

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Revision Application No.D- 14 of 2023

Present:

Omar Sial and

Jawad Akbar Sarwana, JJ

Applicants : **Hakim Ali & another** through Mr. Irshad Hussain Dharejo, Advocate.

Respondent No.2 : **Shah Bux** through Mr. Allah Warrayo Soomro, Advocate.

The State : Through Mr. Aftab Ahmed Shar, Additional Prosecutor, General.

Date of Hearing : **06th June, 2023**

Date of Decision : **14th June, 2023**

ORDER

Omar Sial, J.: Hakim and Qabool are both nominated accused in crime number 147 of 2020 registered at the Kumb police station under sections 302, 324, 337H(2), 337-A(i), 337-F(i), 337-F(iii), 337-F(v), 337-L(2), 148, 149 P.P.C. read with section 7 of the Anti-Terrorism Act, 1997. The case is being tried by the learned Anti-Terrorism Court, Khairpur. The applicants were of the view that their case did not fall within the ambit of the terrorism legislation. Accordingly, they moved an application under section 23 of the ATA 1997 praying that the case be transferred to an ordinary court. The application was dismissed on 04.12.2021 by the learned trial court. The applicants have now approached this Court with their grievance.

2. The record reflects that the aforementioned F.I.R. was registered on 01.10.2020 on the complaint of one Shah Bux Rajar who reported two incidents of 28.09.2020 and 29.09.2020. Rajar recorded that the applicant Hakim along with others opened direct fire on the

complainant, on account of which Sohrab Rajar and Moharram Rajar sustained injuries and expired. Four other members of Rajar's party also received injuries.

3. We have heard the learned counsel for the applicants as well as the learned APG who was assisted by the learned counsel for the complainant. Both the APG and counsel for the complainant have been unable to satisfy us that this is a case of terrorism. The learned trial judge, in his very order, as indeed is stated in the F.I.R, observed that the incident took place as a consequence of some restrictions that the complainant party had placed on the accused.

4. The requirements for a case to fall within the ambit of terrorism have now been clearly defined by the Honorable Supreme Court in the case of **Ghulam Hussain vs The State (PLD 2020 SC 61)**. The Court observed:

"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.”

5. In the present case, the applicants admittedly did not have the design or intent to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies.

6. For the reasons given above, the case arising out of F.I.R. No. 147 of 2020, not being a terrorism case, shall stand transferred to an ordinary court having jurisdiction.

7. We have also noted from the order impugned that the learned trial court has adjourned the hearing of the case on the ground that a section 23 ATA 1997 application has been filed in the High Court. This effectively means that the trial has not proceeded for this reason since 22.01.2022. This was not correct or fair. Perhaps the learned trial court has erred in this regard. There had been no order from this Court to suspend the proceedings and the mere filing of a section 23 ATA 1997 application would not mean that a trial court suspends proceedings. We felt it necessary to observe the foregoing for the guidance of the learned trial court.

JUDGE

JUDGE