

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Mr. Naimatullah Phulpoto, J
Mr. Zulfiqar Ahmad Khan, J

C.P No.D-6228 of 2017

[Arshad Noor Khan v.
Government of Sindh through Home Secretary and others]

Petitioner : Through Syed Mehmood Alam Rizvi,
Advocate

State : Through Mr. Hakim Ali Shaikh,
Additional Advocate General alongwith
Mehmood Hussain, DSP Security-I

Date of Hearing : 23.01.2018

Date of Announcement : 09.02.2018

JUDGMENT

Zulfiqar Ahmad Khan, J:- Through this constitution petition, the Petitioner who is a retired Judge of Anti-Terrorism Court wishes to have the judgment rendered by the Hon'ble apex Court in the case of Sh. Liaquat Hussain and others v. Federation of Pakistan through Ministry of Law, Justice and Parliamentary Affairs Islamabad and others, reported as PLD 1999 SC 504 implemented, where taking into consideration of the prevailing circumstances, the apex Court safeguarded the security of the ATC judge, alongside Witnesses and Advocates appearing before the Anti-Terrorism Courts. Emphasis was placed on Paragraph No.1(3)(ix) of the said judgment, which is reproduced hereunder:-

“That besides invoking aid of the Armed Forces in terms of sections 4 and 5 of the A.T.A., the assistance of the Armed Forces can be pressed into service by virtue of Article 245 of the Constitution at all stages including the security of the Presiding Officer, Advocates and witnesses appearing in the cases, minus the process of judicial adjudication as to the guilt and quantum of sentence, till the execution of the sentence.”

2. The learned counsel appearing on behalf of the Petitioner submitted that the Petitioner when presided over Anti-Terrorism Court, he awarded death sentences to about 90 hardened, desperate and dangerous criminals. Amongst which so far only 12 criminals have been executed and matters regarding capital punishment of remaining criminals are still pending before superior Courts. It was further pointed out that the Petitioner when held the post of MIT-II of this High Court, an attack on his police escort was made which damaged windscreen of the van, however, the Petitioner remained safe. It was next contended that Respondent No.4 (SSP Security Zone-I, Police Headquarter, Garden, Karachi) while having provided intermittent security provisions to the Petitioner and his family, which were far less than desirable, compelled the Petitioner to file Constitution Petition (C.P No.D-1412 of 2009), where prohibitory orders were passed against the Respondents and eventually the petition was disposed of by directing the Respondents to frame a policy regarding security of judges of Anti-Terrorism Courts within the framework laid down in Sh. Liaquat Hussain (*supra*) case. Being aggrieved of having no policy framework established so far, the Petitioner has filed the instant petition asserting that till the execution of sentences awarded by him to the remaining convicts, he should be provided security in the light of the orders passed by this Court in C.P No.D-1412 of 2009.

3. Parawise comments have been filed on behalf of Respondent Nos. 3 & 4 by the Senior Superintendent of Police, Security-I, Karachi stating therein that extra security personnel for which the Petitioner was not entitled were withdrawn, and as per the security entitlement of Ex-Judges of ATC embodied in the Notification issued by Registrar of Special Court

STA/ATA Government of Sindh dated 26.11.2011 (“the 2011 Notification”) in terms of which Ex-ATC Judges are entitled only to one Gunman and one Guard, these provisions are made to the Petitioner also.

4. Heard the counsel for parties, reviewed the material on record.

5. It is fully understandable that the Judges of Anti-Terrorism Courts have to deal with the most hardened criminals and have to work in the circumstances where exposure to their life is far more than usual. In particular, when the apex Court in Sh. Liaquat Hussain (*supra*) case has created an umbrella for protecting these Courts, nonetheless, despite orders passed by this Court in C.P No.D-1412 of 2009 on 07.09.2009, where need to revisit the Policy as notified by the 2011 Notification was emphasized and an undertaking was given by the Respondents that the said Policy will be amended to provide better security measures, it is disheartening to note that since 2011 that stoneaged Policy has not been revisited.

6. Having candidly admitted by Mr. Hakim Ali Shaikh, Assistant Advocate General that security of police mobile could be provided to the Petitioner on as and when and actual-need basis, we therefore, dispose of the instant petition with direction to the Respondents to immediately revisit the 2011 Policy enacting provisions for making extra security available to Serving as well as Ex-Judges of Anti-Terrorism Courts in the light of the apex Court’s Judgment rendered in the case of Sh. Liaquat Hussain (*supra*) to ensure that no lack of security should cause an impediment in free and fair disposal of cases by Anti-Terrorism Courts.

7. While it is anticipated that a new policy will be in place no later than 60 days from the date of this order, we find it prudent to order Respondents to ensure that a police van alongwith security personnel is made available to Petitioner when specific request is made by him for any specific event/travel through the Registrar of Anti-Terrorism Courts. Provided however, after the travel, police van shall be returned to concerned Police Headquarter immediately. This measure would be beside the provision of one Gunman and one Guard at the residence of the Petitioner as provided under the aforementioned 2011 Notification.

8. In view of above, the instant petition is disposed of in the above terms.

Judge

Judge