

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 90 of 2024

Present Before:

Justice Amjad Ali Sahito
Justice Tasneem Sultana

Applicant : Imtiaz Ahmed s/o Abdul Hamid,
through M/s. Syed Imdad Hussain
Shah, and Syed Shabbir Shah,
Advocates.

Respondent : The State,
through Mr. Ali Haider Saleem,
Addl. Prosecutor General, Sindh.

Date of hearing : 10.04.2025
Date of order : .05.2025.

ORDER

TASNEEM SULTANA, J. The instant Criminal Revision Application has been filed to challenge the Order dated 20.04.2024, passed by the Learned Judge of Anti-Terrorism Court No. XIII, Karachi Division, in Special Case No. 30 of 2024, arising out of FIR No. 115/2023, registered at Police Station Saeedabad, Karachi, under Sections 302 and 34 of the Pakistan Penal Code, read with Section 7 of the Anti-Terrorism Act, 1997 (**Act of 1997**). By virtue of the impugned order, the learned trial Court has dismiss the application seeking transfer of the aforementioned special case to the Court of ordinary Sessions.

2. Brief facts of the case are that on 28.02.2023, Sub-Inspector Muhammad Yousuf Niazi of Police Station Saeedabad, pursuant to Entry No. 61, visited the Trauma Centre, Civil Hospital, Karachi, and approached the Casualty Medical Officer for the purpose of recording the statement of the injured person. However, the statement could not be recorded due to the critical condition of the injured. Subsequently, the Investigating Officer inquired into the matter from Sanaullah, the brother of the injured, who disclosed that on the same date, his brother Shafiullah, employed as an Engineer with the Pakistan Atomic Energy Commission, had left their residence for duty. Upon reaching Street No. 3, Sector 15/16, Gulshan-e-Mazdoor, Saeedabad, at approximately 7:30 a.m., two unknown assailants riding a motorcycle opened fire on him with the intent to commit murder, resulting in firearm injuries to the victim.

3. Learned counsel for the applicant contended that the applicant is innocent and has been falsely implicated in the instant case; that although the alleged incident occurred on 28.02.2023, the First Information Report (FIR) was registered belatedly on 07.03.2023, and the applicant was subsequently arrested on 09.03.2023; that the police report (challan) was submitted on 01.04.2023 before the Court of the learned Judicial Magistrate under Sections 302, 393, and 34 of the Pakistan Penal Code; that the relatives of the deceased later alleged that the incident was an act of targeted killing, and on 08.09.2023, one Attaur Rehman surfaced, claiming to be an eyewitness as well as a witness to the dying declaration of the deceased; that this subsequent development led to the addition of Section 7 of the Anti-Terrorism Act, 1997. However, in the peculiar facts and circumstances of the case, the incident does not fall within the ambit of terrorism as contemplated under the said Act, and thus, the trial of the case before the Anti-Terrorism Court is contrary to the spirit and scheme of the law.

4. He further argued that the impugned order suffers from non-appreciation of the correct factual background and misinterpretation of the relevant legal provisions. It was therefore submitted that it would be just and proper to transfer the case to a regular Sessions Court. In support of his contentions, learned counsel placed reliance upon the cases reported as *Imtiaz Latif & others v. The State* (2024 SCMR 1169), *Javed Iqbal & others v. The State* (2024 SCMR 1437), and *Afsar Khan v. The State* (2020 MLD 1534).

5. Conversely, the learned Additional Prosecutor General, Sindh, supported the impugned order and opposed the prayer for transfer of the case. He submitted that the police had rightly invoked Section 7 of the Anti-Terrorism Act, 1997, in view of the manner and circumstances in which the unfortunate incident transpired, which, according to him, engendered a sense of fear, insecurity, and terror among the general public in the locality.

6. We have heard the learned counsel for the respective parties and have gone through the material available on the record.

7. It transpires from the record that the First Information Report was registered on 07.03.2023 by Sub-Inspector Muhammad

Yousuf Niazi on behalf of the State under Sections 324 and 34 of the Pakistan Penal Code against unknown accused persons. Subsequently, the present applicant and co-accused were apprehended on the basis of CCTV footage, and pistols were recovered from their possession. Thereafter, on 01.04.2023, the police submitted the report under Section 173 of the Criminal Procedure Code (Challan) before the Court of Judicial Magistrate XI, West, Karachi, under Sections 392, 302, and 34 of the Pakistan Penal Code, as the injured victim had succumbed to firearm injuries.

8. Subsequently, upon an application filed by the legal heir of the deceased, the Senior Superintendent of Police (Investigation), Kemari, vide order dated 10.08.2023, transferred the investigation to Inspector Syeda Ghazala Parveen. Based on the evidence collected during the reinvestigation, she inserted Section 7 of the Anti-Terrorism Act, 1997.

