

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application 186 of 2024
(Rashid Ghazi Vs The State)

Date	Order with signature of Judge
	Before: Mr. Justice Salahuddin Panhwar Mr. Justice Adnan-ul-Karim Memon

Date of hearing: 14.11.2024

Date of Order: 26.11.2024

M/s. Khawaja Shams-ul-Islam and Shahzad Mehmood advocates for the applicant.

Nemo for the complainant in F.I.R No. 178/2018.

Mr. Ali Hyder Saleem Addl. P.G

ORDER

The applicant, Rashid Ghazi, is challenging the trial court's order dated September 19, 2024, related to terrorism Special Cases No. 20 (vii) of 2020, Special Case No. 20-A (vii) of 2020, and Special Case No. 22 (vii) of 2020 arising out of FIR Nos. 178 of 2008 under section 302/34 PPC read with Section 7 ATA 1997 of PS Preedy Karachi, FIR No. 268 of 2020 under section 4/5 Explosive Substance Act 1908, read with section & ATA 1997 and FIR No. 269 of 2020 under section 23 (i)-A Sindh Arms Act 2013 read with Section 7 ATA 1997. The cases mentioned earlier were amalgamated and ordered to be tried together. An excerpt of the order dated 19.09.2024 is reproduced as follows:-

"Heard both sides and perused the record available to me.

It transpired from the perusal of the record and after hearing both sides that these three special cases bear crime. 178/2018, Crime o. 268/2020 and 269/2020 are pending in this court against the accused namely Rashid Ghazi Baloch. Further, as per the record, two special case(s) bearing FIR No. 268/2020 and 269/2020 were already amalgamated for joint trial for the present accused vide order dated 11.03.2021 by this Court. Subsequently, these amalgamated cases(s) and separate cases under section 302/34 Cr.P.C were proceeded accordingly. As per the record, the prosecution has examined total 04 witnesses in both already amalgamated cases and side was closed by the prosecution and now these both amalgamated cases and side was closed by the prosecution and now these both amalgamated case(s) are in the stage of recording the statement of accused u/s 342 Cr.P.C, thereafter, the learned APG submitted the instant application with the prayer that Special Case bearing crime No. 269/2020 u/s 23(i)(A) SAA, 2013 be amalgamated with the main Special Case bearing crime No. 178/2008 u/s 302/34 PPC r/w section 7 ATA 1997 for a joint trial, on the ground that allegedly recovered unlicensed 9 mm pistol of Special Case bearing crime No. 269/2020 u/s 23(i)(A) SAA, 2013 was used in the commission of murder case of crime No. 178/2008 as per FSL report, as such both the case(s) are required to be amalgamated for joint trial as provided u/s 21-M ATA 1997.

Conversely, learned counsel for the accused raised the objection that the instant application has been filed at the belated stage with the malafide intention just to linger on the case(s), otherwise, the same application

would have been filed when both special case(s) bearing FIR No. 268/2020 and FIR No. 269/2020 were amalgamated vide order dated 13.03.2020 for joint trial of the present accused.

It is a fact that the prosecution was required to file the instant application before the framing of the charge, but the same was not filed due to any reason, however, all three case(s) mentioned above, are still pending before this Court, whereas only three witnesses have been examined I the murder case bearing crime No. 178/2008 and now learned APG has moved an instant application with the prayer to amalgamate this murder case with the special case u/s 23(i)(A) SAA, 2013 in FIR No. 269/2020. It is a settled principle of law that the technicalities should not allow to defeat the ends of justice and if any mistake is committed on the part of prosecution pertaining to fig of instant application at an early stage before framing of charge, then this alone fact should not be allowed to harm the case of prosecution which is heinous crime of murder of government/agency officials.

Under the attending circumstances and perusal of the record, it is my humble view that the instant application merits consideration. The provision of sections 17 and 21-M of ATA 1997 confers the power of joint trial to Anti-Terrorism Courts. Accordingly, instant application is allowed and both already amalgamated special case(s) bearing FIR No. 268/2020 and FIR No. 269/2020 are amalgamated with a murder case bearing Special Case crime No. 178/2008, for joint trial, in the interest of justice, through framing the consolidated charge while treating the murder case as leading case, evidence will be recorded I the said case(s). The order passed accordingly."

