

HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.10214/2022

Muhammad Hanif Tayyab vs Insha Ullah, etc.
&

Crl. Appeal No.12109/2022

Mohib Ullah vs The State, etc.

J U D G M E N T

Date of hearing:	<u>12.03.2024.</u>
Appellants by:	M/s Rana Maqsood-ul-Haq, Arif Mehmood Rana, Muhammad Tayyab and Adil Riaz, Advocates for Muhammad Hanif Tayyab (appellant in Crl. Appeal No.10214/2022). M/s Asif Javed Qureshi and Fahad Javaid Qureshi, Advocates for Mohib Ullah (appellant in Crl. Appeal No.12109/2022).
State by:	Rana Ahsan Aziz, Additional Prosecutor General along with Kamran Ghulam Nabi A.S.I., C.T.D., Lahore.

Farooq Haider, J:- This single judgment will dispose of **Crl. Appeal No.10214/2022** filed by Muhammad Hanif Tayyab (appellant) against his “convictions & sentences” and **Crl. Appeal No.12109/2022** filed by Mohib Ullah (appellant) against his “convictions & sentences”, as both the matters have arisen out of one and the same judgment dated: 08.02.2022 passed by learned Judge Anti-Terrorism Court-I, Lahore/trial court.

2. Muhammad Hanif Tayyab and Mohib Ullah (appellants) were tried in case arising out of F.I.R. No.07/2021 dated: 04.04.2021 registered under Sections: 4, 5 of the Explosive Substances Act, 1908, Section: 13-2 (a) of the Arms Ordinance, 1965 and Section: 7 of the Anti-Terrorism Act, 1997 at Police Station: C.T.D., District: Lahore and the trial court *vide* impugned judgment dated: 08.02.2022 has convicted and sentenced the appellants as under: -

MUHAMMAD HANIF TAYYAB

<u>Convictions</u>	<u>Sentences</u>
i) Under Section: 4 of the Explosive Substances Act, 1908.	Under Section: 4 of the Explosive Substances Act, 1908 to undergo “ Life Imprisonment ”.

ii) Under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997.	Under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997 to undergo “ Life Imprisonment ”.
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MOHIB ULLAH

<u>Convictions</u>	<u>Sentences</u>
i) Under Section: 4 of the Explosive Substances Act, 1908.	Under Section: 4 of the Explosive Substances Act, 1908 to undergo “ Life Imprisonment ”.
ii) Under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997.	Under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997 to undergo “ Life Imprisonment ”.
Under Section: 13 of the Arms Ordinance, 1965,	Under Section: 13-2 (a) of the Arms Ordinance, 1965, for having un-licensed weapon in possession to undergo “ 3-years' R.I. ” along with fine of Rs.50,000/- and in default thereof to further undergo 3-month’s Simple Imprisonment.

All the sentences awarded to the convicts/appellants were ordered to run concurrently and benefit of Section: 382-B Cr.P.C. was also extended to them.

3. Briefly, case of prosecution as per written statement/فرد بیان (Ex.PB/1) sent by Insha Ullah Kahloon 517/Corporal (complainant/PW-4) is that on 04.04.2021 at about 05:20 p.m. (evening), complainant along with Muhammad Aleem 744/CP, Syed Asif Shah 4930/CP, Adeel Anwaar 293/CP, Majid Humayon 471/CP, Hafiz Muhammad Arslan 507/CP armed with official pistols Berreta while riding on official vehicle driven by Mubeen Ali 332/C was present at *Gulshan Ravi, Double Sarak, Lahore* for searching members of proscribed organizations where an information was provided by the informer that two suspect persons are present at Vacant Plot, Printing Corporation Pakistan Press, Band Road, Lahore, they are also having explosive substance with them and want to target the religious places of minorities, if a raid is conducted, they could be apprehended along with explosive substance and loss of human lives as well as properties could be avoided; while considering such information of the informer as credible, after constituting raiding party consisting of complainant and companions, a raid was conducted at the pointed place at 05:30 p.m. and on the pointing out of the informer, two persons were found present there, who started running after seeing raiding party but they were apprehended with the help of companions, who disclosed their names as Mohib Ullah and Muhammad

