

IN THE HIGH COURT OF SINDH AT KARACHI

BEFORE:

MR.JUSTICE AQEEL AHMED ABBASI, CJ

Crl. Transfer Application No.140 of 2022

Date

Order with signature of Judge

FRESH CASE:

1. For order on office objection as at 'A'.
2. For order on MA No.15022/2022.
3. For hearing of main case.

Dated: 22nd January 2024

Mr. Khaleeq Ahmed, Deputy Attorney General, for Applicant.

Mr. Shabbir Hussain Shigri, Deputy Director (Legal) CTW, FIA alongwith Mr. Bharat Kumar, I.O. / Assistant Director, CTW, FIA, Karachi.

Mr. Muhammad Irfan, Advocate for Respondents No.4 & 9.

Mr. S.M. Nehal Hashmi, Advocate for Respondent No.9.

Mr. Hassaan Sabir, Advocate for Respondents No.10 & 12.

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ORDER

Instant Crl. Transfer Application was filed on 13.12.2022 by the State through Additional Attorney General for Pakistan Sindh at Karachi under Section 28(1A) of the Anti-Terrorism Act, 1997, seeking transfer of a Special Case No.135/2020 emanating from FIR No.02/2020 for the offences under Sections 11-H, 11-I, 11-J, 11-K, 11-N, 21-C(7), 21-I of Anti-Terrorism Act, 1997 read with Sections 4/5/23 of FERA, 2020 from Anti-Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad.

2. The applicant of instant Crl. Transfer Application is the Investigating Officer of the FIR No.02/2020 registered at Police Station CTW, Karachi, namely, Ghulam Abbas s/o Ghulam Haider on behalf of the FIA, wherein, it has been stated that Ministry of Interior,

Government of Pakistan conveyed to FIA that Cabinet Division approval of the Cabinet has been sought and cabinet has approved the following proposals as under: -

“Approval of the cabinet is therefore solicited to transfer the case, subject to concurrence of the Hon’ble Chief Justice, Sindh High Court under Section 28(1)(A) of Anti-Terrorism Act, 1997, as he is competent to decide the issue of jurisdiction. After approval of the cabinet, matter shall be replaced before the Hon’ble Chief Justice, Sindh High Court, Karachi through Law & Justice Division, for appropriate orders.”

3. Thereafter, the brief facts of the case have been narrated, including formation of Joint Investigation Team on 25.03.2020, the registration of an Enquiry No.71/2020 made on 21.04.2020 in Commercial Banking Circle, Karachi on the report of FIA, whereafter, on 22.04.2020 such enquiry was transferred and converted into Enquiry No.13/2020 at FIA, CTW, Karachi for further investigation and pursuant to such enquiry proceedings, on 29.04.2020 an FIR No.02/2020 under sections 11-H, 11-I, 11-J, 11-K, 11-N, 21-C(7) and 21-1 of Anti-Terrorism Act, 1997 read with Sections 4/5/23 of FERA, 2020 was registered against six accused persons on the allegation of affiliation with MQM-London allegedly involved in anti-state and terrorist financing activities at Police Station CTW, FIA Headquarters, Islamabad. After completion of investigation, the Investigating Officer submitted report under section 173, Cr.P.C. before the trial Court, where, out of 14 accused persons nominated in the aforesaid FIR, nine (9) accused persons are presently confined at Central Prison Karachi, four (4) accused persons are on bail, and one accused has been shown as absconder. However, the trial is proceeding before the Anti-Terrorism Court No.XII at Karachi situated at Judicial Complex, Central Prison Karachi. The reasons for transfer of trial from Anti-

Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad, as stated in instant CrI. Transfer Application, are that due to highly sensitive case FIA requested the Ministry of Interior to appoint Senior Law Officer to assist the Anti-Terrorism Court, Karachi, thereupon, the Ministry of Law & Justice Division appointed two different DAGs at different times, who resigned due to life threat, whereafter, the Ministry of Law & Justice Division appointed another AAG for prosecution of the case, however, he also recused to proceed with the case due to security threat. Subsequently, Mr. Shabbir Hussain Shigri, Deputy Director (Law) was appointed as Special Public Prosecutor to avoid delay in trial and since his appointment he is regularly appearing before the Anti-Terrorism Court No.XII at Karachi, however, he has also filed an application before Anti-Terrorism Court for provision of necessary security under section 21 of the Anti-Terrorism Act, 1997. Under the aforesaid circumstances, instant CrI. Transfer Application was filed before this Court on 13.12.2022, however, the case diary shows that the applicant did not take any efforts to pursue the case and still CrI. Transfer Application remains pending since its filing without any useful progress.