2. Khawaja Shams-ul-Islam learned counsel for the applicant argues that the prosecution's request to combine the three special cases is a delay tactic, when the subject case was/is fixed for the statement of the applicant/accused under section 342 Cr.PC, however, the request ought to have been made at the beginning of the trial by the prosecution when the other two cases were combined as the challan of FIR No. 178/2008 was submitted on 27.10.2020; however, the trial court granted the prosecution's request to combine three cases as discussed supra for an amalgamation at one trial at the belated stage was/is illegal, after recording the evidence of the prosecution witnesses in all cases. Learned counsel emphasized that law enforcement agencies abducted the applicant in October 2019. His family received ransom calls but could not pay in time, however, after 11 months, he was produced in court on false charges of possessing an explosive substance and jailed, however, the prosecution could not be satisfied and again he was saddled with a third old and in the blind murder case of 2008 (178/2008), which was/is apathy on the part of the prosecution. The learned counsel argues that the trial court's decision to combine the three cases was/is an incorrect decision because of the belated stage as there was no nexus with the third case (178/2008). The application under section 21-M ATA was filed by the prosecution too late after recording the evidence in

the other cases. He also questions the reliability of the forensic report, which was submitted at a later stage. The defense counsel further states that Witness's statement is unreliable due to the long delay (12 years). The pistol allegedly recovered is also questionable due to its delayed testing as the bullet casing was sent for forensic analysis 12 years after the alleged incident took place on 27.03.2008, which is not standard procedure under the law. He added that there is no proof that the bullet casing was sent for testing was/is the same one allegedly recovered from the crime scene; that there are no independent witnesses of the incident; and, that there are no other pending cases against the applicant; that there is no concrete evidence linking him to a terrorist organization as portrayed by the prosecution. He emphasized that the applicant had been booked due to his confessional statement before the investigating officer in police custody. He stated that such confessions should not be acted upon unless corroborated in material particulars by reliable evidence. He added that there is much difference between the statement of prosecution witnesses recorded on 28.3.2008 and 25.9.2020 such a belated statement cannot be relied upon to connect the applicant in a capital punishment case. He further submitted that the applicant had not been provided a fair chance to rebut the case of the prosecution on such an amalgamation of different offenses at one trial. He prayed for allowing the Revision Application by setting aside the impugned order and the decision is to be made separately.

3. Mr. Ali Hyder Saleem Addl. PG has supported the impugned order because the Applicant is affiliated with a terrorist organization. He is involved in the Targeted killing of two intelligence officers of the Intelligence Bureau (IB). The bullet casing was fired from the recovered 9mm pistol from the applicant as per FSL Report. He added that there is an identification parade in the case whereby eyewitnesses identified the applicant to be the same culprit who killed the two innocent officers of the Intelligence Bureau, which piece of evidence supports the prosecution case. He prayed for the dismissal of the Revision Application.

4. We have heard the learned counsel for the parties present in court and have perused the material available on record with their valuable assistance.

5. Applicant faces multiple charges, including a murder case, arising out of FIR No. 178/2018 in Special Case No. 22(vii) of 2020 and an illegal arms and explosive possession case, arising out of FIR No. 268/2020 in Special Case No. 20(vii) of 2020 and FIR No. 269/2020 in Special Case No. 20-A(vii) of 2020. FIR Nos. 268/2020 and 269/2020 were previously merged by the order of the trial court. The prosecution now seeks the merger of crime No. 178/2008 in Special Case No. 22(vii) of 2020 with the remaining two cases, citing the use of the same weapon in both crimes. They rely on Section 21-M of the Anti-Terrorism Act, 1997, to justify the merger of the offenses at one trial. The prosecution's argument for combining the three cases is based on the assertion that the same weapon was used in the two crimes. This is a common legal strategy used to streamline trials and potentially strengthen the prosecution's case. However, the defense side argues that this is a delay tactic and that the prosecution should have sought to combine the cases earlier. They also question the reliability of the forensic evidence linking the weapon to the crimes.