Hanif Tayyab; upon personal search of Mohib Ullah, on checking the black coloured bag carried in his right hand, white coloured Shalwar Kameez and an I.E.D. made in a plastic bottle were recovered; I.E.D. was kept at a safe distance under the supervision of Hafiz Muhammad Arsalan 507/CP and staff of Bomb Disposal Squad was informed; on his further search, a pistol .30 bore kept in the right side of *Nefa* of wearing Shalwar (شلوار پوشیدنی کے نیفہ میں دائیں جانب اڑیسہ ہوا) was also recovered; on unloading said pistol, six live bullets whereas from the right lateral pocket of wearing shirt (قمیض پوشیدنی), cash Rs,1700/-, original C.N.I.C. and a match box were also recovered; on personal search of Muhammad Hanif Tayyab, on checking a black coloured bag, which was hanging on his shoulder, a white coloured Shalwar Kameez and a hand grenade, which was also kept at a safe distance under the supervision of Hafiz Muhammad Arsalan 507/CP, were recovered; on his further personal search, from the right lateral pocket of wearing shirt (قمیض پوشیدنی), cash Rs.1400/-, C.N.I.C. of Muhammad Tayyab Hanif were recovered; after reaching at the place of occurrence, staff of Bomb Disposal Squad defused the hand grenade as well as I.E.D., separated two grams explosive from I.E.D. as well as 1-inch from safety fuse and 1-inch from Prima Cord from I.E.D. as sample and after putting the same in packet of white paper, handed over to the complainant; recovered I.E.D. plastic bottle, explosive substance, safety fuse, Prima-Cord, ball bearing, non-electric detonator, samples of explosive substance, hand grenade, defused detonating assembly, bags along with Shalwar Kameez and other articles were wrapped in separate polythene bags, sealed into separate parcels with evidence tape and took into possession *vide* recovery memos (Ex.PD, Ex.PE), which were attested by Hafiz Arsalan 507/CP and Syed Asif Shah 4930/CP.

On the basis of above said written statement (Ex.PB/1), case *vide* F.I.R. No.07/2021, dated: 04.04.2021 (Ex.PB) was registered under Sections: 4, 5 of the Explosive Substances Act, 1908, Section: 13-2 (a) of the Arms Ordinance, 1965 and Section: 7 of the Anti-Terrorism Act, 1997 at Police Station: CTD, District: Lahore.

On the conclusion of investigation, report under Section: 173 Cr.P.C. was sent to Court, charge was framed against the appellants under Section: 4 of the Explosive Substances Act, 1908, Section: 13-2 (a) of the Pakistan Arms Ordinance, 1965 and Section: 7-1(ff) of the Anti-Terrorism Act, 1997, to which they pleaded not guilty and claimed trial.

Prosecution got examined seven witnesses and while producing tool marks examination report (Ex.PH), closed its evidence. Then statements of the accused persons/appellants were recorded under Section: 342 Cr.P.C. in which they refuted the allegations leveled against them; they did not record their statements under Section: 340 (2) Cr.P.C. however, produced Muhammad Tufail as DW-1; Syed Arslan Bukhari, Executive Govt. Relations & Regulatory Affairs of Ufone (DW-2); Ghulam Dastagir 215/HC (DW-3); Akhtar Hussain, Senior Executive Officer ZONG (DW-4), Muhammad Sabir, Officer Grade-2, United Bank, Lahore as (DW-5) as well as documentary evidence i.e. Ex.DA to Ex.DJ, in their defence. Trial Court after conclusion of the trial *vide* impugned judgment dated: 08.02.2022 has convicted and sentenced the appellants as mentioned above.

4. Learned counsel for the appellants submit in unison that convictions recorded and sentences awarded to the appellants through impugned judgment are against the “law and facts” of the case; also add that ingredients found in samples as per report of Punjab Forensic Science Agency, Lahore (Ex.PG) cannot be considered as explosive; further submit that impugned judgment is result of misreading and non-reading of evidence therefore same is liable to be set-aside. Finally submit that no consent for trial has been produced during trial and request for acceptance of appeals filed by the appellants as well as their acquittal.

5. Learned Additional Prosecutor General while controverting the submissions of learned counsel for the appellants has supported the impugned judgment of the trial court by contending that the appellants were rightly convicted and sentenced. Lastly contends that there is no substance in the appeals and same are liable to be dismissed.

6. **Arguments heard. Record perused.**

7. So far as contention of learned counsel regarding non-production of consent or sanction of the Government/Authority for trial is concerned, it is relevant to mention here that request bearing No.2661/Reader(Inv)/RO/CTD/LHR, dated: 06.05.2021 for “Approval regarding trial of the case” under Section: 7 of the Explosive Substances Act, 1908 was made to Government of the Punjab and relevant portion of the same is hereby scanned below: -

From The Regional Officer/SSP,
Counter Terrorism Department,
Lahore Region, Lahore.

To The Section Officer (Judicial-III)
Govt. of The Punjab,
Home Department Punjab,
Lahore.

No. 264 Reader(Inv)/RO/CTD/LHR,

Dated 06-05-2021

Subject:- **REQUEST FOR APPROVAL REGARDING TRIAL OF CASE FIR NO. 07/21, Dated 04.04.21, U/S 4/5-ESA, 7-ATA, 13(2A)/20/65 AO, PS CTD LAHORE U/S 7-ESA 1908.**

Memorandum:

Kindly refer to the subject cited above.

