ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CR. A.T. JAIL APEAL NO.182/2023

Date	Order with signature of Judge

BEFORE: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE ADNAN-UL-KARIM MEMON

1. For order on MA No.12794/2023
2. For hearing of main case.

04.12.2024

Mr. Shahiryar Ali advocates for appellant.
Mr. Abrar Ali Khichi, APG.

O R D E R

Salahuddin Panhwar, J: Appellant Yaseen has challenged impugned consolidated judgment dated 26.08.2023 passed in SC No.140/2023 *(arising out of FIR No.94/2023, under section 324, 353, 411, 186, 34 PPC, read with section 7, ATA 1997, Police Station Zaman Town)* whereby appellant was convicted and sentenced u/s 324 read with section 34 PPC to suffer R.I. for ten years and fine of Rs.50,000/- and in default of payment to further suffer R.I. for six months, u/s 353 read with 34 PPC to suffer R.I. for two years, u/s 7(h) of ATA 1997 to suffer R.I. for ten years and fine of Rs.50,000/- and in default of payment to further suffer R.I. for six months, with direction that sentences shall run concurrently and with benefit of section 382-B Cr.P.C.

2. Precisely, relevant facts are that while patrolling, the police party saw two suspected persons on a motorcycle standing at a mentioned place, they on seeing the police, tried to fled away; police tried to stop them but they started direct firing upon police to deter them from performing their duty and with intention to kill the police party; in retaliation police also made firing in defence resultantly one of the accused siting on rear seat of motorcycle received firearm injury and fell down while his accomplice escaped; injured accused was apprehended who on enquiry disclosed his name as Noor Ali and name of escapee as Yaseen (present appellant); due to non-availability of private mushirs HS Shahanshah Hussain and PC Muhammad Asif were made mushirs, search conducted and a 30-

bore pistol in black colour and silver barrel with rubbed number alongwith magazine containing three live bullets were recovered, accused could not produce any licence of the pistol, after necessary proceedings FIR was registered against accused persons; later on accused Yaseen was arrested. After full dressed trial, trial court found the appellant guilty as aforesaid.

3. At the outset learned counsel for the appellant contends that there is violation of section 103 CrPC; that there are major contradictions in evidence of witnesses, therefore, the impugned judgment is not maintainable.

4. In contra, learned APG contends that witnesses were examined and offence was duly proved in present case hence appeal is liable to be dismissed.

5. At this juncture, learned counsel for the appellant contends that appellant is a young boy and has served for more than eight months including remission, he is sole bread earner for his family. Learned counsel for the appellant agreed for reduction of sentence to the one already undergone in view of case reported in 2018 P.Cr.L.J. 959 (Suneil vs. the State). Learned APG extends his no objection regarding reduction of sentence.

6. ***Quantum of punishment*** is an independent aspect of Criminal Administration of Justice which, *too,* requires to be done keeping the concept of ***punishment*** in view.

7. At this juncture, it would be conducive to refer paragraphs 6 and 7 of aforesaid judgment, which are that:-

> "6. As per prosecution case, the Appellant was arrested in the night time with the allegation that he was possessing pistol and riffle grenade but it was never proved by prosecution that such allegedly recovered *articles* were either used prior to alleged date of offence nor it is established that Appellant was intending to use the same at subsequent date. In short, the prosecution *though* established recovery but never established that such recovery was *in fact* an act of *'terrorism'* for which the object design or purpose behind the said act (offence) is also to be established so as to justify a conviction

under Section 7 of the Act. Reliance can safely be placed on the case of *Kashif Ali v. Judge, ATA Court No.II* PLD *2016 SC 951* wherein it is held as:-

> "12. ... In order to determine whether an offence falls within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations leveled in the FIR the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design of purpose behind the said act has to be seen. The term "design", which has given a wider scope to the jurisdiction of the Anti-terrorism Courts excludes the intent or motives of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this section is the object for which the act is designed."

Let us, be *specific* a little further. The Appellant has been convicted under Section 5 of Explosive Substances Act so also under 7 subsection (1)(ff) of Anti-Terrorism Act, 1997 i.e. second part of section 6(2)(ee) which reads as:

> "6(2)(ee) involves use of explosives by any device including bomb blast (...)"

If one is convicted for one offence i.e. 'merely possessing explosive' twice i.e. one under Explosive Substances Act and under the Arms Act, it shall seriously prejudice the guarantee, provided by Article 13 of the Constitution, therefore, it would always be obligatory upon prosecution by *first* establish 'object' thereby bringing an act of 'possessing explosive' to be one within meaning of second part of section 6(2)(ee) of the Act as held in the case of *Kashif Ali* supra in absence whereof the punishment under Section 7(1)(ff) would not be legally justified particularly when accused is convicted independently for such act (offence) under Explosive Substance Act. In such circumstances, the conviction awarded against the Appellant under Section 7(i)(f) is hereby set aside.

7. The Appellant has been convicted for fourteen (14) years for offences, punishable under Section 5 of Explosive Substances Act, 1908 which itself provides as **'be punishable with imprisonment for a term which may extend to (fourteen years)**, therefore, it was *obligatory* upon the trial Court to have appreciated the attending circumstances too while awarding maximum sentence which *prima facie* is not done. The Appellant has pleaded himself to be first offender which the *prosecution* did not dispute; and also claimed to be the *only* bread earner of family, which includes five sisters. The *detention* of only bread earner shall compel the *females* to step-out for survival least bread which it

result in bringing a *slightest* spot towards such *helpless* ladies shall ruin their lives."

8. Since, the offences wherein the appellant has been convicted fall within category of offences ***'may extend upto'*** ; the appellant claims himself to be sole bread earner; appellant is of young age; these are circumstances which justify reduction in sentence.

9. In view of above, it would be in the interest of justice to reduce the sentence awarded to appellant to already undergone. Accordingly, conviction is maintained but sentence is reduced to one already undergone by the appellant including fine. Appellant shall be released forthwith if not required in any other custody case.

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