

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

**Present** : Yousuf Ali Sayeed &  
Zulfiqar Ali Sangi, JJ

**Criminal Revision No. D-45 of 2023**

Jannat Gul..... Applicant

Versus

The State and others..... Respondents

**Criminal Revision No. D-47 of 2023**

Jannat Gul..... Applicant

Versus

The State and others..... Respondents

**Criminal Revision No. D-48 of 2023**

Jannat Gul..... Applicant

Versus

The State and others..... Respondents

**Criminal Revision No. D-49 of 2023**

Qasim Khan..... Applicant

Versus

The State and others..... Respondents

Shabbir Ali Bozdar, Advocate, for the Applicants.  
Khalil Ahmed Maitlo, DPG, for the State.

Date of hearing : 15.11.2023.

## **ORDER**

**YOUSUF ALI SAYEED, J.** – The Applicants have impugned the Order passed by the Court of Judge, Anti-Terrorism Court, Ghotki at Mirpur Mathelo on 11.09.2023, dismissing Cr. Misc. Applications Nos.12, 13, 14 and 15 of 2023 (the “**Underlying Applications**”) preferred by them under Section 23 of the Anti-Terrorism Act 1997 (the “**ATA**”) in Special Cases No.30, 30-A, 30-B and 30-C of 2023 (collectively, the “**Subject Cases**”) seeking the transfer thereof from the Anti-Terrorism Court (“**ATC**”) to the ordinary Court having jurisdiction over those matters.

2. As matters stand, the Subject Case are interconnected, arising out of FIR No.31/2023 registered at Police Station Belo Mirpur under Sections 324, 353, 147, 148 of the Pakistan Penal Code (“**PPC**”) and Section 7 of the ATA, and its offshoots, bearing FIR Nos. No.32/2023 under Sections 23(i)(a), 23(i)(b), 23(i)(c), 23(i)(d) of the Sindh Arms Act 2013, and Fir Nos.33/2023 and 34/2023, both under Section 24 of the thereof (collectively, the “**FIRs**”), registered upon the basis of information given by SHO Abdul Jabbar Pathan (the “**Complainant**”) on behalf of the State.
  
3. Succinctly, the narrative set out in the FIRs is that on 17.06.2023, a police party comprising the Complainant and other officials were on patrol, when they received information that a particular vehicle was *en route*, laden with weapons to be delivered to Rahib Shar, for purpose of spreading terror. Upon espying the vehicle, they signaled it to stop, which it did at some distance, with the persons alighting therefrom being said to have been armed with either Kalashnikov assault rifles or pistols and to have opened fire, prompting the patrolling party to respond in kind.

4. One of the accused, namely Mukhtiar Ali, is said to have sustained a bullet injury at the hands of his companions during the ensuing encounter and succumbed on the spot, while two others, namely the Applicants, Jannat Gul and Qasim Khanm were apprehended at the scene whereas two other accused persons, namely Ubedullah Malik and Amanulalh Malik, managed to escape. Two Kalashnikov assault rifles, one 12 bore repeater, one 44 bore rifle, two 9 mm pistols, one .30 bore pistol, 20 empty KK magazines, 500 SMG bullets, 230 44 bore Bullets, 40 9mm bullets, and 430 .30 bore bullets are shown as having been recovered, with the FIRs then being registered.
  
5. As the matter entails a determination on a jurisdictional plane, it merits consideration at the outset that Section 12(1) of the ATA circumscribes the basic jurisdiction of the ATC as follows:

**12. Jurisdiction of [Anti-terrorism Court].—** (1) Notwithstanding anything contained in the Code or in any other law, a scheduled offence committed in an area in a Province [or the Islamabad Capital Territory] shall be triable only by the [Anti-terrorism Court] exercising territorial jurisdiction in relation to such area.

6. The term “Scheduled Offence has been defined as per Section 2(t) of the ATA to mean “an offence as set out in the Third Schedule” of the statute, whereas in terms of Section 2(x) the term “terrorism” is said have the meaning assigned to it in Section 6 thereof.

7. In turn, the Third Schedule contains the following entries:

1. Any act of terrorism within the meaning of this Act including those offences which may be added or amended in accordance with the provisions of section 34 of this Act.

