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ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P.No.D-6621 of 2014



Order with signature of Judge

1. For katcha peshi.
2. For hearing of Misc.No.33939/2014

23.12.2014

Ms.Sarah Bilal, Advocate for the Petitioner.  
Mr.Slaman Talibuddin, Additional Attorney General  
Mr.Ashfaque Rafique Janjua, Standing Counsel  
Mr.Mustafa Mehaser, AAG  
Mr.Iqbal Ahmed Soomro, State Counsel.  
Mr.Zafar Ahmed, APG  
Mr.Gul Muhammad Shaikh, Deputy Superintendent  
Central Prion Karachi and Mr.Muhammad Iqbal,  
Assistant Superintendent Central Prison Karachi  
Mr.Abdul Wahab Memon, Additional Secretary, Home  
Department.  
Dr.Junaid Ujjan, Section Officer, Home Department  
Mr.Aamanullah Zardari, Focal Person, Home  
Department.

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The petitioner has filed this petition with the following prayers:-

“(1) It is therefore most respectfully prayed that the writ petition in hand be kindly accepted and that the execution of Shafqat Hussain, the petitioner, be suspended.

(2) It is further prayed that the petitioner be granted a reasonable time to raise his legitimate legal claims with respect to his conviction and death sentence, in accordance with law.

(3) That any other relief which this Hon’ble Court deems fit and proper may also be awarded to the petitioner.”

2. The brief facts of the case are the petitioner was convicted in Crime No.136/2004 lodged under Section 365-A PPC at P.S. New Town, Gulshan Town, Karachi. He was tried by Anti-Terrorism Court No.III at Karachi in Special Case No.45 of 2004 under Section 302, 365-A PPC r/w Section 7 (a) (e) ATA, 1997. The judgment of the trial court shows that the accused was properly represented by the Advocate, however, vide judgment dated 1.9.2004, he was convicted under Section 7 (e) of ATA 1997, read with Section 365-A of PPP and awarded death sentence. He was also convicted under Section 302 (b) PPC for death sentence. The judgment of the trial court was challenged by the petitioner in Special Anti-Terrorism Appeal No.36 of 2004 (Confirmation Case No.15/2004). Learned Division Bench of this court on 15.5.2006 partly allowed the appeal whereby the conviction was maintained under Section 7 (e) of the Anti Terrorism Act, 1997 read with Section 365-A PPC and its sentence awarded to the appellant under the trial court judgment, however, the learned Division Bench set-aside the conviction and sentence awarded to the petitioner under Section 302 (b) PPC but convicted him under Section 319 PPC and sentenced him to suffer R.I. for 5 years and to pay diyat amount. The Confirmation Case No.15/2004 was allowed in respect of punishment awarded under Section 7 (e) of the Anti Terrorism Act read with 365-A PPC.

3. Being aggrieved by the confirmation of death penalty and the judgment of this court in appeal the petitioner approached the hon'ble Supreme Court in Criminal Appeal No.146 of 2007. In paragraph 8 the hon'ble Supreme Court held as under :-





“8. On independent perusal of evidence we subscribe to the opinion framed by the learned Trial Court as well as the High Court, therefore, no interference is called for in the impugned Judgment as such instant appeal is dismissed with no order as to costs.”

4. Thereafter, the same petitioner filed review petition in the hon'ble Supreme Court being CrI.S.M.R.P. No.66/2007 but it was also rejected with the following order :-

“The review of the judgment is being sought mainly on the ground that petitioner was less 16 years of age at the time of occurrence which aspect of the case was not considered in true prospects. The question of age was not raised at any stage and the same cannot be agitated in review. The perusal of record would not suggest any valid ground for review. This petition is accordingly rejected.”

5. After exhausting all remedies and it is also a matter of record that the review was also dismissed in the year 2007, the petitioner has again filed this constitution petition in this court with the ground that the petitioner was juvenile, which plea was not taken in the trial court. She further argued that the petitioner was convicted and sentenced to death on the basis of evidence that has been tutored out of him which was not voluntary. She further argued that the petitioner has already served a length of time on death row that almost the equivalent of life imprisonment with remissions in Pakistan. As such the enforcement of the death penalty in these circumstances would amount to double punishment, which is expressly prohibited under Article 13 of the Constitution.

6. What we understand from the ground<sup>s</sup> raised in the petition as well as arguments of the learned counsel for the petitioner that after exhausting ~~of~~ all remedies including review petition before the hon'ble Supreme Court of Pakistan the question of juvenility has been raised again, which has not been taken up during trial. At this stage we cannot ~~pass~~ pass any order under constitutional jurisdiction<sup>n</sup> to set aside the hierarchy or chain of judgments in this case. Learned counsel argued that this court can intervene as there is no adequate, equal or alternate remedy available under the law. We fully agree<sup>d</sup> that for redressal of the grievance under the constitutional jurisdiction this court can pass order when there is no equally efficacious, adequate or alternate remedy available under the law, but what we have observed in this case that all adequate remedies have already been exhausted by the petitioner and even the question of juvenility has been turned down by the hon'ble Supreme Court, which is clearly reflecting from the order passed in review petition in which the apex court clearly observed that the question was not raised at any stage of the trial and the same cannot be agitated in review petition. Leaned Additional Attorney General as well as AAG have also based their arguments on the similar premise that after <sup>exhausting</sup> ~~obtaining~~ all remedies, this petition is not maintainable.

7. As a result of above discussion, we <sup>have</sup> ~~reached~~ to the conclusion that this petition is not maintainable, which is dismissed in limine.

JUDGE

JUDGE 23/12

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
C.P No.D-6621 of 2014



Date Order with signature of Judge

1. For order Misc No.33937/2014
2. For order on Misc No.33938/2014
3. For Katcha Peshi
4. For order on Misc No.33939/2014

22.12.2014

Ms. Sarah Belal Advocate for the petitioner.

1. Urgency granted.
2. Exemption granted.
- 3-4. It is *inter alia* contended that the petitioner was the juvenile when he was sentenced to death by the learned trial court which <sup>Plea</sup> question was not taken during trial. The learned counsel though admits that the petitioner has exhausted all remedies up to the Honourable Supreme Court as well as review petition filed in the Apex Court but throughout his sentence was maintained. Now through this petition, the learned counsel wants to re-agitate the issue of juvenile. She further submits that according to her information, the government has also requested to trial court for issuance of black warrant for the petitioner.

Issue notice to the respondents, D.A.G and A.G, the Home Secretary is directed to depute a responsible officer who should be well conversant with the case. The Superintendent<sup>2</sup> Central Prison, Karachi will also be in attendance. The notice shall be transmitted to the respondents through fax from

Registrar's office. Adjourned to 23.12.2014. The learned counsel shall also satisfy this court on maintainability of this petition.

JUDGE

JUDGE

Adil Arab

0064  
12/12/14

1. Adil Arab
2. Adil Arab M.C. No. 33989/14

Notice / order issued for 24/12/14  
order issued through fan  
Fan Report filed

