

CERTIFICATE OF THE COURT IN RECORDING
SPL Gd ATA NO. 44, 45, 56/2014

SINDH HIGH COURT

Composition of Bench.

Single/D.B.

Mr. J. Mohammad Rarum Khan Agha

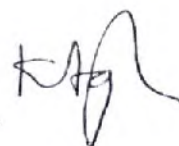
Mr. J. Zulfikar Ali Sangi

Dates of hearing: 14-05-2020

Decided on 14-05-2020

(a) Judgment approved for reporting.

Yes
No



CERTIFICATE

Certified that the judgment */Order is based upon or enunciates a principle of law */decides a question of law which is of first impression/distinguishes/over-rules/ reverses/explains a previous decision.

*Strike out whichever is not applicable.

NOTE:—(i) This slip is only to be used when some action is to be taken.

(ii) If the slip is used, the Reader must attach it to the top of the first page of the judgment.

(iii) Reader must ask the Judge writing the Judgment whether the Judgment is approved for reporting.

(iv) Those directions which are not to be used should be deleted.

674
2

**IN THE HIGH COURT OF SINDH
AT KARACHI**

Special Criminal Appeal NO.D-114/2014.

Muhammad Azeem
S/O Raja Muhammad Saleem,
Muslim, Adult, R/O House No.K-12,
Labour Square,
New Gulshan-e-Rasheedabad,
Karachi, at present
confined in Central Jail
Karachi

Appellant.

VERSUS

The StateRespondent.

F.I.R. No.431/2013
U/S 385-386/324/427/353/34 P.P.C.
R/W Section 7 ATA 1997
P.S. SITE-B Karachi

**APPEAL UNDER SECTION 25 OF
ANTI-TERRORISM ACT. 1997**

Being aggrieved by and dissatisfied with the impugned judgment dated 30.06.2014 passed by the learned Court of Vth Anti-Terrorism Court Karachi in Special Case No.256/2013 the appellant preferred this appeal before this Hon'ble Court on the consideration of following facts and grounds:-

The certified copy of impugned judgment dated 30.06.2013 is attached herewith and marked as Annexure "A".

Contd..... P/2.

615
=

1

**IN THE HIGH COURT OF SINDH
AT KARACHI**

Special Criminal Appeal NO.D-AT 45/2014.

Muhammad Azeem
S/O Raja Muhammad Saleem,
Muslim, Adult, R/O House No.K-12,
Labour Square,
New Gulshan-e-Rasheedabad,
Karachi, at present
confined in Central Jail
Karachi

08-7-14
8/9/2014
2762
Appellant.

VERSUS

The StateRespondent.

F.I.R. No.432/2013
U/S 23 (1) (A) ATA. 1997
P.S. SITE-B Karachi

**APPEAL UNDER SECTION 25 OF
ANTI-TERRORISM ACT. 1997**

Being aggrieved by and dissatisfied with the impugned judgment dated 30.06.2014 passed by the learned Court of Vth Anti-Terrorism Court Karachi in Special Case No.257/2013 the appellant preferred this appeal before this Hon'ble Court on the consideration of following facts and grounds:-

The certified copy of impugned judgment dated 30.06.2013 is attached herewith and marked as Annexure "A".

Contd..... P/2.

676

IN THE HIGH COURT OF SINDH AT KARACHI

AT
Cr. Special Appeal No. **56** of 2014

(1) Syed Raza Shah s/o Syed Gulzar Shah,

(2) Attaur Rehman s/o Fazal-ur-Rehman

3. Fareed alias Agha Jan s/o Jumma Khan Abs.

• All Muslims, adults, residents of Karachi
Presently confined in Central Prison

Karachi... .. Appellants

Versus

The State

Respondent

FIR No.431/2013
U/s 385/386/324/427/353/34 PPC
R/w Sec.7 A.T.A. 1997
P.S. SITE-B, Karachil

CR. SPECIAL APPEAL UNDER SECTION 25
OF THE ANTI-TERRORISM ACT 1997

Being aggrieved by and dis-satisfied with the impugned Judgment of conviction dated: 30th June, 2014 passed by the learned Anti-Terrorism Court No.V, Karachi in Special Case No.256/2013, (titled as: State ...versus ...Muhammad Azeem and others), whereby convicting the appellants (accused Persons) under section 7(h) of A.T.A. 1997 and sentenced them to suffer R.I. for seven years and fine of Rs.25,000/- each and in default of Payment of fine to further undergo S.I. for six months. The benefit of Section 332-B Cr.P.C. was given to the Accused Persons however, two appellants namely Syed Raza Shah and Attaur Rehman were acquitted

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

Spl. Cr. Anti-Terrorism Appeal No.44 of 2014
Spl. Cr. Anti-Terrorism Appeal No.45 of 2014
Spl. Cr. Anti-Terrorism Appeal No.56 of 2014

Date	Order with Signature of Judge
------	-------------------------------

For hearing of main case

14.05.2020.

