**IN THE HIGH COURT OF SINDH, AT KARACHI**

**Present:**
**Mr. Justice Salahuddin Panhwar; and**
**Mr. Justice Zulfiqar Ahmad Khan**

**Spl. Crl. A.T.A. No.58 of 2017**

Shakeel @ Shahid son of Mumtaz Khan. ... ... Appellant

Versus

The State. ... ... Respondent

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Appellant — Through M/s Muhammad Latifuddin and Mumtaz Ali Khan Deshmukh, Advocates.

Respondent — Through Mr. Abrar Ali Kichi, DPG a/w Ghulam Mustafa Arain, Incharge BDS South and Muhammad Faris, B.D. Technical.

Date of hearing — 17.11.2017

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**JUDGMENT**

**Salahuddin Panhwar, J:** Impugned in this appeal is the judgment dated 30.01.2017, passed by the learned Anti-Terrorism Court No.I, Karachi, convicting the appellant under Section 265-H(2), Cr.P.C. to undergo rigorous imprisonment of fourteen (14) years for an offence punishable under Section 7(ff) of Anti-Terrorism Act, 1997 by extending the benefit of Section 382-B, Cr.P.C.

2. FIR in this case has been lodged on 18.04.2015 at 0215 hours whereas the incident is shown to have taken place on the same day at 0115 hours. Complainant ASI Aqeel Shah has stated that on the fateful day he alongwith his staff was on patrolling duty in official mobile. It was about 0115 hours when reached at Main Road Korangi

No.5½ roundabout, they saw a person going on foot in suspicious manner, who on seeing the police tried to slip away towards 'G' Area, however, the police succeeded in apprehending him and on query he disclosed his name as Shakeel @ Shahid son of Mumtaz Khan. On conducting search, the police recovered one hand grenade from right side pocket of his pant, which he had kept for committing an act of terrorism, hence he was arrested and the recovered grenade was seized on the spot and after completing legal formalities brought at Police Station Zaman Town, Karachi, where a case under Section 4/5 Explosive Act read with Section 7 of Anti-Terrorism Act, 1997 was registered vide FIR No.202 of 2015.

3. Pursuant to the registration of FIRs, the investigation was followed and in due course the challan was submitted before the Court of competent jurisdiction.

4. At trial, the prosecution has examined as many as five witnesses whose testimonies was found consistent and unshaken during cross-examination as such the learned trial Judge awarded conviction and sentence to the appellant, explained herein above, hence this appeal.

5. Heard the learned counsel for the appellants at length. Though they have referred various aspects of the case including clearance report, which is produced at the time of trial as Exh. 5/D, wherein remarks *"Searched visually and with electronic equipment. No Detonating or Explosive Device/Material found",* whereas BDS report reflects that explosive material was found. This point was also raised on the last date of hearing, therefore, experts from BDS office were called.

6. Today Mr. Ghulam Mustafa Arain, Incharge Bomb Disposal (South) is present in Court and submits that they had only one proforma to give clearance to the VVIPs or other suspected places with regard to explosive substance and they use to issue such certificates and that certificate they were also using in the criminal cases but when this issue is pointed out by this Court, they have submitted that they have changed the proforma with regard to clearance of places and VVIPs Protocol. He produced the copies of clearance certificates, which are taken on record. He further contends that he conveyed this irregularity to his SSP and now they have assured that in future this exercise would not be carried out.

7. Learned counsel further contends that appellant is only the male member to earn bread and butter for his family. He is not a previous convict and sentence awarded by the trial court is harsh as maximum sentence has been awarded. The appellant is married having two issues, who are minors, therefore, this is a fit case for reduction of sentence. It is further pointed out that in cross-examination, P.W.3 Muhammad Faris has contended that *"It is correct to suggest that grenade cannot cause any damage without its detonator".*

8. We have considered the grounds raised by the learned counsel for the appellant in view of the reply of Incharge Bomb Disposal Squad (South) as well as able assistance provided by the learned D.P.G. Needless to mention here that concept of punishment can be reformative and learned trial Courts are bound to award sentence after considering all aspects, nature of crime, conduct as well as previous criminal history of an accused. Discretionary powers are given to the trial Court entitling it to provide punishment up to 14

years. The Court can award punishment to any quantum and that is the only reason that such language is inserted on that statute. In the case in hand, we had not seen that such an exercise has been undertaken by the trial Court, therefore, trial Courts shall always in the cases wherein minimum and maximum sentences are awarded justify the quantum of their punishment in the judgments. With regard to clearance certificate and BDS report are concerned, the same are contradictory and it is contended that same is an irregularity and only human error. The plea taken by the Incharge BDS is not worth considering of human error while awarding conviction, the agencies must be careful in future. Additional IGP looking after the issues of Bomb Disposal Squad is hereby directed to ensure that in future such irregularity shall not happen. However, the question of explosive and detonator is not material here and if we ignore that aspect even then its possession, this is not a case of terrorism.

9. It is necessary to mention here that awarding punishment is only meant to have a balance in the society because all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of retribution, deterrence or reformation so as to bring peace which could only be achieved either by keeping evils away (criminals inside jail) or strengthening the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, the punishment whereof is with phrase "**not less than**" while there are other which are with phrase "**may extend upto**" Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in later case which appear to be dealing with those offences, the guilty whereof may be given an opportunity of

"**reformation**" by awarding less punishment which how low-so-ever, may be, will be legal. The concept of reformation should be given much weight because conviction normally does not punish the guilty only but whole of his family/dependents too. A reformed person will not only be a better brick for society but may also be helpful for future by properly raising his dependents. The plea of reduction in sentence however shall not be available to hardened criminals, guilty of serious offences.

10. It is the case of the prosecution that the appellant was arrested in night time alongwith a grenade, but it was without detonator. The prosecution though established recovery but failed to discharge its burden that such recovery was in fact an act of "**terrorism**" for which the object, design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Anti-Terrorism Act, 1997. In this context, reliance can be placed on the case of *Kashif Ali v Judge, ATA Court No.II* (PLD 2016 SC 951, wherein it is held as under:-

> *"12…… In order to determine whether an offence falls within the ambit of Section 6 of the Act, it would be essential to have a glance over the allegations leveled in the FIR, the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said act has to be seen. The term "design" which has given a wider scope to the jurisdiction of the Anti-Terrorism Courts excludes the intent or motive of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this Section is the object, for which the act is designed"*

11. The appellant has been awarded maximum sentence of fourteen (14) years under Section 265-H(2), Cr.P.C. for an offence punishable under Section 7(ff) of Terrorism Act, 1997, however, it was obligatory upon the trial Court to have appreciated the attending

circumstances too while awarding maximum sentence which prima facie is not done. The appellant is the only male family member to earn the livelihood of his family and he is not previously convicted and sentence awarded by the trial Court is harsh as maximum sentence is awarded. The detention of only bread earner shall compel the families to step-out for survival least bread which if result in bringing a slightest spot towards such helpless family shall ruin their lives.

12. Keeping in view, the phrase "**may extend upto**" and the circumstances explained herein above, we find it appropriate to reduce the sentence from fourteen (14) years to already undergone. The appellant shall be released forth with, if not required in any other custody case.

13. Copy of this judgment shall be circulated to all Criminal Courts, Prosecutor General Sindh as well as shall be communicated to I.G.P Sindh for compliance.

14. With the above observations, the appeal stands disposed of.

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JUDGE

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