

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

PRESENT:

Mr. Justice Arshad Hussain Khan.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Criminal Revision Application No.D-07 of 2025
[Saifullah vs. Fida Hussain & others]

Mr. Muhammad Hashim Laghari, Advocate for applicant.

Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.

Complainant Fida Hussain present in person.

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Date of hearing : **22.05.2025**

Date of decision : **22.05.2025.**

ORDER

Dr. Syed Fiaz ul Hassan Shah, J: The applicant has impugned Order dated 29.03.2025, passed by the learned Anti-Terrorism Court, Shaheed Benazirabad, whereby an application under section 23 of the Anti-Terrorism Act, 1997 filed by the Applicant to transfer the case proceedings arising from FIR No.05 of 2025 registered with PS Chotiyaroon, District Sanghar from the said Anti-Terrorism Court, Shaheed Benazirabad to the ordinary Sessions Court of competent criminal jurisdiction in relation to the commission of offences punishable under Sections 302, 324, 109, 506/2, 337-A(i), 337-F(i), 147, 148, 149 PPC, read with Section 7 of the Anti-Terrorism Act, 1997 for homicide / multiple murder.

2. The facts are already mentioned in the FIR, therefore we do not think it is necessary to re-produced it again.

3. The Counsel for the Applicant has argued that the case was not triable by the Anti-Terrorism Court in view of principles settled in Ghulam Hussain's case. On the other hand, the DPG urged that the multiple murder committed and entire village was kept under fear and insecurity therefore, the trial must adjudicate before the ATC Court. The complainant presents in person argued that learned trial Court has rightly dismissed an application under Section 23 of ATA 1997 while holding that this case is triable under the provisions of Anti-Terrorism Act 1997.

4. We have seen the impugned order and perused the record. The following question requires our consideration:

Legal Question:

Whether the offence alleged against the accused, despite its grievous or brutal nature, falls within the **exclusive and exhaustive definition of "terrorism"** as provided under **Section 6 of the Anti-Terrorism Act, 1997**, and whether Courts can expand that definition to cover offences not explicitly included by the legislature.

Legal Framework & Doctrine:

5. The term "**Scheduled offence**" has been defined under Section 2(t) (ibid) as an offence as set out in the Third Schedule. The Third Schedule of the Act of 1997 specifies following offences as Scheduled Offences:

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

6. The "**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 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 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 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 or private property including damaging property by ransacking, looting or arson or by any others 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 strip 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 congregation, mosques, Imambargah, 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 a 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 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 departments

(3) The use or threat of use 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.

(3A) Notwithstanding anything contained in subsection (1), an action in violation of a convention specified in the Fifth Schedule shall be an act of 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 proscribed organization

(6) A person who commits as offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.”

Scope and interpretation of Section 6 ATA, 1997:

7. Section 6 of the ATA, 1997 defines “**terrorism**” in precise terms. It requires that the alleged act must not only fall within the prohibited conduct listed in the said provision and its related schedules but must also be **intended to create or act or design terror or insecurity** in designated classes of society, or **coerce a government or public functionary**.

8. Section 6 of the ATA defines "terrorism" in **strict and specific terms**. An act constitutes terrorism only when the **intent, design, and purpose** behind the act are crucial in determining whether it qualifies as **terrorism** and not every act of murder or brutality can be termed as **terrorism** merely due to its severity.

9. We have observed that the definition of "**terrorism**" under **Section 6 of the Anti-Terrorism Act, 1997**, along with the different types of offenses triable under this law, are explicitly outlined in the **Third Schedule**, as referenced under **Section 2(t) of the ibid Act**. A careful examination of these provisions confirms that cases falling within the definitions provided in **Section 6** or the scheduled offenses under the Act must be tried and adjudicated by the **Anti-Terrorism Court (ATC)**, which is established under **Section 13 of the ibid Act**.

