

HIGH COURT OF SINDH, KARACHI

Cr. Rev. Application No.D-40 of 2024

Present:

Justice Adnan Iqbal Chaudhry

Justice Tasneem Sultana

Applicant	Sher Muhammad: Nemo.
Respondent No.1	The State through Mr. Abrar Ali Khichi Assistant P.G
Respondent No.2	Rashid through Mr. Ajab Khan Khattak advocate
Date of hearing	21.07.2025
Date of judgment	26.08.2025

JUDGMENT

TASNEEM SULTANA, J: The instant Criminal Revision Application has been filed to challenge the validity and legality of the Order dated 25.01.2024 passed by the learned Judge of Anti-Terrorism Court No.XIX, Karachi Division in Special Case No.32 of 2023, arising out of FIR No.229 of 2023 for the offence under Section 302 and 34 Pakistan Penal Code, 1860 (PPC) read with Section 7 of the Anti-Terrorism Act, 1997 (ATA) registered at Sharafi Goth Police Station, Karachi, whereby the application filed by the respondent under Section 23 of ATA, 1997 for transfer of case to the Ordinary/Sessions Court was allowed.

2. Brief facts as per prosecution case are that complainant Sher Muhammad lodged report that on 19.08.2023 his son H.C. Zahid Ali was sitting outside of the house in street, meanwhile at about 10:25 p.m. he heard gunfire sound in the street and he came out of the house and saw that three suspects on one 125cc motorbike were fleeing towards Allah Dad Goth. Out of them one was identified as Rashid s/o Muhammad Yaqoob, who was from their vicinity, and two unknown suspects residing of area also converged. He saw that his son had sustained gunfire shots on his left arm, forehead, and left cheek. His son was drenched in blood and succumbed to injuries on the spot. He lodged the FIR that his son had been murdered on account of unknown enmity.

3. During investigation, further developments surfaced. The complainant nominated three additional accused: Amir, Abdul Rehman, and Naseem. An application dated 28.06.2023, said to submitted by the deceased himself to the SHO of P.S. Sharafi Goth, was traced. In that application, Zahid Ali had complained that Rashid and his associates, who were engaged in the business of *manpuri/gutka* and other unlawful acts, had fired upon his house and threatened to

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kill him. He had linked the threats to his role as a police officer resisting their illegal activities and facilitating their arrest. This document, authored by the deceased prior to his murder, if proved at trial, sheds light on the motive and purpose behind the subsequent killing. It suggests that Zahid Ali was under threat because of his law enforcement role, and that his ultimate murder was the culmination of that threat.

4. Statements recorded under Section 161 Cr.P.C. seem to corroborate this narrative. The widow of the deceased stated that her husband had repeatedly told her that Rashid and his associates bore him enmity for having resisted their unlawful trade, and that they would one day kill him. She further confirmed that firing had earlier been resorted to at their house by the same accused. Other witnesses of the locality, too, confirmed that Zahid Ali had earned the hostility of criminal elements due to his official stance. Thus, even if the FIR initially recorded "unknown enmity," the subsequent investigation and documentary record point to a targeted killing motivated by the victim's official role as a police officer.

5. It may be out of place to mention here that this Court stayed the proceedings of trial Court vide Order dated 10.12.2024. Thereafter learned counsel for the applicant did not put his appearance to make his submissions. Whereas lastly viz: 21.07.2025 widow of deceased Mst. Naila appeared and requested for adjournment but same was not taken into consideration on the ground that proceedings are stayed.

