

ORDER SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

WRIT PETITION NO. 490 OF 2022

Mumtaz Shah & another
Versus
The State, etc.

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3

14.02.2022 Mr. Rabi-Bin-Tariq, Advocate.

The instant writ petition is arising out of order dated 09.02.2022, passed by the learned Special Court-II, Anti-Terrorism, Islamabad ("A.T.C. Court") whereby physical remand of the petitioners was granted for five days in FIR No. 60 of 2022 dated 26.01.2022, registered with P.S. Shalimar, Islamabad under Sections 324, 395, 436, 506(ii), 353, 186, 427, 109, 148, 149 PPC & Section-7 of the Anti-Terrorism Act, 1997 (Act of 1997).

2. The learned counsel contended that apart from the remand order, petitioners also question the jurisdiction of the learned A.T.C. Court to try the offence under Section 7 of the Act of 1997 as no panic has been created in the public-at-large. The learned counsel has referred various judgements of the Hon'ble apex Court, this Court as well the sister High Courts in support of his submissions.

3. The learned counsel further contended that since the operation of the impugned order has already taken effect and the petitioners have been remanded to the judicial custody, he will not press the instant petition to that extent. However, he insisted to question the application of Section 7 of Act of 1997 in the instant case, though he was also confronted with availability of remedy in terms of Section 23 of Act, 1997.

4. The learned counsel argues that the scuffle between the police and the residents of the vicinity took place when the police showed high-handedness towards the incident and launched an attack upon the public; that the accused persons had nothing to do with the incident; that no fear has been created in the public and that to attract Section 7 of Act of 1997, the requirements laid down under Section 6 of Act of 1997 have to be fulfilled which are lacking in the instant case.

5. The learned counsel further asserted that no overt act is attributed to the petitioners to show that they coerced, intimidated or overawed the government, public-in-general, a section of the public or a community, as such the ingredients of Section 6 Act of 1997 are missing, therefore, the case may be transferred from Anti-Terrorism Court to the Court of plenary jurisdiction.

6. Arguments heard, record perused.

7. The question of maintainability of instant writ petition to assail the order of learned A.C.T. Court in presence of remedy of revision in terms of Section 435 & 439 Cr.P.C. is to be addressed at the first instance but as the learned counsel opted not to press prayer to that extent, there is no need to dilate upon the same.

8. As far as the question with regard to the application of Section 7 of the Act of 1997 is concerned, suffice it to say that remedy in terms of Section 23 of the Act of 1997, is available to the petitioners which bestows authority to the learned A.T.C. Court to transfer the case to any Court having jurisdiction under the Code of Criminal Procedure 1898. For ease of reference Section 23 of the Act of 1997 is reproduced:-

23. Power to transfer cases to regular Courts:- Where, after taking cognizance of an offence, a Special Court is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any Court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence.

9. The petitioners have not yet agitated their grievance qua application of Section 7 of Act of 1997 in the instant case before the Court of competent jurisdiction at the first instance by way of an application, therefore, in presence of alternate efficacious remedy referred to above, direct recourse in terms of Article 199 of the Constitution is not available to the petitioners.

10. The learned counsel prays for a direction to the police for early submission of report under Section 173 Cr.P.C. before the learned A.T.C. Court.

11. In view of above, the instant writ petition is dismissed in limine. The Investigating Officer is directed to submit report under Section 173 Cr.P.C. before the court of competent jurisdiction within stipulated period under the law.

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

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