10. This definition is **exhaustive and restrictive**, not illustrative or expandable by implication. The legislature has deliberately limited the application of the ATA to acts that fulfill both the **objective elements (actus reus)** and **subjective intention (mens rea)** described therein. The offenses that do not fall within the **prescribed definitions of terrorism** cannot be tried or prosecuted by the Anti-Terrorism Court, regardless of their severity, including those classified as **gruesome, ghastly, cruel, heinous, or horrendous** in nature. The determining factor for jurisdiction under the **Anti-Terrorism Act, 1997**, is not the degree of brutality of an offense but rather its legal classification under the Act itself coupled with the essential fact that it is or it was an offence having manufactured act or structured designed for terrorism. The provisions in question have delineated various societal acts and classifications by providing detailed definitions for terms such as "ethnic cleansing attempt" and "sectarian violence or extremism." However, they have not accounted for other significant societal classifications, including "community," "caste," or even

“co-villagers.” Such terminology is absent from the *ibid* Act and alien with any established canon of interpretation, nor can it be reasonably inferred within the context or application of any provision in the *ibid* Act, 1997.

Judicial Precedents:

11. In “*Ghulam Hussain vs. State*”, (PLD 2020 SC 61), the Larger Bench of Supreme Court of Pakistan has elaborately discussed the definition of “Terrorism” at paragraph 14,15&16. The relevant portion is reproduced hereunder:

“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 labelled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta.”

12. The Supreme Court consistently elaborated the scope, power and jurisdiction regarding section 6 as envisaged in the *ibid* Act, 1997. For instances:

- i.* In **Ghulam Hussain’s case** (*supra*), held that the real test to determine whether a particular act attracts provisions of the ATA is not merely the nature of the

offence but the design, object, and impact of such act."

ii. In "*Shahbaz Masih v. The State*", (2017 SCMR 1797), the Supreme Court observe that the ATA is a special law and must be invoked strictly in accordance with its object and scope. Any offence which does not fall squarely within the ambit of Section 6 cannot be tried by an Anti-Terrorism Court."

iii. In "*Muhammad Sadiq v. The State*", (PLD 2016 SC 872), the Supreme Court observed that the brutality of an act, in isolation, is not sufficient to attract ATA unless it is coupled with the intent to create terror among the public or challenge the writ of the state."

13. We further observe that, under the established principles of **criminal jurisprudence**, cases registered by the **District Police** while invoking the provisions of the **Anti-Terrorism Act, 1997**—with the exception of case(s) related to **terror financing**, as provided under **Section 11 and its related clauses**—**cannot** be tried by the **Anti-Terrorism Court** unless their contents fall within the scope of **Section 6** of the Act or any of its scheduled offenses.

Doctrine of Strict Interpretation of Penal Statutes:

14. All such cases that do not meet this threshold must be **exclusively** tried by the **Court of Sessions**, which is established under the **Criminal Procedure Code, 1898**, and governed by procedural laws applicable to regular criminal cases and such cases may be adjudicated by Special Courts constituted under **Special Statutes (Criminal Laws)**, depending on the nature of the offense.

15. The jurisdiction of the Courts is determined strictly by statutory provisions and cannot be influenced by the subjective preferences of the **complainant, police, or prosecution**. The **Courts** cannot expand

jurisdiction or scope through interpretation of **penal statute**. The Supreme Court of Pakistan has settled these principles and comparative jurisdictions where common law prevails has also settled these principles. It is a settled principle of criminal law that **penal statutes** must be interpreted strictly and cannot be enlarged by **judicial interpretation**. Courts must not add to or subtract from the clear words of the legislature. Relevant case law includes:

- i. In “*Syed Zafar Ali Shah v. The State*”, (2012 SCMR 1137), the Supreme Court reiterated that **criminal statutes must be interpreted literally and not purposively**. No individual can be punished unless their actions fall squarely within the mischief the law seeks to address.
- ii. In “*Asfandiyar Wali v. Federation of Pakistan*”, (PLD 2001 SC 607), the Supreme Court stressed strict construction of special criminal statutes and held that **expansion of jurisdiction** of special courts (like ATCs) without express **legislative intent** is not permissible.
- iii. In “*Muhammad Arshad v. The State*”, (2005 SCMR 1746), the Supreme Court emphasized that courts are not allowed to read into **penal statutes anything more than what is clearly written**. Any doubt or ambiguity must go in favour of the accused.
- iv. In “*Amir Bakhsh v. The State*”, (PLD 2005 SC 173), the Supreme Court ruled that **penal laws** cannot be given wider interpretation to rope in conduct **which is not explicitly criminalized**. The intention of the legislature is critical in determining the scope of criminal liability.
- v. In “*Abdul Rashid v. The State*”, (PLD 1972 SC 139), the Supreme Court held that **penal provisions** must be interpreted **strictly**, and **any ambiguity** must be resolved in favor of the accused. The court cannot

expand the meaning of a penal provision to include actions not clearly covered by the statute.

