

Zahid Sarfaraz Gill vs. The State

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Pakistan’s criminal justice system is grappling with a staggering backlog of cases, with thousands languishing as undertrial prisoners.¹ In Pakistan, there are currently 1.86 million cases pending at the district judiciary level, 36% of which are criminal cases.² Poor investigation techniques, which delay the commencement and conclusion of trials, are one of the main reasons for this backlog.³ Therefore, to expedite investigation in criminal cases, there is an urgent need for adoption of modern approaches like photo capturing and video recording. The judgement in *Zahid Sarfaraz Gill vs. The State* marks a pivotal step in this direction.

The Petitioner was allegedly caught red-handed and subsequently arrested for the possession of 1833 grams of *charas*, a narcotic substance. He contested his implication, arguing that despite the alleged seizure being made at a public park during broad daylight, neither any independent witness was sought nor any photographic or videographic evidence of the search and seizure was taken by the police. The Supreme Court (“Court”) held that this was a case of further inquiry and granted bail to the Petitioner. The Court further observed that Section 25 of the Control of Narcotic Substances Act, 1997 (“CNSA”) excludes the requirement under Section 103 of the Code of Criminal Procedure, 1898 (“CrPC”) which mandates the association of respectable local inhabitants during searches.

Despite this exclusion, the Court expressed bewilderment as to why the police and the Anti-Narcotic Force’s (“ANF”) personnel do not use video or photo documentation during searches and seizures. By relying on Article 164 of the Qanun-e-Shahadat, 1984 (“QSO”), which renders evidence obtained through modern techniques admissible in courts, the Court

¹ Zille Huma, Maira Mumtaz, and Johar Imam, ‘The struggle for prison reform in Pakistan’ (*Himal Southasian*, 22 January 2024) <<https://www.himalmag.com/politics/pakistan-prison-reform-human-rights>> accessed 19 March 2024; National Commission for Human Rights, *Submission to the Universal Period Review (2023)* <<https://www.nchr.gov.pk/wp-content/uploads/2023/09/NCHR-UPR-Report.pdf>> accessed 19 March 2024; Law & Justice Commission of Pakistan, *2nd Bi-Annual Report* (Judicial Statistics, 2023) <<http://www.ljcp.gov.pk/reports/bar.pdf>> accessed 19 March 2024.

² Staff Reporter, ‘July-Dec 2023 statistics show 2.26 million cases pending in courts: report’ *Dawn* (Islamabad, 16 February 2024) <<https://www.dawn.com/news/1814586>> accessed 19 March 2024.

³ Correspondent, ‘Paralysed youth’s family protests against police brutality’ *The Express Tribune* (Karachi, 9 January 2024) <<https://tribune.com.pk/story/2452667/paralysed-youths-family-protests-against-police-brutality>> accessed 19 March 2024.

encouraged police personnel to use their phones' in-built cameras and record videos/photographs whilst conducting searches and seizures. The Court advised this to ensure credible evidence collection, speedy case disposal, and strengthening of the prosecution's case. Towards the end, the Court directed that a copy of the order be sent to concerned narcotics personnel who may consider amending their rules in light of the Court's observations.

Police personnel have vast powers to detain, enter, search, and arrest a person believed to be involved in narcotics related offences under the CNSA.⁴ In case of finding contraband substances, the police are obligated to seize and forward them for chemical examination.⁵ Since offences under the CNSA carry strict punishments and since wide powers have been given to the police to ensure a crackdown on contraband substances, courts ensure that convictions are based on infallible evidence.⁶ Police must document the search, seizure, and recovery process and a representative sample from each piece of contraband substance must be sent for chemical examination whilst ensuring a safe chain of custody.⁷ A recovery memo must be prepared on-site, signed by witnesses and affixed with the seizing officer's monogram to minimise wrongful implication or evidence tampering.⁸

This approach is connected to the State's broader objective of ensuring justice. Attempts have been made to amend the criminal law framework and introduce modern techniques for investigation and documentation of evidence. In *Mehboob vs. Sajjad Ahmad and another*,⁹ the Court endorsed the use of sniffer dogs to investigate and collect evidence. In *Dr. Yasin Zia vs. Government of Punjab and others*,¹⁰ the Court endorsed the installation of CCTV cameras in police stations to improve police conduct and reduce abuse of power. The Punjab Government amended the Police Rules, 1934 ("Police Rules") to mandate keeping of an electronic *roznaamcha* (daily diary) wherein all timelines of police actions, such as receiving information and making searches, seizures, and arrests, etc., are preserved. However, these digitalization efforts were met with challenges when manual and electronic records contradicted one another, with the former records being prioritised over the latter ones.¹¹

⁴ The Control of Narcotic Substances Act 1997, s 20–26.

⁵ The Control of Narcotic Substances (Government Analysts) Rules 2001, rule 5; CNSA (n 3) s 36.

⁶ *Ameer Zeb vs. The State* PLD 2012 SC 380.

⁷ *Ibid.*

⁸ *Zafar Khan and Taj Meer Khan vs. The State* 2022 SCMR 864; *Akhtar Iqbal vs. The State* 2015 SCMR 291.

⁹ PLD 2008 Peshawar 69.

¹⁰ PLD 2016 Lahore 94.

¹¹ *Mst. Asmat Parveen vs. The State and another* PLD 2021 Lahore 105.

Furthermore, body-worn cameras are now being used by the Sindh and Islamabad police to ensure vigilance and reduce crime rates.¹² These cameras are quite popular in multiple other jurisdictions around the world such as the USA, UK, Australia, and China. Thus, the Court's judgement in *Zahid Sarfaraz Gill vs. The State* is a welcome change in Pakistan's investigation and evidence collection framework.

While the Court's observations are welcome, they only go so far in resolving the issue of poor investigation techniques. If the Court's observations are heeded and the laws governing narcotic substances are amended, such amendments must adhere to already established standards. First, these amendments must be in line with the Court's earlier ruling in *Ishtiaq Ahmed Mirza vs. The State*,¹³ which established specific requirements for video evidence to be admissible and credible. Second, whichever electronic medium for inquiry is selected, it must carefully tread the fine line between a valid evidentiary procedure and a breach of the fundamental right to privacy.

In conclusion, the judgment in *Zahid Sarfaraz Gill vs. The State* signifies a progressive shift in Pakistan's legal landscape by advocating for the recording of video and photographic evidence during police searches and seizures. This approach will not only strengthen prosecution's cases but also address long-standing issues of judicial delays and inefficiencies plaguing the criminal justice system. However, the judgment does not sufficiently address concerns regarding potential privacy breaches and data misuse: concerns which are exacerbated by the absence of a robust protection framework. The need for comprehensive legal reforms to safeguard individual rights and ensure justice remains as important as ever.

¹² NNPS Desk, 'Islamabad police to use body cams during checking' (*Associated Press of Pakistan*, 1 September 2023) <<https://www.app.com.pk/national/islamabad-police-to-use-body-cams-during-checking/>> accessed 19 March 2024; Web Desk, 'Karachi police complete training for body camera set up, control room established' (*Times of Karachi*, 12 October 2022) <<https://timesofkarachi.pk/karachi-police-complete-training-for-body-camera-set-up-control-room-established/>> accessed 19 March 2024.

¹³ PLD 2019 SC 675.