allows his supporters to exercise their right to vote while preventing others from free exercise of their right to vote;
- (c) coerces, intimidates or threatens, directly or indirectly, any voter and prevents him from going to the polling station or a place fixed for the poll to cast his vote; or
- (d) being in the service of any Government or corporation or institution controlled by the Government, commits all or any of the aforesaid activities or aids or connives in, any such activity in furtherance of the prospects of the election of a candidate."

Section 174 of the Elections Act, 2017.

"Penalty for corrupt practice. — Any person guilty of the offence of corrupt practice shall be punished with imprisonment for a term which may extend to three years or with fine which may extend to one hundred thousand rupees or with both."

Section 175 of the Elections Act, 2017. "



175. **Illegal practice.**— A person is guilty of the offence of illegal practice if he—

- (a) is guilty of disorderly conduct near a polling station, canvassing in or near a polling station, interferes with the secrecy of voting, or adversely affects the interests of a candidate;
- (b) obtains or procures, or attempts to obtain or procure, the assistance of any person in the service of Pakistan to further or hinder the election of a candidate;
- (c) votes or applies for a ballot paper for voting at an election knowing that he is not qualified for, or is disqualified from, voting;
- (d) votes or applies for a ballot paper for voting more than once in the same polling station;
- (e) votes or applies for a ballot paper for voting in more than one polling station for the same election;
- (f) removes a ballot paper from a polling station during the poll;
- (g) violates restrictions on publicity laid down in section 180 or restrictions on announcement of development schemes under section 181;
- (h) violates prohibition on public meetings during a certain period as provided in section 182;
- (i) fails to comply with section 134 relating to election expenses;
- (j) carries or displays any kind of weapon or fire arm in a public meeting or procession during campaign period, on the poll day and till twenty four hours after the announcement of the official results by the Returning Officer;
- (k) resorts to aerial firing or uses firecrackers and other explosives at public meetings or in or near a polling station; or
- (l) resorts to violence in any form or manner against an election official or any other person officially deputed to work at a polling station.

Explanation.— The word —weapon used in clause (j) includes a danda, lathi, knife, axe or any other thing which can be used as a weapon to inflict injury to a person.”

20. Similarly, the relevant provisions of other applicable laws/Rules are also reproduced hereunder for ease of reference:-

Rule 4 of the KPK Local Government (Conduct of Elections) Rules 2021 “Procedure of the Commission.— The Commission shall regulate its business and procedure in all matters relating to and connected with the elections in accordance with Elections Act, the Act and rules made thereunder.”



Rule 8 of the KPK Local Government (Conduct of Elections) Rules 2021 "Power of the Commission to ensure fair election.— Save as otherwise provided, the Commission may:-

- (a) stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election;
- (b) review an order passed by an officer under the Act or these rules including rejection of a ballot paper; and
- (c) issue such instructions, exercise such powers and make such **consequential orders** as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of the Act, Elections Act and these rules."

[Emphasis added]

21. From the plain reading of the above provisions of law, it is clear that Commission has ample powers to stop the polls at one or more polling stations at any stage of the election if it is convinced that it shall not be able to ensure the conduct of the election justly, fairly and in accordance with law due to large scale malpractices, including coercion, intimidation and pressures, prevailing at the election.

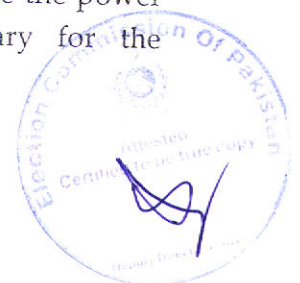
22. Clause (3) of Article 218 of the Constitution of Pakistan mandates the Election Commission to hold the elections and to make arrangements for free, fair and transparent elections in the following terms:-

"It shall be the duty of the Election Commission to organize and conduct the election and to make such arrangements as are necessary to ensure that the election is conducted honestly, justly, fairly and in accordance with law, and that corrupt practices are guarded against."

23. Further, sections 3, 4 and 8 (c) of the Elections Act, 2017, empower the Election Commission to regulate its own procedure and issue such orders as are necessary for ensurance of free, fair and transparent elections. These sections are reproduced hereunder:-

"3. Procedure of the Commission.—(1) In the performance of its functions, and duties and exercise of its powers, the Commission shall regulate its own procedure.

.....
4. Power to issue directions.—(1) The Commission shall have the power to issue such directions or orders as may be necessary for the



performance of its functions and duties, including an order for doing complete justice in any matter pending before it and an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction or order shall be enforceable throughout Pakistan and shall be executed as if it had been issued by the High Court.

(3) Anything required to be done for carrying out the purposes of this Act, for which no provision or no sufficient provision exists, shall be done by such authority and in such manner as the Commission may direct.

.....

8. Power of Commission to ensure fair election.—Save as otherwise provided, the Commission may —

(a)

(b)

(c) issue such instructions, exercise such powers and make such consequential orders as may in its opinion, be necessary for ensuring that an election is conducted honestly, justly, fairly and in accordance with the provisions of this Act and the Rules.