4. During the course of pendency of instant CrI. Transfer Application, notices were issued to the respondents, whereas, reports were called from the Superintendent, Central Prison Karachi as well as progress report from the concerned Anti-Terrorism Court, however, nothing adverse with regard to the conduct of the accused persons or any incident of issuing threats either to the witnesses or the Prosecutor has been intimated, nor any such complaint or request in writing has been received to this effect.

5. Conversely, learned counsel appearing for the respondents have vehemently denied the allegations, as alleged in the instant CrI.

Transfer Application and have opposed the transfer of the case from Anti-Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad, as according to learned counsel, no valid grounds whatsoever have been mentioned in the instant Crl. Transfer Application, requiring this Court to exercise its discretion as vested under Section 28 of Anti-Terrorism Act, 1997, nor any material whatsoever has been placed on record, which could possibly support the allegation of security threats at the end of accused persons, either to the witnesses, the prosecutor, or the Hon'ble Judge of the ATC Court No.XII at Karachi. It has been further argued by the learned counsel for the respondents that the entire case is based on surmises, whereas, the accused persons have been falsely involved in the aforesaid crime due to political victimization to the workers of a political party. According to learned counsel for the respondents, the prosecution is causing delay in concluding the trial, whereas, instant Crl. Transfer Application has been filed to cause delay in disposal of the case on merits, wherein, the evidence has been recorded and the matter can be concluded if the prosecution shall pursue the case and conclude recording of evidence of the prosecution witnesses. It has been further contended by the learned counsel for respondents that serious injury and inconvenience will be caused to the accused persons as well as to the witnesses and defense lawyers, if the trial is transferred from Anti-Terrorism Court No.XII at Karachi to Anti-Terrorism Court, Islamabad at this stage of the proceedings, whereas, it will also have huge financial implications as well, keeping in view the long distance, cost of air tickets, boarding and lodging on each date of hearing. Per learned counsel, the prosecution intends to drag the accused persons in a false and frivolous case, whereas, engaging a counsel from Islamabad, just to create a ground of his inconvenience, cannot a valid ground for seeking transfer of the case from the Court

of proper jurisdiction to any other Court, even beyond the territorial limits of the case.

6. On 04.12.2023, when the matter was taken up again in Court, following order was passed: -

“Khuwaja Muhammad Imtiaz, Special Public Prosecutor holding brief for Mr. Shabbir Hussain Shigri, Special Prosecutor for FIA, requests for short adjournment on the ground that the latter could not reach from Lahore on account of his some personal exigency.

Learned counsel appearing on behalf of the respondents have opposed such request and have also raised objection with regard to maintainability of instant CrI. Transfer Application, as according to learned counsel, the matter is at the stage of examination of the witnesses, whereas, maximum punishment in terms of sections, as mentioned in the FIR, is about five years and the accused are behind the bar for the last four years, therefore, any order regarding transfer of case from Anti-Terrorism Court-XII, Karachi to Anti-Terrorism Court, Islamabad will amount to abuse of the process of law and denial of fair trial to the accused persons under the facts and circumstances of the case. This aspect of the matter will be examined on the next date of hearing.

*As an indulgence and last chance, this matter is adjourned to **18.12.2023**, to be taken up **at 11:00 A.M.**, when the aforesaid Special Prosecutor for FIA shall come prepared to assist the Court. No further adjournment on any ground will be granted. In the meanwhile, the learned trial Court shall proceed with the case regularly and may not affect in view of the pendency of instant CrI. Transfer Application before this Court.”*

7. Pursuant to the aforesaid order, matter was fixed in Court on 18.12.2023 and was heard at length, whereas, following order was passed: -

“Heard the learned counsel for the parties at some length, however, Deputy Director (Legal), CTW, FIA, requests for some times to place on record the material, documents, which could justify seeking transfer of case from Anti-Terrorism Court-XII,

Karachi to Anti-Terrorism Court, Islamabad. Let such material may be placed on record through a statement before next date with advance copy to the learned counsel for the respondents.

To come up on 22.01.2024, to be taken up at 11:00 A.M.

