ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Revision Application No.D-39 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE

Present:

Justice Zafar Ahmed Rajput
Justice Irshad Ali Shah

Applicants	:	Muhammad Ismail s/o Muhammad Ishaque & Ali Asghar s/o Shah Mardan alias Sheedo, through Miss Rizwana Jabeen Siddiqui, Advocate
Respondent No.1	:	The State, through Mr. Shafi Muhammad Mahar, D.P.G.
Respondents No.2	:	Mst. Hafeezan w/o Abdul Hafeez, through Mr. Mujahid Hussain Phulpoto, Advocate
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Date of Hearing	:	25.01.2023
Date of Order	:	25.01.2023
		=========

O R D E R

ZAFAR AHMED RAJPUT, J: - This Criminal Revision Application is directed against order, dated 01-11-2022, whereby the learned Judge Anti-Terrorism Court, Khairpur dismissed the application filed by the applicants/ accused under section 23 of the Anti-Terrorism Act, 1997 ***("Act of 1997")***, seeking transfer of Special Case No. 18 of 2022, arisen out of Crime/F.I.R. No. 118 of 2022, registered at P.S. B-Section, Khairpur under sections 302, 324, 311, 3337-A(i), 337-F(i), 148, 149, 427, P.P.C. r/w section 7 of the Act of 1997 from the file of Court of Anti-Terrorism, Khairpur to ordinary court for want of jurisdiction.

2. Briefly stated facts of the prosecution case are that, on 24.05.2022, respondent No.1/ complainant lodged the aforesaid F.I.R. alleging therein that her brother-in-law Nadir Ali got an F.I.R. bearing Crime No.113/2022

registered at P.S. B-Section, Khairpur for the offence under sections 506/2, 114, 337-H(2), P.P.C. against accused Ajeeb Phulpoto & others; on that, the accused party being annoyed used to issue murderous threats to compel him to withdraw the case; that, on 24.05.2022, she, her husband Abdul Hafeez, her brother-in-law Naimatullah, her brother-in-law Nadir Ali, her sons Naeem Ahmed and Muhammad Peeral *(aged 4 years)*, were returning on motor-cycles from village Khedo after visiting their relatives and reached Bhano Village link road, near Banana Garden of Memon community, located at National Highway Bypass Road Peer Mangio, where at 1030 hours, (1) Ajeeb (2) Rano (3) Nawab (4) Wazir (5) Nazir (6) Abdullah alias Jogi (7) Ali Asghar (8) Muhammad Ismail and two unidentified accused, duly armed with weapons, formed an unlawful assembly and in prosecution of common object of such assembly accused Ajeeb, Abdullah, Ali Asghar, Muhammad Ismail, Rano and Nazir committed *qatl-i-amd* of Nadir Ali and Muhammad Peeral by causing them firearm injuries, while accused Nawab and Wazir made fires with intention to commit murder upon Naeem, who sustain injuries on his left knee and left thigh; that the accused party also made aerial firing and created panic, terror and insecurity, for that the accused persons were booked in the F.I.R.

3. After usual investigation, police submitted the challan against the applicants/accused in the Anti-Terrorism Court, Khairpur wherein the applicants filed Cr. Misc. application, under section 23 of the Act of 1997, which was dismissed by the Trial Court, vide impugned order holding that *applicants/accused along with their companions armed with automatic deadly weapons, being the members of unlawful assembly and in prosecution of their common object made direct firing upon the complainant party with intention to commit their murder, in which one minor child, son of the complainant namely Peeral, has been murdered in front of her mother Mst. Hafeezan. Such scenario*

has made the instant case a case of terrorism; therefore, the same is to be proceeded by the Anti-Terrorism Court.

4. Learned counsel for the applicants has mainly contended that the impugned order is against the facts and law as the learned trial Court failed to appreciate that section 7 of the Act of 1997 has been misapplied by the police as the ingredients of said provision of law is missing in the case. She has further contended that the alleged incident has neither taken place at public place, not there appears any intention for creating sense of insecurity in public at large or striking terror. In support of her contentions, learned counsel has relied upon the case of *Ghulam Hussain v. The State* **(PLD 2020 SC 61)**.

5. Conversely, learned counsel for the respondent No.1/complainant has maintained that the offence with which the applicants/accused have been charged falls within the ambit of "terrorism" as defined in section 6 (2) of the Act of 1997, which is exclusively triabal by the Anti-terrorism Court. Learned D.P.G. has also vehemently opposed this application and has asserted that the impugned order is a legal order, which does not suffer from any illegality or irregularity requiring any interference of this Court.

6. Heard the learned counsel for the applicants and respondent No.1 as well as learned D.P.G. and perused the material available on record.

7. In order to appreciate the contentions of learned counsel for the parties, we deem it appropriate to reproduce relevant provisions of section 6 of the Act of 1997, as under:

> ***6. Terrorism.*** *– (1) In this Act, "terrorism" means the use or threat of action where:*
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> *(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:
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(3) The use or threat 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.

8. It has been observed by the Apex Court in the case of *Ghulam Hussain (supra)* 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."

9. In the case of *Muhabbat Ali and another vs. The State* (**2007 SCMR 142),** the Apex Court has laid down the principles to determine the act of terrorism to attract the provision of section 6 of the Act of 1997, as under:

> *"In order to determine as to whether an offence would fall within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations made in the F.I.R., record of the case and surrounding circumstances. It is also necessary to examine that the ingredients of alleged offence has any nexus with the object of the case as contemplated under sections 6, 7 and 8 thereof. Whether the particular act is an act of terrorism or not, the motivation, object, design or purpose behind the said Act is to be seen. It is also to be seen as to whether the said act has created a sense of fear and insecurity in the public or any section of the public or community or in any sect."*

10. While examining the case in hand on the above touchstone, it is manifest on the face of it that the alleged offence took place because of previous enmity in rural area. Motive as alleged in the F.I.R. is also to be given a specific attention which indicates that there was a personal enmity/*private vendetta* between the parties. The mere fact that the crime for personal motive was committed in a gruesome or detestable manner, by itself would not be sufficient to bring the act within the meaning of terrorism or terroristic activity. There is no criminal record against the accused showing their involvement in terrorist activities. There is no allegation of sectarian or religious issues and no threat or over awe to society or section of people or public is alleged in the case; therefore, the question of creating terror in the minds of general public has not arisen; hence, the alleged offence has got no nexus with the section 6 and 7 of the Act of 1997.

11. For the foregoing facts and reasons, we are of the considered view that the Trial Court while dismissing the application under section 23 of the Act of 1997 has failed to attend to the above facts and circumstances of the case, which has resulted into miscarriage of justice. We, therefore, by allowing this criminal revision application, set aside the impugned order. Resultantly, Special Case No. 18 of 2022 is accordingly withdrawn from the file of Anti-Terrorism Court, Khairpur and transferred to the learned Sessions Judge, Khairpur with direction either to try himself or assign it for trial to any of the Additional Sessions Judge working under him.

12. Criminal Revision Application stands allowed.

JUDGE

JUDGE