

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Revision Application No. D-31 of 2022

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| DATE OF HEARING | ORDER WITH SIGNATURE OF HON'BLE JUDGE. |
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1. For Orders on office objection.
2. For Orders on MA No. 1529/2022 (Stay/A)
3. For hearing of main case.

Mrs Justice Rashida Asad, J
Mr Justice Khadim Hussain Soomro, J

Date of hearing. 19.09.2023.

Date of announcement 24.10.2023

Mr. Parvez Ahmed Maitlo, advocate for the applicants.
Mr. Ferozuddin N. Shaikh, advocate for respondent.
Mr. Aftab Ahmed Shar, Additional Prosecutor General.

ORDER

KHADIM HUSSAIN SOOMRO, J; Through the instant application, applicants Nazir and Shahmir impugned the order dated 20-10-2022, passed by the Court of learned Judge, Anti-Terrorism Court, Khairpur in Special Case No. 14/2022, "Re. The State Vs. Nazeer & others", Crime No. 01/2022, offence u/s 302, 324, 404, 337H(2), 148, 149 PPC r/w section 7 ATA, 1997 registered at police Station Baradi Jatoi, whereby the application under Section 23 of Anti-Terrorism Act, 1997, filed by the applicant/accused for transfer of this case to the Court of ordinary Criminal Court, was dismissed; hence they have filed the instant Crl. Revision Application.

2. Briefly facts for disposal of this application are that on 26-04-2022, complainant Shoukat Ali Mangnejo lodged the FIR alleging therein that he is Nekomard of his locality. About 05 months back, Umar Narejo and his companions attacked their village and committed the murders of his relatives, Kaleemullah and Ahmed Ali Mangnejo. In the aforementioned

incident, accused Mumtaz, Dilbar and Ghulam Narejo died due to the firing of their companions, and such a case was also registered at Police Station Baradi Jatoi. Accused Umar Narejo and others threatened the complainant to withdraw from that case. On the morning of April 20, 2022, the complainant, along with his nephew Waliullah and cousins Abdul Qavi and Abdul Ali, proceeded on motorcycles towards Pir Jo Goth to accomplish an assignment. Upon completion of their work, they were on the way to their village. As they arrived near village Rabban Janwari, at village Gul Hassan Mangnejo, a group of 23 individuals armed with Kalashnikovs, pistols, and guns emerged on the katcha road from the eastern side. These persons were identified as the accused Khadim, Mansoor, Wazir, Umar, Ali Pasand (also known as Passo), Bashir, Abdul Ghani, Dinnal, Ali Nawaz, Rashid, Rano, Ali Gohar, Foto, Mour, Ilyas, Ghulam Hyder, Manzoor, Ghulam Akbar, Wali Muhammad, along with Nazeer armed with a pistol and Shahmir armed with a gun. They were all by caste, Narejo. All the accused persons pointed their weapons at the complainant party, while accused Khadim told them that they would not be spared as they were not withdrawing from their previous case. Upon hearing the aforementioned sentence, the accused party dismounted from their motorcycles, and accused persons named Khadim, Ilyas, Umar, Ali Nawaz (also known as Nazo), and Ali Passan made straight fires upon Waliullah, who sustained fireshots and fell down. The complainant and others sought refuge along a watercourse and sand dune and raised cries, resulting in the dissemination of fear and panic throughout the vicinity. Then, all the accused persons, while making indiscriminate firing, fled away from the scene of the offence. Accused Khadim Hussain drove

away the motorcycles of the complainant party towards the eastern side. The complainant party saw that Waliullah, who sustained firearm injuries and, after shivering/trembling, succumbed to the injuries at the spot. Police arrived at the place of the incident; they proceeded to carry out the necessary preliminary procedures. Subsequently, the dead body of the deceased was transported to Pir Jo Goth Hospital for the purpose of conducting a postmortem examination. In the wake of the completion of this procedure and after the burial ceremony of the deceased, the complainant appeared at the police station and lodged the above-said FIR.

3. After investigation, challan was submitted before the Court of Anti-Terrorism, Khairpur, where the applicants/accused filed an application u/s 23 Anti-Terrorism Act, 1997, but after hearing the parties, the same was dismissed vide order dated 20-10-2022, which is impugned by the applicants/accused by filing the instant CrI. Revision Application.

