

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Revision No. D-34 of 2024

BEFORE:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicant : Rais Qambar Ali Khan s/o Rais Muhammad
Parial Khan, by caste Laghari,
Through M/S Qurban Ali Malano & Syed
Israr Ahmed Shah, Advocates

The State : Through Mr. Zulfiqar Ali Jatoi, Addl. P.G

Date of hearing : 17.09.2025
Date of short order : 17.09.2025
Reasons recorded on : 19.09.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— Applicant Rais Qamber Ali Khan has invoked revisional jurisdiction of this court, challenging the order dated 26.10.2024 passed by the learned Special Judge, Anti-Terrorism Court, Naushahro Feroze, in a case bearing crime No.50/2024, Police Station Mehar, District Dadu, for offences under Sections 324, 353, 148 & 149 PPC read with Sections 6/7 of the Anti-Terrorism Act, 1997, whereby an application under Section 23 of the Anti-Terrorism Act, 1997 for transfer of the case to an ordinary court was dismissed.

2. The genesis of this case lies in an FIR lodged on 11.02.2024 by complainant SHO Muhammad Anwar Leghari at Police Station Mehar, alleging that on 10.02.2024, while conducting routine security patrol for election materials stored at various locations, he along with his subordinate staff witnessed an incident at about 2300 hours. According to the FIR, about 200 armed individuals with Kalashnikov rifles and repeaters had gathered at Degree College Mehar, firing at Army personnel with intent to kill. The complainant identified three accused persons, namely Qamber Leghari, Irfan Zafar Leghari, and Imran Leghari from Sita Road, Taluka K.N. Shah. The accused allegedly fled towards the Indus Highway when they saw the police mobile.

3. The case was initially processed through the ordinary criminal justice system, with the Investigating Officer presenting a final report before the learned Sessions Judge, Naushahro Feroze, who accepted the report on 08.04.2024. Subsequently, the case was transferred to the Anti-Terrorism Court and fixed for trial. During the trial proceedings, the accused filed an application

under Section 23 of the Anti-Terrorism Act, 1997, seeking transfer to an ordinary court, which was dismissed by the order impugned herein.

4. The learned counsel for the applicant advanced several compelling arguments challenging the jurisdiction of the Anti-Terrorism Court by submitting that the FIR was lodged on 11.02.2024 for an incident allegedly occurring on 10.02.2024, however, the General Elections had concluded on 08.02.2024, making it highly improbable that election-related violence would occur two days post-election. He further contended that election materials allegedly stored at Mono Technical College while the incident occurred at Degree College Mehar. He next argued that despite an alleged attack by 200 armed individuals, no Army personnel sustained injuries. He argued that no Army official was named as a witness despite the alleged direct attack on military personnel. He further contended that the incident allegedly occurred at 2300 hours when no general public would be present, negating the essential element of creating public fear required for terrorism charges. The evidence fails to establish the essential elements required under Sections 6 and 7 of the Anti-Terrorism Act, 1997, particularly the intent to terrorize the public or advance sectarian/religious causes. The FIR appears to be motivated by personal vendetta rather than actual terrorist activity, with the case being more appropriately characterized as ordinary criminal behavior.

5. The learned Additional Prosecutor General for the State contended that personnel of armed forces were attacked while performing official duties, creating alarm and insecurity among the public. The act deterred public servants from performing their duties and created widespread fear and insecurity. The offences fall within the schedule appended to the Anti-Terrorism Act, 1997, giving the Anti-Terrorism Court competent jurisdiction. The incident at a public place (Degree College) would have caused fear and insecurity in the minds of the general public.

6. The Anti-Terrorism Act, 1997, was enacted with the specific purpose of preventing terrorism, sectarian violence, and ensuring speedy trial of heinous offences. Section 6 of the Act defines "terrorism" while Section 7 prescribes punishments for acts of terrorism. For the Anti-Terrorism Court to exercise jurisdiction, the prosecution must establish that the alleged act falls within the definition of terrorism as enunciated in Section 6 of the Act.

Section 6 of the Anti-Terrorism Act, 1997 defines terrorism as the use or threat of action where:

- The action falls within subsection (2), and
- The use or threat is designed to coerce, intimidate, or overawe the Government, public, or create fear and insecurity in society, or
- The use or threat is made for advancing religious, sectarian, or ethnic causes.

7. The Hon'ble Supreme Court of Pakistan in various precedents, including Ghulam Hussain and others vs. The State, has conclusively determined that for an act to constitute terrorism under the Anti-Terrorism Act, 1997, the following essential elements must be present:

- a) ***Objective Element:*** *The act must fall within the categories specified in Section 6(2) of the Act*
- b) ***Subjective Element:*** *There must be intent to terrorize the public, coerce the government, or advance sectarian/religious causes*
- c) ***Impact Element:*** *The act must create or be designed to create fear, insecurity, or panic among the public*

8. Upon careful examination of the FIR, police report, and surrounding circumstances, this Court finds several disturbing inconsistencies that cast serious doubt on the prosecution's case for terrorism charges:

9. The timing of the alleged incident raises fundamental questions about its authenticity. The General Elections concluded on 08.02.2024, yet the incident allegedly occurred on 10.02.2024, with the FIR being lodged on 11.02.2024. It defies logic that election-related violence would occur 48 hours after the conclusion of elections when election materials would typically have been secured and transported.

