

IN THE HIGH COURT OF SINDH, AT KARACHI

PRESENT:-
MR. JUSTICE MUHAMMAD IQBAL KALHORO
MR. JUSTICE SHAMSUDDIN ABBASI.

Criminal Revision Application No.83 of 2018
Criminal Bail Application No.1196 of 2018

Applicant Wali Muhammad Rahimoon son of
Muhammad Ali, through Mr. Muhammad
Ashraf Kazi, Advocate.

Respondent The State & another, through Ali Haider
Saleem, DPG.

Complainant Muhammad Hashim Rahpoto son of Umer
Din, through Mr. Pir Bux Bhurgri, Advocate

Dates of hearing 30.08.2018, 06.09.2018 and 10.10.2018.

Date of order 12.10.2018

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ORDER

SHAMSUDDIN ABBASI, J:- Since both the aforesaid matters pertain to same crime, therefore, we deem it appropriate to decide the same together.

2. By an order dated 24.03.2018, passed in Special Case No.1431 of 2017, the learned Judge of Anti-Terrorism Court No.XII, declined an application moved on behalf of applicant under Section 23 of Anti-Terrorism Act, 1997, for transfer of case to the Court of ordinary jurisdiction. The trial Court also rejected the bail plea of applicant vide order dated 11.08.2018.

3. Facts relevant to the case are that the applicant is facing trial in a case punishable under Sections 365-A, 383, 506-B, 337-A(i), 511, 204 & 34, PPC read with Section 7 of Anti-Terrorism Act, 1997, registered at Police Station Frere, Karachi, vide FIR No.90 of 2017 lodged by complainant Muhammad Hashim Rahpoto, who is serving as electrical inspector in Energy Department, Government of Sindh, Karachi.

4. The allegations against the applicant is that he alongwith his accomplices abducted the complainant from road on the show of weapons, took him to a flat, locked in a room, stripped of his clothes,

attempted to commit unmannered acts and also recorded the video of such acts and forced the complainant to pay Rs.15,00,000/- {Rupees fifteen lac} by stating that he has earned money and made property, and also extended threats that in case of failure they would make the said video viral on social media. During such course they had beaten the complainant by fists and kicks and also used filthy and abusive language and finally released him on his assurance that the amount of Rs.15,00,000/- {Rupees fifteen lac} would be paid by him on next day. The complainant immediately approached to police station and lodged FIR under Sections 365-A, 383, 506-B, 504, 337-A(i), 34 & 511, PPC read with Section 7 of Anti-Terrorism Act, 1997 on 07.06.2017.

5. Pursuant to the registration of FIR, the investigation was followed and in due course the prosecution first submitted interim challan and then final challan, which was accepted by the Administrative Judge, ATC, and the case is now pending trial in the Court of learned Anti-Terrorism Court No.XII, Karachi.

6. An application was moved on behalf of applicant, whereby the jurisdiction of Anti-Terrorism Court was called in question on the ground that ingredients of section 6 of Anti-Terrorism Court Act, 1997, are not attracted in the facts and circumstances of the case as such Anti-Terrorism Court has no jurisdiction to entertain the matter, hence the matter may be returned to the Court of Sessions, having jurisdiction, for disposal according to law, which was declined by the trial Court vide order dated 24.03.2018. The applicant also preferred bail application, which too was declined by an order dated 11.08.2018.

7. Learned counsel for the applicant has argued that the order on application under Section 23 of Anti-Terrorism Act, 1997, is bad in law and facts inasmuch the alleged offence does not fall within the ambit of section 6 of Anti-Terrorism Court Act, 1997. It is further argued that section 365-A, PPC has been wrongly applied only on the whims and wishes of the complainant, who is an influential person and having good relations with the present regime. He further submitted that the applicant is gold medalist from Mehran

