

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Misc. Appln. No. D- 29 of 2024

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Appellant : The State through Prosecutor General Sindh,
4th Floor, Administration Block, High Court of
Sindh Karachi,
Through Mr. Aftab Ahmed Shar, Addl. P.G

Complainant : Nadeem s/o Ghulam Abbas, Hajana
Through Mr. Nisar Ahmed Kanasiro, Advocate

Date of hearing : 17.12.2025
Date of decision : 17.12.2025

O R D E R

KHALID HUSSAIN SHAHANI, J. – The State, through the Prosecutor General Sindh, has invoked the inherent powers of this Court under Section 561-A Cr.P.C. to challenge the order dated 16.05.2024 passed by the learned Presiding Officer, Anti-Terrorism Court (ATC), Khairpur. By that order, the grave case bearing Crime No.20/2024, registered under Sections 302, 363, 201, 120-B, 109 PPC r/w Section 7 of the Anti-Terrorism Act, 1997 (ATA), P.S. Kot Diji, was summarily returned to the Investigating Officer for presentation before a Judicial Magistrate. This Court, alive to the heinous nature of the offence, a brutal murder of an innocent minor has meticulously scrutinized the record, heard persuasive submissions, and applied the touchstone of binding Supreme Court precedent to determine the jurisdictional threshold.

2. The unassailable facts, as crystallized in the FIR and corroborated by the record, paint a picture of unimaginable brutality. Complainant Nadeem s/o Ghulam Abbas, a resident of Hajana, recounts that his eldest son, Ali Raza, aged merely 8/9 years, left home on 07.02.2024 to play and never returned. Frantic searches yielded nothing until 13.02.2024,

when Nadeem, accompanied by his brother Javed Akhter and cousin Zawar Jamaluddin, discovered the child's mutilated corpse in the fields of one Jamaluddin at around 08:00 A.M. Stray dogs were scavenging the remains, a grotesque testament to the perpetrators' callousness. The body bore evident signs of savage violence, prompting immediate notification to villagers and police. Post-mortem at Taluka Hospital, Kot Diji, confirmed the murder, while the crime scene revealed footprints of five unknown assailants. Forensic breakthrough came with the recovery of a bloodstained hatchet at the instance of accused Mst. Ghulam Kalsoom, chemical analysis irrefutably linking it to the deceased's blood. These facts, untainted by any motive of private grudge, underscore a premeditated atrocity that demands swift justice, yet jurisdiction must be lawfully anchored.

3. The record reveals that, following service of notice, respondent Mst. Ghulam Kalsoom appeared and sought adjournments on 17.09.2025 and 19.09.2025 to engage counsel, which were duly granted; however, she remains absent today without intimation.

4. Learned Additional Prosecutor General, Mr. Aftab Ahmed Shar, forcefully contends that the impugned order betrays a patent non-application of judicial mind, devoid of cogent reasoning for returning the FIR. He asserts it constitutes a non-speaking order, notwithstanding the FIR's explicit allegations of kidnapping and abduction. Mr. Shar underscores the brutality of the offence, a minor child, aged about 8/9 years, mercilessly murdered, his body discarded for stray dogs to ravage. He highlights the recovery of a hatchet, at the instance of accused Mst. Ghulam Kalsoom, bearing blood stains of the deceased minor Ali Raza as confirmed by chemical analysis. Furthermore, he emphasizes that this ghastly murder has engendered widespread fear and panic in the locality inhabited by the complainant and

accused. No enmity or private vendetta emerges to undermine ATC jurisdiction; thus, the impugned order being arbitrary and vitiated by misapplication of law, warrants prompt set-aside. Notwithstanding protracted arguments, learned counsel reluctantly concedes the absence of evidence measured against the touchstone of the landmark Supreme Court judgment in *Ghulam Hussain v. The State* (PLD 2020 SC 61).

5. It is a settled canon of jurisprudence that cognizance in terrorism-related matters demands a *mens rea*-centric approach, eschewing the mere *actus reus* (effect-based) lens. This rigorous paradigm scrutinizes the accused's intentions, motives, and mental state to ascertain ATA applicability. An action's unintended fallout of public fear suffices not; it must evince deliberate design to instill such terror. Notably, offences listed in the Third Schedule of the ATA 1997 do not *ipso facto* constitute terrorism absent the requisite *mens rea* under Section 6(1)(b) or (c). Though the FIR invokes Scheduled offences, ATC jurisdiction crystallizes only upon prosecutorial demonstration of the specific intent delineated in the aforesaid provisions. Superior Courts, in a catena of binding precedents, mandate early jurisdictional determination under Section 23 ATA, predicated on the FIR and attendant material, sans awaiting trial culmination.

6. Having meticulously evaluated the attendant facts, the authoritative exposition in *Ghulam Hussain v. The State* (PLD 2020 SC 61), and the material on record, this Court holds that the alleged incident transpired in a secluded locale, bereft of evidence evincing design to engender public fear or insecurity. The indispensable ingredients of Section 6 (1) (b) or (c) ATA remain conspicuously absent from the FIR allegations. The offence, as narrated, falls squarely outside terrorism's ambit as authoritatively delimited by the Hon'ble Supreme Court.

7. The instant Criminal Miscellaneous Application accordingly stands dismissed.

8. A stark perusal of the impugned order unmasks its patently cursory character: bereft of any reasoned discourse, it shuns judicial application of mind, neglects to dilate upon the merits of jurisdictional contest, and deprives parties of adversarial opportunity. Such non-speaking orders erode the edifice of judicial transparency and accountability, contravening cardinal tenets of natural justice and procedural fairness enshrined in our jurisprudence.

9. In all future matters, the learned Presiding Officer shall meticulously pass *speaking orders*, duly dilating upon the merits, affording full opportunity of hearing to both prosecution and defence, and furnishing cogent reasons grounded in law and record. Non-compliance shall invite judicial reproof. This mandate upholds the sanctity of judicial process and safeguards against arbitrary dispositions.

J U D G E

J U D G E