

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.D-103 of 2007

Cr. Rev. Appln. No.D-71 of 2008

DATE **ORDER WITH SIGNATURE OF JUDGE(S)**

26.01.2022.

Mr. Mir Shakir Ali Talpur, Advocate for appellants in Criminal Jail Appeal No.D-103 of 2007.

Mr. Aijaz Shaikh, Advocate for applicants in Criminal Revision Application No.D-71 of 2008.

Mr. Shawak Rathore, Deputy Prosecutor General.

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Mr. Aijaz Shaikh, learned Advocate for the applicant / complainant pointed out that reasons assigned by the trial Court vide judgment dated 10.04.2007 for lesser punishment are infact not mitigating circumstances and judgment passed by the trial Court is also not supported by the case law. It is submitted that this is a fit case for enhancement of the sentence against the respondents/accused.

We have perused the impugned judgment. In para-43 of the judgment, the trial court has held as under:-

“43. Since all accused with their common intention entered into the house of deceased persons and committed their murder, therefore, I hold all the accused equally responsible for committing the murder of deceased persons and they are entitled for capital punishment of death, but all the accused persons belong to one family as four are brothers interse and one accused Abdul Ghafoor is their father and they have faced agony of long trial as matter pertains to the year 1999 and now we are in 2007. Hence I by taking lenient view hereby convict accused Muhammad Bukhsh, Dhani Bukhsh, Rasool Bukhsh, Nabi Bukhsh and Abdul Ghafoor for committing murder of deceased Nazar Muhammad, for life imprisonment U/s. 302 PPC with fine of Rs.50,000/- (Rupees Fifty Thousand only) each, in default thereof to suffer further R.I for six(6) months. If fine is realized, is directed to be given to the legal heirs of deceased Nazar Muhammad. The benefit of section 382-B Cr.P.C is also awarded to the all accused.”

It appears that trial Court has found all the accused equally responsible for committing murders of three persons and trial Court has already held that they are entitled for capital punishment of death but awarded lesser punishment only on the ground that they belong to one and same family. Mr.

Aijaz Shaikh, Advocate further submits that three deceased also belonged to the same family. Apparently, the reasons assigned by the trial Court for awarding lesser punishment are not mitigating circumstances. Therefore, after hearing learned Counsel for the appellants/respondents and learned Advocate for the complainant, it is ordered that appellants / respondents be issued show-cause notice to explain as to why the sentence of imprisonment of life awarded to them by the trial Court may not be enhanced to sentence of death. Show-cause notice upon appellants / respondents be served through concerned SHO. In case convicts are in jail, concerned Jail Superintendent shall serve show-cause notice upon them and send copy to this Court.

To be fixed after four weeks.

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ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Bail Application No.D-03 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-654/2020

2. For hearing of main case.

26.01.2022.

Mr. Muhammad Asif Zai, Advocate for applicants.

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1. Urgency is granted.

2. Applicants / accused Khuda Bux, Abbas Ali and Aijaz Ali are present alongwith their Counsel and seek protective bail in Direct Complaint No.01 of 2022 for offences under Sections 386, 387, 506(ii), 147, 148, 149 read with Section 6/7 of Anti-Terrorism Act, 1997. It is stated that presently the case is pending before learned Judge, Anti-Terrorism Court, Mirpurkhas and NBWs have been issued against the applicants/accused. It is contended that applicants / accused are prepared to surrender before the trial Court but apprehend their arrest as NBWs have been issued against them. Serious *mala fides* on the part of complainant and police have been alleged.

Without touching the merits of the case, applicants/accused are granted protective bail for a period of 05(five) days in Direct Complaint No.01 of 2022, subject to their furnishing solvent surety in the sum of Rs.30,000/- (Rupees Thirty Thousand) each and P.R. Bonds in the like amount to the satisfaction of Additional Registrar of this Court. Applicants / accused are directed to surrender before the trial Court within the aforesaid period. In the meanwhile, operation of the NBWs issued against the applicants shall stand suspended.

This order shall cease to have its effect on expiry of 05(five) days from today i.e. upto 30.01.2022 or whenever the applicants / accused surrender themselves before the trial Court. It is made clear that in case the applicants / accused failed to surrender before the concerned Court within stipulated period, their bail bonds shall stand automatically forfeited. Before parting with this order, it is observed that question regarding jurisdiction of the Anti-Terrorism Court in this matter is involved. Learned Judge, Anti-Terrorism Court is directed to first determine the jurisdiction of Anti-Terrorism Court under the provisions of Anti-Terrorism Act, 1997 and then to proceed further and send copy of the order to this Court.

Bail application stands disposed of in above terms.

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