Engineering University, Jamshoro. The applicant belongs to a respectable and highly educated family. It is next submitted that parties are previously known to each other, complainant and applicant are classmates and have completed their graduation from Mehran University of Engineering & Technology, Jamshoro, and the complainant has fabricated a false story against the applicant on account of previous rivalry inasmuch as the applicant had made a complaint against complainant to Chairman NAB, Islamabad, for his involvement in corruption and corrupt practices. It is also submitted that the applicant is doing business in the name and style "Electrical Inspector Pakistan (Pvt) Limited", he entered into business with a Chinese firm "SEPCO" and executed a contract agreement to carry on work at Port Qasim Electric Power Station, Karachi, which requires permission from Energy Department, Government of Sindh, and the complainant being electrical inspector was competent to grant such permission and in lieu thereof he demanded Rs.50,00,000/- (Rupees fifty lac), which led the applicant to the filing of a complaint to Chairman NAB against complainant under compelling circumstances and based on such rivalry the complainant has lodged a false FIR against the applicant taking advantage of his influence and position. The learned counsel further submits that complainant was not recovered from the possession of applicant and he himself appeared at police station within an hour of alleged incident and FIR is silent in respect of demand of ransom. The applicant has been arrested on 28.10.2017 and since then he is in custody; that from the facts and surrounding circumstances, the case falls within the jurisdiction of Sessions Court and not of the Anti-Terrorism Court; that the findings of the learned trial Court are not just and proper, hence liable to be reversed. The learned counsel lastly submits that the impugned order may be set-aside and the case may be withdrawn from the Court Anti-Terrorism Court and sent to the Court of Sessions, having jurisdiction, for disposal according to law. While arguing the bail plea of applicant, he submitted that the case of the applicant falls within the ambit of further inquiry inasmuch as the complainant in his further statement has made certain improvements and exhilarated the facts of the case; that statement of driver of complainant, Arbab Ali, was recorded after 15 days of the incident, which has lost its evidentiary value; no specific role has been attributed to the

applicant; there is no demand of Bhatta and at the most the case falls within the meaning of extortion of money, which too has not been proved as not a single penny has been paid by the complainant to the applicant; the provision of section 365-A, PPC, is linked with demand of ransom subject to release of detinue but here in this case the complainant was released within an hour of the incident with the rider that he would pay money to the applicant. He further contended that the offence does not fall within the provision of section 365-A, PPC, and further statement of complainant under Section 162, Cr.P.C. and statements under Section 161, Cr.P.C. of PWs were recorded after 15 days of the incident, which have lost their evidentiary value. In support of his submissions, the learned counsel for applicant has placed reliance on the cases of *Khuda-e-Noor v The State* {PLD 2016 Supreme Court 195}, *Abdul Rehman alias Lalo and another v Mst. Shani Qayyum and another* {2018 P.Cr.L.J. 422}, *Waseem Yousuf and another v The State* {2018 P.Cr.L.J. 324}, *Muhammad Rashid @ Master & another v The State* {SBLR 2016 Sindh 1347}, *Shahid alias Kaloo v The State* {2009 SCMR 558} and *Syed Amanullah Shah v the State & another* {PLD 1996 SC 241}.

8. The counsel for the complainant has contended that the applicant is a habitual offender and remained involved in other criminal cases, he is a man of criminal mind and involved in criminal activities such as blackmailing, harassing and pressurizing the Government officers to get favour in contracts and due to his illegal and unlawful acts he was dismissed from service. He further submits that complainant is a respectable citizen and responsible officer and earned good name and reputation. He also submits that act of applicant is designed as to intimate or overawe a government officer in an indirect manner as well amongst his colleagues, which otherwise spread sense of fear and insecurity, and fell within the ambit of Section 6(2)(m) and other scheduled offences of Anti-Terrorism Act, 1997. He submits that the order passed on application under Section 23 of Anti-Terrorism Court, 1997, is well reasoned, speaking one and according to the relevant provisions of law. As to the bail plea of applicant, he submitted that the applicant is nominated in FIR with specific role of demanding ransom and according to further statement of complainant, it is clear cut case of

kidnapping for ransom falling under Section 365-A, PPC, which comes within the ambit of prohibitory clause of section 497, Cr.P.C. The offence is heinous one, which is directed against the society. It is also submitted that the applicant is habitual offender and involved in various other cases. The applicant has been removed from service as he was holding two Government jobs at a time and drawing salary therefrom. During investigation the police not only recovered torn clothes of complainant from the flat of applicant but vehicle and crime weapon have also been recovered, hence the applicant does not deserve concession of bail. He has placed reliance on the cases of *Kashif Ali v The Judge of Anti-Terrorism Court-II, Lahore*, {PLD 2016 SC 951}, *Shahrukh Jatoi v The State* {2013 MLD 1588}, *Abdul Aziz v Punhal* {2017 MLD 1321} and *Zahoor Ahmed @ Abdul Karim v The State* {2018 P.Cr.L.J. 586}.

