

## **IN THE HIGH COURT OF SINDH AT KARACHI**

**Criminal Misc. Application No. D-117 of 2025**

Present

**Justice Zafar Ahmed Rajput**

**Justice Dr. Syed Fiaz ul Hassan Shah**

Applicant : Ghulam Yaseen s/o Ghulam Rasool, through  
Mr. Raj Ali Wahid Kunwar, Advocate

Respondent : The State, through Mr. Ali Haider Saleem,  
Addl. Prosecutor General, Sindh (**Addl. PG**).

Complainant : Mst. Shama Begum w/o Muhammad Ali,  
through Mr. Shah Jahan Shah, Advocate

Date of Hearing : 04.06.2025

Date of Order : .06.2025

### **ORDER**

**Dr. SYED FIAZ UL HASSAN SHAH, J –** Through this Criminal Misc. Application, filed under section 561-A, CrPC, the applicant has impugned the Order dated 18.01.2025, whereby the Anti-Terrorism Court No. XV, Karachi (**“Trial Court”**) dismissed his application filed under section 23 of the Anti-Terrorism Act, 1997 (the **“Act”**) seeking transfer of the Special Case No. 08 of 2023 (*Old Special Case No. 120 of 2023*) from the Trial Court to the Regular Sessions Court.

### **Brief Facts**

2. On 02.09.2022, ASI Mumtaz Hussain, on behalf of the State, lodged at P.S. Pirabad two FIRs i.e. (i) **FIR No. 725 of 2022**, under sections 353, 324, read with section 7 of the Act and (ii) **FIR No.726 of 2022**, under section 23(1) of the Sindh Arms Act, 2013, alleging therein that on the said day he, alongwith PC Mohsin Shamoan, PC Amir Rasool and PC Muhammad Qasim, was on patrolling in the area when intelligence staff HC Ghulam Yaseen and PC Umair Khan reported him that one suspicious

person had gone to Paracha Graveyard and was sitting there. On receiving such information, police party reached the pointed place at 06:30 a.m. and encircled the suspicious person who, with intention to kill them, attempted to fire on them but the bullet stuck inside the chamber of his pistol. In retaliation, police also fired on him; he sustained injuries and was held by the police. On inquiry, he disclosed his name as Nadir Magsi son of Muhammad Ali Magsi. Police seized his unlicensed 30-bore pistol with magazine loaded with three bullets and shifted him to Abbasi Shaheed Hospital, where he succumbed to his injuries.

3. Subsequently, on 07.09.2022, Mst. Shama Begum, the mother of deceased Nadir Magsi, lodged a counter Crime Report being **FIR No.731 of 2022**, under section 302/34, PPC read with section 7 of the Act, stating therein that, on 02.09.2022, some persons in police uniforms and civil dresses came at her house and took away with them her said son; later at 09:00 a.m., she received information through Chhipa Ambulance Service that her son was killed by the police party. In her said FIR, she nominated SHO Peerabad, Nazar Alam, ASI Mumtaz Hussain, PC Mohsin Shamoon, PC Amir Rasool, Muhammad Qasim, HC Ghulam Yaseen (*present applicant*) and PC Umair Khan as accused for committing *qatl-e-amd* of her son in a fake police encounter.

4. Afterward, C.P. Nos. D-5326 & D-7380 of 2022 were filed before this Court, challenging registration of two FIRs for one and the same incident in view of dictum laid down in the case of Sughran Bibi (PLD 2018 SC 595), wherein DIG, Karachi-South submitted his reports to the effect that the **FIR No. 725 of 2022** would be disposed of under “B”-Class and **FIR No. 731 of**

**2022** to be recommended for disposal under “C”-Class, while investigation thereof to be merged into the investigation of **FIR No. 725 of 2022**.

5. After usual investigation, police submitted the charge-sheet. The Applicant filed an application under section 23 of the Act, which was dismissed by the Trial Court vide impugned order.

6. We have heard the learned counsel for the Applicant, complainant as well as learned Addl. P.G and scanned the record placed before us.

7. Learned counsel for the Applicant while referring the judgment of the Apex Court passed in the case of Ghulam Hussain v. The State (**PLD 2020 SC 61**) has argued that the alleged offence though serious, grave, heinous, gruesome and brutal does not meet the threshold of “terrorism” as defined under section 6 of the Act in the absence of specific proof of the intent or objective referred to in section 6(2) of the Act; hence, the Trial Court has no jurisdiction to try the alleged offence but the Regular Sessions Court.

8. Conversely, learned counsel for the complainant as well as learned Addl. P.G. while supporting the impugned Order have maintained that since the alleged offence falls within the definition of “*terrorism*”, as defined under the Act, the Trial Court has the jurisdiction to try the same.

