

IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.116 of 2024

Present:
Justice Zafar Ahmed Rajput
Justice Miran Muhammad Shah

Applicant	:	Gulzar Ali s/o Muhammad Ali Khan Jamali, through Barrister Mudassir Khan.
Respondent	:	The State, through Ms. Rubina Qadir, Deputy Prosecutor General, Sindh (DPG).

Date of hearing	:	07.08.2025
Date of order	:	07.08.2025

ORDER

ZAFAR AHMED RAJPUT, J: Impugned in this Crl. Revision Application is the order dated 17.05.2024, whereby the Anti-Terrorism Court No. XVI, Karachi ("*Trial Court*") dismissed an application under Section 23 of the Anti-Terrorism Act, 1997 ("*the Act*"), filed by the applicant/accused for transfer of cases bearing Special Case No.240/2022 (*Old Special Case No.573/ 2022*) arising out of FIR No.336 of 2022, registered under Sections 302, 353, 392, 397/34, P.P.C., read with section 7 of the Act at P.S. Pak Colony, Karachi and Special Case No.241-A/2022 (*Old Special Case No.573-A/2022*) arising out of FIR No.82 of 2022, registered under Section 23(1)(a) of the Sindh Arms Act, 2013 at P.S. CTD, Karachi from the Trial Court to regular Sessions Court.

2. Learned counsel has contended that the alleged offences do not fall within the ambit of Sections 6 and 7 of the Act; that as per the contents of the FIR No.336/2022, the motive and intent was of committing robbery and there was no intention or motivation for causing terror; that the alleged act of the accused shows no intent, purpose or design to create terror or sense of terror; that the causing of murder of a police official was not the primary intention of the accused but a by-product; hence, there arises no question of creating fear

or insecurity among the general public; that in terms of Section 6 of the Act, the use or threat of action within the meaning of “terrorism” must be designed to achieve any of the objectives specified in clause (b) of subsection (1) of Section 6 and/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 the Act, which is missing in the case; therefore, the alleged offence(s) are triable by the regular Sessions Court. In support of his contentions, he has relied upon the cases of (i) *Ali Gohar and others vs. Pervaiz Ahmed and others* (PLD 2020 SC 427), (ii) *Ghulam Hussain and others vs. The State and others* (PLD 2020 SC 61), (iii) *Ahmed Shah and another vs. The State* (2003 YLR 1977) and (iv) *Muhammad Nawaz vs. The State and another* (2024 YLR 670).

3. Conversely, learned DPG has maintained that since the alleged action of the accused squarely falls within the ambit of clauses (n) and (o) of subsection (2) of Section 6 of the Act, the Trial Court, established under Section 13 of the Act, has the exclusive jurisdiction to take cognizance of the offence.

4. Heard. Record perused.

5. It reflects from the record that, on 19.10.2022 at Bara Board Chowk, Main Manghopir Road, Karachi, two unknown armed muggers robbed Rs. 4,00,000/- from one Shakeel Ahmed Khan, 39, and upon his resistance, they opened fire causing him injuries. During the incident, police constables of Shaheen Force, engaged in patrolling duty on motorcycles in the area, reached the spot. The muggers also fired on them, resulting in firearm injuries to PC Nihaluddin. Both the injured, Shakeel Ahmed Khan and PC Nihaluddin succumbed to their injuries. The muggers managed to flee while firing chaotically, thereby causing fear and panic at a public place. Later, accused Gulzar Ali (*applicant*) and Zahid Husain were arrested by CTD,

Karachi; after investigation, police submitted charge-sheet against them before the Trial Court.