9. On the other hand, learned DPG, while supporting both the orders, has adopted the same arguments as advanced by the learned counsel for complainant, he, however, added that the applicant is a habitual offender and involved in various other criminal cases, hence does not deserve concession of bail and also prayed for dismissal of criminal revision application.

10. We have heard the learned counsel for applicant, counsel for the complainant, and the learned Deputy Prosecution General on behalf of the State as well as perused the record available before us with their able assistance.

11. First of all we would like to decide the point of jurisdiction.

12. The question arises as to whether offence under Section 365-A, PPC {kidnapping or abduction for ransom} and offence under Section 383, PPC {extortion} are exclusively triable by a Special Court established under the provisions of Anti-Terrorism Act, 1997 or an ordinary Court. Here it would be advantageous to reproduce sections 365-A and 383, PPC, which read as under:-

“365-A. Kidnapping or abduction for extorting property, valuable security, etc. Whoever kidnaps or abducts any person for the purpose of extorting from the

person kidnapped or abducted, or from any person interested in the person kidnapped or abducted, any property, whether movable or immovable or valuable security, or to compel any person to comply with any other demand, whether in cash or otherwise for obtaining release of the person kidnapped or abducted, shall be punished with (death or) imprisonment for life and shall also be liable to forfeiture of property”.

“383. Extortion. *Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security or anything signed or sealed which may be converted into a valuable security, commits “extortion”.*

Section 2(n) of Anti-Terrorism Act, 1997 provides definition of kidnapping for ransom under Anti-Terrorism Act, 1997, which is reproduced below:-

“2(n). *“kidnapping for ransom” means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from any other person, as a condition of his release”*

Section 6 provides details of offences triable under the provisions of Anti-Terrorism Act, 1997. Here it would be appropriate to reproduce Section 6 (2) (e) and (k), which read as under:-

“6(2)(e). *involves kidnapping for ransom, hostage-taking or hijacking”.*

“6(2)(K). *involves extortion of money (Bhatta) or property”*

Section 7 (e) and (h) of Anti-Terrorism Act, 1997 provide punishment for kidnapping for ransom and an act of terrorism, which are reproduced below:-

“7(e). *the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable, on conviction, with death or imprisonment for life”.*

“7(h). *the act of terrorism falls under clauses (h) to (n) of sub-section (2) of section 6, shall be punishable, on conviction, to imprisonment of not less than {five years} and not more than {but may extend to imprisonment for life} and with fine”.*

Here, it would be more advantageous to reproduce third schedule of Anti-Terrorism Act, 1997 as under:-

“The Third Schedule:

- (1)** *Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of Section 34 of this Act.*
- (2)** *Any other offence punishable under this Act.*
- (3)** *Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.*
- (4)** *Without prejudice to the generality of the above paragraph, the Anti-Terrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:-*
 - (i)** *Abduction or kidnapping for ransom.*
 - (ii)**
 - (iii)**

13. Having gone through the above referred provisions of section 365-A PPC provided in section 2(n), section 6(2)(e)(k), section 7(e)(h) and Schedule of Anti-Terrorism Act, 1997, it is crystal clear that section 365-A, PPC is a scheduled offence and triable by Anti-Terrorism Court, which has exclusive jurisdiction to take cognizance and try the said offences or the offences mentioned under section 6 of Anti-Terrorism Act, 1997.

14. A perusal of the FIR reflects that complainant alongwith his driver was going to Clifton in his car. It was about 8.30 pm when they reached race course signal via Quaid-e-Awam Bridge, the signal was off and meanwhile a white Civic car intercepted them, two persons armed with weapons came out from the said car; they by show of force on the point of weapons abducted the complainant and confined him in a flat, owned by the present applicant, where accused persons maltreated him, torn his clothes, made him naked and recorded his video while committing immoral/unmannered acts and demanded money for his release. During investigation, the investigating officer namely, Inspector Ali Nawaz Soomro, recorded further statement of complainant under Section 162, Cr.P.C. on