2. Any other offence punishable under this Act.

3. Any attempt to commit, or any aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.

[4. Without prejudice to the generality or the above paragraphs, the Anti-terrorism Court to the exclusion of any other Court shall try the offences relating to the following, namely:-

(i) Abduction or kidnapping for ransom;

(ii) use of fire arms or explosives by any device, including bomb blast in a. mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby; or

(iii) firing or use of explosive by any device, including bomb blast in the court premises.]

8. For its part, Section 6 of the ATA provides as follows:

**“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 a foreign government or population or an international organization 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 contained herein 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 sub-section (1), if it:

(a) involves the doing of anything that causes death;

(b) involves grievous violence against a person or grievous bodily injury or harm to a person;

(c) involves grievous damage to property [including government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any others means;

(d) involves the doing of anything that is likely to cause death or endangers person’s life;

(e) involves kidnapping for ransom, hostage-taking or hijacking;

(ee) involves use of explosive by any device including bomb blast [or having any explosive substance without any lawful justification or having been unlawfully concerned with such explosive;

(f) incites hatred and contempt on religious, sectarian or ethnic basis to strip up violence or cause internal disturbance;

(g) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, government officials and institutions, including law enforcement agencies beyond the purview of the law of the land;]

(h) involves firing on religious congregation, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;

(i) creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civic life;

(j) involves the burning of vehicles or any other serious form of arson;

(k) involves extortion of money (“bhatta”) or property;

(l) is designed to seriously interfere with or seriously disrupt a communication system or public utility service;

(m) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;

(n) involves serious violence against a member of the police force, armed forces, civil armed forces, or a public servant;

(o) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or

(p) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the government or its concerned departments.

(3) The use or threat of use 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.

[(3A) Notwithstanding anything contained in sub-section (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of terrorism under this Act.]

(4) In this section “action” includes an act or a series of acts.

(5) In this Act, terrorism includes any act done for the benefit of a proscribed organization.

(6) A person who commits an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.

(7) In this Act, a “terrorist” means:-

(a) an individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism;

(b) an individual] who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above.

9. Proceeding with his submissions within the contours of that statutory framework, learned counsel for the Applicants submitted that even if the allegations set out in the FIRs were taken to be correct, the matter did not qualify as 'terrorism' within the contemplation of the ATA, nor otherwise constituted a Scheduled Offence, so as to attract the jurisdiction of the ATC. He pointed out that the version of the prosecution merely showed a police encounter which of itself had not been said to have created panic, terror or insecurity amongst the general public, but with a twist sought to be given through it being alleged that the weapons/firearms recovered were to be supplied onwards for that purpose, without identifying any proscribed person or proscribed organization. He argued that in the absence of any explosive substance or device, the alleged recovery of such weapons/firearms and the mere assertion that they were to be supplied for the spread of terror did not serve to bring the matter within the fold of 'terrorism'. He argued that the trial Court had thus erred in dismissing the Underlying Applications, and prayed that the impugned Orders be set aside and the Subject Cases be transferred for trial in the ordinary course.

10. In response, the learned APG formally opposed the plea advanced on behalf of the Applicants, but was unable to advance any cogent argument to demonstrate with specificity that the version of events narrated in the FIRs constituted any Scheduled Offence.

11. While seeking to understand the scheme of the ATA so as to make a determination as to whether the matter at hand falls within the ambit thereof and jurisdiction of the ATC, it merits consideration that in the case reported as Ghulam Hussain and others v. The State PLD 2020 SC 61, it was observed with reference to the Third Schedule that:

“A careful reading of the Third Schedule 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 but also some other specified cases involving heinous offences which do not fall in the said 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 an 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 an 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. The same may also be said about the other offences mentioned in entry No. 4 of the Third Schedule to the Act pertaining to "Use of firearms or explosives by any device, including bomb blast in a mosque, imambargah, church, temple or any other place of worship, whether or not any hurt or damage is caused thereby", "Firing or use of explosive by any device, including bomb blast in the court premises", "Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance" and "Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908)". Such distinction between cases of terrorism and other heinous offences by itself explains and recognizes that all heinous offences, howsoever serious, grave, brutal, gruesome, macabre or shocking, do not ipso facto constitute terrorism which is a species apart. Through an amendment of the Third Schedule any heinous offence not constituting terrorism may be added to the list of offences which may be tried by an Anti-Terrorism Court and it was in this context that the Preamble to the Act had mentioned "Whereas it is expedient to provide for the prevention of terrorism, sectarian violence and for speedy trial of heinous offences".