10. The FIR contains several internal contradictions:

- *Election materials allegedly stored at Mono Technical College*
- *Army personnel stationed at Degree College Mehar*
- *Attack occurred at Degree College where no election materials were present*

11. This geographical and logical disconnect undermines the credibility of the prosecution's narrative regarding the motive for the alleged attack. Despite allegations of an attack by 200 heavily armed individuals on Army

personnel no Army personnel sustained injuries, no Army official was named as a witness in the FIR and no independent witnesses from the public were cited.

12. The incident allegedly occurred at 2300 hours at a location where general public would not be present. The essential element of creating public fear or panic, which is fundamental to terrorism charges, appears to be absent.

13. The Hon'ble Supreme Court in *Qaiser Baloch & others vs. State* (2013 P.Cr.L.J 1259) and *Nawazish Ali Shah and others vs. The State* (2016 P.Cr.L.J. 1463) has consistently held that mere allegations of violence against law enforcement personnel do not automatically attract the provisions of the Anti-Terrorism Act unless the essential elements of terrorism are established.

14. The learned trial court, while relying on these precedents, failed to conduct a thorough analysis of whether the factual matrix of the case truly satisfied the requirements for terrorism charges. The Anti-Terrorism Act, 1997, was not intended to be invoked for every incident involving violence against law enforcement personnel. There must be a clear nexus between the alleged act and the objectives outlined in Section 6 of the Act. The prosecution must establish:

- a) *Intent to create terror among the public*
- b) *Design to coerce or intimidate the government or public*
- c) *Purpose of advancing sectarian, religious, or ethnic causes*

15. In the present case, the evidence fails to establish any of these essential elements. The allegations, at best, point to ordinary criminal activity that should be adjudicated under the Pakistan Penal Code by a court of ordinary jurisdiction.

16. The prosecution bears the burden of proving that the case falls within the ambit of the Anti-Terrorism Act. The standard is not merely probable cause but requires clear and convincing evidence of terrorist intent and impact. The mere fact that law enforcement personnel were allegedly attacked does not, without more, establish terrorism.

17. After thorough examination of the record, legal precedents, and arguments presented by both parties, we are of the candid opinion that the learned Anti-Terrorism Court erred in assuming jurisdiction over this case. The essential elements required for terrorism charges under Sections 6 and 7 of the Anti-Terrorism Act, 1997, are conspicuously absent from the prosecution's

case. The FIR suffers from fundamental factual inconsistencies and logical contradictions that undermine its credibility as a foundation for terrorism charges. The temporal disconnects between the elections and the alleged incident, combined with the absence of any credible motive for targeting election materials 48 hours post-election, raises serious questions about the authenticity of the allegations. The prosecution has failed to establish any evidence of terrorist intent as required under Section 6 of the Anti-Terrorism Act. The alleged act lacks the requisite nexus with the objectives of terrorism as defined in the statute. The case, as presently constituted, falls within the domain of ordinary criminal law and should be adjudicated by a court of ordinary jurisdiction under the relevant provisions of the Pakistan Penal Code. The learned trial court, while citing relevant precedents, failed to apply the legal principles correctly to the factual matrix of the case. The court mechanically rejected the application without conducting the requisite detailed analysis of whether the essential elements of terrorism were present.

18. The Anti-Terrorism Act, 1997, represents special legislation designed to address specific categories of offences that pose a threat to public order and national security. The jurisdiction of Anti-Terrorism Courts is not unlimited and cannot be invoked merely because law enforcement personnel are involved in an incident.

19. The Hon'ble Supreme Court has consistently emphasized that the definition of terrorism under Section 6 of the Act must be strictly construed, and all essential elements must be satisfied before invoking the special jurisdiction. The present case fails this test on multiple grounds. Furthermore, the principle of "actus reus" and "mens rea" requires that both the physical act and the mental element (intent) be established. While the prosecution may argue that certain physical acts occurred, they have failed to establish the requisite mental element of terrorist intent.

20. The temporal analysis of the case reveals that the alleged incident occurred in circumstances where the purported motive (interference with election materials) had already been rendered moot by the conclusion of elections. This temporal disconnect is fatal to the prosecution's case for terrorism charges.

21. In light of the foregoing detailed analysis and legal reasoning, we found that the impugned order dated 26.10.2024 passed by the learned Special

Judge, Anti-Terrorism Court, Naushahro Feroze, is/was legally flawed, unsupported by evidence, and based on a misapplication of the law. The essential elements required for invoking the jurisdiction of the Anti-Terrorism Court under Sections 6 and 7 of the Anti-Terrorism Act, 1997, are/were conspicuously absent from the prosecution's case. The allegations, as they stand, constitute ordinary criminal offences that fall squarely within the jurisdiction of ordinary courts. The Criminal Revision Application is/was accordingly allowed vide short order dated 17.09.2025. The impugned order dated 26.10.2024 passed by the learned Special Judge, Anti-Terrorism Court, Naushahro Feroze, is/was set aside. It is/was held that the Anti-Terrorism Court lacks jurisdiction to try the present case under the Anti-Terrorism Act, 1997. Accordingly, the case referred above is/was transferred to the Court of learned Sessions Judge, Dadu, or any other court of ordinary jurisdiction as deemed appropriate. The Sessions Judge, Dadu, or the competent court of ordinary jurisdiction shall proceed with the case under the relevant provisions of the Pakistan Penal Code and the Code of Criminal Procedure, 1898. All interim orders, if any, passed by the Anti-Terrorism Court shall remain in effect until modified by the court of ordinary jurisdiction. The record of the case shall be transmitted to the appropriate court of ordinary jurisdiction within fifteen (15) days of this order. These are the detailed reasons of short order referred above.

JUDGE

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