

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

CP No. D – 1562 of 2012

Present:

Mr. Justice Syed Hasan Azher Rizvi
Mr. Justice Salahuddin Panhwar

Order with signature of Judge

For hearing

25.07.2012

Mr. Amir Mansoob Qureshi, Advocate
Mr. Iqbal Rind, APG

SALAHUDDIN PANHWER, J. The petitioner has invoked the extra-ordinary jurisdiction of this Court to seek suspension of sentence in crime No. 279/2011 under sections 324, 353, 452, 395, 436, 149, 148, read with section 7 of ATA 1997 Police Station Kharadar.

1. The relevant facts of the case are that the complainant Zeeshan Israr lodged FIR No. 279 of 2011 are that he lives at Sughra Manzil, Thokar Gali, Juna Market, does the business of cloths when on 08.07.2011 he had gone from his house to Imam Bargah for Namaz; when he received information on telephone at about 02.45 p.m. that 40/45 people armed with weapons had attacked and entered the house and he taken golden ornaments, cash, repeater with license. On hearing of this, he went home and saw that the people were armed with weapons were firing and few of them had entered his house with petrol and lit the house on fire. He phoned the police and rangers there mobiles and APC came, whereupon the accused person also started firing at them. Police retaliated upon which the accused persons started to escape but police had arrested two accused persons from near Gali at about 1530 hours. The police inquiry their names before

complainant who disclosed their names as Rizwan s/o Abdul Ghani and Attaullah s/o Haji Yar Muhammad.

2. Trial was conducted and the accused convicted in the following terms:

“From the above discussion evidence, I answer point No. 3, 4 and 5 as proved. The two accused Rizwan s/o Abdul Ghafoor and accused Attaullah s/o Haji Yar Muhammad are found guilty of offence u/s 6 of subsection (2) (m) and (n) Terrorism act 1997 involving themselves in serious coercion and intimidation the police official from discharging their duties by firing, punishable u/s 7(H) of Anti-Terrorism Act 1997 the punishment of which is not less than five years,. Therefore each of them are sentenced to minimum punishment for 5 years as well as for five years in both their cases of 13-D Arms Ordinance. They are young and do not have criminal record therefore their minimum punishment / sentence are to run concurrently. They are given benefit of section 382-B Cr.P.C.

3. Learned counsel has, inter alia, contended that petitioners were arrested on 08.07.2011 whereas they have been convicted by the trial Court for five years by judgment dated 31st January 2012. The petitioners are behind the bar since one year; the law of Anti-Terrorism Act 1997 provides mandatory provision under section 25(8) that appeal to be decided within seven working days, but to backlog of appeals in the High Court, there is no possibility of conclusion of appeal in near future. The petitioners were convicted for five years. One years has already passed in jail and four years are remained; petitioners are entitled for bail on the ground of short sentence. He has relied upon unreported case of Muhammad

Aamir Khan decided in CP-D 1903 of 2003, 1997 SCMR, 2012 P Cr L J 387, 2011 YLR 403, 2008 YLR 1255.

4. Conversely, Assistant Prosecutor General for state has argued that this Hon'ble Court has no jurisdiction to grant bail in civil petition as under ATA there clear embargo under section 25 subsection (8) provides complete bar during appeal;

5. Heard learned counsel for parties. Perused record.

6. We will dilate upon the issue of maintainability this issue is already decided in case of Muhammad Jehangir v. The State reported in PLD 2003 SC 525 it is observed as under:

(5) Muhammad Jahangir Badar v. the State, PLD 2003 SC 525, wherein the apex Court observed that prosecution should make all efforts to have the case decided within 30 days, inordinate delay could be considered as a ground for bail and apex Court directed the trial Court to conclude trial within 30 days on day to day basis and in case trial is not concluded within given time petitioner to be admitted to bail in the sum of 2 million and PR bond in the amount by the trial Court”.

7. In the case of Allah Din and other v. Special Judge, Anti-Terrorism Court, reported in PLD 2008 LAH 74, it is observed as under;

“Being guided by the view of their lordships find mentioned in above referred cases we hold that in spite of the bar under section 25(8) of the Anti-Terrorism Act 1997 qua the release of a convict on bail during the pending of his appeal, High Court is not deprived of the authority/jurisdiction to grant said relief under extraordinary constitutional jurisdiction in view of Article 199 of the Constitution of Islamic Republic of Pakistan. Accordingly we hold that in exercise of its extraordinary constitutional jurisdiction High Court in exceptional cases can suspend the sentence of a convict during the pending of his appeal when satisfied that it is a case of coram-non-judice or there is inordinate delay in disposal of appeal or the sentence is short and there is no possibility of hearing of appeal in near future and where the convict during the pendency of his appeal before the appellate Bench develops an ailment of the nature that keeping him in detention/confinement may result into his death and that he cannot be provided requisite treatment under detention in the Government and / or other hospitals. We also of the considered view that the said provision of statute i.e.r. subsection (8) of section 25 of the Anti-Terrorism Act 1997 is harsh in nature and contrary to principles of natural justice. Accordingly we recommended for suitable amendment in the legislation.

In view of the dictum laid down in above referred cases,

Judge

Judge