2. It is submitted that the above cited case FIR has been registered at PS CTD Lahore, on recovery of explosive material and Arms & Ammunitions from the accused(s) mentioned below. The challan has been prepared and submitted in the prosecution branch of concerned Anti-Terrorist Court for scrutiny. The prosecution branch has required the approval regarding trial of above mentioned case U/S 7-ESA 1908 from the Home Department Punjab:-

Sr.	FIR No. Date & U/S	Name of Accused(s)
1	FIR No.07/21, Dated 04.04.21, U/S 4/5 ESA, 7 ATA, 13(2A)/20/65 AO, PS CTD LAHORE	1. Muhib Ullah s/o Ameer Faisal 2. M. Hanif Tayyab s/o Haji Ahmad Bakhsh

3. In view of above, it is requested that the permission regarding trial of the case may kindly be given.

4. Following documents are attached:

1. Copy of FIR
2. Police Report u/s 173 Cr.P.C
3. Synopsis of Evidence
4. Statement of accused
5. Sanction Order
6. Brief facts in English



Regional Officer,
Counter Terrorism Department,
Lahore Region, Lahore.

Report under Section: 173 Cr.P.C. (Challan) in the case was prepared on 10.04.2021 and received in the court on 19.05.2021. Section: 7 of the Explosive Substances Act, 1908 is hereby reproduced below: -

*“7. **Restriction on trial of offences.** No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Provincial Government [or an officer authorized in this behalf by the Provincial Government] 2[to which intimation shall be sent within two days of the registration of the case] 3[::]*

4[Provided that if the consent is neither received nor refused within sixty days of the registration of case by the Government such consent shall be deemed to have been duly given.]

*5**Punjab Amendment:** In Section 7, for the full stop at the end, a colon shall be substituted and thereafter the following Proviso shall be added:*

“Provided that the consent to proceed to the trial of an offence under Section 3 or Section 4 of the Act, shall be deemed to have been given if the Provincial Government does not convey its decision to the Court within sixty days of the report forwarded to it under Section 173 of the Code of Criminal Procedure, 1898 (V of 1898).”

Similarly, Section: 19 (8b) of the Anti-Terrorism Act, 1997, being relevant, is also reproduced as under: -

“(8b) Notwithstanding anything contained in section 7 of the Explosive Substances Act, 1908 (VI of 1908), or any other law for the time being in force, if the consent or sanction of the appropriate authority, where required, is not received within thirty days of the submission of challan in the Court, the same shall be deemed to have been given or accorded and the Court shall proceed with the trial of the case.]”

Therefore, non-production of sanction/consent of Government for trial is not fatal and same i.e. sanction/consent would be deemed as has been given/accorded. Hence, afore-mentioned contention of learned counsel in this regard is without any force thus repelled.

It has been noticed that as per case of prosecution, mentioned in aforementioned written statement/فرد بیان (Ex.PB/1), on spy information, a raiding team was constituted, raid was conducted, present appellants were apprehended red handed from the spot and from the possession of Mohib Ullah (appellant in Crl. Appeal No.12109/2022), a black coloured bag, white coloured Shalwar Kameez, an I.E.D. made in a plastic bottle, a pistol .30 bore, cash Rs,1700/-, his original C.N.I.C. and a match box were recovered whereas from the possession of Muhammad Hanif Tayyab (appellant in Crl. Appeal No.10214/2022), a black coloured bag, white coloured Shalwar Kameez, a hand grenade, cash Rs.1400/- and his C.N.I.C. were recovered. Undeniably, aforementioned articles were recovered from the appellants on 04.04.2021 at about 05.30 p.m. (evening) within the area of Vacant Plot, Printing Corporation Pakistan Press, Band Road, Lahore, I.E.D. and hand grenade were kept at a safe distance under the supervision of Hafiz Muhammad Arsalan 507/CP and staff of Bomb Disposal Squad was informed, upon which, Riaz Ahmad, Bomb Disposal Technician (PW-1) reached at the place of occurrence, defused hand grenade and I.E.D., separated two grams explosive from I.E.D., one inch from safety fuse wire and one inch from prima-cord, sealed the same into parcel and handed over the same to Inshallah 517/CPL (complainant/PW-4), who took all aforementioned samples along with articles *vide* recovery memo Ex.PD and Ex.PE, respectively; then he drafted the complaint (Ex.PB/1) at 06:50 p.m. on 04.04.2021 and sent the same for chalking out the F.I.R. through Muhammad Aleem/CP and in the light of the same, First Information Report (F.I.R./Ex.PB) was recorded on 04.04.2021 at 07:45 p.m. (evening) at Police Station: C.T.D., Lahore, which is at a distance of 33/34 kilometers from the place of occurrence as per Column No.4 of the F.I.R.; hence, in the “peculiar facts and

circumstances” (mentioned above), case has been got registered without unnecessary/unexplained delay.

