

**ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

Criminal Appeal No.67693/2022

Ghulam Abbas vs GOP, etc.

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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13.07.2023. Mr. Ahmad Masood Gujjar, Advocate.

Mr. Falak Sher Bakhsh Gill, AAG with Irshad Ahmad,
Section Officer, Home Department and Zafar SHO.

The appellant has filed the instant criminal appeal mainly against the order dated 18.10.2021, whereby his name was entered in the 4th schedule of Anti-terrorism Act, 1997 (ATA, 1997) and the order dated 20.09.2022, by which his review petition against the above order has been rejected.

2. We have heard the arguments of learned counsel for the parties and examined the record.

3. Learned counsel submits that appellant's case does not qualify to be treated under section 11-EE ATA, 1997 for his proscription because no such material is available against him. For ready reference relevant part of section 11-EE ATA, 1997 is reproduced as under:-

“11EE. Proscription of Person. (1) The Federal Government may, by order published in the official Gazette, list a person as a proscribed person in the fourth Schedule on an ex-parte basis, if there are reasonable grounds to believe that such person is—

(a) concerned in terrorism;

(aa) listed under the United Nations (Security Council) Act, 1948 (XIV of 1948)

(b) an activist, office bearer on an associate of an organization kept under observation under section 11D or proscribed under section 11B; and

(c) in any way concerned or suspected to be concerned with such organization or affiliated with any group or organization suspected to be involved in terrorism or sectarianism or acting on behalf of, or at the direction of, any person or organization proscribed under this Act.

Recitation of above section stands in confirmity to the stance raised by the learned counsel for the appellant, therefore, we are persuaded to examine the material and criteria in place for proscription of nay person.

4. The criteria or prerequisites for listing a person as a proscribed in the fourth schedule of ATA, 1997 are almost settled by the courts i.e. the State must demonstrate that the person sought to be notified as such, was involved in cases under Sections 6 and 7 of the ATA, 1997 or was an office-bearer, activist or associate with an organization notified in terms of Section 11-B for proscription of organization by Federal Government or was member of such organization which was under observation in terms of Section 11-D of ATA, 1997 or was involved in terrorism or sectarianism. Further, in order to arrive at a conclusion on above aspects, the information may be gathered from any credible source whether domestic or foreign including governmental and regulatory authorities, the law enforcement agencies, financial intelligence units, banks and non-banking companies and even international institutions. The cases reported as "FARRUKH IMTIAZ KHOKHAR versus GOVERNMENT OF PAKISTAN through Secretary Ministry of Interior, Islamabad and 2 others" (2021 MLD 40) and "MUHAMMAD ILYAS GHUMAN versus GOVERNMENT OF PUNJAB through Secretary Home Department Lahore and others" (PLD 2020 Lahore 378) are referred. But the foremost condition would always remain that above conclusion would be drawn on the basis of concrete/cogent material/grounds and justifiable reasons to establish that such person was an activist, office bearer or an associate of proscribed organization or an organization suspected to be involved in terrorism or sectarianism. "ZULFIQAR ALI GOHAR ALVI versus GOVERNMENT OF THE PUNJAB through Home Secretary, Lahore and 11 others" (2017 YLR Note 264). There must be some reasonable grounds before enlisting a person in 4th schedule and of course reasonable grounds stand apart from reasonable suspicion. This court has explained the statutory safeguards in this respect in a case reported

as “*Qari MUHAMMAD ARIF Versus SECRETARY HOME DEPARTMENT and others*” (**PLD 2021 Lahore 499**).

5. We are mindful of the consequences of enlisting a person in 4th schedule, which are enumerated through section 11-O of ATA, 1997, like as follow: -

- (a) the money or other property owned or controlled, wholly or partly, directly or indirectly, by a proscribed organization or proscribed person shall be frozen or seized, as the case may be;
- (b) the money or other property derived or generated from any property referred in clause (a) shall be frozen or seized, as the case may be;
- (c) no person shall use, transfer, convert, dispose of or remove such money or other property with effect from proscription; and
- (d) within forty-eight hours of any freeze or seizure, the person carrying out the freeze or seizure shall submit a report containing details of the property and the persons affected by the freeze or seizure to such office of the Federal Government as may be notified in the official Gazette.

The property so frozen or seized shall remain as such until a proscription is cancelled as per section 11-U of Anti-Terrorism Act, 1997.

6. Sanctions so reflected above apparently are against the fundamental rights but of course, as per command of the Constitution of Islamic Republic of Pakistan, 1973, fundamental rights are regulated subject to statutory law, therefore, when fundamental right is being abridged through statutory law, utmost care and caution should be exercised to evaluate the information/material against the delinquents. It must not be an exercise in vacuum or routinely venture based on whims, wishes or conjectures of the authority to move blindly and run over the guaranteed fundamental rights. It is in common experience that after imposition of such sanctions, person becomes handicapped to run his life honourably and smoothly; for subsistence and spending his life, he becomes dependent upon the discretion of the Federal Government, and he is to take refuge in this respect under section 11-OO of the Act, ibid. For ready reference the said section is reproduced here under: -

“Access to services, money or other property. (1) *The Federal Government may permit a person to make available to a proscribed*

organization or proscribed person such services, money or other property as may be prescribed, including such money as may be required for meeting necessary medical and educational expenses and for subsistence allowance, and such person shall not be liable for any offence under this Act on account of provision of the prescribed services, money or other property.”