9. The primary issue for determination before this Court is whether the acts allegedly committed by the accused fall within the definition of "**terrorism**" as contemplated under Section 6 of the Anti-Terrorism Act, 1997. To address this question, it is appropriate to refer to the judgment reported as *PLD 2020 Supreme Court 61 (Ghulam Hussain and others v. The State and others)*, the relevant portion of which is reproduced below:

16. For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such

actions are taken in furtherance of personal enmity or private vendetta."

10. Moreover, the Hon'ble Supreme Court, in the unreported case of ***Ali Gohar and others v. Pervaiz Ahmed and others (Cr. Petition No. 230 of 2019 and Cr. Misc. Application No.301 of 2019)*** has been pleased to observe, vide judgment dated 30.06.2020 that:-

11. *This brings us to the merits of the very decision of the ATC transferring the case. To adjudge the legal correctness of the said transfer order of the ATC, it has to be seen, whether the facts alleged by the complainant in FIR No. 20 constitute an offence of "terrorism", as envisaged under section 6 of the Act. As to what would constitute an offence triable under the Act was aptly dealt with by a larger bench of this Court in the case of Ghulam Hussain v. The State (PLD 2020 SC 61) wherein, after deliberating exhaustively on the conflicting precedents, this court has held that:-*

16. *For what has been discussed above it is concluded and declared that for an action or threat of action to be accepted as terrorism within the meanings of section 6 of the Anti-Terrorism Act, 1997 the action must fall in subsection (2) of section 6 of the said Act and the use or threat of such action must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of section 6 of that Act or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) of subsection (1) of section 6 of that Act. It is clarified that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as terrorism if it is not committed with the design or purpose specified or mentioned in clauses (b) or (c) of subsection (1) of section 6 of the said Act. It is further clarified that the actions specified in subsection (2) of section 6 of that Act do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.*

11. Similar views have time and again been taken by the Hon'ble Apex Court in cases reported as PLD 2018 Supreme Court 178 (*Province of Punjab through Secretary Punjab Public Prosecution*

Department and another v. Muhammad Rafiq and others) and PLD 2009 Supreme Court 11 (Bashir Ahmed v. Muhammad Siddique and others).

12. Upon perusal of the record, it transpires that the deceased was employed at the Karachi Nuclear Power Generation Station in the capacity of Senior Technician (Civil), SPS-5. From the testimony of PW-2, Sub-Inspector Muhammad Mushtaq, it appears that he, in the company of the complainant, SIP Muhammad Yousuf, visited the place of occurrence and examined the CCTV footage obtained from a camera installed at Agha Super Store. The footage revealed that two individuals arrived at the scene on a motorcycle, and it was visibly observed that the pillion rider drew a pistol and began loading it. In the course of loading the weapon, a bullet was discharged, striking the deceased, Shafiullah.

13. The crux of the above-cited judgments of the Hon'ble Supreme Court is that the motive and object underlying the commission of an offence are critical factors in determining whether the offence falls within the exclusive jurisdiction of an Anti-Terrorism Court or that of an ordinary criminal court. In the instant matter, after careful consideration, it is concluded that the incident does not appear to be the result of targeted killing, and the requisite element of "**terrorism**" is evidently absent. It is a well-settled principle of law that where an offence is committed for personal gain or in furtherance of private motives, such offence does not fall within the purview of Section 6 of the Anti-Terrorism Act, 1997, and is not triable by Anti-Terrorism Court. The conduct and intent of the accused, as discerned from the record, do not reflect or manifest any act of terrorism as envisaged by the provisions of the said Act.

14. In view of the foregoing discussion, it is held that the present case is triable by a Court of ordinary criminal jurisdiction, as the prosecution has failed to establish that the alleged acts of the accused were aimed at creating terror, fear, or insecurity among the public at large. Consequently, the instant Criminal Revision Application is **allowed**. The Special Case No. 30 of 2024, arising out of Crime No. 115 of 2023 of Police Station Saeedabad, does not fall within the ambit of the Anti-Terrorism Act, 1997, and is therefore triable by a regular

Sessions Court. Accordingly, the proceedings undertaken before the Anti-Terrorism Court No. XIII, Karachi Division, are held to be *coram non judice*. The said case is hereby withdrawn from the Anti-Terrorism Court No. XIII, Karachi Division, and is entrusted to the learned Sessions Judge, Karachi-West with a direction to either try the case himself or assign it to any other competent Court of jurisdiction.

15. The Revision Application stands allowed in the terms stated hereinabove.

JUDGE

JUDGE

Faheem/PA