9. The case in hand pertains to the jurisdiction of Trial Court to try the alleged offence as a Scheduled offence of the Act. Therefore, it has to be determined as to whether the alleged offence qualifies as an act of “*terrorism*” within the meaning of section 6 of the Act and, therefore, comes within the exclusive jurisdiction of an Anti-Terrorism Court (“**ATC**”) or it is to be tried by the Regular Sessions Court. For convenience’s sake, the relevant provisions of section 6 of the Act are reproduced, as under:

6. Terrorism. - (1) In this Act. "terrorism" means the use or threat of action where:

- (a) the action falls with the meaning of sub-section (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 or terrorizing the public, social sector, media person, 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 sub-section (1), if it:

- (a) involves the doing or anything that causes death;
- (b) involves grievous violence against a person or grievous body injury or harm to person;
- (c) involves grievous damage to property, including government premises, official installations schools, hospital, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means;
- (d) involves the doing of anything that is likely to cause death or endangers a person's life;
- (e) involves kidnapping for ransom, hostage-taking or hijacking;
- (ee) involves use of explosives 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 stir up violence or cause internal disturbance;
- (g) involves taking law in own hand, award of any punishment by any 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 congregations, 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 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 another serious form of arson;
- (k) involves extortion of money ("Bhatta") or property;
- (l) is designed to seriously interfere with or seriously disrupt a communications 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; or
- (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 department.

**(3)** The use or threat or use of any action falling within sub-section (2) which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not subsection 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 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 prescribed 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) any person who has committed an offence or terrorism under this Act, and is or has been concerned in the commission, preparation, facilitation, funding or instigation of acts of terrorism;
- (b) any person 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.

**(Emphasis supplied)**

**Factual Distinction from Ghulam Hussain’s Case:**

10. The facts of the case in hand are distinguishable. In the *Ghulam Hussain’s case (supra)*, the incident involved brutal murder of two minors and prosecution case based on personal enmity or grudge. In contrast, the present case involves a specific and independent FIR lodged by the mother of the deceased, alleging that her son was unlawfully abducted from her house by the police officials, and then he was murdered in a fake encounter; This dual-FIRs’ scenario, with allegations of custodial killing and fabrication of encounter, adds a new layer of complexity and factual divergence which was not present in *Gulam Hussain’s case*. This substantial difference in factual matrix justifies a separate legal treatment.

11. It may be observed that *Ghulam Hussain’s case* sets out the general framework requiring both act and intent, however, in our humble view, it does not provide specific interpretation of clause (b) of sub-section (1) of section 6 of the Act, which includes acts “*designed to strike terror or create a sense of fear or insecurity in the public,*” and clauses (a) & (b) of sub-section (2) *ibid*, which deals with acts “*causing death and grievous injury*”;

which arguably may involve an implicit design or intent, and sub-section (3) of section 6 of the Act, which introduces a statutory presumption that acts listed in clause (c) of sub-section (1) *ibid* to be treated as acts of “terrorism” if they cause or are likely to cause fear, insecurity, etc. The Judgment in *Gulam Hussain’s* case primarily interprets the scope of clause (b) of sub-section (1) of section 6 in conjunction with sub-section (2) of section 6 of the Act. It adopts a restrictive construction of sub-section (3) of section 6 of the Act, cautioning against its indiscriminate application to ordinary criminal acts. It neither interprets clause (a) of sub-section (1) of section 6 of the Act, which relates to acts intended to intimidate the public, nor it strikes down or invalidate sub-section (3) *ibid*. It squares itself with the principles of criminal law that require *mens rea* (guilty mind) and *actus reus* (guilty act) to constitute an offence; hence, the dictum of *Ghulam Hussain’s* case reads down it and is binding on all Courts to that extent. However, this Court is of the considered view that sub-section (3) of section 6 of the Act does not override the requirement of establishing the design under sub-section (2) of section 6 of the Act.

**Binding Nature of Ghulam Hussain’s Case under Article 189 of the Constitution:**

12. Article 189 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”) provides that “*any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.*” Therefore, reading down of section 6 (3) of the Act in the decision of *Ghulam Hussain’s* case applies generally and is binding on all courts including the High Courts, to the extent of its *ratio decidendi* i.e., restrictive application of section 6(3) of the Act. However, the High Court can interpret