It has been straightaway observed by us that Muhammad Khalid, Inspector (Investigating Officer/PW-6) reached at the place of occurrence, where complainant handed over all above case properties, police papers and accused persons to him; in this regard, relevant portion of statement of complainant (PW-4) is reproduced as under: -

“At about 09:00 P.M. Investigating Officer reached at the place of occurrence I handed over all the above case properties, police papers and accused persons to him and Investigating Officer inspected the place occurrence in my presence.”

Similarly, Muhammad Khalid, Inspector (Investigating Officer) while appearing before the Court as PW-6 stated about handing over case property to Moharir (PW-2) as under: -

“I handed over case property to Moharrar and recorded his statement u/s 161 Cr.P.C. and locked the accused to police lock up.”

Likewise, Muhammad Irshad, A.S.I. (Moharir/PW-2) deposed before the court that Investigating Officer of the case handed over to him four parcels pertaining to accused Muhammad Hanif Tayyab which were sealed through evidence tape and eight parcels pertaining to accused Mohib Ullah which were also sealed through evidence tape, for keeping the same in safe custody and their onward transmission to the offices of Bomb Disposal Squad and Punjab Forensic Science Agency respectively; in this regard, relevant portion of statement of the Moharir (PW-2) is hereby reproduced as under: -

“On the same day, Khalid Inspector, the Investigating Officer of the case handed over to me four parcels pertaining to accused Muhammad Hanif Tayyab which were sealed through evidence tape and eight parcels pertaining to accused Mohib Ullah which were also sealed through evidence tape, for keeping the same in safe custody and their onward transmission to the offices of Bomb Disposal Squad and Punjab Forensic Science Agency respectively.”

Muhammad Irshad, A.S.I. (Moharir/PW-2) also deposed that on 06.04.2021, he handed over two parcels consisting upon defused hand grenade and detonating assembly which were allegedly recovered from accused Muhammad Hanif Tayyab to Majid Hamayon 471/CPL (PW-3) for their dispatch to the office of Bomb Disposal Squad; in this regard, relevant portions of his statement are reproduced below: -

“On 6.4.2021 I handed over two parcels consisting upon defused hand grenade and detonating assembly which were allegedly

recovered from accused Hanif Tayyab to Majid Hamayon/CPL for their dispatch to the office of Bomb Disposal Squad.”

“Majid Humayon/CPL maintained that due to lapse of time the parcel which were entrusted to him were not deposited in the office of Bomb Disposal Squad and he returned the above said parcels to me on the same day and I kept the same intact.

On 07.4.2021 I again handed over two parcels consisting upon hand grenade and detonating assembly to Majid Humayon/CPL for their onward transmission to the office of Bomb Disposal Squad. So long parcels remained in my custody I did not tamper the same.”

whereas Majid Humayon 471/CPL (PW-3) while appearing before the court categorically deposed that on 06.04.2021, he was posted at Police Station: CTD, Lahore; on the same day, Muhammad Irshad Moharrar Police Station: CTD handed over to him two parcels said to contain defused hand grenade and detonating assembly for their onward transmission to the office of Bomb Disposal Squad; further stated that said parcels could not be deposited in the concerned office because of lapse of time; further deposed that he returned back above said two parcels intact to the *Moharir* and on 07.04.2021, *Moharir* again handed over to him above said two parcels for their onward transmission to the office of Bomb Disposal Squad which he deposited in above said office, intact on the same day. In this regard, relevant portion of statement of Majid Humayon 471/CPL (PW-3) is reproduced as under: -

“On 06.04.2021 I was posted at Police Station: CTD, Lahore. On the same day, Muhammad Irshad Moharrar Police Station CTD handed over to him two parcels said to contain defused hand grenade and detonating assembly for their onward transmission to the office of Bomb Disposal Squad. Said parcels could not be deposited in the concerned office because lapse of time. I returned back above said two parcels intact to the Moharir. On 07.04.2021, Muhammad Irshad Moharrar, ASI again handed over to me above said two parcels for their onward transmission to the office of Bomb Disposal Squad which he deposited in above said office, intact on the same day.”

(emphasis added)

whereas Riaz Ahmad, Bomb Disposal Technician while appearing before the Court as PW-1 clearly stated that said two sealed parcels brought by Majid Humayon Corporal were received on 06.04.2021 along with a letter dated: 04.04.2021 issued by Regional Officer, CTD, Lahore; in this regard, relevant portions of his statement are reproduced as under: -

“A letter, dated 4.4.2021 issued by Regional Officer CTD, Lahore received on 6.4.2021 along with two sealed parcels brought by Majid Humayon Corporal. One sealed parcel said to contain defused grenade and one sealed parcel said to contain detonating assembly of hand grenade. I examined both said sealed parcels

and issued report EX.PA which bears my signature.”
(emphasis added)