12. In that very case, the Supreme Court further observed in the context of S. 6 of the ATA that:

“Reading of subsections (1) and (2) of the said section together makes good sense, i.e. all the actions specified in subsection (2) shall constitute terrorism if they are committed with the ‘design’ mentioned in clause (b) of subsection (1) or are committed for the ‘purpose’ referred to in clause (c) of subsection (1) of that section. Subsection (3) of that section, however, provides that “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” which means that if for commission of the actions mentioned in subsection (2) a firearm, an explosive substance or any other weapon is actually used or a threat regarding use of the same is extended then all such actions are to constitute the offence of terrorism even if the other requirements of clause (c) of subsection (1) of section 6 are not satisfied or fulfilled. The requirements that need to be satisfied for invoking clause (c) of subsection (1) of section 6 are that the use or threat of action should be for “the purpose of advancing a religious, sectarian or ethnic cause” or for the purpose of “intimidating and terrorizing the public, social sectors, media persons, business community” or for the purpose of “attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies”. If the said requirements and purposes mentioned in clause (c) of subsection (1) of section 6 do not need to be satisfied and if mere use or threat of use of a firearm, an explosive substance or any other weapon for commission of the actions mentioned in subsection (2) of section 6 is to *ipso facto* constitute the offence of terrorism then every murder committed (action under clause (a) of subsection (2) of section 6), every grievous bodily injury or harm caused (action under clause (b) of subsection (2) of section 6), every grievous damage to private property (action under clause (c) of subsection (2) of section 6), doing anything that is likely to cause death or endangers a person’s life (action under clause (d) of subsection (2) of section 6) or creating a serious risk to safety of the public or a section of the public (action under clause (i) of subsection (2) of section 6) even if committed with an ordinary stick, a brickbat or a stone when used as a weapon would constitute the offence of terrorism! Such trivializing of the diabolical offence of terrorism surely could not be the intention of the legislature when framing a law for the offence of terrorism which is a class apart and a species different from any other ordinary crime.

13. The Court then went on to declare *inter alia* that an action falling under S. 6(2) would not of itself constitute terrorism, but would require the coincidence of any of the objectives specified in clause(b) of S. 6(1), or the use or threat of such action must be to achieve any of the purposes mentioned in clause (c) thereof, failing which the action, albeit otherwise

constituting an offence, would not qualify as “terrorism”, irrespective of how grave, shocking, brutal, gruesome or horrifying such action may be. A finding to that effect is encapsulated in Paragraph 16 of the judgment, which reads as follows:

“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.

14. When the matter at hand is examined in light of the overall scheme of the ATA, it is apparent that albeit the same ostensibly involving an act of armed resistance against members of a law enforcement agency, as envisaged in Section 6(2)(o), the coincidence of the factors specified in Section 6(1) is conspicuously absent in the given factual matrix. As such, the matter does not fall within the fold of

‘terrorism’, as per the ratio of Ghulam Hussain (Supra) and the conception of the term arrived at in the impugned Order is far removed from what has been laid down by the Supreme Court in that case. Indeed, in the case reported as P.C. Nasir Hussain v. Hasnain Shah and 2 others 2022 MLD 425, a learned Division Bench of this Court (of which one us was a member) had dispelled such a contention where the accused had simply been implicated in firing upon and injuring police personnel, as the ingredients of Section 6(1) were found missing.

15. The mere recovery of firearms and ammunition coupled with the assertion that the same were to be supplied onwards for the purpose of creating/spreading terror does not suffice for that purpose, especially when it has not even been stated that the intended recipient is a proscribed person or proscribed organisation. Furthermore, the alleged offence is even otherwise not one of those heinous offences which do not constitute the offence of terrorism *per se*, but are nonetheless to be tried by an ATC due to having been specified in Entry No. 4 of the Third Schedule.

16. In view of the foregoing, it is apparent that the impugned Order suffers from error. Hence the captioned Criminal Revision Applications are allowed with the impugned Order being set aside and the Subject Cases accordingly being transferred to the ordinary Court of competent jurisdiction.

JUDGE

JUDGE

