

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

34/25

Criminal Petition No. 556/2022 and
Jail Petition Nos. 191/2022 and 204/2023

(On appeal against the judgment/order dated 06.04.2022
passed by the High Court of Sindh, Bench at Sukkur
in CrI. A. No. D-157 to 159/2018)

Gulsher (in CrI.P No. 556/2022)
Hyder Bux (in J.P No. 191/2022)
Miroo @ Mir Muhammad (in J.P No. 204/2023) Petitioner(s)

Versus

The State (in all) Respondent(s)

For the Petitioner(s): Mr. Shahriyar Tariq, ASC
(in CrI.P. 556/2022)
Ms. Aisha Tasneem, ASC
(in J.Ps. 191/2022 and 204/2023)

For the State: Mr. Siraj Ali Khan, Addl. P.G Sindh
(via V/L from Karachi)

For the Complainant(s): Mr. Nazir Ahemed Bhatti, ASC
(in CrI.P. No. 556/2022)

Date of Hearing: 07.05.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. Through these petitions for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973 the petitioners, Gulsher, Hyder Bux and Miroo @ Mir Muhammad, have assailed the judgment dated 06.04.2022, passed by the High Court of Sindh, Bench at Sukkur, whereby their appeals were dismissed and their convictions and sentences were upheld.

2. Briefly, the facts of the case, are that on 3.12.2004 at approximately 8:15 p.m., three judicial officers, namely, Aftab Ahmed

Bughio (PW-12), Farooque Ahmed Channa (PW-11), and Abdul Wahab Abbassi (PW-5) were returning from Larkana to Shikarpur in an official vehicle (GS-0066) when they were intercepted near village Uban Odho by eight armed men, one wielding a rocket launcher and others equipped with Kalashnikovs. The assailants forced the car to stop through aerial firing and abducted all three judges at gunpoint. Mr. Bughio, who had recently undergone surgery, was left behind shortly after the abduction due to his inability to keep up. The remaining two judges were held in captivity for approximately 58 days. Mr. Abbassi (PW-5) testified that a ransom of Rs. 2,000,000 was paid for his release and that his injuries from the ordeal led to the amputation of multiple toes. Mr. Channa (PW-11) corroborated this account, adding that a ransom of Rs. 1,750,000 was paid for his release.

2. During the course of the investigation, accused Ghulam Hussain, Hyder Bux and Mirza were arrested while already confined at Central Jail Karachi. They voluntarily led police to Chuttal Wah, where they produced unlicensed Kalashnikovs with live bullets resulting in the registration of separate FIRs No. 64, 65 and 66. Hyder Bux was positively identified by both abductees during the identification parade held on 12.09.2005 before Civil Judge Fida Hussain (PW-14). Furthermore, Mr. Channa and Mr. Abbassi testified to Hyder Bux's direct involvement in the abduction and captivity. Similarly, Miroo @ Mir Muhammad was arrested and identified by the abductees and was found guilty under sections 365-A PPC and 7 of the Anti-Terrorism Act, 1997 ("the ATA").

3. We have heard the learned counsel for the parties and have perused the available record. As far as the role of the petitioner Gulsher is concerned, we have observed that he was neither named in the FIR nor his presence was established at the scene of occurrence, and it is only during identification parade that he was identified. It has also come on record that he was not involved in the kidnapping or abduction of the victims rather the only role attributed to him was of providing shelter and food for the accused. As such, we are of the considered view that the prosecution has failed to prove its case against Gulsher beyond reasonable doubt. Therefore, whilst converting his petition into appeal

and allowing the same he is acquitted of the charges levelled against him. He be released forthwith if not required in any other case.

4. As regards the remaining petitioners-convicts, namely, Hyder Bux and Miroo @ Mir Muhammad, the learned counsel representing them at the very outset placed reliance on the judgment of this Court in the case of *Ghulam Hussain v State* (PLD 2020 SC 61) and stated that the offence under section 7(1)(e) of the ATA was not attracted due to lack of evidence, as such, the convictions and sentences awarded to the petitioners under the provisions of the ATA are liable to be set aside. While concluding her arguments she further submitted that the petitioners would be satisfied and will not press the petitions on merits provided their convictions and sentences under the provisions of the ATA are set aside.

5. The present case pertains to an offence under section 365-A PPC, which is triable exclusively by the Anti-Terrorism Court under the ATA, however, merely because an offence is triable by the Anti-Terrorism Court does not automatically mean it falls under the substantive anti-terrorism provisions (sections 6 to 11-E of the ATA). A conviction under the ATA cannot be sustained without proving a "terrorism-oriented design" behind the offence.

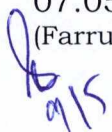
6. In view of what has been discussed above, whilst maintaining the convictions and sentences of the petitioners under the PPC, the convictions and sentences of the appellants under the ATA are set aside. Consequently, the petitions filed by Hyder Bux and Miroo @ Mir Muhammad are converted into appeals and partly allowed.


Judge


Judge


Judge

ISLAMABAD
07.05.2025
(Farrukh)


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