

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Revision Application No. D-08 of 2025

along with

Criminal Revision Application No. D-09 of 2025

Date	Order with signature(s) of Judge(s)
------	-------------------------------------

Before
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro

Applicant Parvaiz Ahmed in Cr. Rev. No.D-08/2025	:	Through M/s. Shabbir Ali Bozdar & Shakeel Ahmed G. Ansari, Advocates
Applicant Furqan in Cr. Rev. No.D-09/2025	:	Through Mr. Safdar Ali Ghouri, Advocate
The State	:	Through Mr. Ali Anwar Kandhro, Addl. Prosecutor General, Sindh.
Respondent/Complainant Zafar Ali	:	Through Mr. Aftab Ahmed Channa, Adv.
Date of Hearing	:	24.09.2025
Date of Order	:	24.09.2025

O R D E R

MUHAMMAD SALEEM JESSAR, J. This common order shall decide the fate of captioned Criminal Revision Applications through which the applicants/ accused Pervaiz Ahmed Khoso & Furqan Ahmed, have assailed order dated 05.06.2025 (impugned order) passed by Learned Special Judge Anti-Terrorism Court Kashmore @ Kandhkot (Trial Court) vide Special Case No 132 of 2024 Re - “The State versus Furqan Ahmed and others”, stemming from FIR No 159 of 2024 of police station Kashmore for an offence punishable under sections 302, 342, 337 Hii, 148, 149 PPC read with Sections 6 / 7 of Anti-Terrorism Act 1997 (ATA) declining thereby the application under section 23 of ATA filed by the applicants seeking transfer of the case for trial before ordinary Court.

2. The facts in nutshell of the prosecution case are that on 25.08.2024 complainant Zafar Ali Malik set law into motion by recording complaint at police station Kashmore, seeking investigation for the offence of murder of his brother Kamran (deceased). It is alleged in the FIR that on 24.08.2024 complainant along with his brothers Kamran, Abdul Hafeez and Shahid Hussain left home on motorbikes aims to visit their ailing maternal uncle. It was about 0030 hours in the night when they reached near the house of accused Furqan Soomro near civil hospital over Nadir Shah Road where they were intercepted by the accused Furqan, Shah Jahan, Pervaiz Ahmed and Asadullah who were armed with pistols. Accused dragged Kamran into the otaq (out house) of Furqan Soomro, where complainant party saw accused Mushtaq Soomro and three unidentified accused standing there in the street. Accused Furqan, Shah Jahan, Pervaiz Ahmed and Asadullah made straight pistol fires upon Kamran who sustained injuries, fell down and died. Thereafter accused Mushtaq Soomro and three unidentified accused dragged dead body of deceased caused butt blows to dead body with intention to cause insult. Accused Mushtaq along with three unidentified accused took dead body of Kamran in car to screen off the evidence. Accused resorted to aerial firing which created terror and panic in the area. Accused furqan and others confined the complainant party in the otaq for several hours and ultimately released them. Complainant party searched for the dead body and on following morning found it lying in Nadir Shah graveyard. Complainant approached police station and got recorded instant FIR in above terms.

3. Police after completion of legal formalities, took up investigation, found sufficient incriminating material and submitted report under section 173 CrPC before Learned Trial Court showing applicants/ accused Pervaiz, Furqan and Asadullah under custody and accused Shah Jahan as well as Mushtaq as absconders.

4. Applicant / accused Pervaiz Ahmed filed an application under section 23 of ATA seeking transfer of instant case from ATA Court to an ordinary Court which was declined by Learned Trial Court vide impugned order dated 05.06.2025, hence these Criminal Revision Applications.

5. Mr Shabir Ali Bozdar Learned counsel for the applicant in Criminal Revision Application No. D-08 of 2025 argued that the FIR was delayed for about one day; besides, no motive or design for commission of the offence as well as object has been shown to believe that ingredients for applying Sections 6 & 7 of the ATA, were attracted. He further submits that though the applicant and others accused have been shown nominated with specific role but the alleged offence took place in Otaq (out house) and latter accused were alleged to have shifted the dead body towards graveyard of the area wherefrom it was recovered on the following day. He further argued that basic ingredients for applying provisions of the section 6 and 7 of ATA are lacking in instant case; hence, the case is liable to be tried by an ordinary Court instead of Special Court established under ATA. In support of his contention, he placed reliance upon the cases of **MUHAMMAD ASIF and others Versus SPECIAL JUDGE, ANTI-TERRORISM COURT and others (2020 P.Cr.L.J 1228)**, **MUHAMMAD IDREES Versus SPECIAL JUDGE, ANTI-TERRORISM COURT and others (2019 P.Cr.L.J 516)** and **GHULAM HUSSAIN and others Versus The STATE and others (PLD 2020 Supreme Court 61)**. He solicits that by granting this revision application, impugned order may be set-aside and the case viz. Special Case No.132 of 2024 (re-the State Versus Furqan Soomro and others) may be withdrawn from the file of Anti Terrorism Court and may be transferred to an ordinary Court having jurisdiction, for its trial and disposal, in accordance with law.