Mr. Nasarullah Malik, Advocate for appellants Mohammad Azeem, Syed Raza Shah and Attaur Rahman.
Haji Habibullah Ghaffar, Advocate for the Surety.
Mr. Mohammad Iqbal Awan, Deputy Prosecutor General.

Mohammad Karim Khan Agha, J. In Criminal ATA No.56 of 2014 appellant Fareed alias Agha Jan son of Juma Khan vide order dated 26.08.2016 was released on bail pending final decision on his appeal in the sum of Rs.2,00,000/- (Rupees Two Lacs). Vide order dated 03.04.2017 such surety was reduced to the amount of Rs.1,00,000/- (Rupees One Lac). Munir Ahmed stood surety for Fareed alias Agha Jan to ensure his attendance before this Court when his matter was fixed for hearing. However, as soon as appellant Fareed was released from jail on bail he did not attend a single hearing of this Court from 05.10.2017 till date which is a period of nearly two and a half years.

2. On 17.08.2017 due to absence of appellant Fareed notice under Section 514 Cr.P.C. was issued to the surety. On 08.09.2017 BWs were issued in the sum of Rs.1,00,000/- against the appellant Fareed and notice was again ordered to be issued to the surety on 16.10.2017. On 18.09.2017 Munir Ahmed surety of appellant Fareed was present but did not produce the appellant Fareed which was his obligation. On 16.10.2017 NBWs were issued for the arrest of appellant Fareed and notice was given to the surety under Section 514 Cr.P.C. From 23.10.2017 till date the order sheets reveal that NBWs have not been executed against the appellant Fareed who remained absent from the Court till date and that from time to time notices were given to the surety Munir Ahmed

under Section 514 Cr.P.C who neither produced the surety nor gave a satisfactory explanation as to why his surety should not be forfeited.

3. It is absolutely apparent that the appellant Fareed alias Agha Jan son of Juma Khan has absconded and breached the terms of his bail and has no intention of appearing before this Court when his appeal is heard and thus for a continuous period of two and a half years has misused and abused his release on bail.

4. Under these circumstances his bail is withdrawn / cancelled and he is ordered to be arrested by SHO PS SITE-B Karachi who shall arrest the appellant Fareed alias Agha Jan son of Juma Khan and return him to prison custody at Karachi Central Jail to serve out his remaining sentence.

5. A copy of this order shall be sent by facsimile to I.G. Police Sindh and SHO, PS SITE-B Karachi for compliance. SHO, PS SITE-B Karachi shall be in attendance before this Court on the next date of hearing along with his compliance report.

6. The surety has been given countless opportunities to produce the appellant Fareed before this Court as is his obligation and has been served notice under Section 514 Cr.P.C. as to why his surety should not be forfeited. Today learned counsel for the surety submits that surety is a poor man and the court should act with leniency and not forfeit his surety.

7. we have heard learned counsel for the surety and considered the record.

8. When this court grants bail it is given subject to furnishing solvent surety and it is the role of the surety to ensure that the person granted bail is produced before this court on each and every date of hearing. This is a very serious obligation/responsibility to be undertaken by a surety and is not to be taken lightly. In our view to show leniency

would encourage people to act as surety who had no serious or genuine interest in ensuring the person granted bail appeared before the court knowing that there would be no consequences for them if the person on bail absconded. In this respect reliance is placed on **Ghulam Dastagir v State** (PLD 2011 SC 116) which held as under at page 118 para 11 & 12 which are set out below for ease of reference:

*"11. The case-law relied upon by the learned counsel for the petitioner is not applicable on facts of the present case. The present law and order situation prevailing in the country and the deterioration of the moral values in the society in the past 3/4 decades **requires that provisions of section 514, Cr.P.C. should not only be adhered to strictly but in case of non-appearance of the accused, a surety should be held liable for forfeiture of full amount of its bonds for the reason that moral values of our society as were in the sixties are different today.***

*12. Where a Court allows bail to an accused person with the condition that he shall furnish bail bonds in a particular amount through sureties and if such sureties fail to produce the accused when required by the Court, **any leniency shown in case of failure of the surety in production of an accused would tantamount to violating the law and would encourage the non-production of accused who was allowed bail on the basis of bonds furnished by the sureties.***"

9. Based on the particular facts and circumstances of this case we do not consider that there is any room for any leniency to be shown and as such the surety of Munir Ahmed, who has been given countless opportunities to bring the appellant before this Court but has failed to do so, is hereby forfeited.

10. A copy of this order shall also be sent to the Nazir of this Court for compliance who shall submit his compliance report within 03 days of the date of this order.

11. We have just received jail rolls in respect of appellant Syed Raza and Mohammad Azeem which are taken on record. Superintendent, Central Prison, Karachi shall send by facsimile during course of the day the jail roll of Attaur Rahman son of Fazalur Rahman.

12. At the request of learned counsel for the aforesaid appellants this matter shall come up for hearing tomorrow i.e. **15.05.2020 at 08:30 am.** Learned counsel is aware that if he or any appellants on bail fails to attend this Court to submit his arguments this Court may pass appropriate orders.

13. A copy of this order shall be sent to Superintendent, Central Prison, Karachi for compliance.

MAK/PS**