24.06.2017, wherein the complainant has supported the version of his FIR and further added that accused persons demanded Rs.15,00,000/- {Rupees fifteen lac} in lieu of his release while accused Sabir committed immoral/unmannered acts with him and accused Aamir Iqbal Rajput recorded video of such acts and thereafter they all repeated such acts with him until and unless he gave them assurance for payment of Rs.15,00,000/- {Rupees fifteen lac} as ransom. The complainant has further added that accused Wali Muhammad Rahimoon {present applicant} and his three other accomplices had threatened him that in case of non-payment of Rs.15,00,000/- {Rupees fifteen lac} as ransom they would make viral his video on social media. He further added in his statement under Section 161 Cr.P.C. recorded by Inspector Muhammad Yameen Gujjar that at the time of registration of FIR he was under stress and did not mention all the facts in the FIR and at the time of incident accused had taken Rs.1,25,000/- {Rupees one lac twenty five thousand} lying in his pocket as ransom. The investigating officer has also recorded the statements of witnesses under Section 161, Cr.P.C. who have fully supported such version of the complainant. Admittedly FIR is not a substantive piece of evidence but it simply discloses information about the occurrence to set the law into the motion for the purpose of investigation. It is a matter of record that the complainant has lodged FIR of the incident within 45 minutes of his release from the captivity of accused persons and there is every likelihood that he could not disclose exhaustively all facts in his FIR which later on he recorded in his further statements. The investigating officers after determination of the contents of further statements of complainant formed their opinions and submitted challan under Section 365-A and 383, PPC and the Hon'ble Administrative Judge, ATA, having gone through the material available on record, accepted the challan and took cognizance under Section 365-A and 383, PPC as both these offences are scheduled offences and triable by Anti-Terrorism Court.

15. We have confined ourselves to the tentative assessment as deeper appreciation at this stage would prejudice the case of either side. Such assessment has led us to the view that the alleged offence falls within the ambit of Anti-Terrorism Act, 1997, and exclusively

triable by a Court of Special Judge, ATA. We, thus, do not feel to interfere with the findings of the learned trial Court while dismissing application under Section 23 of Anti-Terrorism Court Act, 1997. Here we have taken the guidance from an unreported case of *Sikandar Ali Lashari v The State and others*, passed by Hon'ble Supreme Court in Criminal Petition No.822 of 2017, wherein it has been held as under:-

“this Court at this stage cannot give any opinion without deeper appraisal of the evidence. Section 23 of the ATA caters for a situation of this type. The court which has recorded evidence can at any stage transfer the case for trial to a court of competent jurisdiction according to the nature of the case. We thus, do not feel persuaded to interfere with the impugned orders. However, if the trial Court on appraising the evidence comes to the conclusion that it is not a case triable under the ATA, it would be at liberty to send it to the Court of ordinary jurisdiction without being influenced by any of the observations made in the impugned orders. The petitioner would thus be at liberty to move an application in this behalf if in his view the evidence recorded shows that it is not a case triable by Anti-Terrorism Court”.

16. In the light of the dictum laid down by the Hon'ble Supreme Court in the case, referred herein above, we have come to the conclusion that the case falls within the jurisdiction Anti-Terrorism Court and is exclusively triable by such Court under the provisions of Anti-Terrorism Act, 1997. However, keeping in view the facts and circumstances of the case and the dictum laid down by the Hon'ble Supreme Court in the case {supra}, we direct the trial Court to examine the complainant preferably within a period of one month from the date of receipt of this order. Thereafter, the applicant would be at liberty to move a fresh application under Section 23 of Anti-Terrorism Act, 1997, if so desired and in case such an application is filed, it shall be decided on its own merits.

17. Coming to the bail plea of applicant, it has been seen that no specific allegation has been leveled against the applicant with regard to demand of ransom. It is well-settled law that further statement of complainant under Section 162, Cr.P.C., recorded after 15 days of FIR, always opens the door of further inquiry in terms of Section 497(2), Cr.P.C. The applicant was arrested on 27.10.2017 and he is in jail continuously, but till the trial against him has not

been concluded. In the mentioned circumstances, we are of the considered view that a case for bail in favour of applicant has been made out. Therefore, we admit applicant Wali Muhammad Rahimoon on bail subject to furnishing solvent surety in the sum of Rs.300,000/- {Rupees three hundred thousand only} and P.R. Bond in the like amount to the satisfaction of learned trial Court. It is, however, mentioned that the observations made herein above are of tentative assessment and shall have no bearing on the merits of the case.

18. The criminal revision application stands dismissed while criminal bail application is allowed in the foregoing terms.

Naeem

JUDGE

JUDGE