

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

CP No. D-1420 of 2024

[Hafiz Muhammad Hanif v. The Province of Sindh & others]

BEFORE:

MR. JUSTICE ADNAN-UL-KARIM MEMON
Mr. JUSTICE RIAZAT ALI SAHAR

Petitioner: Hafiz Muhammad Hanif through Mr. Jaleel Ahmed Memon, advocate

Respondents: Through Mr. Muhammad Ismail Bhutto, Additional Advocate General Sindh.

Date of hearing: 24.11.2025

Date of decision: 24.11.2025

O R D E R

RIAZAT ALI SAHAR, J: - Through this petition, the petitioner seeks the following relief:

- A). That this Honorable Court may kindly direct respondent No. 1 to delete the name of the petitioner from the Fourth Schedule of Anti-Terrorism Act 1997 as well as remove his name from the notification being No. SO (JUDL-II)/HD/8-1/2022 dated 21-03-2022
- B). That this Honourable Court may kindly direct respondents Nos. 3 and 7 not to harass the applicant and his family members and not to call him to the police station.
- C). Any other relief this Hon'ble Court deems fit and proper may also be granted to the petitioner.

2. The petitioner stated that he has been serving as Pesh Imam of Ismail Masjid, Sanghar Road, Nawabshah and for the last nineteen years his name has been included in the Fourth Schedule to the Anti-Terrorism Act, 1997 by local intelligence and police allegedly without lawful justification. Respondent No.2 has produced no material proving his involvement in anti-state activities and that although various criminal cases are said to have been instituted by respondent No.7 or other officials, the petitioner neither has been convicted nor does any case is pending against him. According to the petitioner, Section 11-E of the Anti-Terrorism Act prescribes that a name cannot remain in the Fourth

Schedule beyond three years, whereas his name has allegedly been retained for thirteen years. The petitioner's name had been de-notified by this Court's order dated 21.12.2016, but was again enlisted on 24.01.2017 and thereafter challenged in C.P. No. D-2296 of 2018 which was dismissed for non-prosecution on 14.02.2024; even otherwise the said C.P become infructuous after issuing of impugned order dated 21.03.2022. The petitioner adopted the due course of law, preferred an appeal against the notification of enlistment in the Fourth Schedule of ATA 1997, but the same is still pending and has not been decided till today, hence, the has filed this constitution petition.

3. The learned counsel for the petitioner contends that for the last nineteen years the petitioner's fundamental rights have been continuously violated by the respondents by maintaining his name in the Fourth Schedule of the Anti-Terrorism Act, 1997 ("ATA") without any lawful justification or substantive material. He contends that in the absence of any allegation linking the petitioner with a proscribed organization or any evidence indicating his involvement in anti-state or terrorist activities, the impugned notification fails to meet the statutory requirements prescribed under Section 11-E of the ATA and is, therefore, liable to be annulled. He further contends that the indefinite inclusion of the petitioner's name in the Fourth Schedule is contrary to the relevant provisions of law and constitutes a manifest violation of the petitioner's firm right to the protection of law and to be treated in accordance with law, as guaranteed under Article 4 of the Constitution. He contends that Article 9 of the Constitution prohibits the curtailment of personal liberty on the basis of mere presumptions. According to him, even if the respondents possess any material suggesting the petitioner's involvement in terrorist or anti-state activities, the same ought to be produced before this Court. He further contends that upon knowledge of the re-enlistment of his name in the Fourth Schedule, the petitioner promptly moved applications to different authorities and also preferred an appeal under Section 11-EE of the ATA, 1997 to the Home Department, Government of Sindh; however, remain undecided to date. The learned counsel contends that respondents No. 2 to 7 possess no evidence whatsoever of the petitioner's physical involvement in any anti-government or anti-state activities, nor has he ever been found in any such criminal proceedings. Learned counsel, therefore, prays that the petitioner's name be deleted from the Fourth Schedule of the ATA, 1997 and that the Notification dated 21.03.2022 be set aside to the extent of the petitioner.

4. Conversely, the learned Additional Advocate General, Sindh, while relying upon the comments filed on behalf of respondent No. 2, submits that vide letter No.AIGP/LEGL/4th Sch/CPO/1048-55/22 dated 17.02.2022, the Inspector General of Police, Sindh, recommended the enlistment of the petitioner in the Fourth Schedule on the premise that he is an active member of Ahle Sunnat Wal Jamaat / banned Sipah-e-Sahaba Pakistan. The recommendation was made pursuant to the report of the Provincial Committee comprising the DIGP Counter Terrorism Department (Chairman), DIGP Special Branch, and Assistant IGP Operations. He further contends that respondent No. 5 endorsed the petitioner's enlistment in the Fourth Schedule on the ground that the petitioner actively participates in sectarian gatherings of a banned organization and promotes hatred among different sectarian groups. He points out that respondent No. 6 after conducting an impartial inquiry, found material indicating the petitioner's involvement through speeches delivered at Jamaat gatherings and Ijtimas, hence, the petitioner's name was placed in the Fourth Schedule of the Anti-Terrorism Act, 1997.

