

Order Sheet

**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

**Cr. Rev. Application No. D -36 of 2022**

Present:

**Justice Zafar Ahmed Rajput**

**Justice Irshad Ali Shah**

Applicant : Hakim S/o Akbar Ali Jatoi, through  
Mr. Ghulam Murtaza Korai, Advocate

Respondent No. 1 : The State, through Mr. Shafi Muhammad  
Mahar, Deputy Prosecutor General.

Respondent No. 2 : Naveed Ahmed Arain, (*Nemo*)  
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Date of Hearing : 31.01.2023

Date of Order : 31.01.2023  
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**ORDER**

**ZAFAR AHMED RAJPUT, J:** - This Criminal Revision Application is directed against order, dated 01.10.2022, whereby the learned Judge, Anti-Terrorism Court, Naushahro Feroze dismissed the Crl. Misc. application No. 14 of 2022, filed by the applicant/accused under Section 23 of the Anti-Terrorism Act, 1997 ("*Act of 1997*"), seeking transfer of Special Case No.43 of 2022 (*Re. The State v. Hakim Ali Jatoi & anther*), arisen out of Crime/F.I.R. No.349 of 2022, registered at Police Station Moro, District Naushahro Feroze under Sections 394, 337-H(2), 34, P.P.C. read with Section 6/7 of the Act of 1997 from the file of Court of Anti-Terrorism, Naushahro Feroze to ordinary Court for want of jurisdiction.

2. Precisely, the case of the prosecution as unfolded in the F.I.R. is that on 29.08.2022 at 09:20 a.m., at the spare parts shop of the complainant Asghar Ali, situated at main road Moro, accused Asif Ali and one unknown accused, duly armed with pistols, robbed Rs. 1000/= from complainant, while the father of the complainant resisted the robbery, on that unknown accused made straight fire on him, which hit on upper side of his left foot; thereafter, both the accused made aerial firing to create terror among the general public and shopkeepers, for that the accused persons were booked in the F.I.R.

3. After usual investigation, police submitted the challan against the accused including present applicant in the Anti-Terrorism Court, Naushahro Feroze wherein the applicant filed Cr. Misc. Application, under Section 23 of the Act of 1997, which was dismissed by the trial Court, vide impugned order holding that *present applicant/accused is nominated in the FIR with specific role, no any ill-will or mala fide has come on the record on the party of complainant party for the false implication of the applicant/accused in the present case, present accused caused firearm injury to the father of complainant namely Asghar Ali and such medical certificate is available on record, present accused was apprehended on the spot with crime weapon pistol while committing robbery in the heart of Moro Town in day time, such act has not only frightened shopkeepers, but general public of the city, that act seems to have been done to spread fear in the mind of general public at large, and this court has already taken cognizance in this case, and nothing new has been brought on record in support of this application at this stage, and the act of the accused seems allegedly to have been done by design with plan to give message to the peoples of the city with an aim to create sense of fear and insecurity in the city, hence offence comes within the ambit of this Act, within the jurisdiction of this court.*

4. Learned Counsel for the applicant has mainly contended that the impugned order is against the facts and law as the learned trial Court failed to appreciate that Section 6/7 of the Act of 1997 has been misapplied by the police as the ingredients of said provision of law is missing in the case. He has further contended that the alleged incident has neither taken place at public place, not there appears any intention for creating sense of insecurity in public at large or striking terror.

5. Learned D.P.G. has vehemently opposed this application and has asserted that the impugned order is a legal order, which does not suffer from any illegality or irregularity requiring any interference of this Court.

6. Heard the learned Counsel for the applicant as well as learned D.P.G. and perused the material available on record.

7. In order to appreciate the contentions of learned counsel for the applicant as well as learned D.P.G., we deem it appropriate to reproduce relevant provisions of Section 6 of the Act of 1997, as under:

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

*(a) the action falls within the meaning of subsection (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 create a sense of fear or insecurity in society; or*

*(c) the use or 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.*

*(2) An “action” shall fall within the meaning of subsection (1), if it: -----*

*(3) The use or threat of any action falling within sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (1) (c) is satisfied.*

8. It has been observed by the Apex Court in the case of Ghulam Hussain v.

The State (PLD 2020 SC 61) 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.”*

9. In the case of Muhabbat Ali and another vs. The State (2007 SCMR 142), the Apex Court has laid down the principles to determine the act of terrorism to attract the provision of section 6 of the Act of 1997, as under:

*“In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the F.I.R., record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether the particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect.”*

10. While examining the case in hand on the above touchstone, it is manifest on the face of it that the allegations leveled in the F.I.R. at the most constitute offence of committing or attempt to commit robbery and causing injury. There is no criminal record against the accused showing their involvement in terrorist activities. There is no allegation of sectarian or religious issues and no threat or over awe to society or section of people or public is alleged in the case; therefore, the question of creating terror in the minds of general public has not arisen; hence, the alleged offence has got no nexus with the section 6 and 7 of the Act of 1997.

11. For the foregoing facts and reasons, we are of the considered view that the trial Court while dismissing the application under Section 23 of the Act of 1997 has failed to attend to the above facts and circumstances of the case, which has resulted into miscarriage of justice. We, therefore, by allowing this criminal revision application, set aside the impugned order. Resultantly, Special Case No.43 of 2022 is accordingly withdrawn from the file of Anti-Terrorism Court,

Naushahro Feroze and transferred to the learned Sessions Judge, Naushahro Feroze with direction either to try himself or assign it for trial to any of the Additional Sessions Judge working under him.

**12. Criminal Revision Application stands allowed.**

J U D G E

J U D G E

Abdul Basit