“I have not received any parcel relating to instant case
except 6.4.2021.”
(emphasis added)

Relevant portion of the report (Ex.PA) is scanned below: -

Received two (02) sealed parcel on 06-04-2021 from Corporal Majid
Humayoun No. 471/ CPL CTD, Lahore for analysis vide letter under reference.
The detail is as under:-

1. A Parcel having one hand grenade (diffused).
2. A. Parcel having one detonating assembly of hand grenade

Now it is crystal clear that two parcels said to contain defused hand grenade and detonating assembly were deposited by Majid Humayoun 471/CPL (PW-3) on 07.04.2021 but Riaz Ahmad (PW-1) issued report Ex.PA *qua* parcels which were deposited on 06.04.2021 and not on 07.04.2021. Therefore, safe custody as well as transmission of two parcels said to contain defused grenade and detonating assembly from police station to the office of Bomb Disposal Squad, has not been proved in this case. Now law is well settled on the point that unbroken chain of “safe custody of allegedly recovered case property and parcel of sample” is to be proved otherwise, conviction is not possible and it is rightly so because recovery of explosive substance is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment. Guidance in this regard has been sought from the case of “**The State through Regional Director ANF versus Imam Bakhsh**” (2018 SCMR 2039); relevant portion whereof is being reproduced below: -

“Chain of Custody – Safe custody and safe transmission

9. We have noted above that in Criminal Appeals Nos.523 to 525/2017 and No.22/2018, safe custody and safe transmission of the alleged drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory are not satisfactorily established. The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. **The prosecution must establish that the chain of custody was unbroken, unsuspicious, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. This Court has already held in Amjad Ali v. State (2012 SCMR 577) and**

Ikramullah v. State (2015 SCMR 1002) that where safe custody or safe transmission of the alleged drug is not established, the Report of the Government Analyst becomes doubtful and unreliable.

20. -----

----- ***The representative samples of the alleged drug must be in safe custody and undergo safe transmission from the stage of recovery till it is received at the Narcotics Testing Laboratory”***

(emphasis added)

In this regard, guidance has also been sought from the case of “**Abdul Ghani and others versus The State and others**” (2019 SCMR 608); relevant portion whereof is being reproduced:-

“There is hardly any occasion for discussing the merits of the case against the appellants because the record of the case shows that safe custody of the recovered substance as well as safe transmission of samples of the recovered substance to the office of the Chemical Examiner had not been established by the prosecution in this case. Nisar Ahmed, S.I./SHO complainant (PW1) had stated before the trial court that he had deposited the recovered substance at the Malkhana of the local Police Station but admittedly the Moharrir of the said Police Station had not been produced before the trial court to depose about safe custody of the recovered substance. It is also not denied that Ali Sher, H.C. who had delivered the samples of the recovered substance at the office of the Chemical Examiner had also not been produced during the trial so as to confirm safe transmission of the samples of the recovered substance. It has already been clarified by this Court in the cases of The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039), Ikramullah and others v. The State (2015 SCMR 1002 and Amjad Ali v. The State (2012 SCMR 577) that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through independent evidence there it cannot be concluded that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt. The case in hand suffers from the same legal defects. This appeal is, therefore, allowed, the convictions and sentences of the appellants recorded and upheld by the courts below are set aside and they are acquitted of the charge by extending the benefit of doubt to them. They shall be released from the jail forthwith if not required to be detained in connection with any other case.”

(emphasis added)

Further guidance has also been sought from the cases of “**Qaiser Khan versus The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar**” (2021 S C M R 363), “**Gulzar versus The State**” (2021 S C M R 380), “**Mst. Sakina Ramzan versus The State**” (2021 S C M R 451), “**Zubair Khan versus The State**” (2021 S C M R 492), “**Muhammad Shoaib and another versus**

The State” (2022 SCMR 1006) and “Subhanullah versus the State” (2022 SCMR 1052).

Since safe custody of two parcels of samples said to contain defused hand grenade and detonating assembly (allegedly recovered from the possession of Muhammad Hanif Tayyab) has not been proved, therefore, conclusiveness and reliability of the report of Bomb Disposal Technician (Ex.PA) has been vitiated and said report is not capable of sustaining conviction to the extent of Muhammad Hanif Tayyab (appellant in Crl. Appeal No.10214/2022); hence, now there is no need to discuss other merits of the case to his extent. Resultantly, prosecution has been failed to prove its case against Muhammad Hanif Tayyab (appellant) beyond shadow of doubt, thus, there is no need to discuss his defence version. Therefore, Crl. Appeal No.10214/2022 filed by Muhammad Hanif Tayyab is **allowed/accepted**, convictions recorded and sentences awarded to him through impugned judgment dated: 08.02.2022 passed in case arising out of F.I.R. No.07/2021 dated: 04.04.2021 registered under Sections: 4, 5 of the Explosive Substances Act, 1908, Section: 13-2 (a) of the Arms Ordinance, 1965 and Section: 7 of the Anti-Terrorism Act, 1997 at Police Station: C.T.D., District: Lahore, are hereby set aside; he is acquitted of the charge and will be released from jail forthwith if not required in any other case.