6. The issues for determination in the present proceedings are as follows:

- i) *Whether the prosecution's application was sufficiently persuasive under section 21-M of the Anti-Terrorism Act (ATA), 1997, to warrant the consolidation of three F.I.Rs*
- ii) *Whether the doctrine of merger of offenses in a single trial is applicable in this case to establish a "same transaction" under section 335 of the Code of Criminal Procedure 1898 (Cr.P.C); and*
- iii) *Whether the trial court was justified in holding that the consolidation of three cases would serve the interests of justice.*

7. Sections 17 and 21-M of the Anti-Terrorism Act of 1997 pertain to joint trials and the inclusion of related offenses in a single proceeding. These provisions empower the Anti-Terrorism Court (ATC) to conduct joint trials of multiple offenses if they are interconnected. This includes offenses under the ATA or any other applicable laws, provided the connection between the offenses is established.

8. Before going ahead with the subject amalgamation of the three F.I.Rs, let at the first instance look at the facts of F.I.R No. 268/2020 in Special Case No. 20(vii) of 2020, which shows that on 20.9.2020 a police team led by SI Tariq Shah Zaman received

intelligence about a suspected member of the banned organization Harkatul-Mujahideen, Rashid Ghazi, armed with a hand grenade and a pistol. The team apprehended Rashid at a specified location in Karachi and recovered the hand grenade, a 9mm pistol with 10 rounds, motorcycle (CG-125, black). The recovered items were seized as evidence, and the case has been registered against Rashid. The Bomb Disposal Unit has been notified to defuse the hand grenade.

9. Facts of the F.I.R No.269/2020 in Special Case No. 20-A(vii) of 2020 show that on November 21, 2020, at 9:00 PM, accused Rashid Ghazi, son of Ghulam Qadir Baloch, was arrested by the Sindh Police's Special Investigation Unit (SIU) in Karachi. During the arrest, a 9mm pistol with a loaded magazine containing 10 rounds was recovered from his possession. The arrest took place at the service road under the railway line behind Drig Road Main Shahrah-e-Faisal. The recovered pistol was seized by the arresting officers, ASI Balach Khan and ASI Imran Shah. A case was registered against Rashid Ghazi under Section 23(1)A of the Sindh Arms Act.

10. Facts of F.I.R No. 178/2008 in Special Case No. 22(vii) of 2020 show that on March 27, 2008, at approximately 7:30 PM, Muhammad Ibrahim and Fazal-ur-Rehman were fatally shot near a Suzuki Showroom on Frère Road, Karachi. The victims were identified as Muhammad Ibrahim, an Inspector in the Intelligence Bureau. Fazal-ur-Rehman, ASI. The first information report (FIR) was registered based on the statement of Abdul Rehman, the brother of Muhammad Ibrahim. The FIR alleges that two unidentified individuals on a motorcycle shot and killed the victims, also stealing Fazal-ur-Rehman's licensed pistol. After the usual investigation investigating officer submitted a charge sheet to the ATC Court on 27.10.2020 with the addition of section 397 PPC. The charge was framed on 15.7.2020 and the prosecution examined the witnesses.

11. During the trials of FIR No. 268/2020 in Special Case No. 20(vii) of 2020 and FIR No. 269/2020 in Special Case No. 20-A(vii) of 2020, the prosecution requested the court to merge these cases with FIR No. 178/2008. The prosecution argued that the pistol

recovered in FIR No. 269/2020 was the same weapon used in the 2008 murder case (FIR No. 178/2008). Therefore, combining these cases would streamline the legal proceedings. The applicant objected to the amalgamation request, arguing that this Court had already questioned the reliability of the forensic evidence. Besides, most of the evidence in the three cases has already been recorded.

12. Prima facie, the applicant was arrested in September 2020 in all three cases. As per the police report, the Witness's statement had been recorded after 12 years. Besides the bullet casing was sent for forensic analysis after 12 years of the alleged incident, which factum needs to be threshed out in evidence and it is yet to be ascertained whether the bullet casing purportedly sent for testing was/is the same one that was allegedly recovered from the crime scene and now it for the parties to prove their case beyond the shadow of doubt which is only possible to allow the parties to complete their evidence and even expert witness can be called by the trial court to ascertain the truth.

13. At this juncture, the linking of the Special Case (FIR 178/2008) and 269/2020 with FIRs 268/2020 is inappropriate for the simple reason that Special Case 20 (vii)/2020, originating from FIR 268/2020, under Sections 4 and 5 of the Explosive Substances Act, 1908, involves a separate offense with a different date, time, and location. The offenses are distinct, registered under different sections, and at different police stations. Thus, there is no connection between FIR 178/2008, which was registered under sections 302/34 of the Pakistan Penal Code (PPC); and FIR 268/2020 under Sections 4 and 5 of the Explosive Substances Act, 1908.

