

IN THE PESHAWAR HIGH COURT,
BANNU BENCH.
(Judicial Department)

Criminal Appeal No.92-B/2022

Hazrat Ali Vs. The State

JUDGMENT

For Appellant: **M/S Noor Zada Khan Ahmedzai and
Asghar Nawaz Advocates.**

For the State: **Sardar Muhammad Asif, Assistant
Advocate General.**

Date of hearing: **18.08.2022**

MUHAMMAD FAHEEM WALI, J.— Appellant, Hazrat Ali son of Muhammad Younas, has assailed the Judgment dated 31.05.2022 passed by the learned Judge Anti-terrorism Court, Bannu Division, whereby the appellant was convicted under Section 11-F(6) of ATA-1997 and sentenced for one-year rigorous imprisonment with fine of Rs.20,000/- or in default thereof to suffer two months S.I. The appellant was also convicted under Section 11-N of ATA-1997 and sentenced to five years rigorous imprisonment with fine of Rs.30,000/- or in default thereof to suffer three months S.I.



2. Facts forming factual canvas of the instant appeal are that the appellant/accused was charged and arrested in a crime report No.23 dated 01.05.2020 registered at Police Station C.T.D. Bannu under Sections 11-N, 11-F(1), 11-F(5), 7 ATA. However, after his release on bail in the case, the appellant appeared before the learned Judge Anti-Terrorism Court D.I.Khan on 30.05.2022 with an application to plead guilty. On the following day i.e. 31.05.2022, the learned Judge Anti-terrorism Court Bannu framed charge against the appellant to which he pleaded guilty and then he was issued a show cause notice under Section 243 Cr.P.C. to which appellant/ accused remained firm to his pleading guilty. Finally, the learned Judge Anti-Terrorism Court Bannu convicted him under Sections 11-F(6) & 11-N of ATA-1997 and sentenced him as detailed hereinabove. Aggrieved of the legality of the sentence, the appellant has preferred the instant appeal.



3. Arguments of learned counsel for appellant and that of learned Assistant A.G representing the state heard at length and the record perused with their valuable assistance.

4. The record reveals that the appellant/accused on 30.05.2022 appeared before the learned Judge Anti-terrorism Court Bannu and submitted an application to plead guilty to

the charges levelled against him. The learned Judge Anti-terrorism Court Bannu issued notice of the application to the State for the next day; and on the following day the learned Court framed charge against the appellant/accused to which he pleaded guilty. He was then issued a show cause notice under Section 243 of the Cr.P.C. to which too he did not change his mind, and accordingly the learned court below convicted and sentenced him under Sections 11-F(6) & 11-N of the ATA.

5. The procedure for commencement of the trial of criminal cases in the Court of Session has been given in Chapter XXII-A of the Code of Criminal Procedure, 1898, and to follow such procedure is mandatory in nature by dint of provision of Section 265-B of Cr.P.C. This procedure starts from supply of statements & documents to accused under Section 265-C of Cr.P.C., not later than seven days before the commencement of the trial and then Court, after perusing the police report and all other documents and statements filed by the prosecution, if is of the opinion that there is ground for proceedings with the trial of the accused, it shall frame in writing a charge against accused within the purview of Section 265-D Cr.P.C.; and if accused pleads guilty, the Court shall record the plea, and may in its



discretion convict him thereon. Whereas, the learned Judge Anti-terrorism Court did not make compliance of the mandatory provision of Section 265-C Cr.P.C, and this failure on the part of learned court below vitiates the entire proceedings i.e. framing of charge, plead guilty and award of conviction & sentence. Besides, noncompliance of such mandatory provisions is violative of the fundamental rights of appellant enshrined in Article 4 of the Constitution of Pakistan. A threadbare perusal of sections 265-B and 265-C of the Code of Criminal Procedure reveals that obligation of the Court in both the sections is couched by word “shall” for observing the procedure, supplying the copies and commencing the trial with the interval of seven days. The stage of Charge and plea of guilt under Section 265-D and 265-E, would come after providing copies to the accused. Evidently, in the instant case, the learned trial court on receiving application for plead guilty by the accused, issued notice to the state for the next date and on the following date charge was framed without adhering to the provisions of Section 265-C Cr.P.C. which is an incurable illegality. Reliance in this regard is placed on the cases of “*Nadeem Ahmed Khan Vs. The State (2007 P.Cr.L.J. 233)*”, “*The State through Regional Director Anti-Narcotic Force*



Baluchistan Vs. Abdul Wahab and 11 others” (2019 MLD 2048), Imtiaz Ali Vs. The State (2018 YLR 1067).