- vi. In “*Manzoor Elahi v. The State*”, (PLD 1969 SC 86), the supreme court observed that criminal liability must be founded on a clear provision of law, and **courts must refrain from creating offences through interpretation.**

Indian Jurisdiction:

- vii. In “*Tolaram Relumal v. State of Bombay*”, (AIR 1954 SC 496), the Supreme Court of India¹ held that a **penal statute is to be construed strictly**, and where two interpretations are possible, the one favorable to the accused must be adopted.
- viii. In “*G.P. Nayyar v. State (Delhi Administration)*”, (AIR 1979 SC 602) held that **courts cannot add words to a penal statute**, nor extend its meaning beyond the language used by the legislature.
- ix. In “*Sanjay Dutt v. State through CBI*”, (1994) 5 SCC 410), the Supreme Court of India reiterated that **penal provisions** must be interpreted literally and strictly, and no penal liability should be created by **presumption or implication.**
- x. In “*M. Narayanan Nambiar v. State of Kerala*”, (AIR 1963 SC 1116), the Supreme Court emphasized that criminal statutes must be interpreted as per their **plain meaning**, without straining the language to cover cases not specifically intended.
- xi. In “*Ranjit Udeshi v. State of Maharashtra*”, (AIR 1965 SC 881) the Indian Supreme Court held that the courts **must not enlarge the scope of a penal provision** under the guise of interpretation, especially when fundamental rights (like free speech) are involved.
- xii. In “*T.V. Joshi v. State of Gujarat*”, (AIR 1994 SC 1256) reaffirmed that interpretation should not lead to

¹ **Quote:** “If two constructions are reasonably open, the one which is more favorable to the accused should be adopted.”

a new offence being created **judicially**. This would violate the principle of legality under Article 20(1) of the Constitution (Indian).

xiii. In “*M/s. Dilip Kumar & Co. v. Commissioner of Customs*”, [(2018) 9 SCC 1] though a tax case, the court clearly reiterated that in **penal provisions**, ambiguity must always favor the subject/accused, reinforcing the principle of strict interpretation.

English Rules

xiv. In “*Tuck & Sons v. Priester*”, [(1887) 19 QBD 629], the Queen’s Bench while applying “**Strict Construction Rule**” that penal statutes must be construed strictly. Courts cannot extend their meaning beyond the clear and plain language used, held that “Where an enactment creates an offence, the court will not hold a person guilty **unless the act in question is clearly within the scope of the statute.**”

xv. In “*R v. Chambers*”, [(1830) 1 B & Ad 596], the English court applied the “**Rule of Lenity**” that if a penal statute is ambiguous, it must be interpreted in favour of the accused and stated that **interpreted strictly**, and no man is to be punished unless his case **falls clearly** within the letter of the law.

xvi. In “*R v. Bolton*” [(1841) Car & M 296], same rule followed and held that where words are capable of two meanings, the one more **favorable** to the accused **must be adopted**.

Conclusion:

16. In the present case, the learned Anti-Terrorism Court, Shaheed Benazirabad has not observed given findings with regard to any element of **design or intent to create terrorism or insecurity** as mandated by Section 6 of the Anti-Terrorism Act, 1997 in the light of principles settled by the Hon’ble Supreme Court of Pakistan in *Gulam Hussain’s case (supra)* and other related rules and no observation has given that within above-referred legal framework to decide application under section 23 of the *ibid* Act or at

the time of framing “Charge” that when the offence **does or does not qualify as terrorism**, the **Anti-Terrorism Court** has or has no **jurisdiction** to try the present and the **case shall be tried or shall not be tried by the competent Sessions Court**, in accordance with the regular provisions of the Code of Criminal Procedure and the Pakistan Penal Code.

17. Therefore, impugned Order dated 29.03.2025 passed by the learned Anti-Terrorism Court, Shaheed Benazirabad is set aside and matter is remanded back with directions to pass afresh Order on the application of Applicant filed under section 23 of ATA, 1997 in the light of legal principles referred and observed hereinabove.

18. The Criminal Revision Application stands disposed of.

19. The learned Registrar of this Court is directed to convey the copy of this Order amongst all Anti-Terrorism Courts throughout Province of Sindh for perusal and compliance.

JUDGE

JUDGE

Muhammad Danish