Form No: HCJD/C-121

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT.

Criminal Revision No. 62 of 2021

The State through Advocate General (ICT), Islamabad

Versus

Sifarash Ali and another.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
(08)	06.10.2022	Usama Azeem Ch., learned State Counsel. Raja Muhammad Shafat Khan, Advocate for the respondents / accused. Akhtar Abbas, S.I.

TARIQ MEHMOOD JAHANGIRI, J.-

Through the instant criminal revision filed under Section 435 & 439 of the Cr.P.C, the petitioner has called in question order dated 03.06.2021, passed by learned Special Judge Anti-Terrorism Court-II, Islamabad, whereby application U/S 23 of ATA, 1997, for transferring of case to regular criminal jurisdiction filed by respondents, was allowed and the challan was returned to prosecution for submitting the same before Court of regular criminal jurisdiction.

02. Brief facts of the case are that

Inspector Abdul Sattar Baig, S.H.O P/S Nilore on 22.12.2020, recorded statement of Atar Khan, 6754/C that he along with Afzal Janan 7067/HC and Muhammad Raqeeb 3707/C was on routine patrol upon the orders of SHO concerned on two motorcycles. It was 01:40 p.m. when they were passing through *Lahtrar road Jhamala near Satti Block Factory,* saw known drug peddler Sifarash Ali alias *Kodo* alongwith his brother Aamir in a *Chappar Hotel.* The police officials stopped there, however, the two brothers on seeing them ran towards poultry shed. They were chased and both of them went into the poultry shed which is located in upper storey of an under construction market. Constable Afzal Janan followed them inside the shed on which Sifarish Ali alias *Kodo* fired at him with .30 bore pistol. Constable Afzal Janan after receiving a fire shot in right side of his head got seriously injured and fell on the ground. Accused Aamir with his .12 bore rifle fired straightly on other two police officials, however, they by hiding behind the wall

remained safe. Both the accused decamped from the spot, their act terrorized the local population. On the basis of said application formal crime report was registered and investigation proceeded. The two accused were later on arrested and are now confined in jail. Injured Head Constable later on succumbed to the injuries on 02.01.2021.

03. After completion of investigation, challan was submitted in Anti-Terrorism Court, copies U/S 265-C Cr.P.C were provided to accused and the case was fixed for framing of charge.

04. The respondents / accused filed petition U/S 23 of ATA, 1997, for transfer of case to the Court of regular criminal jurisdiction, learned Court allowed the petition vide impugned order dated 03.06.2021, hence the instant revision petition.

05. Learned State counsel states that the contents of F.I.R and the evidence collected by the prosecution clearly disclose that the

police officials who were performing their duties, were attacked by the respondents / accused; they have committed heinous crime, which created panic, uncertainty and insecurity amongst the public at large, hence F.I.R U/S 7-ATA was rightly registered by the police; the impugned order is erroneous, not tenable under the law and the same is liable to be set-aside.

06. Conversely, learned counsel for the respondents / accused states that the instant revision petition has not been filed by competent person; the respondents / accused had no *mens rea* of doing terrorism at the time of commission of offence; the applicability of Anti-Terrorism Act was not made out; learned trial Court passed impugned order strictly in accordance with law as well as principles laid down by the Hon'ble Supreme Court of Pakistan, hence the instant revision petition is liable to be dismissed.

07. Arguments advanced by learned State Counsel, learned counsel for the

respondents / accused have been heard and record has been perused with their able assistance.

08. The Advocate General, Islamabad is appointed Under President's Order 1 of 2015, who is empowered to give advice to the Provincial Government on such constitutional or legal matters and perform such other functions of a legal character as may be referred or assigned to him by Provincial Government.

09. It is mentioned in Section 22(3) of Legal Practitioners & Bar Councils Act, that:-

> **"*No advocate shall appear or act for any person in any Court or tribunal unless he has been appointed for the purpose by such person by a document in writing signed by such person or his recognized agent or some other person duly authorized by him to make such appointment, and such document has been filed in such Court or tribunal*".**

10. The instant revision petition has been filed with the stamp of the office of Advocate General Islamabad Capital Territory for Islamabad High Court,

Islamabad but the same has not been signed by the Advocate General, it is not clarified that who is the signatory of the revision petition, some initials are affixed and before the initials word "For" is mentioned.

11. According to law, Advocate General cannot authorize any other person for filing petition before any Court of law unless he has been duly given *Wakalatnama* by the person on whose behalf the petition is filed or he is duly appointed as prosecutor or having any authority under the law to file the petition in the Court of law.

12. At the very outset, learned State Counsel has admitted that the instant revision petition has not been filed by the competent person and no one can file the same by singing the petition and mentioning the word "For" Advocate General, ICT, Islamabad.

13. As far as the merits of the very decision of the ATC transferring the case is concerned, to adjudge the legal correctness

of the said transfer order of the ATC, it has to be seen, whether the facts alleged by the complainant in FIR No.277/20, constituted an offence of "terrorism", as envisaged under section 6 of the Act. As to what would constitute an offence triable under the Act was aptly dealt with by a larger bench of the Hon'ble Supreme Court of Pakistan in a case titled as ***Ghulam Hussain Vs. The State (PLD 2020 SC 61)*** wherein, after deliberating exhaustively on the conflicting precedents, it was held that:-

> ***"16. 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."

14. We note from the above, that this Court in Ghulam Hussain's case (supra) has finally clarified the two most often misgivings about the scope and extent of the term "terrorism" under the Act: firstly, it was clarified that no matter how grave, shocking, brutal, gruesome or horrifying the offence, it would not fall within the scope of 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; and secondly, even if an offence falls squarely within the scope specified in subsection (2) of section

6, it would not constitute the offence of "terrorism", if the same was in furtherance of a private dispute or vendetta.

15. In the instant case, the police party chased the accused, who were seen in a hotel and the facts so narrated in no way suggest that there was a pre-planned concert in the mind of accused to commit acts of terrorism. No evidence was collected, in order to establish that accused / respondents were having a design and were waiting for police officials to arrive at the spot, so as to attack them to create panic in the locality. The impugned order has been passed by following the principles laid down by the Hon'ble Supreme Court of Pakistan in the cases titled as ***Ali Gohar and others Vs. Pervaiz Ahmed and others (PLD 2020 Supreme Court 427), Ghulam Hussain and others Vs. The State and others (PLD 2020 Supreme Court 61), Haroon Bin Tariq and others Vs. The State and others (2019 SCMR 2014)*** and ***Muhammad Akram Vs. The***

State (2022 SCMR 18).

16. As the instant revision petition has not been filed by the competent authority and impugned order has been passed by following the dictum laid down by the Hon'ble Supreme Court of Pakistan, therefore no interference is required by this Court in revisional jurisdiction, resultantly, instant revision petition is ***dismissed*** being devoid of any force.

(MOHSIN AKHTAR KAYANI) JUDGE

(TARIQ MEHMOOD JAHANGIRI) JUDGE

Bilal /-

Approved for Reporting.