IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Muhammad Hasan (Akber)

Spl. Cr. Anti-Terrorism Jail Appeal No. 131 of 2024
[Muhammad Ashraf vs. The State]

Appellant	:	through Mr. Manzoor Hussain Khoso and Ms. Sara Malkani, advocates.
Respondent	:	through M/s. Muhammad Iqbal Awan & Ali Haider Saleem, Additional Prosecutors General, Sindh.
Date of Hearing	:	21.05.2025
Date of Decision	:	04.06.2025

JUDGMENT

Omar Sial, J: A police party led by A.S.I. Arshad Arain was on regular patrol on 20.04.2023 when it received information that one person with explosive was present at Football Ground, Sector-8, Saeedabad. The suspect was apprehended and identified as Mohammad Ashraf (the appellant). One live hand grenade was recovered from him. An F.I.R. No. 216 of 2023 was registered on 21.04.2023 under sections 4 and 5 of the Explosives Act 1908 read with section 7 ATA, 1997 at the Saeedabad police station.

2. After a full-dress trial, on 31.10.2024, the learned Anti-Terrorism Court No. 13 at Karachi convicted and sentenced the appellant to fourteen years for an offence under section 4 (b) of the Explosives Act, 1908. The whole property of the appellant was also forfeited in favour of government. He was further convicted for an offence punishable under section 7 (ff) of ATA, 1997 and sentenced to suffer fourteen years.

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

4. We have heard the learned counsel for the appellant and the learned Additional Prosecutors General. Our findings and observations after re-appraising the evidence are as follows.

5. We notice that although this case is being treated as a terrorism case, no conviction or sentence has been recorded by the learned trial court under any section of the terrorism legislation. The appellant has been sentenced for offence under the Explosive Substances Act, 1908 as well as Anti Terrorism Act, 1997. Perhaps this was an inadvertent error on behalf of the learned trial court. Be that as it may, we notice that even otherwise, based on the evidence produced at trial, a terrorism case was not made out. What constitutes terrorism has been described in much detail 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, <u>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</u>. 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. Needless to say, the judgments of the Supreme Court on points of law are binding on all. In the current case, no evidence was produced at trial to establish that the ingredients of section 6(1)(b) or (c) were satisfied. 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.

7. As mentioned above, the appellant has not been sentenced for a section 6(2)(ee) ATA 1997 but under section 4 of the Explosive Substances Act, 1908. Section 4 of the Act of 1908 comes into play when an explosive is kept to endanger life or property. No evidence was presented at trial to establish the endangering life or property criterion. Section 5 of the Explosive Substances Act, 1908, is the provision of law that would be applicable. Section 5 deals with contingencies when an explosive substance is in possession under suspicious circumstances.

8. The case against the appellant falling outside the ambit of terrorism would mean he would be entitled to section 382-B remissions. A jail roll was called for that showed that the appellant had completed six years, one month, and five days. The learned Additional Prosecutors General agree that looking at the case holistically, they would have no objection if the sentence under section 4 of the Explosive Substances Act, 1908 is converted to a conviction under section 5 of the Act of 1908 and the sentence reduced to the one the appellant has already undergone. This would include the sentence in default in payment of fine. Directions regarding forfeiture of appellant's property are kept intact.

9. Given the above, the appeal is dismissed subject to the modification in sentence as given above. The appellant would

be entitled to Section 382-B Cr.P.C. remissions, and the sentences would run concurrently. The appellant may be released after the jail authorities confirm his sentences are complete and that the appellant is not required in any other custody case.

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

JUDGE

JUDGE