In addition to above, the person enlisted in 4th schedule is required to execute a bond for certain restriction upon his freedom of movement, right to reside at a particular place, deprivation from entertainment and amusement, curtailment of liberty including check and probe on their assets or assets of his family members including parents, being under constant monitoring or surveillance; so much so he can be arrested and detained u/s 11-EEE of ATA, 1997 as and when the government desires. In short, he is clutched so hard to live a peaceful life. Therefore, a strict criteria or stringent approach be adopted before enlisting a person in the 4th schedule, and the material collected against him should be appreciated keeping in view the above consequences.

7. Section 11-EE of ATA, 1997 though enumerates different situations attracting liability for the persons to be enlisted in 4th schedule but use of words “reasonable grounds” in the section requires to evaluate the material/information within that scope. The term ‘reasonable grounds’ though is part of explanation attached to Section 11-EE but it has not been defined in the Act, so in any ordinary sense it could be understood from the following expressions;

“Reasonable grounds” means

a set of facts or circumstances which would satisfy an ordinary cautious and prudent person that there is reason to believe and such belief goes beyond mere suspicion.

a suspicion that is based on reasons which can be articulated. It is more than mere hunch or supposition, but much less than the level of proof that would be required to impose a disciplinary sanction.

more than mere suspicion but less than the civil test of balance of probabilities. It is a much lower threshold than the standard known as “proof beyond reasonable doubt.” It is a bona fide belief in a serious possibility based on credible evidence.

that there must be some supporting information for the suspicion. A mere allegation is not enough. Reports must not contain information that is known to be untrue.

information that establishes sufficient articulable facts which give a trained law enforcement or criminal investigative agency officer, investigator, or employee a reasonable basis to believe that a definable criminal activity or enterprise is, has been, or may be committed.

The reasonable grounds flow from the information available or collected against the delinquents and such information is usually derived from the links propagated through many types of material including SMS/Voice Messages, messages on WhatsApp or other social media accounts, pamphlets/handouts, posters, photographs, painting, caricatures, books/Literature, newspapers, Audio/Video CDs, electronic and digital material, wall chalking, banners/Pena flex, demonstrations in Rallies, material on Facebook, twitter or any other social media account, communication on Telephone/Mobile (CDR), speeches in Public Meetings, Radio & T.V. shows, surveillance report in any form, reports from international agencies, suspicious transaction report from any financial institution.

8. What type of material could be considered as giving rise to reasonable grounds can well be understood from the designs and intentions of terrorists for preparation, facilitation, funding, instigation or commission of a terrorist act and has well been explained by Honourable Supreme Court of Pakistan in case reported as “GHULAM HUSSAIN and others Versus The STATE and others” (**PLD 2020 Supreme Court 61**); that “*terrorism as an ‘ism’ is totally a different concept which denotes commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which are essentially political, ideological or religious.*” All the persons who are involved in acts advancing a religious, sectarian or ethnic cause or promoting political destabilization could well be judged for enlisting in 4th schedule if credible information in any of the forms cited above or evidence is available against them.

The authority before enlisting any person in 4th schedule must ensure that information be available in more than one forms as highlighted above so as to make it credible and be more than a suspicion. It is expected that authority should maintain record

periodically for addition or deletion of any activities of the suspect during the period he is taken on 4th schedule so as to place it before the courts for proper assistance and decisions. It must be ensured that the person, once involved in such activities, is still alive and in touch with same state of affairs in order to avoid any deprivation of an individual from his fundamental rights whose dignity is to be respected which is inviolable right of a citizen as contemplated under Article 14 of the Constitution of the Islamic Republic of Pakistan, 1973.

9. Coming back to the case, this court asked specific questions from the learned law officer whether he has any record with him which could establish links of the present appellant with any proscribed organization or he could show the Court any material like visuals or audio by which it could be seen or heard that appellant was engaged in any objectionable activities but no such material could be produced or shown to the Court. When asked to explain the reasons for placing appellant's name in the 4th schedule of ATA, 1997, contended that appellant remained involved in one criminal case and learned law officer had also no information about the fate of such FIR. Even otherwise, simply the involvement of the appellant in any criminal case is hardly a ground to deprive any citizen of his fundamental right of life and liberty. Record once at the credit of an accused cannot be used to rotate him in such allegations again without any fresh material in this respect which is not available.

10. For what has been discussed above, keeping in mind the strict implications flowing from enlisting a person in the fourth schedule, by which practically the life and living of such person is massively curtailed as even for medical and educational expenses he needs approval from the Federal Government, we are of the view that there exist no such grounds which could justify enlisting of appellant in the 4th schedule. Consequently, the instant appeal is allowed and both the impugned orders i.e. dated 18.10.2021 whereby his name was entered in the 4th schedule of ATA, 1997 and the order dated 20.09.2022 by

which his review petition against the above order was rejected, are set-aside.

(ALI BAQAR NAJAFI) (MUHAMMAD AMJAD RAFIQ)
JUDGE. JUDGE.

Approved for reporting.

(ALI BAQAR NAJAFI) (MUHAMMAD AMJAD RAFIQ)
JUDGE. JUDGE.

This order was announced,
dictated, prepared and signed
on 13.07.2023.

Javed*