14. The law allows joint trials/charges for offenses linked by time, place, or motive. The wisdom behind joinder of charges is to avoid conflicting decisions, minimize witness burden, and save court time by combining related offenses into a single trial. Additionally, the "same transaction" test, requiring continuity, intent, and shared design, is crucial. It is important to note that the court while trying any offense under the law as a special court may also try any other offense which an accused may, under the Cr. PC be charged, at the same trial if the offense is connected with such

other offense. If in the course of any trial under the law of any scheduled offense, it is found that the accused person had committed, in addition, any other offense connected with the scheduled offense, the special court may pass the order for such other offense as authorized by the law or as the case may be such other law. To understand the Anti-Terrorism Act, 1997 (ATA), we first examined its legislative intent as expressed in the preamble, which for convenience sake is referred to here under:-

“ whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offenses and for matters connected therewith and incidental thereto.”

15. The preamble of the ATA, 1997 extends its scope to offenses connected to or incidental to terrorism. The term "incidental" refers to acts and results linked to the main terrorist act, as defined in Section 12(1). Additionally, Section 21-M allows Anti-Terrorism Courts to try other connected offenses alongside scheduled offenses.

16. After analyzing Sections 12(1), 17, and 21-M of the ATA, 1997, we conclude that these provisions must be interpreted together. Though initially separate, cases were registered i.e. FIR No. 269/2020 and FIR No. 178/2008; and, are now linked by the same pistol, establishing a "same transaction" as prima facie, the FSL report confirms the pistol used in the FIR No. 178/2008, was also involved in the F.I.R No. 269/2020. This link prima facie establishes a "same transaction" scenario, justifying a joint trial of both the F.I.Rs., for the reason that if multiple offenses were/are part of the same transaction, factors like motive, timing, and location are considered. In such a scenario, joint trials are allowed for offenses linked by a common motive or design.

17. The terms “offenses” and ‘transaction’ must be clearly understood: offenses refer to individual criminal acts, while a transaction encompasses a series of acts or omissions connected by a shared scheme or intent. The “same transaction” doctrine is interpreted in light of continuity, temporal and spatial proximity, and the existence of a shared purpose or design. Acts committed in close succession and stemming from a common objective typically fall under this category.

18. The provisions of Sections 17 and 21-M of the Anti-Terrorism Act, 1997, reflect those of Sections 235 and 239 of the Criminal Procedure Code, 1898. These provisions confer discretion upon the Court to try offenses jointly where the circumstances align with the criteria outlined therein. However, the Court is not obligated to amalgamate such trials in every case. The discretion vested in the Court must be exercised judiciously, based on sound legal principles and the facts and circumstances of the case. A reference can be made to the precedent set by the Supreme Court of Pakistan in **Noor Ahmed v The State (PLD 1964 SC 120)**, wherein it was observed that:

“ The Provisions of the sections 235 and 239 of the Criminal Procedure Code vest, in our view, a discretion in the Court to try offenses of the kinds, indicated therein jointly in the circumstances therein mentioned, but there is nothing in them to indicate that the Court is bound to try such offenses or persons together in every case. The discretion vested in the Court by these sections is expected like any other discretion vested in a Court of law to be exercised upon sound judicial principles and in the light of facts and circumstances of each case. It is obvious that where such a joint trial is likely to embarrass an accused person or cause some serious hardship to the defence, it goes without saying that the Courts ought not to exercise this discretion.”

19. In light of the aforementioned facts and circumstances, Special Case No. 20(vii) of 2020, arising from FIR No. 268/2020, must be adjudicated independently and tried separately from the cases arising out of FIR Nos. 178/2008 and 269/2020. The applicant, having had a fair chance to cross-examine witnesses, as reported by the trial court, however, the trial court will ensure a fair trial in all respects. An excerpt of the progressive report is reproduced as under:-

