

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUHAMMAD HASHIM KHAN KAKAR
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE ISHTIAQ IBRAHIM

JAIL PETITION NO.621 OF 2017

*(Against the consolidated judgment dated
15.05.2017, passed by the learned Lahore
High Court, Lahore in Cr.A. No.1835 and
464-J of 2014)*

Muhammad Yamin; and

Muhammad Ameer (died during pendency of instant petition)

...Petitioner

Versus

The State

...Respondent(s)

For the Petitioners:

Ms. Aisha Tasneem ASC

For the complainant:

Nemo

For the State:

Ms. Memoona Ihsan-ul-Haq, DPG.

Date of hearing:

11.03.2025

ORDER

ISHTIAQ IBRAHIM, J.-Petitioners Muhammad Yamin and Muhammad Ameer, charged for abduction of minor Taha Rashid aged about 09 years ('abductee') on 01.10.2012 at about 08.20 p.m. within the area of Block-A, MC Girls High School Sargodha, for extorting ransom vide case FIR No.411 dated 01.10.2013, under sections 365-A of Pakistan Penal Code, 1860 ('PPC'), registered at Police Station Sajid Shaheed, District Sargodha were convicted and sentenced by the learned Special Judge Anti-Terrorism Court, Sargodha ('Trial Court') vide judgment dated 09.07.2014 as below:-

Under Section 365-A/34 PPC:- To undergo imprisonment for life each and to pay rupees one hundred thousand each as compensation to the complainant Muhammad Rashid within the meaning of section 544-A Cr.P.C. and in default thereof to further undergo six months S.I. each.

Under Section 7(e) of the Anti Terrorism Act, 1997 read with section 34 PPC:- To undergo imprisonment for life each with forfeiture of their property.

2. The learned Lahore High Court, Lahore, while dismissing Criminal Appeals No.464-J and 1835 of 2014 of the petitioners through a consolidated judgment dated 15.05.2017 ('impugned judgment'), maintained the conviction and sentences of the petitioners, hence, this petition for leave to appeal. During pendency of instant petition petitioner Muhammad Ameer passed away in prison on 09.10.2017, hence, the instant petition to his extent was ordered to have become infructuous vide order dated 06.01.2025.

3. Having heard the arguments of learned counsel for the petitioner and learned DPG appearing on behalf of the State, record divulges that complainant Muhammad Rashid (PW.2), father of the minor abductee, and Irfan Ullah (PW.3), have furnished ocular account of the incident of abduction of abductee Taha Rashid from the area of Block-A MC Girls High School Sargodha, whereas, the minor abductee has furnished the ocular account of the entire episode of his abduction from the spot till his release by the abductors after receiving ransom amount of rupees twenty two lacs from his father. According to testimony of PWs Muhammad Rashid and Irfan Ullah on 01.10.2013 the abductee along with his brother Sobhan Rashid aged 11 years was returning home after offering Isha prayer at Sonehri Masjid and at 08.20 p.m. when reached at the corner of M.C. Girls High School, two abductors riding on a motorcycle arrived there and forcibly abducted the minor abductee. The incident was reported on the same day to police by the complainant. On 12.10.2013, the complainant received a phone call from mobile No.0305-6862970 on his cell phone No.0300-9600907 and the abductors demanded ransom of rupees fifty lacs for the release of the abductee, however, after negotiation rupees twenty two lacs were agreed to be paid to the abductors. On 13.10.2013 at about 06.00 a.m, the complainant along with PWs Irfan and Waqar paid the said ransom amount to four abductors including the petitioner on a road opposite to Rehmat ul-lil-Alamin Park Sargodha in lieu whereof the minor abductee was released and handed to the complainant. As per testimony of the complainant, he obtained phone data of the aforesaid mobile number w.e.f. 14.09.2013 to 12.10.2013 and handed over the same to the Investigating Officer who took the same through recovery memo Exh.PC. On 24.12.2013, the present petitioner was identified by the complainant and PW Irfan Ullah during identification parade conducted at District Jail

Sargodha by Zafar Iqbal learned Judicial Magistrate Sargodha (PW.10). Minor Taha Rashid after answering rational answers to the questions of the learned trial Court was examined as PW.4. He reiterated the same story of his abduction as set forth by his father/complainant. According to his statement, after his abduction he was confined in a room and after settling of the ransom amount by the petitioner with his father/complainant he was blindfolded and brought near a park close to his house where he was released. The above named material witnesses have been cross-examined at length but nothing beneficial to defence could be extracted from their mouth. The CDR data of the mobile number through which the complainant had received call for arranging ransom amount is found to be that of petitioner Muhammad Yamin. The petitioner has been duly identified by the complainant and PW Irfan Ullah to be one of the abductor who abducted the minor abductee on motorcycle from the spot.

