

Order Sheet

**IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR**

Crl: Transfer Appln. No. S – 11 of 2023

Date	Order with Signature of Hon'ble Judge
-------------	--

For hearing of main case

31.03.2023

Mr. Shahid Aziz Kaleri, Advocate for the Applicant/accused
Mr. Imran Mobeen Khan, Assistant Prosecutor General

<><><><>..<><><><>

Through instant Criminal Transfer Application, the applicant seeks withdrawal of Special Cases No.41/2018, 41-A/2018, 41-B/2018, 41-C/2018 and 41-D/2018, New Special Cases No.4/2022, 4-A/2022, 4-B/2022, 4-C/2022 and 4-D/2022 from Anti-Terrorism Court-II, Sukkur to any other Anti-Terrorism Court at Karachi, on the ground that the aforementioned cases were initially pending adjudication before the Anti-Terrorism Court-V, Karachi; however, vide Administrative Order dated 01.04.2022, the same were transferred from the said Court to present Anti-Terrorism Court-II, Sukkur, where the statement of accused persons under Section 342, Cr.P.C could not be recorded for want of case property which is lying in Malkhana of Anti-Terrorism Court Judicial Complex Central Prison, Karachi and the same cannot be produced before trial Court being in huge quantity.

Section 28 of the Anti-Terrorism Act, 1997 provides the provision to transfer of cases, which reads as under;-

28. Transfer of Cases.-(1) Notwithstanding anything contained in this Act, "the Chief Justice of High Court concerned on the application of any party to the proceedings or on the application of the Federal Government or a Provincial Government may, if he considers it expedient so to do in the interest of justice, or where the convenience or safety of the witnesses or the safety of the accused so requires transfer any case from one Anti-Terrorism Court to another Anti-Terrorism Court within or outside the area.

- (2).....
- (3).....
- (4).....
- (5).....

It has been observed by the Honourable Division Bench of this Court in the case of Hafiz Ali Dur vs. Qalandar Bux and others **(2012 Y L Y [Sindh] 309)** that *“Upon a perusal of the Act, it appears that there are two sections with regard to the transfer of cases from one ATC Court to other i.e. section 13(4) and section 28(1). Section 13(4) empowers an Administrative Judge to exercise such powers, while acting suo motu or on the application of any party, at any stage of the proceedings for sufficient cause including as mentioned in subsection (1) of section 28 of the Act. But from a plain reading of subsection (4) of section 13 of the Act, we are clear in our mind that the Administrative Judge can exercise such powers, for that particular area under his administrative jurisdiction but, not beyond that. However from a bare reading of section 28(1) of the Act, it is, crystal clear that the Honourable Chief Justice is competent to exercise such powers throughout the entire province. Even from the language implied in aforesaid section, there is no ambiguity in this regard. By substituting the words "High Court" with a "Chief Justice" the intention of the law makers is crystal clear. Hence we are of the considered view that only the Honourable Chief Justice has the sole power to decide the transfer of cases pertaining to cases pending in any Anti-Terrorism Court of the concerned province.”*

In view of above facts and discussion, office is directed to place this Criminal Transfer Application before the Honourable Chief Justice, High Court of Sindh for appropriate orders.

Judge

ARBROHI