

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Revision Application No. 51 of 2025**

*Present:*

*Justice Zafar Ahmed Rajput.*

*Justice Muhammad Hasan (Akber)*

Applicant : Mir Ali Hydr Bughti s/o Mithal Khan,  
through Mr. Waqar Alam Abbasi, Advocate

Respondent : The State, through Mr. Abrar Ahmed Khichi,  
Additional Prosecutor General

: Mr. Aamir Mansoob Qureshi, Advocate for  
Murtaza Bughti, legal heir of the deceased

Date of hearing : **03.09.2025**

Date of order : **03.09.2025**

**ORDER**

**ZAFAR AHMED RAJPUT, J. -** Through this CrI. Revision Application, filed under section 435/439, CrPC, the applicant has impugned the Order dated 17.02.2025, whereby the Anti-Terrorism Court No. XIII, Karachi ("**Trial Court**") dismissed his application filed under section 23 of the Anti-Terrorism Act, 1997 ("**Act**") seeking transfer of the Special Case No. 218 of 2024 from the Trial Court to the regular Sessions Court.

2. It is alleged that, on 25.07.2024, at about 1055 hrs., two groups belonging to Bughti Tribe and having murderous enmity, duly armed with weapons, boarded on their vehicles reached Lane RPK-11, situated at Animal Hospital, Khayaban-e-Nishat, Phase-VI, DHA, Karachi where they made heavy firing upon each other with intention to commit murders of each other, which resulted in *qatl-e-amd* of (i) Mir Essa, (ii) Mohassam, (iii) Ali Akber, (iv) Nawabzada Fahad Ahmed Bughti and (v) Naseebullah, and caused injuries to others. For that, on 26.07.2024 at 0515 hours, complainant

SIP-Muhammad Saleem lodged the FIR No. 407 of 2024, under sections 302, 324, 34, P.P.C. R/W section 7 of the Act, at P.S. Darakhshan, Karachi-South.

3. 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 observing, as under:

*“9.... The above criminal act is designed to create a sense of fear and sense of insecurity in the minds of general public that can only be adjudged by keeping in view the impact of the alleged offence and manner of the commission of alleged offence. Neither the motive nor intent for commission of the offence is relevant for the purpose of conferring jurisdiction on the Anti-terrorism Court. It is the act, which is designed to create sense of insecurity and/or destabilize the public at large; which attract the provision of section 6 of the A.T. Act. The case in hand was designed to create sense of insecurity among the co-residents of the vicinity.”*

4. We have heard the learned counsel for the applicant, legal heir of the deceased as well as Addl. P.G and perused the record placed before us.

5. 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) contends 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.

6. Learned counsel for the legal heir of the deceased and learned Addl. P.G. concedes to the contentions of learned counsel for the applicant; however, they maintain that since both the parties have fierce enmity with

each other, their case may be transferred to the Court of Addl. Sessions Judge-IV, Karachi-South for holding jail trial to avoid any casualty. The learned counsel for the applicant records his no objection to the propositions of learned counsel for the legal heir of the deceased and learned Addl. P.G.

7. It may be observed that under Section 12 of the Act, the ATC has jurisdiction to try a scheduled offence. 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 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.*
4. *Without prejudice to the generality or 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 fire arms 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.*

(Emphasis supplied)

8. Term "*terrorism*" has been defined under section 6 of the Act, 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 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 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 sub-section (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 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 sub-section (2) which involves the use of firearms, explosive or any other weapon is terrorism, whether or not sub-section (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 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 an offence under this section or any other provision of this Act, shall be guilty of an act of terrorism.*

8. It has been observed in the case of *Ghulam Hussain* (supra) that an action or threat of action to be accepted as "terrorism" within the meanings of section 6 of the Act, the action must fall in subsection (2) of section 6 of

the 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 the 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 the Act. It has further been observed that the requirements that needed to be satisfied for invoking clause (c) of subsection (1) of section 6 of the Act are that the use or threat of action should be for "the purpose of advancing a religious, sectarian or ethnic cause" or for the purpose of "intimidating and terrorizing the public, social sectors, media persons, business community" or for the purpose of "attacking the civilians, including damaging property by ransacking, looting, arson, or by any other means, government officials, installations, security forces or law enforcement agencies". Clause (b) of subsection (1) of section 6 of the Act specified the 'design' and clause (c) of subsection (1) of section 6 of the Act earmarks the 'purpose' which should be the motivation for the act and the *actus reus* has been clearly mentioned in subsection (2) of section 6 of the Act. Only when the *actus reus* specified in subsection (2) of section 6 of the Act is accompanied by the requisite *mens rea* provided for in clause (b) or clause (c) of subsection (1) of section 6 of the Act, then an action could be termed as "terrorism". Thus, it is not the fear or insecurity actually created or intended to be created or likely to be created which would determine whether the action qualified to be termed as terrorism or not but it was the intent and motivation behind the action which would be determinative of the issue irrespective of the fact whether any fear and insecurity was actually created or not. It has also been observed that any action constituting an offence, howsoever grave, shocking, brutal, gruesome or horrifying, does not qualify to be termed as

“terrorism” if it was not committed with the design or purpose specified or mentioned in clause (b) or clause (c) of subsection (1) of Section 6 of the Act. Action could be termed as “terrorism” if the use or threat of that action was designed to coerce and intimidate or overawe the Government or the public or a section of the public or community or sect, etc. or if such action was designed to create a sense of fear or insecurity in the society or the use or threat was made for the purpose of advancing a religious, sectarian or ethnic cause, etc. Creating fear or insecurity in the society was not by itself terrorism unless the motive itself was to create fear or insecurity in the society and not when fear or insecurity was just a byproduct, a fallout or an unintended consequence of a private crime. Mere shock, horror, dread or disgust created or likely to be created in the society does not transform a private crime into "terrorism". "Terrorism" is a totally different concept which denoted commission of a crime with the design or purpose of destabilizing the government, disturbing the society or hurting a section of the society with a view to achieve objectives which were essentially political, ideological or religious. Violent activity against civilians that had no political, ideological or religious aims was just an act of criminal delinquency, a felony, or simply an act of insanity unrelated to "terrorism".

9. In the instant case, it is an admitted position that there is nothing on record to suggest that the alleged action was taken with any design, purpose, intention and *means rea* of causing terrorism.

10. For the foregoing facts, discussion and reasons, we are of the considered view that since the alleged offence is not a scheduled offence, the Trial Court has no jurisdiction to try the offence. We, therefore, allow

this Crl. Revision Application by setting aside impugned order dated 17.02.2025 with directions to Trial Court to transfer the record of Special Case No. 218 of 2024 to the Court of Sessions Judge, Karachi-South for further proceedings in accordance with law, who shall consider the request/apprehensions of parties to transfer the case to the Court of Addl. Sessions Judge-IV, Karachi-South for holding jail trial.

The instant Crl. Revision Application stands allowed.

JUDGE

JUDGE

*Athar Zai*