

## IN THE HIGH COURT OF SINDH AT KARACHI

**Present:**

Mr. Justice Omar Sial  
Mr. Justice Muhammad Hassan (Akber)

SPL. CR. ANTI TERRORISM JAIL APPEAL NO. 103 OF 2023

Appellants : 1). Faisal s/o Wali Muhammad and  
2). Muhammad Faisal s/o Saleem Shahzad  
through Mr. Mukesh Kumar Khatri,  
Advocate

Respondent : The State  
through Mr. Ali Haider Saleem,  
Additional Prosecutor General  
Sindh

Date of Hearing : 06.05.2025

Date of Decision : 14.05.2025

### **JUDGMENT**

**Omar Sial, J.:** The appellants were nominated as accused in a case arising out of F.I.R. No. 410 of 2022 registered under sections 353, 324, 427 and 34 P.P.C. read with Section 7 of A.T.A. of 1997 at Police Station Garden, Karachi. Appellant Faisal s/o Wali Muhammad was also charged in F.I.R. No. 411 of 2022 registered under section 23(1)(a) of the Sindh Arms Act, 2013. The case against the appellants is that on 20.12.2022, at Sobraj Chitumal Road towards Mirza Adam Khan Road, near Jhanda Chowk, Dhobi Ghat, Garden, Karachi, a police party on regular patrol signaled two persons who were coming on the road for checking purpose, but instead of stopping, they started firing on

the police party and fled towards Siddique Wahab Road. Police chased them and also retaliated firing in their defence, resultantly the appellant Faisal son of Wali Muhammad received injury and was arrested from the spot, one 30 bore pistol was recovered from his possession and the other accused made his escape good from there. During the course of investigation appellant Muhammad Faisal son of Saleem Shahzad was arrested in another case and after completing all formalities, the appellants were sent up for trial.

2. After a full dress trial, the learned A.T.C. No. 2 at Karachi vide Judgment dated 31.03.2023 convicted both the appellants and sentenced them to suffer (i) five years for offence under section 6(2)(m) punishable under Section 7(H) of ATA, 1997 read with Section 353 P.P.C., and (ii) five years for offence under section 6(2)(n) punishable under Section 7(H) of ATA, 1997 read with Section 324 P.P.C. Appellant Faisal son of Wali Muhammad was also convicted for five years for offence under Section 23(1) A of Sindh Arms Act, 2013.

3. This Court vide order dated 16.10.2023 while admitting the appeal observed that CMA No. 7153/2023 seeking condonation of delay will be heard and decided at the time of final hearing. This is a Jail Appeal which was filed through the Superintendent Central Prison along with application of condonation of delay for more than one month. Learned counsel submits that the appellants being poor persons had no means to engage a counsel to defend them at that time as such the appeal was filed

with delay. In the circumstances, and keeping in view that the liberty of appellants is at stake, CMA No. 7153/2023 is allowed. Consequently, delay in filing of appeal is condoned.

4. The learned counsel for the appellants submitted that the case against the appellants was not one of terrorism and that he would not argue the case on merits; however, he requested that the sentences already undergone by the appellants be treated as their final sentence.

5. We have heard the learned counsel for the appellants and the learned Additional Prosecution General. Our findings and observations after re-appraising the evidence are as follows.

6. **In Ghulam Hussain vs The State (PLD 2020 SC 61)**, the Supreme Court held:

“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.”

7. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. The only reference to insecurity was made by the complainant in his testimony. No witness was produced at trial to prove the alleged insecurity. It is also evident from the very facts of the case that no design or intent was established for the offence to be categorized as a terrorism offence. We have no qualms in concluding that the prosecution failed to justify a section 7 ATA conviction. The same is accordingly set aside.

8. The case against the appellants falling outside the ambit of terrorism would mean they would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellant Faisal had completed 2 years, 8 months and 8 days and appellant Muhammad Faisal had completed 2 years 8 months and one day of the sentences awarded to them. After reviewing the record, the learned Additional Prosecutor General conceded that the sentence already undergone by the appellants would be appropriate punishment. While considering the request made by the appellants, we have also considered that the appellants, remorseful and repentant for what he had done, wish to spend the rest of their life as law-abiding citizens. Their admission has saved the time and money of the State. The jail authorities have reported that their conduct in jail has been satisfactory. We have also considered that the learned Additional Prosecutor General,

on behalf of the State, very correctly and wisely, does not object to a reasonable reduction in sentence.

9. Given the above, the appeal is allowed only to the extent of the conviction with respect to section 7 of the ATA 1997. The convictions and sentences awarded to the appellants for the offenses under the Penal Code and the Sindh Arms Act, 2013 are upheld; however, the sentences awarded to the appellants are reduced to the period they have already undergone. This will also include imprisonment instead of a fine. The appellants may be released if not required in any other custody case.

10. The appeal stands disposed of in the above terms.

JUDGE

JUDGE