

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Application No. D-08 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J

Mr. Justice Khalid Hussain Shahani, J

Applicant : Shamsuddin @ Shamus s/o Qabool, Bhatti
Through Mr. Ghulam Shabbeer Shar, Advocate

The State : Through Mr. Zulfiqar Ali Jatoi, Addl. PG

Date of hearing : 09.09.2025

Date of order : 09.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— The applicant, Shamsuddin @ Shamus Bhatti, seeks exercise of inherent jurisdiction to challenge the order dated 16.01.2025, passed by the learned Anti-Terrorism Court, Naushahro Feroze, which took cognizance against him and directed his trial in a case bearing crime No.567/2024 for offences under Section 302, 324, 337-H(2), 337-F(iii)148, 149, 506/2, 504 PPC, r/w section 6/7 ATA, 1997 of PS Moro.

2. It is strenuously urged by learned counsel for the applicant that the impugned order is not only illegal and hasty but also offends principle of due process and the right to fair trial enshrined in Article 10-A of the Constitution of Pakistan, 1973. Counsel has stressed that the applicant was denied meaningful opportunity of hearing prior to passing of the impugned order. CDRs from the cellular company established, to the satisfaction of the Investigating Officer, that the applicant was present at a location remote from the scene of the occurrence at the material time; further, contemporaneous documentary evidence recorded by the SHO Police Station Moro on the day of incident confirmed the involvement of a sole accused, explicitly excluding the present applicant. Accordingly, for want of any incriminating material, the applicant's name was rightly placed in column-II of the final report under Section 173 Cr.P.C. Learned counsel submits that the trial court failed to engage with the material thus collected, passing the impugned order with no discussion whatsoever

on the evidence relevant to the applicant's possible involvement, contrary to the requirements of Article 10-A. He prays that the impugned order be set aside, with direction to the trial court to hear the applicant and decide afresh after full appreciation of the record.

3. Learned Additional Prosecutor General for the State, with commendable fairness, concurs that the trial court must be directed to afford an opportunity of being heard to the applicant and to pass a speaking order founded upon the relevant material, particularly the CDR and statements of SHO.

4. Perusal of record reflects, the Investigating Officer's report under Section 173 Cr.P.C. places the applicant's name in column-II, based on scientific and documentary evidence that negates his presence at the locus delicti and excludes his participation, as corroborated by both the CDR and official police statement. The failure of the learned trial court to recognize and discuss such material while passing the impugned order constitutes a breach of the constitutional mandate of fair trial and due process, as embodied in Article 10-A.

5. The Supreme Court has categorically held in *Kashif Ali v. Judge, Anti-Terrorism Court No. II, Lahore* (PLD 2016 SC 951), that the right to fair trial has been raised to a higher pedestal; consequently, a law, or custom or usage having the force of law which is inconsistent with the right to a fair trial would be void by virtue of Article 8 of the Constitution.

6. It is trite law that the *audi alteram partem* rule, i.e. the right to be heard, is foundational to Article 10-A protection; fair trial comprises meaningful notice and opportunity of hearing. It necessitates the requirement of being heard so that the judicial order reflects the contention of every party before the court. To fulfill the requirements of being heard, it is settled that the relevant party must be issued first a notice and then be allowed a hearing. These two (notice and hearing) are basic pre-requisites, which satisfy the test of being heard as well as fair trial and due process within the ambit of Article 10A of the Constitution.

7. Therefore, for the reasons set forth, instant criminal miscellaneous application succeeds. The order dated 16.01.2025, passed by the learned Anti-Terrorism Court, Naushahro Feroze, is set aside to the extent of taking cognizance against the applicant. The matter is remitted with direction to the learned trial court to afford the applicant a meaningful opportunity of being heard and thereafter to pass a speaking and reasoned order afresh strictly in accordance with law and the dictates of Article 10-A of the Constitution, keeping in view the material available on the record.

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