6. Mr Ali Anwer Kandhro Learned Addl. P.G, Sindh appearing for the State, after going through the file as well as arguments advanced by counsel for the applicant, and placing reliance upon the case of Ghulam Hussain (Supra), did not oppose the application and submitted that from facts of the incident narrated in FIR the ingredients of section 6 and 7 of ATA were not attracted.

7. Mr. Aftab Ahmed Channa Learned counsel for the respondent No 2/ complainant opposed the application on the ground that accused / applicants are nominated in the FIR with specific role of causing brutal murder of a young boy and then shifted his body to a graveyard; besides, due to their such action, a terror and sense of insecurity was created in the minds of public at large; hence, provisions of section 6 of ATA were fully

attracted in the case, therefore, he submitted that the impugned order did not suffer from any illegality or infirmity which may warrant interference by this Court.

8. **Heard arguments and perused record.** Admittedly, the applicant and other accused are nominated in the FIR with specific role of causing brutal murder of young boy aged about 19 years. To bring a charge for the trial of an offence before the Court established under the provisions of ATA, it is essential that the ingredients of section 6 of ATA are sine qua non. Section 6 of ATA, underwent drastic changes by the passage of time, presently it reads as under:

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 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 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 subsection (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 place 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 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 stir 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 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 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 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 enforcements 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 any action falling within subsection (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not subsection (1) (c) is satisfied.

(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 organisation.

(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 be included in the meaning given in clause (a) above.

9. From perusal of above provision of law it is vivid and clear that an act of terrorism is not to be confused with an ordinary crime committed in the background of a personal enmity or private vendetta. The gravity of an offence, the shocking nature of the violence committed or mere fear and

insecurity generated or likely to be generated by commission of a brutal, gruesome or heinous act are not to be treated as the yardsticks for determining whether an action amounted to an act of terrorism. Under the provisions of section 6 of ATA an action is to be treated as an act of terrorism which falls within the limb of the definition of subsection (2) of section 6. Broadly speaking the offence which is committed with a “design” or “motive” envisaged in clauses (b) or (c) of subsection (1) of section 6 shall fall within the definition of terrorism constituting a charge punishable under section 7 of ATA.

10. Under the provisions of ATA, the Anti-Terrorism Court has been established to try the offences provided under third Schedule of ATA. Section 12 of ATA confers jurisdiction for trial of the case to an Anti – Terrorism Court which reads as under:

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."*

11. Perusal of above provision of law confers jurisdiction to an Anti – Terrorism Court for trial of a scheduled offence committed in an area in a province or Islamabad Capital Territory. Use of word “Only” manifested the intent and wisdom of legislature that the courts were established for specific purposes and trial of the scheduled offences. Section 2(t) of ATA defines a scheduled offence, which reads as under:

"Scheduled offence" means an offence as set out in the Third Schedule."

12. It would be conducive to review The Third Schedule to the ATA, to know that which offence were the scheduled offences within the meaning and definition of the ATA, the Third Schedule to section 2(t) reads as under:

THE THIRD SCHEDULE
(Scheduled Offences)
[See section 2(t)]

- 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 aid or abetment of, or any conspiracy to commit, any of the aforesaid offences.

4. Without prejudice to the generality of 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 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; or

(iii) Firing or use of explosive by any device, including bomb blast in the court premises; or

(iv) Hurt caused by corrosive substance or attempt to cause hurt by means of a corrosive substance; and

(v) Unlawful possession of an explosive substance or abetment for such an offence under the Explosive Substances Act, 1908 (VI of 1908).

13. From bare reading of third schedule, it transpired that the offence of murder and damage to property have been included in the scheduled offence; however, on plain reading, it becomes apparent that these offences are triable by the Special Courts when the ingredient of charge for offence under section 7 read with section 6 of the ATA were attracted. 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 under section 6 of ATA but also some other cases involving abduction for ransom etc for the said category of cases, it was not necessary that the ingredients of section 6 be made out, as the said offences itself created a sense of terror in society.