it in a new factual context through restrictive test, cumulatively with sections 6(1)(a) to (c), (3) & (5) of the Act. In the case of Khizar Hayat v. The State (PLD 2019 SC 527), the Apex Court has held that the Courts can interpret undiscussed provisions where Supreme Court has not laid down specifically. This Court retains jurisdiction under Article 203 of the Constitution to interpret statutory provisions which remain legally valid and unaddressed by the Apex Court particularly where facts of the case demonstrate a design or intent to terrorize, intimidate, or coerce. It may be observed that the interpretive authority of the High Courts is not confined to writ jurisdiction under Article 199 but extends to appellate and revisional proceedings. Reference is made to Raja Khurram Ali Khan & 2 others v. Tayyaba Bibi and another (PLD 2020 SC 146), The State v. Zia ur Rehman (PLD 1973 SC 49), Federation v. Mian Muhammad Nawaz Sharif (PLD 2009 SC 284), Baz Mohammad Kakar v. Federation (PLD 2012 SC 923), Mubin Islam and other v. Federation (PLD 2006 SC 602) and Pir Sabir Shah v. Shad Muhammad Khan & another (PLD 1995 SC 66), wherein it was affirmed that High Courts are competent to interpret statutory clauses in criminal matters and that Apex Court has observed that interpretation of law by lower courts is not forbidden where the superior court has not explicitly dealt with the same provision or scenario. In the cases of Khursheed Anwar v. Federation (PLD 2010 SC 483) and The State v. Asif Ali Zardari (PLD 2001 SC 568), the Apex Court has held that what binds is not the result, but the principle. In the cases of Dr. Mubashir Hassan v. Federation of Pakistan (PLD 2010 SC 265) and Province of Punjab through Secretary Prosecution v. Mohammad Rafique & others (PLD 2018 SC 178), the Apex Court has held that where the Apex Court interpreted some provisions of a Statute, the



subordinate courts are not precluded from interpreting remaining provisions that have not been examined.

**13.** Sub-section (3) of section 6 of the Act provides that where acts falling under clauses (a) to (c) of subsection 1 of Section 6 are committed and result in consequences such as public fear or panic, they shall be deemed to have been committed for the purposes laid down in subsection (2). In the present case, the actual consequences of the alleged action of accused police officials *causing death* of a citizen in a fake police encounter has resulted in widespread fear and disruption, which has clearly been observed and documented in the prosecution evidence. Therefore, the presumption under sub-section (3) *ibid* is attracted, distinguishing this case factually from *Ghulam Hussain's case*, where no such overt public terror or fear was proven. The Applicant/accused did not act out of personal motive against a specific individual alone but chose a sensitive office of police, thereby targeting the public at large. Additionally, the defence plea of the accused is "police encounter", within the purview of clauses (n) and (o) of sub-section (2) of section 6 of the Act, which must be tried before the ATC being a Scheduled offence.

**Conjunctive Reading of Section 6 and Section 23:**

**14.** Section 23 of the Act reads, as under:

**23. Power to transfer cases to regular courts.-** Where, after taking cognizance of an offence, an 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.

It appears from the perusal of the above provision that if, after taking cognizance of an offence, ATC is of the opinion that the offence is not a Scheduled offence, it can order transfer of the case for trial of such offence to any regular court having jurisdiction under the CrPC. When this provision is read conjunctively with the provisions of section 6 of the Act, it may be concluded that an ATC retains full discretion to invoke jurisdiction under the Act if the material prima facie supports the ingredients of a scheduled offence with reference to section 6 of the Act. However, after taking the cognizance of an offence, at any subsequent stage i.e. before framing of charge, during evidence, or even at the conclusion of the trial, if ATC comes to an opinion that the offence is not a scheduled offence, it is empowered to transfer the case to a regular Sessions Court. The cumulative reading of sections 6 and 23 of the Act empowers the ATC to continue with the adjudication under the Act where prima facie material suggests the connection of "terrorism", as defined in section 6 of the Act in the alleged offence. Thus, judicial assessment under section 6 of the Act is fluid and ongoing, not static.

**15.** We do not find any force in the argument of the learned counsel for the Applicant. Even otherwise, since investigation of **FIR No. 731 of 2022** (*lodged by Mst. Shama Begum under section 302/34, PPC read with section 7 of the Act*) has been merged into the investigation of **FIR No. 725 of 2022** (*lodged by ASI Mumtaz Hussain under sections 353, 324, read with section 7 of the Act*). The offence of so-called assault and/or using force to deter police from discharging of their duties in terms of section 353, PPC and violence against the members of the police force and resistance against the law enforcement agency in terms of clauses (n) and (o) of sub-section (2) of section 6 of the Act, as per defence of the applicant/accused, squarely falls within the ambit of the

“terrorism” as defined under section 6 of the Act, which is to be decided by the ACT/Trial Court after recording pro and contra evidence of the parties. Therefore, the application for transfer of the case from the Trial Court to a Regular Sessions Court is devoid of any merit.

**16.** For the foregoing facts, discussion and reasons, we do not find any illegality or irregularity in the impugned Order requiring any interference of this Court under its inherent power; hence, the instant Criminal Misc. Application is dismissed, accordingly.

**JUDGE**

**JUDGE**

Asim/PA