6. The wisdom for seven days interval between supply of documents under Section 265-C Cr.P.C. and commencing of trial is to provide sufficient time to accused person to get acquainted with allegations against him and also to enable the Court to study the case and satisfy itself as to whether any case for trial is made out or not. These provisions of the Code of Criminal Procedure, 1898, are in-fact in line with the provisions of Article 4 of the Constitution of Pakistan, which read as under:


4: Right of individuals to be dealt with in accordance with law, etc: (1). To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

2. In particular-

- a. no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law

b. no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

c. no person shall be compelled to do that which the law does not require him to do.



7. The phrase "in accordance with law" used in both the parts of Article 4 *ibid* exactly relates to compliance of provisions of Section 265-B & 265-C of Cr.P.C, and such compliance, undeniably, is missing in this case and thereby it can be safely concluded that the appellant has not been treated 'in accordance with law'. It is also pertinent to note that the appellant is an illiterate person and used to affix his thumb as is evident from the application filed for plead guilty and the Charge Sheet coupled with the show cause notice under Section 243 Cr.P.C. and all this process completed within the span of two consecutive days. Thus, this court has a rigid view that the appellant at the time of filing application, pleading guilty and affirming the show cause was not having any independent advice nor having adequate knowledge of accusations against him.

8. Learned Additional Advocate General, representing the State, during the course of arguments laid a great stress

to the provisions of Section 412 Cr.P.C. which, according to him, prevents an accused person to file appeal against the conviction passed on the basis of his plead guilty. We are, however, not in agreement with what the learned A.A.G. argued at the bar for the simple reason that Section 412 Cr.P.C. does not prevent an accused person to challenge the legality of sentence awarded on the basis of plead guilty. For ready reference, Section 412 Cr.P.C. is reproduced hereunder:

412. No appeal in certain cases when accused pleads guilty. Notwithstanding anything hereinbefore contained where an accused person has pleaded guilty and has been convicted by a High Court, a Court of Session or Magistrate of the first class on such plea, there shall be no appeal except as to the extent or legality of the sentence. (*Underline is our emphasis*)

9. It is clear from the above extracted provision that after pleading guilty, still the accused has the right to challenge the legality of the Sentence. Article 10-A of the Constitution of Pakistan provides, "*For the determination of his civil rights and obligations or in any criminal charge against him a*

person shall be entitled to a fair trial and due process.” It obviously indicates that a person, in a criminal charge, is entitled to a fair trial and due process. The terms ‘fair trial’ and ‘due process’ as indicated in supra-Article are supplement to the provisions of Article 4 of the Constitution, as due process and fair trial was attached to compliance of provisions of Section 265-C Cr.P.C. In the absence of due process and fair trial by providing seven days’ time to appellant to have a look at and understanding with the nature of allegations, the conviction and sentence cannot be said to be legal, hence, the appeal in hand is fully competent and Section 412 Cr.P.C. does not levy any bar upon filing of this appeal.



10. Moreover, the instant appeal has been filed under Section 410 Cr.P.C. read with Section 25 of the Anti-Terrorism Act, 1997; and latter being a special law provides a right of appeal against final judgment of the Anti-terrorism Court, which may be preferred by a person sentenced by a Special Court to a High Court. There is no differentiation for a person sentenced on the basis of plead guilty. Hence, the objection raised by the learned A.A.G. is without any legal backing hence, overruled.

11. As far the notice given to the appellant under Section 243 Cr.P.C. is concerned, the same reveals that the answer to show cause was also signed by the learned Presiding Officer of the Court besides the accused, which is not the requirement of law; rather reply should have been the statement of accused under his signature or thumb impression and learned Presiding Officer at the most can endorse it as "*Read over and Admitted to be Correct*" or in short 'RO & AC'. Therefore, possibility of the reply of show cause notice, to have been typed by some court officer mechanically countersigned by the Presiding Officer, cannot be ruled out, otherwise, the same would have been scribed on a separate paper.



12. For what has been discussed and observed hereinabove, the instant criminal appeal is allowed, the impugned Judgment/order dated 31.05.2022 is set aside, and consequently, the matter is remitted back to the learned trial Court to proceed with case on merit in the light of provisions contained in Chapter XXII-A of the Code of Criminal Procedure, 1898. As the appellant was on bail during proceedings and is now behind the bars due to the impugned Judgment; and it is yet uncertain as to when the trial of appellant would be concluded, so in the given circumstances

of present case, we deem it essential to release the appellant on bail. Accordingly, appellant is admitted to bail subject to furnishing bail bonds in the sum of Rs.200,000/- (rupees two lac) with two sureties each in the like amount to the satisfaction of learned trial court. He shall be released forthwith, if not required to be detained in connection with any other criminal case.

13. Above are the detailed reasons of our short order of even date.

Announced.
18.08.2022
 (*M/Subhan)



JUDGE



JUDGE

Handwritten signature
 05/9/2022
 SCANNED
 05 SEP 2022
Handwritten signature

(D.B)
Hon'ble Mr. Justice Sahibzada Asadullah and
Hon'ble Mr. Justice Muhammad Faheem Wali