8. Today, when the matter is taken up for hearing, it has transpired that inspite of having sought time to place on record the material, documents, which could justify seeking transfer of case from Anti-Terrorism Court-XII, Karachi to Anti-Terrorism Court, Islamabad, Mr.Shabbir Hussain Shigri, Deputy Director (Legal), CTW, FIA and the learned Deputy Attorney General did not place any material, nor could even cite or refer to any single incident of alleged security threat by the accused persons either to the witnesses, the Prosecutor of the case, or the learned Judge of Anti-Terrorism Court-XII at Karachi. Whereas, it has also transpired that the case has not been concluded before the Anti-Terrorism Court No.XII at Karachi, as the prosecution failed to examine the prosecution witnesses, and the adjournments are sought in view of the pendency of instant Crl. Transfer Application before this Court.

9. It is settled principle of law that jurisdiction of a Court has to be jealously safeguarded and cannot be ousted, or transfer of a case from the competent Court of jurisdiction cannot be sought on flimsy grounds at the pleasure or sweet will either of the accused or of the Prosecutor to the disadvantages and inconvenience of either party. It will be advantageous to reproduce the provision of Section 28 of the Anti-Terrorism Act, 1997, relating to transfer of case, which reads as follows: -

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.

[(1A) Where it appears to the Government that it would be in the interest of justice or expedient for protection and safety of judges, witnesses or prosecutors, it may apply to the Chief Justice of the High court concerned for transfer of a case from an Anti-terrorism Court falling within its jurisdiction to an Anti-terrorism Court in any other place in Pakistan and for this purpose shall also seek concurrence of the Chief Justice of the High Court concerned.]

(2) [An Anti-terrorism Court] to which a case is transferred under sub-section (1) shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall and re-hear any witness who has given evidence and may act on the evidence already recorded [:]

[Provided that nothing herein contained shall affect the power of the presiding officer of the Anti-terrorism Court to call any witness as is available under the law.]

[(3) The Federal Government may in the interests of justice and for protection and safety of witnesses and investigators, transfer the investigation of any case from one place to any other place in Pakistan.]

[(4) The investigating officer or the agency to which case is transferred under sub-section (3), may proceed from the stage the inquiry or investigation was left or may proceed with the case as if it had been originally entrusted to him or the agency, as the case may be.

(5) On completion of investigation and before submission of report under section 173 of the Code, the Federal Government may direct that the case falling in the jurisdiction of a particular Anti-terrorism court may be forwarded for trial to another Anti-terrorism court anywhere in Pakistan, as may be specified by the Federal Government in this behalf, in the public interests or for the safety and protection of judges, public prosecutors or witnesses.]”

10. From perusal of hereinabove provision, it is clear that unless any party seeking transfer of the case from one Anti-Terrorism Court to another can make out a case to establish that it is expedient and in the interest of justice, or where the convenience or safety of the witnesses or the safety of the accused so requires, transfer of any case from one Anti-Terrorism Court to another cannot be allowed. Similarly, if such request is made by the Government, **unless it is established that such transfer would be in the interest of justice or expedient for protection and safety of the Judges, witnesses or the Prosecutors.** Such request cannot be acceded by the concerned Chief Justice of the High Court concerned. It is regretted to observe that in the instant case, none of the aforesaid eventuality is attracted, as no material whatsoever has been placed on record to justify the allegation of any security threat, harassment or inconvenience to the accused, witnesses or the Judge of the Anti-Terrorism Court-XII at Karachi, whereas, the transfer is being sought on mere allegation of security threat to the Prosecutor(s) appointed by the Ministry of Law & Justice Division, Islamabad through Ministry of Interior, however, without any material to support such allegations. It appears that the appointment of Prosecutor(s) based at Islamabad perhaps resulted in inconvenience to such Prosecutor(s), who were required to travel to Karachi on each date of hearings during pendency of the case before the Anti-Terrorism Court No.XII at Karachi.

11. In view of hereinabove facts and circumstances of the case, having none of the ingredients of Section 28 of Anti-Terrorism Act, 1997 attracted as per record of the case, instant Crl. Transfer Application, besides being misconceived, appears to have been filed to delay the conclusion of trial, whereas, transferring the case at this

stage will cause serious injury and inconvenience to the accused persons and the witnesses on the one hand, but will also involve serious financial implications, if all the accused persons, their lawyers and the witnesses will appear before the Anti-Terrorism Court at Islamabad, till finalization of the case, which would amount to denying the fair trial and justice to the accused persons. Accordingly, I do not find any merits in the instant Crl. Transfer Application, which is hereby dismissed alongwith listed application.

CHIEF JUSTICE

Farhan/PS
