

ORDER SHEET  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

Criminal Revision Application No.D-06 of 2025

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE (S)</b>
	1. For orders on M.A. No.2441/2025.
	2. For orders on office objections.
	3. For orders on M.A. No.2442/2025.
	4. For hearing of main case.

**08.04.2025**

Mr. Rasool Bakhsh Soomro, Advocate for applicant.

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**ORDER**

**Syed Fiaz ul Hassan Shah, J:** 1. Urgency is granted.

2to4. Through this Criminal Revision Application, the applicants have prayed for setting-aside the impugned order dated 10.02.2025 whereby their application seeking transfer of their case to the ordinary Court of Jurisdiction has been dismissed.

The Applicants are nominated in Crime No.70 of 2024, registered with Police Station 60<sup>th</sup> Mile, Shaheed Benazirabad under section 365-A and 34 of the Pakistan Penal Code, 1860 read with Sections 6 & 7 of the Anti-Terrorism Act, 1997 and FIRs No.79, 80, 81 and 82 of 2024 under section 24 of the Sindh Arms Act, 2013. Initially, the Applicants have filed an application before the learned Anti-Terrorism Judge, Shaheed Benzairabad for transfer of case to ordinary Sessions Court which was dismissed through the Order dated 10.02.2025 passed by the Anti-Terrorism Court, Shaheed Benazirabad which order has impugned before us.

The Applicants have alleged that they have privy with the complainant Qurban Ali in respect of sale/purchase of some agriculture land and it is alleged that the complainant had managed the story and falsely caused to register FIR for abduction of his brother against ransom.

The complainant and Applicants / Accused party are residing in same locality previously agricultural land was purchased by the complainant party from the father of Applicant No.1/accused Aijaz Ali under sale agreement. The possession was handed over to complainant party however a sum of Rs.50,00,000/- were required to be paid by complainant party to the Applicant / accused Aijaz Ali and the complainant instead of payment of outstanding amount has lodged FIR on false and frivolous allegations.

It is admitted position that the charge has been framed by the Anti-Terrorism Court, Shaheed Benzairabad and now the matter is fixed for recording of evidence. We have noticed that provisions of section 23 of the Anti-Terrorism Act, 1997 deals with the transfer of cases to any other Court having jurisdiction provided the offence is not ***scheduled offence***. For the sake of convenience provisions of Section 23 is reproduced herein:

**“23. Power to transfer cases to regular Courts.** Where, after taking cognizance of an offence, (Anti-Terrorism 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.”

The arguments of learned counsel for the Applicants that there is concurrent jurisdiction to try the case relating to the provisions of section 365-K Pakistan Penal Code, 1860 is misconceived and untenable. The

offence of Kidnapping for ransom is itself enumerated under section 2(n) of the said Anti-Terrorism Act, 1997, which is re-produced as under:

“(n) **“kidnapping for ransom”** means the action of conveying any person from any place, without his consent, or by force compelling or by any deceitful means inducing him, to go from any place, and unlawfully detaining him and demanding or attempting to demand, money, pecuniary or other benefit from him or from another person, as a condition of his release;

Furthermore, the sentence for the commission of offence for kidnapping for ransom has been provided under section 7(e) as under:

**“the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable, on conviction, with death or imprisonment for life.”**

Therefore, neither any Court can try the offence of kidnapping for ransom nor the law has authorized any court with sentencing power except the Court as established under section 13 of the Anti-Terrorism Act, 1997. The case law relied upon by the learned counsel for the Applicants reported as **“Ghulam Hussain and others Vs. The State and others” (PLD 2020 Supreme Court 61)** is distinguishable. It does not relate to the schedule offence and it does not contemplate the mode, manner or proceeding of the trial under the Anti-Terrorism Act, 1997. The word “terrorism” has been defined in section 6(1) of the ATA of 1997, which means the use or threat of action, which falls within the meaning of sub-section (2) of section 6 of the ATA of 1997 and:

(a) ---

(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 by ransacking, looting, arson or by any other means, government officials, installations, security forces or law enforcement agencies:

Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.

A great need of time was required to interpret the offence of “terrorism” which has strikingly described by the larger bench of the august Supreme Court of Pakistan. The dicta laid down by the Hon’ble Supreme Court is audaciously related with the definition of word “terrorism” used by the legislatures in Section 6 of the Anti-Terrorism Act, 1997 and it has elaborately been emphasized that the “terrorism” is in fact an intent, **act, design, object or motive** having nexus with the ingredients of clauses (b) and (c) of section 6(1) of the ATA of 1997 and marked a distinction that no matter how gruesome or brutal act of commission of murder or other incident involve in a crime unless the intent, act, design, object or motive of terrorism is not available on the record, it cannot be considered as “terrorism” and cannot be considered on the touchstone of section 6 of the ATA of 1997 in the absence of any of the ingredients of section 6 of the Anti-Terrorism Act, 1997.

Anxiously, the offence of kidnapping for ransom is independently defined in section 2(n) under the Terrorism Act, 1997 and in the provision of Section 365-K of Pakistan Penal Code, 1860. Regardless the absence of the ingredients of “terrorism” as embodied in section 6 sub-section 1 and its extensive scope stretched out from section 6 sub-section 2(e) of the

Anti-Terrorism Act, 1997, due to severity and heinousness of the offence, the legislatures have declared it as a **scheduled offence** under Section 2(t) and Schedule III “Entry No.4” of the Anti-Terrorism Act, 1997 which was added through amended Act No. II of 2005 and it is re-produced under:

2 (t) “**Scheduled offence**” means an offence as set out in the Third Schedule;”

In summation, the provisions of kidnapping for ransom is itself an offence under the Anti-Terrorism Act, 1997 and it has classified as a **schedule offence** exclusively triable by the Court of Anti-Terrorism as established under section 13 of the Anti-Terrorism Act, 1997, and such aspect has been pondered by in Gulam Hussain’s case at paragraph-13 which is re-produced as under:

“...For the purpose 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, P.P.C. 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 AntiTerrorism Act, 1997 shows that an ordinary case of abduction or kidnapping for ransom under section 365-A, P.P.C. is merely triable by an Anti-Terrorism Court 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, P.P.C. whereas in the latter case the convicted person is to be convicted both for the offence under section 365-A, P.P.C. as well as for the offence under section 7(e) of the Anti-Terrorism Act, 1997....”

**(Emphasis supplied)**

Therefore, the Criminal Revision application is not maintainable and dismissed in *limine*. We have noticed that serious allegations alongwith documents of sale agreement with complainant has been levelled, therefore, the applicants are at liberty to move application to the SSP Shaheed Benazirabad who shall examine the same being Supervising Investigation Officer in accordance with law.

JUDGE

JUDGE

Muhammad Danish \*