6. The case in hand pertains to the jurisdiction of the Trial Court to try the alleged offence as a ‘Scheduled Offence’ of the Act. Under Section 12 of the Act, an Anti-Terrorism Court (“ATC”) has jurisdiction to try a scheduled offence. The term “scheduled offence” has been defined under Section 2(t) of the Act as an offence as set out in the Third Schedule. The entry No. 1 of the Third Schedule of the Act specifies any act of terrorism within the meaning of the Act as scheduled offence. Term “terrorism” has been defined under 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 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, medias 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) -----;
- (d) -----;
- (e) -----;
- (ee) -----;

- (f) -----;
- (g) -----;
- (h) -----;
- (i) -----;
- (j) -----;
- (k) -----;
- (l) -----;
- (m) -----;
- (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) -----;

(3) *The use or threat or use of any action falling within subsection (2) which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not subsection 1 (c) is satisfied.*

- (3A) -----;
- (4) -----;
- (5) -----;
- (6) -----;
- (7) -----;

(Emphasis supplied)

7. It may be perceived from the perusal of aforementioned definitions of the term “terrorism” provided under clauses (n) and (o) of subsection (2) of Section 6 of the Act of 1997 that an action involving serious violence against a member of the police force, armed forces, civil armed forces, or a public servant; or involving in acts as part of armed resistance by groups or individuals against law enforcement agencies falls within the prescribed definitions. In the instant case, the applicant is facing the charge of acting violently against police force in the execution of their duties and offered armed resistance against law enforcers, which act of the applicant being

falling under clauses (n) and (o) *ibid* comes within the prescribed definition of “terrorism” assigning jurisdiction to the Trial Court being ATC to take the cognizance of the offence.

8. As regards the contentions of the learned counsel for the applicant, it may be observed that the dictum laid down by the Apex Court in the case of *Ghulam Hussain (supra)* elucidates ‘heinous offences’ by referring the offences specified in entry No.4 of the Third Schedule to the Act that such heinous offences specified in entry No.4 that do not inherently qualify as terrorism, are to be tried by an ATC due to their inclusion in the Third Schedule, and the ATC can impose a punishment appropriate for the specific offence, rather than for the offence of terrorism itself. However, not all heinous offences, regardless of their seriousness, brutality, or shocking nature, automatically qualify as acts of terrorism, which is a distinct category of crime.

9. So far as the contentions of learned counsel for the applicant regarding intent, purpose and design to create terror, and the murder of a police official being a by-product is concerned, the record reveals *prima facie* that the act in question was committed by the accused with full intention and *mens rea* to deter their arrest at the hands of law enforcers. In this regard, the term “action” is more appropriate and carries greater legal weight than the expression “designed to”. The incident took place in a thickly populated locality, where members of the Shaheen Force were performing patrolling duty to prevent and control crimes. The attack created alarm, panic and fear in the minds of the public, leaving the clear impression that if police officials themselves were not safe, then ordinary citizens could not expect protection. It is therefore evident that this was not a case of personal enmity or private vendetta; rather, it was a deliberate, intentional and armed assault upon law

enforcers in the discharge of their lawful duty. Such action could neither have remained unnoticed by the locality nor can it be considered an ordinary offence, as its effect was to spread intimidation, insecurity and a sense of lawlessness amongst the public at large. The incident, in which one police constable, PC Nihaluddin, lost his life, was of a grave and serious nature and, if left unchecked, would directly erode public confidence in law enforcement and the writ of the State. Such attacks on police officials strike at the very fabric of society, amounting to an assault not only on individual officers but on the society and State itself. They are calculated to create fear, insecurity and terror both in the minds of the public and within the ranks of law enforcement agencies. Consequently, the alleged act clearly falls within the parameters of clauses (b) and (c) of subsection (1) of Section 6 of the Anti-Terrorism Act, 1997, and cannot be brought within the jurisdiction of the regular Sessions Court. The case-law cited by the learned counsel for the applicant being on different footings does not advance the case of the applicant for transfer of aforementioned cases to regular Sessions Court.

10. 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 revisional jurisdiction; hence, this Crl. Revision Application is dismissed, accordingly.

11. Above are the reasons of our short order dated 07.08.2025.

JUDGE

JUDGE