IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Revision Application No.D- **15** of 2023

Present:
Omar Sial and
Jawad Akbar Sarwana, JJ

Applicant	:	**Syed Saqlain Shah Lakyari** through M/s Ghulam Shabeer Shar, Syed Mohib Shah and Sohail Ahmed Khoso, Advocates.
Respondent No.2	:	**Waseem Ahmed** through Syed Jaffar Ali Shah, Advocate.
The State	:	Through Syed Sardar Ali Shah, Additional Prosecutor, General.
Date of Hearing	:	**07th June, 2023**
Date of Decision	:	**14th June, 2023**

O R D E R

Omar Sial, J.: Syed Saqlain has challenged an order dated 16.03.2022 passed by the learned Anti-Terrorism Court, Khairpur. In terms of the said order an application under section 23 of the Anti-Terrorism Act, 1997 filed by the applicant was dismissed.

2. The applicant is an accused in a case arising out of F.I.R. No. 271 of 2020 registered under sections 302, 120-B, 297, 435, 148 and 149 P.P.C. read with section 7 of the ATA, 1997. On 20.11.2020, Waseem Ahmed Wasan lodged the aforementioned F.I.R at P.S. Shaheed Murtaza Miran, District Khairpur, recording that his relative Junaid Bilal, who worked in the police, had extended a loan to a man named Sarfaraz alias Faraz Rajput. When Junaid asked Sarfaraz to return the loan, Sarfaraz would, on one pretext or the other, not return it. On 20.11.2020, the complainant along with 3 of his relatives were going in

a car when they saw Junaid Bilal over-taking them speedily. Junaid had 6 or 7 persons in the car with him. The complainant party chased Junaid's vehicle, which after a stretch of 2 to 3 kilometers stopped. When the passengers from the vehicle disembarked, the complainant party saw 9 armed persons, out of which 6 were identified including the applicant being one of them. In what seems to be a badly worded F.I.R., Junaid Iqbal was also one of the passengers in the same vehicle. The complainant party then saw that the armed men, which also included Sarfaraz and the applicant, chopped up Junaid, and set on fire the vehicle and the dead body.

3. We have heard the learned counsel for the applicant and the learned APG who was assisted by the learned counsel for the complainant. Our observations and findings are as follows herein below:

i. Learned APG and learned counsel for the complainant have both argued solely that the incident was a heinous one; that Junaid Iqbal was a policeman; and, that because of media reporting, fear and insecurity had spread in the public at large. Both, however, candidly conceded that no section 161 Cr.P.C. statement of any neutral person from the public at large was recorded during the investigation to prima facie show the spread of insecurity and fear.

ii. It is clear from the mere reading of the F.I.R. that, even according to the allegation made, at the heart of the incident was a dispute between two persons over money. Junaid loaned Sarfaraz an amount of Rs.5 million and was asking Sarfaraz to return the amount, which Sarfaraz was not returning to him. In fact, the F.I.R records that the very loud pronouncement by Sarfaraz before the chopping began was also that as Junaid had been asking for his money, Sarfaraz would now kill him. The

applicant did not have the design or intent to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies.

iii. It is now well settled after the judgment in **Ghulam Hussain vs The State (PLD 2020 SC 61)** that heinousness of an offence is not the yardstick with which it should be decided whether a person is guilty of an offence of terrorism. Paragraph 16 of the said judgment provides as follows:

> *"16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as 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."

4. In view of the above, the application is allowed. The case arising out of F.I.R. No. 271 of 2020 of police station Shaheed Murtaza Mirani-Khairpur not being a case of terrorism, shall stand transferred to a court of ordinary jurisdiction.

JUDGE

JUDGE