8. Now coming to the case of Mohib Ullah (appellant in Crl. Appeal No.12109/2022, hereinafter to be referred as “appellant”), in order to prove aforementioned recovery of I.E.D. (P-3) and pistol .30 bore (P-4), taken into possession *vide* recovery memo (Ex.PD), prosecution produced Inshallah Kahloon 517/CP (complainant/PW-4) and Syed Asif Shah 493/CP (PW-3), who categorically deposed and supported case of the prosecution against the appellant through their statements recorded during trial of the case, their testimony remained un-shattered in spite of searching cross-examination and its credibility could not be shaken; any enmity or animosity of said witnesses against the appellant also could not come on record. Needless to observe that police officials are as good witnesses unless it has been proved that they are having ill will or animosity against the accused/convict; in this regard, reliance is placed upon the case of **“NASEER AHMAD versus The STATE” (2004 SCMR 1361), “TARIO MEHMOOD versus The STATE through DEPUTY ATTORNEY-GENERAL, Peshawar” (PLD 2009 Supreme Court 39) and “AJAB KHAN versus The STATE” (2022 SCMR 317).** Therefore, recovery of aforementioned articles from possession of the appellant has been proved by the prosecution.

Admittedly, Bomb Disposal Squad is meant to defuse explosive substances like grenade, bomb, detonators, suicide jacket, I.E.D. etc. and make the recovered explosive substance "safe"; on 04.04.2021, on call of Inshallah 517/CP (complainant/PW-4), Riaz Ahmad, Bomb Disposal Technician (PW-1) reached at the place of occurrence, defused one grenade, one I.E.D. and after defusing both said articles as well as separating the sample and sealing, handed over the same to the complainant (PW-4), who took the same along with other articles into possession *vide* recovery memo (Ex.PD) and when the Investigating Officer i.e. Muhammad Khalid, Inspector (PW-6) came at the spot, he handed over all above case properties along with police papers and accused persons to him; thereafter, Investigating Officer (PW-6) handed over parcels pertaining to Mohib Ullah (appellant) for keeping the same in safe custody to Muhammad Irshad, A.S.I. (Moharir/PW-2); subsequently, four parcels consisting of pistol .30 bore along with six live bullets, sample of explosive, safety fuse and prima-cord were handed by the *Moharir* (PW-2) to Syed Asif Shah 493/CP (PW-5), who deposited three parcels in the office of Punjab Forensic Science Agency, Lahore whereas returned fourth parcel pertaining to pistol to the *Moharir* after analysis by said laboratory; in this regard, relevant portion of statement of PW-2 is reproduced below: -

"Four parcels consisting upon pistol 30 bore alongwith six live bullets, sample of explosive, safety fuse and prima cord were handed over to Asif Shah/CPL for their dispatch to the office of Punjab Forensic Science Agency. Asif Shah deposited three parcels in the office of Punjab Forensic Science Agency and 4th parcel qua pistol was returned to me after analysis. So long said parcels remained in my custody I did not tamper the same."

Similarly, Syed Asif Shah 493/CP (PW-5) also deposed about receiving of four parcels from the *Moharir* on 06.04.2021 and thereafter depositing the same in the office of Punjab Forensic Science Agency, Lahore; in this regard, relevant portion of his statement is reproduced as under: -

"On 06.4.2021, Muhammad Irshad Moharrar handed over to me four sealed parcels, one sealed parcel said to contain samples two grams explosive, one sealed parcel said to contain sample of one inch prima cord, one sealed parcel said to contain sample one inch safety fuse and one sealed parcel said to contain pistol 30-bore alongwith magazine and six live bullets for its onward transmission to the office of Punjab Forensic Science Agency. I deposited the same in the office of Punjab Forensic Science Agency. One parcel containing pistol 30-bore and bullets were returned by the Punjab Forensic Science Agency after its examination. I returned the same to Muhammad Irshad A.S.I."

For proving safe custody of aforementioned explosive i.e. I.E.D. (P-3), samples and pistol .30 bore (P-4) as well as safe transmission of samples and pistol to the office of Punjab Forensic Science Agency, Lahore, aforementioned prosecution witnesses i.e. Inshallah Kahloon 517/CP (complainant/PW-4), Syed Asif Shah 493/CP (PW-5), Muhammad Khalid, Inspector (Investigating Officer/PW-6); Muhammad Irshad, A.S.I. (*Moharir*/PW-2) and Muhammad Fayyaz, Junior Forensic Scientist (PW-7) categorically deposed about aforesaid facts in their testimony in the court and their evidence remained un-shattered as discussed above; therefore, safe custody of aforementioned explosive and pistol .30 bore as well as safe transmission of samples and pistol to the office of Punjab Forensic Science Agency, Lahore, intact has been proved beyond shadow of doubt.

