

**ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI.**

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Abdul Mobeen Lakho.

Cr. Rev. Application No.129 of 2021

Abdul Ghaffar Applicant.

Vs.

The State Respondents

Date of hearing: 11.01.2022 & 20.01.2022

Date of order :- 20.01.2022

Mr. Haad Abid, advocate for Applicant
Shaikh Javed Mir, advocate for legal heirs of deceased.
Mr. Ali Haider Saleem Addl.P.G

ORDER

MUHAMMAD IQBAL KALHORO J: Applicant is an accused in a Special Case No.02/2021 bearing Crime No.149/2019 U/s 302,324, 427, 34 PPC r/w section 7 ATA, of P.S. Artillery Maidan, Karachi pending before learned Anti-Terrorism Court No.XV, Karachi has filed this application for transfer of the said case from Anti-Terrorism Court to the court of ordinary jurisdiction. Earlier, applicant filed an application u/s 23 of Anti-Terrorism Act, 1997 (ATA, 1997), before the trial court for the same relief has been dismissed vide impugned order dated 22.05.2021.

2. Allegations set out in the FIR are that on the day of incident viz. 22.11.2019 complainant Syed Raza Imam alongwith his friend deceased Nabeel with a cane of beer inside were going in a car to the house of Mr. Baber. At Khayaban-e-Muhahid and Khayban-e-Hafiz, a police party flagged them down and asked them to switch on inner light of the car. But deceased Nabeel sped the car chased by the police party comprising applicant and co-accused HC Aftab Ahmed and C. Muhammad Ali Shah. When they reached PACE Fatima Jinnah Road, Cantt, accused/police fired at them which hit Nabeel driving the car killing him at the spot. Thereafter accused/police party ran away.

3. Learned counsel for the applicant submits that case against the applicant is not of terrorism and does not fall within the provisions of section 6, ATA, 1997 as has been decided by the Honourable Supreme Court in the case of Ghulam Hussain & Others Vs.The State & others reported as **PLD 2020 Hon'ble Supreme Court 61**.

4. On the other hand, learned Addl. P.G and counsel for legal heirs of deceased have opposed application and have submitted that the case falls within the jurisdiction of learned ATC; that applicant and co-accused while chasing the victim passed by jurisdiction of several police stations but did not inform them on wireless about it; that after murdering the victim cold blooded left the scene immediately without providing him medical treatment or taking him to the hospital for first aid etc. which shows that their intention was to commit terrorism. The deceased was Tennis Star and British nationalist, his murder at the hands of applicant has sent ripples of fear to the civil society.

5. We have considered submissions and perused the record. The Honorable Supreme Court has finally set at rest controversy surrounding definition of terrorism in above cited judgment (PLD 2020 Hon'ble Supreme Court 61) and has eloquently elaborated as to what action or threat of an action constitutes terrorism with reference to section 6 of ATA, 1997. It has been explained that effect of offence is no more relevant to decide as to whether or not it falls within definition of terrorism but the intention to commit the crime is now necessary element to characterize an offence as terrorism. In paragraph 10 and 11 thereof has recalled all the precedent cases available on either side of divide defining constituents of terrorism in the background of section 6 of ATA, 1997. And finally after an erudite discussion in paragraph 13, 14 and 15 examining, among others, preamble to ATA, 1997 and jurisdiction of Anti-Terrorism court under section 12 of said Act coupled with definition of scheduled offence in relation to the Third Schedule to said Act has declared in paragraphs 16 of said judgment as under:-

16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as Criminal Appeal No. 95 of 2019, etc. 58 terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.

6. We after taking guidance from the aforesaid decision of the Honourable Supreme Court and perusing facts of the case are of a firm view that the allegations against the police party including the applicant of having committed murder of deceased, which is an offence u/s 302, 324, 34, PPC , did not amount to terrorism, was not an outcome of a design to achieve any of the objectives specified in clause

(b) of subsection (1) of section 6 of ATA, 1997 nor the same appear to be aimed at achieving any of the purposes mentioned in clause (c) of subsection (1) of section 6 of ATA, 1997 to justify invoking jurisdiction of Anti-Terrorism Court. Even the FIR shows that the deceased when asked to switch on the inner light suddenly sped the car fuelling suspicion around. The investigation officer has informed that during interrogation the applicant and co-accused disclosed that due to deceased's speeding away his car, they got suspicious about him and while chasing him tried to stop him by making aerial firing but he did not stop. And that they never intended to kill him and create terrorism.

7. For the foregoing discussion keeping in view the facts of the case and ratio laid down by the Hon'ble Supreme Court in PLD 2020 S C 61 which has been confirmed in the case of Ali Gohar & others Vs. Pervez Ahmed and others (PLD 2020 S C 427) , the application in hand is allowed and the case is withdrawn from the file of learned Anti-Terrorism Court No.XV, Karachi and transferred to learned Sessions Judge (East), Karachi having territorial jurisdiction to either try himself or assign the same to any other court having jurisdiction for disposal according to law.

The criminal Revision Application stands disposed of in above terms.

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