24. The august Supreme Court in a land mark judgment reported as **PLD 2012 Supreme Court 681 "Workers' Party Pakistan Vs. Federation of Pakistan and 2 others"**, defined the duties of the Election Commission in the following terms:-

"40. A bare reading of Article 218(3) makes it clear that the Election Commission is charged with the duty to 'organize' and 'conduct the election'. The language of the Article implies that the Election Commission is responsible not only for conducting the election itself, but also for making all necessary arrangements for the said purpose, prior to the Election Day. By conferring such responsibility on the Election Commission, the Constitution ensures that all activities both prior, on and subsequent to Election Day, that are carried out in anticipation thereof, adhere to standards of justness and fairness, are honest, in accordance with law and free from corrupt practices. This Court in *Election Commission of Pakistan v. Javaid Hashmi and others* (PLD 1989 SC 396), observed that "(g)enerally speaking election is a process which starts with the issuance of the election programme and consists of the various links and stages in that behalf, as for example, filing of nomination papers, their scrutiny, the hearing of objections and the holding of actual polls. If any of these links is challenged it really (is) tantamount to challenging the said process of election". It interpreted that the phrase 'conduct the election' as having "wide import" and including all stages involved in the election process. These observations subject all election related activities



that take place between the commencement and the end of the election process to the jurisdiction conferred on the Election Commission under Article 218(3). The Election Commission therefore has to test all election related activities that are carried out in the relevant period, both individually and collectively, against the standards enumerated therein."

41. The Election Commission may also exercise its powers in anticipation of an ill that may have the effect of rendering the election unfair. In the case titled as *In Re: Petition filed by Syed Qaim Ali Shah Jellani* (PLD 1991 Jour. 41) the Elections Commission exercised its powers under Article 218(3) pre-emptively, by making all necessary arrangements to ensure that a certain class of people would be allowed to vote. This case implies that where a violation of the standards mentioned in Article 218(3) has not as yet taken place, the Election Commission is legally empowered under Article 218(3) to exercise its powers pre-emptively in order to avoid a violation of these standards. Furthermore, *Mst. Qamar Sultana v. Public at Large* (1989 MLD 360) and *In Re: Complaint of Malpractices in Constituency No. NA-57, Sargodha-V* (supra) both reinforce the argument that the Election Commission is fully empowered by Article 218(3) to make 'such orders as may in its opinion be necessary for ensuring that the election is fair, honest etc'. These decisions recognize that the Election Commission enjoys broad powers not only to take pre-emptive action but also to pass any and all orders necessary to ensure that the standards of 'honesty, justness and fairness' mentioned in Article 218(3) are met.

43. Article 218(3) also empowers the Election Commission to ensure that the election process does not suffer from any corrupt and/or illegal practices. Sections 78, 79, 80, 80-A, 81 and 83 of ROPA comprehensively define the terms "corrupt practices" and "illegal practices". ROPA in sections 82, 99 and 100 further elaborates the consequences of such practices and enunciate that the same form a sufficient basis for the Election Commission to, inter alia, imprison, fine and disqualify those who violate them. These provisions, therefore, subsume all those impugned activities as cognizable by the Election Commission. Similarly, Section 103(a) of ROPA instructs the Election Commission to ensure a "fair election". In doing so it implies that "large scale malpractices including coercion, intimidation and pressures, prevailing at the election" would negate the 'fairness' elections are to embody. While sections 78, 79, 80, 80-A, 81 and 83 specify activities that the Election Commission can regulate and check under Article 218(3), section 103(a), substantially enhances this defined spectrum of cognizable activities and reinforces the



obligation to check them. In section 103(c) section it empowers the Election Commission to issue instructions, exercise its powers and make orders to effectuate the said standard."

25. In view of all above investigation made by the DPO, geo-fencing and CDR data and the inquiry conducted by the Committee, we observe that Mr. Shah Muhammad Khan, MPA/Provincial Minister for Transport being a public office holder, along with other accused, was involved in the abovementioned incidents of attacking the polling stations, abduction/kidnapping of polling staff, snatching of election material, harassing and threatening to polling staff and other investigation agencies, etc and have committed corrupt practices. Therefore, in exercise of powers under Article 218(3) of the Constitution read with sections 3, 4 and 8(c) of the Elections Act, 2017, and deriving strength from the judgment of the august Supreme Court *supra*, we hold and direct as under:-

- a. Mr. Shah Muhammad Khan is disqualified to hold any public office for a period of five years, upon the announcement of this order. Therefore, he be de-notified as Member of Provincial Assembly KPK, accordingly;
- b. Mr. Mamoon Rasheed, who was a contesting candidate from the Constituency is barred from contesting any election on account of involvement in the corrupt practices, till finalization of criminal proceedings against him;
- c. The Provincial Election Commissioner, KPK is directed to file complaints of corrupt practices against Shah Muhammad Khan, MPA/Provincial Minister Transport KPK, his son Mamoon Rasheed, Mr. Gul Baz Khan, Mr. Mohabat Khan and Mr. Qudrat Ullah, under the relevant provisions of the Elections Act, 2017, and the Pakistan Penal Code;
- d. Disciplinary proceedings also be initiated against Mr. Mohabat Khan, Assistant Presiding Officer and Hameed Ullah alias Qudrat Ullah;
- e. The Police is directed to investigate the case by all angles and arrest the remaining accused and make all best efforts for better and effective criminal prosecution of the cases/FIRs registered in this matter to punish the accused involved in these crimes;



26. With the above observations and directions, the subject complaints stands disposed of.

(Nisar Ahmed Durrani)
Member

(Shah Muhammad Jatoi)
Member

Islamabad
1st February 2022