6. However, in order to consider the pleadings of applicant, we have gone through the memo of revision application, wherein the applicant has challenged the impugned Order on the grounds *"that the trial Court did not consider the facts and material available on record and has not exercised its judicial mind; that the impugned Order is bad in the eyes of law and based on surmises and conjectures; that the deceased was serving as Head Constable in Police Department but the trial Court has failed to appreciate that murdering a public servant creates a sense of terror and fear; that the deceased Head Constable was murdered outside of his house, which is congested residential area, therefore, a sense of fear and terror was created in the vicinity; that the trial Court has also failed to appreciate that deceased during his lifetime also moved application with regard to threats extended by the accused Rashid just because deceased decided to stand against the selling of manpuri/gutka by the accused persons."*

7. Whereas the learned Assistant P.G as well as learned counsel for the respondent No.2 supported the impugned Order by arguing that a bare reading of the FIR reflects that complainant himself claimed that his son was murdered on

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account of unknown enmity rather while performing his official duties; that mere stating that his son was serving in Police Department does not bring the case within the purview of Section 6(e) of ATA and that at the time of incident neither the deceased was in official uniform nor was performing his official duties, therefore, this incident at any count cannot be said to be an act of terrorism.

8. The learned trial Court while deciding the application under Section 23 ATA, brushed aside aforesaid material and held that since the FIR referred to "unknown enmity," and as the deceased was not on duty or in uniform at the time of the occurrence, the case could not be treated as terrorism. Such reasoning betrays a misunderstanding of the law as settled by the apex Court. It amounts to a selective reliance upon a part of the record while ignoring other pieces of evidence. It also reflects a return to the discarded "effect-based" approach, which treated terrorism as synonymous with any heinous act producing fear, an approach which the Supreme Court has decisively rejected.

9. At this stage, it is necessary to recall the statutory provisions. Section 6 of the ATA defines terrorism. Sub-section (1) states that terrorism means the use or threat of action where:

- (a) the action falls within the meaning of sub-section (2);
- (b) the use or threat is designed to coerce or intimidate or overawe the Government or the public or a section of the public, or to create a sense of fear or insecurity in society;
- (c) the use or threat is made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorising the public, social sectors, media persons, business community or attacking civilians including government officials, lawyers, judges, personnel of law enforcement agencies and armed forces.

Clause (n) of sub-section (2) enumerates an act that "involves serious violence against a member of the police force".

10. The Hon'ble Supreme Court in case of *Ghulam Hussain and others v. The State* PLD 2020 SC 61, where a seven-Member Bench explained that it is not the effect but the object of the act which determines whether an offence is terrorism. The Hon'ble Supreme Court undertook a comprehensive review of the ATA and prior case law, and formulated a precise twofold test. The Court held that,

firstly, the actus reus element must be satisfied — meaning that the action in question must fall within the category of violent acts specifically enumerated in Section 6(2), such as killing, grievous bodily

J. Hussain

harm, kidnapping, firing upon law enforcement, arson, or bomb blasts.

Secondly, and equally importantly, the mens rea element must also be satisfied — the action must be designed to intimidate, coerce, or overawe the Government, the general public, a section thereof, or to terrorise law enforcement or advance a prohibited ideological cause. The Court cautioned that both elements must co-exist; the absence of either would disqualify the act from the ambit of terrorism.

In passing the impugned order, the learned trial Court did not notice the aforesaid twofold yardstick.

11. Prima facie, the investigation demonstrates that the accused Rashid and his associates had threatened and attacked the deceased because as a police officer he resisted their unlawful *manpuri/gutka* business and facilitated their arrest. Thus, it cannot be ruled out at this stage that the design or object of the act was not personal revenge simpliciter, but the silencing of a law enforcement officer and the intimidation of the police force and local community. The fact that the deceased was not on duty or in uniform at the time of attack is not sufficient to dislodge the stated test of 'terrorism'.

12. Considering the foregoing discussion, it was premature of the trial Court to opine that the case does not constitute terrorism. The revision application is accordingly allowed. The impugned order dated 25.01.2024 passed by the learned Anti-Terrorism Court-XIX, Karachi, is set aside. The case shall remain on the file of the Anti-Terrorism Court-XIX, Karachi until there is evidence to rule out terrorism.

J. Ahmad
26/8/2025
JUDGE

J. Ahmad
JUDGE

Irfan Ali

Announced by:

J. Ahmad
J. Ahmad Chaudhry
28/8/2025

J. Muhammad Jaffer Raza
J. Muhammad Jaffer Raza