5. We have heard the learned counsel for the petitioner, learned A.A.G. Sindh as well as perused the record.

6. From the meticulous scrutiny of the material placed before us, it is an admitted position that although at different points in time certain criminal cases were registered against the petitioner, he has been acquitted in all such cases and no criminal case is presently pending against him before any Court of law. The respondents have not disputed this factual aspect, nor have they produced any order of any competent Court or authority to show that the petitioner is currently facing proceedings that may reasonably justify the continued retention of his name in the Fourth Schedule. Once the petitioner stands acquitted of the allegations earlier levelled against him, the foundational basis for suspicion, if any, automatically diminishes and in absence of any fresh incriminating material, continuation of such adverse action becomes legally untenable.

7. Section 11-E of the Anti-Terrorism Act, 1997 embodies the legislative intent that the drastic measure of placing an individual in the Fourth Schedule must be reviewed periodically and cannot be allowed to continue indefinitely without fresh assessment or tangible evidence. The provision contemplates a maximum period of three years subject to

renewal upon justifiable grounds. However, in the present case, the petitioner's name has admittedly remained on the Fourth Schedule for nearly nineteen years, at times uninterruptedly and at times re-notified without any objective material meeting the statutory threshold. Such prolonged retention, without any substantiated evidence of present or recent involvement in proscribed activities, violates not only the letter but also the spirit of Section 11-E of the Act.

8. It is a well-settled principle that mere suspicion, unverified intelligence reports or general allegations cannot constitute legal grounds for curtailing a citizen's liberty or subjecting him to restrictions reserved for individuals reasonably believed to be associated with proscribed organizations. The respondents, despite repeated opportunity, have not produced any concrete material demonstrating that the petitioner has engaged in any activity falling within the ambit of anti-state, sectarian, extremist or terrorist conduct. Mere assertions that the petitioner "attends gatherings" or "delivers speeches", cannot be accepted as evidence unless supported through credible, verifiable and legally admissible material. Even otherwise, none of the respondents have shown that any such alleged activity resulted in the registration of a fresh case or inquiry against the petitioner in recent years.

9. The constitutional scheme, in particular Articles 4, 9, 10-A, 14 and 25 of the Constitution, guarantees to every citizen the right to be dealt with in accordance with law, the right to life and liberty, due process, dignity and equality before law. Curtailment of liberty through statutory mechanisms such as the Fourth Schedule may be permissible, but only when justified by cogent reasons and in strict compliance with statutory conditions. The indefinite retention of the petitioner's name in the Fourth Schedule, despite his repeated acquittals and the absence of any fresh evidence, clearly amounts to an unreasonable restriction on his constitutionally protected rights. It has further resulted in continuous harassment, impediments in his movement, stigmatization in society and unwarranted police surveillance, all of which fail to meet the test of proportionality recognized by constitutional jurisprudence.

10. We also find it significant that the petitioner, upon his re-enlistment, immediately availed the statutory remedy provided under Section 11-EE of the ATA, 1997, but his appeal has remained undecided for a considerable period without any explanation from the concerned authorities. The failure of the competent authority to determine the

petitioner's statutory appeal within a reasonable time is itself a violation of due process and renders the impugned notification susceptible to judicial interference. An administrative order affecting fundamental rights cannot be allowed to subsist when the statutory appellate mechanism remains dormant due to inaction of the State.

11. The respondents have placed heavy reliance upon certain reports of the Provincial Committee and observations of local police officials. However, the same are neither supported by any independent evidence nor do they demonstrate that the petitioner is currently associated with any proscribed organization and engaged in conduct posing a threat to public safety. The law requires that any such opinion must be based on credible and concurrent material, not mere assumptions or historical allegations that have lost legal efficacy after acquittal. In the absence of a single pending case, inquiry, or complaint registered during the last several years, the respondents' reliance upon such unsubstantiated reports cannot withstand judicial scrutiny.

12. It is also pertinent to note that this Court had earlier denotified the petitioner's name through order dated 21.12.2016, which suggests that even at that time, the material relied upon by the respondents was insufficient. The immediate re-enlistment of the petitioner merely one month later and subsequent issuance of another notification on 21.03.2022, without demonstrating any new or additional grounds, reflects arbitrary exercise of authority. An administrative act based upon stale, repetitive or previously disbelieved material cannot be justified as lawful.

13. In view of the above discussion, we are of the clear view that the respondents have failed to discharge the burden of establishing that the petitioner presently meets the statutory criteria for continued retention in the Fourth Schedule of the ATA, 1997. The impugned action, being unsupported by evidence, in violation of statutory provisions, contrary to constitutional guarantees and perpetuating prejudice without lawful cause, cannot be sustained. Accordingly, the petitioner is entitled to relief.

14. For what has been discussed above, the petition is **allowed**. The name of the petitioner shall be deleted from the Fourth Schedule of the Anti-Terrorism Act, 1997 and the notification bearing No. SO (JUDL-II)/HD/8-1/2022 dated 21-03-2022 is hereby set aside. The competent

authority is further directed to ensure that no harassment is caused to the petitioner or his family and no coercive action shall be taken against him unless warranted by law on the basis of new and legally actionable material.

JUDGE

JUDGE

Abdullahchanna/PS