14. In the present case the offence was committed allegedly in the otaq of accused Furqan in the wee hours of night, the parties were known to each other as evidenced from the contents of FIR, besides, there was no evidence mustered during investigation that the offence created panic and terror in the society or raised alarms for sense of insecurity, so that it could be deduced that alleged offence was an act of terrorism warranting trial of the accused under special law. The motive as well as design for commission of the crime has also not been specifically brought on record to believe that accused had committed the offence with an aim to create or establish a sense of insecurity in the minds of people of the surrounding area. No doubt, an innocent person had lost his life allegedly at the hands of accused / applicants but it did not mean that they do not have a right of fair trial

particularly when the basic ingredients for applying Sections 6 & 7 of the ATA do not find place from the contents of the FIR.

15. Learned Trial Court declined the application of the applicant / accused while placing reliance upon the case of Nazeer Ahmed and others versus Nooruddin & others reported as 2012 SCMR 517 wherein it was held that neither the motive nor the intent for commission of the offence is relevant for the purposes of conferring jurisdiction on the Anti – Terrorism Court, it is the act which is designed to create sense of insecurity and destabilize the society to constitute an offence within the definition of section 6 of ATA. Learned Trial Court further observed that investigation officer in its report under section 173 CrPC opined that murder of the deceased was an act of terrorism. It is a settled principle of law that ipxi dixit of the police was not binding upon the court. Section 23 of ATA was an enabling provision of law, which empowered the Special Court established under the Act to transfer the cases to ordinary courts when a case not falling within the definition of scheduled offence was sent up to Special Court.

16. Honorable Supreme Court of Pakistan deliberated the provisions of section 6 of ATA in the case of Ghulam Hussain Versus the State reported as PLD 2020 SC 61 and held that:

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.

17. Moreover, where Honorable Supreme Court deliberately and with the intention of settling the law, pronounces upon a question of law, such pronouncement is the law declared by the Supreme Court within the meaning of

Art. 189 of the Constitution and is binding on all Courts in Pakistan. The doctrine of binding precedent promotes certainty and consistency in judicial decisions, and ensures an organic and systematic development of the law. Since Honorable Supreme Court of Pakistan in the case of Ghulam Hussain (supra) settled the law on the issue of jurisdiction of Special Courts established under ATA, therefore it is a law declared by the Supreme Court and binding on all the Courts in country, in terms of article 189 of the Constitution which reads as under:

189. 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.

18. From careful examination of material collected during investigation, a candid view can be formed that in the present case the ingredients of section 6 of ATA were not attracted and the alleged murder was an act committed for personal vengeance. Thus it was a fit case to be dealt with in accordance with the principle laid down by the learned Apex Court in case of Ghulam Hussain (Supra), wherein it has been specifically held 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 ATA and the actions specified in subsection (2) of section 6 of ATA do not qualify to be labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.

19. For aforementioned reasons, We are of the considered view that trial Court has not applied its judicious mind while dealing with the case of applicant and sufficient reasons were not demonstrated to deviate from the principle laid down by learned apex court in the case of Ghulam Hussain (Supra); hence, the impugned order, in view of the above factual and legal position of the record, is not sustainable. Resultantly, instant application [Criminal Revision Application No.D-08 of 2025] is here **allowed**. Consequently, impugned order dated 05.06.2025 passed by learned trial Court / Judge, Anti-Terrorism Court, Kashmore @ Kandhkot is hereby set-aside and the application [Transfer Application No.16 of 2025] filed by the applicant before the trial Court seeking transfer of the case from Anti - Terrorism Court to an ordinary Court in terms of Section 23 of the ATA,

stands allowed. The Trial Court shall send the R&Ps of Special Case No 132 of 2024 Re The State Versus Furqan and others to the Court having jurisdiction for trial and disposal in accordance with law.

Criminal Revision Application No. D-09 of 2025

20. Mr. Safdar Ali Ghouri, learned counsel for the applicant does not wish to press Criminal Revision Application No. D-09 of 2025 on the ground that the applicant had approached this Court directly and in the wake of the order passed in Criminal Revision Application No. D-08 of 2025 instant application has become infructuous. Order accordingly.

Office to place a signed copy of this order in the connected application.

JUDGE

JUDGE

Larkana
24.09.2025
Approved for reporting
Zulfiqar