As per report of Punjab Forensic Science Agency, Lahore (Ex.PG), Dynamite was identified in 02-grams explosive taken out from I.E.D. i.e. Item 1, which is an explosive, Pentaerythritol Tetranitrate (PETN) was identified in Prima-Cord i.e. Item 2, which is also an explosive whereas Black Powder (mixture of Potassium Nitrate, Sulfur and Carbon) was identified in Safety Fuse i.e. Item 3, which is also an explosive; for ready reference, relevant portion from Results and Conclusion of said report is scanned below: -

Description of Evidence Items, as Received:

The following evidence items were submitted by Syed Asif Shah (493/Corporal) on 06-04-2021 at PFSA evidence receiving unit, along with the request of the Regional Officer, Counter Terrorism Department, Lahore Region, Lahore.

Item No.	Description
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- | | |
|----|-----------------------------------------------------------------------------|
| | Sealed and labeled parcels said to contain: |
| 1. | "02 grams explosive taken out from IED recovered from accused Muhib Ullah". |
| 2. | "01 inch prima cord taken out from IED". |
| 3. | "01 inch safety fuse taken out from IED". |

Tests Performed on Received Evidence Items:

Item 1, item 2 and item 3 were examined by burn test, light microscopy, chemical spot tests, micro-chemical tests, Fourier Transform – Infrared Spectroscopy and Gas Chromatography-Mass Spectrometry.

Analysis Start Date: 15-04-2021

Analysis End Date: 21-04-2021

Results and Conclusion:

1. Dynamite was identified in item 1. Dynamite is an explosive.
2. Pentaerythritol Tetranitrate (PETN) was identified in item 2. Pentaerythritol Tetranitrate (PETN) is an explosive.
3. Black Powder (mixture of Potassium Nitrate, Sulfur and Carbon) was identified in item 3. Black Powder (mixture of Potassium Nitrate, Sulfur and Carbon) is an explosive.

So far as contention of learned counsel for the appellant that Potassium Nitrate, Sulfur and Carbon are not themselves explosive is concerned, it is relevant to mention here that first of all we have to define element, mixture and compound.

- (i) **Element** is the simplest substance that cannot be broken down by any chemical method.
- (ii) **Mixture** is made from two or more substances physically combined together.

(iii) **Compound** is made of two or more elements chemically combined together.¹

Dynamite is explosive; similarly, Pentaerythritol Tetranitrate (PETN) is also explosive; Black Powder is a mixture of Potassium Nitrate, Sulfur and Carbon, which is also an explosive because Potassium Nitrate (KNO₃), Sulfur and Carbon reacting together form Nitrogen and Carbon Dioxide gases, heat energy, and Potassium Sulfide. The heat causes the gases to expand rapidly producing an explosive force, providing the propelling action.² It goes without saying that element as alone has certain properties but after combining with other elements in mixture or compound, can have different properties e.g. Hydrogen is flammable but when it combines with oxygen then result is Water (H₂O) which consists of two elements i.e. hydrogen and oxygen but water has entirely different properties. Hence, this contention of learned counsel for the appellant is not holding the water.

Prosecution has proved that aforementioned I.E.D (P-3) containing explosive was found from the possession of the appellant, who (appellant) is resident of Kohat, came to Lahore having said explosive in possession which clearly reflects that it was for endangering the life or causing serious injury to property; hence, recovery of aforementioned explosive substance as defined under Explosive Substances Act, 1908 from the appellant has been proved.

Similarly, having possession of “explosive substance” without any lawful justification as mentioned under Section: 6 (ee) of the Anti-Terrorism Act, 1997 and punishable under Section: 7 (ff) of the Act (*ibid*) has also been proved against the appellant.

Recovery of pistol (P-4) with magazine and 6-bullets (P-5/1-6) from the appellant (Mohib Ullah) has also been proved and as per report of Punjab Forensic Science Agency, Lahore (Ex.PH), said pistol was found in mechanical operating condition.