4. After assessing and evaluating the evidence available on the record the learned courts below had concurred in their conclusion that the prosecution had succeeded in establishing the petitioner's guilt to the hilt. The contentions of the learned counsel for the petitioner have already been attended to and answered by the learned courts below with reference to the evidence available on the record. No specific or particular misreading or non-reading of the evidence on the part of the learned courts below has been pointed out by the learned counsel for the petitioner warranting interference by this Court with the lawful exercise of their jurisdiction by the learned courts below. However, applicability of section 7(e) of the Anti-Terrorism Act, 1997 ('Act of 1997') and the sentence awarded to the petitioners thereunder in view of the peculiar facts and circumstances of the instant case as well evidence available on record requires serious consideration in light of the elaborate and authoritative judgment rendered by a larger Bench in Ghulam Hussain's case PLD 2020 Supreme Court 61. On scrutiny of the entire evidence of prosecution we did not find any concrete evidence to bring the action of the petitioners within the meaning of terrorism as defined in section 6 of the Act of 1997 and discussed in the judgment (supra). Section 6 of the Act of 1997 read as under:-

“S.6.Terrorism(1) In this Act, “terrorism” means the use or threat of action where:-

- (a) The action falls within the meaning of sub- section (2) and
- (b) The use or threat is designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect or a foreign government or population or an international organization or create a sense of fear or insecurity in society; or
- (c) The use of threat is made for the purpose of advancing a religious, sectarian or ethnic cause or intimidating and terrorizing the public, social sectors, media persons, business community or attacking the civilians, including damaging property to ransacking, looting, arson or by any other means, government officials, installation security forces or law enforcement agencies.

In *Ghulam Hussain’s* case (supra), this court after thorough discussion arrived at the conclusion that reading of the Third Schedule of the Act of 1997 shows that an Anti-Terrorism Court has been conferred jurisdiction not only to try all those offences which attract the definition of terrorism provided by the Act of 1997 but also some other specified cases involving heinous offences which do not fall in the definition of terrorism. For such latter category of cases it was provided that although those offences may not constitute terrorism yet such offences may be tried by Anti-Terrorism Court for speedy trial of such heinous offences. This distinction between cases of terrorism and cases of specified heinous offences not amounting to terrorism but triable by an Anti-Terrorism Court has already been recognized by this Court in the cases of *Farooq Ahmed v State and another* (PLJ 2017 SC 408), *Amjad Ali and others v The State* (PLD 2017 SC 661) and *Muhammad Bilal v The State and others* (2019 SCMR 1362). It has been clarified by this Court in those cases that such specified heinous offences are only to be tried by Anti-Terrorism Court and that court can punish the person committing such specified heinous offences only for commission of those offences and not for committing terrorism because such offences do not constitute terrorism. For the purposes of further clarity on this issue it is explained for the benefit of all concerned that the cases of the offences specified in entry No. 4 of the Third Schedule to the Anti-Terrorism Act, 1997 are cases of those heinous offences which do not per se constitute the offence of terrorism but such cases are to be tried by an Anti-Terrorism Court because of their inclusion in the Third Schedule. It is also clarified that in such cases of heinous offences mentioned in entry No.

4 of the said Schedule an Anti-Terrorism Court can pass a punishment for the said offence and not for committing the offence of terrorism. It may be pertinent to mention here that the offence of abduction or kidnapping for ransom under section 365-A, PPC is included in entry No. 4 of the Third Schedule and kidnapping for ransom is also one of the actions specified in section 7(e) of the Anti-Terrorism Act, 1997. Abduction or kidnapping for ransom is a heinous offence but the scheme of the Anti-Terrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365-A, PPC is merely triable by an Anti-Terrorism Court but if kidnapping for ransom is committed with the design or purpose mentioned in clauses (b) or (c) of subsection (1) of section 6 of the Anti-Terrorism Act, 1997 then such offence amounts to terrorism attracting section 7(e) of that Act. In the former case the convicted person is to be convicted and sentenced only for the offence under section 365-A, PPC whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, PPC as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997.

5. For what has been discussed above this petition is converted into appeal and is partly allowed. The conviction and sentences of the petitioner under section 7(e) of the Act of 1997 recorded by the two courts below are set-aside, whereas, ~~this~~ conviction and sentences under section 365-A PPC recorded by the two courts below are upheld.

Announced in open Court at Islamabad on

9-16 April 2025

Approved for reporting.
M. Siraj Afridi PS
Tayyaba Munir LC