“ That the Special Case No. 22(vii)/2020, (Re. State versus Rashid Ghazi S/o Ghulam Qadir Baloch, FIR No. 178/2008, U/s 302/397/34 PPC, P.S Preedy, Karachi is pending in this Court. On 07.11.2020, case was received by way of transfer from Honorable Administrative Judge ATCs @ Anti-Terrorism Court No.1 Karachi. On 15.07.2021, after framing of charge, Case adjourned to 18.08.2021 for Evidence, The Prosecution examined 04 witnesses out of 16 Prosecution witnesses. On 24.07.2023, Learned APG for the state submitted the application u/s 21-M of ATA in the case No. 20/2020 & 20-A/2020 of accused Rashid Ghazi to amalgamate this case (bearing FIR No. 178/2018 of P.S Preedy Karachi) with the cases bearing FIR No. 268 & 269/2020 of P.S SIU Karachi) placed on record. Order passed. “Notice to learned defense counsel”. On 23.01.2024, Mr. Shehzad Mehmood advocate of accused Rashid Ghazi submitted the written objections to the application u/s 21-M ATA 1997 filed by the learned APG for the state in case No. 20/2020 bearing FIR No. 178/2018 of P.S Preedy Karachi. Order on it. “Notice to APG for the state”. Noticed. Learned APG for the state seeking further time and requesting the Court to adjourn the matter to some other date. The case was adjourned to 21.02.2024 for hearing on application u/s 21-M of ATA of 1997 in case No. 20/2020 bearing FIR No. 178/2018 of P.S Preedy Karachi. On 19.09.2024, Arguments heard on application u/s 21-M ATA of 1997 fled by learned APG for the state in Special case(s) bearing FIR No. 268 of 2020 and FIR No. 269 of 2020 to amalgamate this murder case bearing special case No. 22/2020, crime No. 178/2008 for joint trial with already amalgamated special case(s) bearing FIR No. 268 of 2020 and

FIR No. 269 of 2020 are amalgamated. Order passed on it. On 24.10.2024, Mr. Shehzad Mehmood advocate for the accused is present. Mr. Shehzad Mehmood advocate requested the court to adjourn the matter to another date, further verbally stating he has filed the Cr. Misc. application before the Honorable High Court of Sindh, Karachi for to set aside the order passed by this Court on dated 19.09.2024 in respect of application u/s 21-M of ATA of 1997 filed by learned APG for the state. Case was adjourned to 14.11.2024 for framing of amended charge. On 14.11.2024, Mr. Shehzad Mehmood advocate for the accused are present. Mr. Shehzad Mehmood advocate requested the court to adjourn the matter to another date, further verbally stating he had filed the Cr. Misc. application before the Honorable High Court of Sindh Karachi, to set aside the order passed by this Court dated 19.09.2024 in respect of application u/s 21-M of ATA of 1997 filed by learned A/G for the State, which is fixed today for hearing before Honorable High Court of Sindh Karachi. Case was adjourned to 30.11.2024 for framing of amended charge. The case is being delayed on the part of defense counsel for the accused. Now, the case is fixed on 30.11.2024 for framing of amended charge."

20. Upon a thorough examination of the impugned order, as well as the recovery of the bullet casing, FSL Report an identification parade as well as the statement of the eyewitness, it is evident that the learned Trial Court ordered the joinder of trials solely based on its authority under Sections 17 and 21-M of the Anti-Terrorism Act, 1997. However, the order fails to provide any substantive reasoning or justification for trying the offense under Sections 4 and 5 of the Explosive Substances Act, 1908, in conjunction with the murder trial. The record does not indicate any direct or indirect nexus between the two offenses. In the absence of a demonstrable connection between the cases, the joinder of these trials i.e. FIR No. 178/2008 of P.S Preedy and FIR No. 268/2020 of P.S SIU East, Karachi cannot be sustained under the law. Consequently, the impugned order passed by the learned Anti-Terrorism Court to combine all three cases in one trial is legally untenable.

21. In light of the foregoing facts and circumstances, the impugned order is hereby set aside. This revision application is accordingly disposed of with a direction to the learned Trial Court to adjudicate all pending cases within one month. The trial in Special Case No. 20(vii) of 2020, arising out of FIR No. 268/2020 of P.S SIU East, Karachi, under Sections 4 and 5 of the Explosive Substances Act, shall proceed independently. The decision in this case shall be rendered on its own merits, ensuring that all parties are afforded a full opportunity to present their respective arguments under the law.

JUDGE

JUDGE

Shafi