9. Now adverting to the defence version, during statement recorded under Section: 342 Cr.P.C. in reply to Question No.6 that “*Why this case is registered against you and why the PWs have deposed against you?*”, appellant stated as under: -

MOHIB ULLAH

“On 21.5.2018 I alongwith my real brother Aman Ullah was going towards Islamabad Airport and when at about 4.30 A.M. we reached near Railway Crossing Fateh Jang, Rawalpindi Road, two Vigo Dalas/vehicles stopped us and some persons in plain as well as in black dresses came out from those vehicles and apprehended me and took away in their vehicles. My brother got registered a rapt No.5, dated 26.6.2018 at police post Fateh Jang, District Attock. I was

¹ (see <https://misschen.com.sg>)

² (see: www.nps.gov.)

interrogated traditionally by different agencies but nothing was found against him. I and my family is patriot as any other citizens of Pakistan. I was never involved in any anti-state or anti-social activities. I was interrogated and investigated thoroughly and then involved in the present case falsely. There is no evidence with the prosecution to have any connection with my co-accused. My co-accused was also apprehended much prior to the registration of instant case. I can give oath on Holy Quran that nothing was taken into possession from my custody by CTD Authorities. ”

Defence version is mere a bald denial; it is relevant to mention here that when the appellant took plea that a *rapt* bearing No.5 dated: 25.06.2018 (Ex.DE) was got registered by his brother namely Aman Ullah at Police Post: City Fateh Jang, District: Attock regarding his (appellant's) taking away by some persons wearing plain black dresses in their vehicle and furthermore that he has been falsely implicated in this case, then he was himself the best witness to depose entire detail that who took him, where he was kept in illegal detention for such long period of 2-years and 10-months (approximately) as said *rapt* was got recorded in the year 2018 whereas this F.I.R. was registered in 2021 and of course law provided a chance to him in this regard through Section: 340(2) Cr.P.C. while appearing as his own witness in support of his version but he neither opt so nor any material was produced to show that whether aforementioned *rapt* was converted into separate F.I.R., whether it was investigated and what was its final result/fate. Although, non-appearance of accused under Section: 340(2) Cr.P.C. for disproving allegation levelled against him, does not create any inference against him yet when he has taken plea of false implication and his abduction as well as detention for a long period, then regarding the same, he is the best witness to prove his said version by appearing so and his non-appearance amounts to withhold the best evidence. Though Ghulam Dastagir 215/HC while appearing before the court as DW-3 produced aforementioned *rapt* (Ex.DE) yet it is relevant to mention here that he is not scribe of said *rapt* rather Aman Ullah (brother of the appellant) got recorded the same through application and Akhlaq Ahmad A.S.I./Duty Officer of Police Post: City Fateh Jang was scribe of said *rapt* but neither Aman Ullah (mentioned above) nor scribe of said *rapt* i.e. Akhlaq Ahmad A.S.I. was produced to prove contents of said *rapt*; merely producing/getting exhibited document in the court and proving the same are not one and the same thing rather different phenomena; therefore, same cannot be relied upon; in this regard, guidance has been sought from the case of **“SOMAIID and another vs. ALI GOHAR alias GOHAR ZAMAN and others” (2019 SCMR 1008)**; relevant portion of said case law is reproduced as under: -

“the person who records dying declaration is therefore a most important witness to verify veracity thereof. He is conspicuously missing in the array of witnesses and thus declaration, Exhibit PA, cannot be relied upon without potential risk of error.”

Bank account statement (Ex. DH/1-7) as well as evidence of Muhammad Sabir, Officer Grade-2, United Bank, Lahore (DW-5) produced by the appellant in his defence is not a proof to show that the appellant was in custody during said period. Therefore, aforementioned version of the appellant i.e. bald denial has neither been proved nor caused any dent in the case of prosecution and same is even otherwise of no avail.

10. Now, when case of the prosecution has been kept in juxta position with aforementioned defence version/plea taken by Mohib Ullah (appellant), then it is crystal clear that defence version neither could be proved nor could create any dent in the case of the prosecution rather prosecution has proved its case against Mohib Ullah (appellant) beyond shadow of doubts. Therefore, the appellant has been rightly convicted Under Section: 4 of the Explosive Substances Act, 1908, under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997 and Under Section: 13 of the Arms Ordinance, 1965; hence, all aforementioned convictions recorded against the appellant under aforementioned offences are maintained, his whole property stands forfeited under Section: 5-A of the Explosive Substances Act, 1908 to the government; however the sentence awarded to the appellant under Section: 4 of the Explosive Substances Act, 1908 is “reduced to 7-years” whereas under Section: 7-1 (ff) of the Anti-Terrorism Act, 1997 is “reduced from Life Imprisonment to 14-years” however sentence to the extent of offence under Section: 13-2(a) of the Arms Ordinance, 1965, amount of fine imposed upon the appellant by the trial court as well as sentence in default thereof will remain intact. Benefit of Section: 382-B Cr.P.C. will be extended to the appellant. All the sentences of imprisonment shall run concurrently. Resultantly, Crl. Appeal No.12109/2022 filed by Mohib Ullah (appellant) is hereby **dismissed** with aforementioned modification in the quantum of sentences.

**(AALIA NEELUM)
JUDGE**

**(FAROOQ HAIDER)
JUDGE**

APPROVED FOR REPORTING

**(AALIA NEELUM)
JUDGE**

**(FAROOQ HAIDER)
JUDGE**