4. Mr Parvez Ahmed Maitlo, learned Counsel for applicants/accused, submits that the provision of Anti Terrorism Act, 1997 is not attracted in the present case as previous enmity is admitted by the complainant in the FIR; that the motive of crime related to the complainant and he should have been the prime target, however, he was not caused any harm during the occurrence. No element of Terrorism as defined by the legislator was found; the parties had a blood feud for a long, and the object of the alleged incident was purely to take revenge; the offence does not fall within the ambit of Section 6 or 7 Anti Terrorism Act. He submits that the Police have misapplied Section 7 of the Anti Terrorism Act, 1997, that ingredients of such section are not attracted in the case in hand. He lastly contended that no element of Terrorism had been found in the FIR as well as in the

investigation which created panic, terror and a sense of insecurity in the minds of the general public; hence, this case comes within personal vendetta/enmity between the parties. In support of his contentions he placed reliance upon cases reported in *the cases of 1. Bashir Ahmed v. Mohammad Siddique and others (PLD 2009 Supreme Court 11), 2. Hazoor Bux and another v. The State and another (PLD 2012 Sindh 469), 3. Waris Ali and 5 others v. The State (2017 SCMR 1572).*

5. Mr Ferozuddin Shaikh, learned Counsel for the complainant, submits that offence does fall within the parameter of the Special Court established u/s 13 of the Anti-Terrorism Act, 1997; that names of the applicants/accused are mentioned in the FIR with a specific role they along with companions being armed with sophisticated weapons committed the murder of Waliullah Mangnejo and went away by making indiscriminate firing which created terror, panic and sense of insecurity in the minds of the general public, which comes within the ambit of Anti-Terrorism Act, 1997; hence the application filed by the applicants/accused is liable to be dismissed.

6. Mr Aftab Ahmed Shar learned Additional Prosecutor General in view of the dictum laid down in the case of *Waris Ali and five others v. The State (supra)* has contended that enmity existed between the parties and the crime has been committed due to the previous murderous enmity; therefore, this crime does not come within the meaning of terrorism or terrorist activities; therefore, he conceded the arguments advanced by learned counsel for the applicant/accused.

7. We have given patience hearing the arguments advanced by the Counsel for the parties and have gone through the material available on

the record. As per the contents of the FIR, all accused persons, on the point of weapons, surrounded the complainant party. Accused Khadim told the complainant that since murderous enmity had been carried on between them, they refused to withdraw the case, they would commit their murder and then accused Khadim, Ilyas, Umar, Ali Nawaz @ Nazo, and Ali Pasand made direct firing upon Waliullah and committed his murder and remaining accused made indiscriminate firing and went away which shows that there exists previous murderous enmity between the parties.

8. To obtain a thorough comprehension of this jurisdictional difficulty, it is imperative to recognize that the Anti-Terrorism Act 1997 is a distinct statute established to tackle the prevention of terrorism, sectarian violence, and the prompt adjudication of grave offences. In order to achieve this goal, the legislative body has, among other things, established a specific procedure for the registration, investigation, and trial of offences falling under its jurisdiction. In order to examine the scope of ATA to transfer the case, it is necessary to scrutinize the provision outlined in section 23 of the Act. These provisions are as follows:

Section 23

“ Power to transfer cases to regular courts. Where, after taking cognizance of an offence, [an Anti-terrorism Court] is of opinion that the offence is not a scheduled offence, it shall, notwithstanding that it has no jurisdiction to try such offence, transfer the case for trial of such offence to any court having jurisdiction under the Code, and the Court to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence”

9 . The Supreme Court of Pakistan has resolved the ambiguity surrounding the definition of terrorism in its judgment in the case of

Ghulam Hussain v. The State (PLD 2020 SC 61), which has provided clarity on the criteria for determining acts of terrorism under sections 6 and 7 of the ATA. Let us reproduce the relevant paras from *Ghulam Hussain v. The State (supra)* at some length:

"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."

10 . As mentioned earlier, it is evident from the analysis that the august Supreme Court of Pakistan, in the above case, has provided definitive meaning on two commonly misunderstood aspects regarding the definition and application of the term "terrorism" under the Act. Firstly, it has been decided that regardless of the severity, shock value, brutality, gruesomeness, or horror of an offence, it cannot be characterized as an act of terrorism unless it is committed with the specific intent or purpose outlined in clauses (b) or (c) of subsection (1) of section 6 of the aforementioned Act. Secondly, even if an offence falls directly within the

parameters outlined in subsection (2) of section 6, it cannot be deemed an act of "terrorism" if it is motivated by a personal dispute or vendetta.

11 . In the case in hand, it is clearly mentioned in the FIR that both parties have already entangled in previous murderous enmity, which cannot be regarded as a terrorist act in view of the dictum laid down in the afore-referred judgment. Consequently, we allow this application and set aside the impugned order dated 20-10-2022 passed by Special Judge, Anti Terrorism Court, Khairpur. The case is transferred from the Anti-Terrorism Court to the court of ordinary jurisdiction, i.e learned Sessions Judge, Khairpur, for trial in accordance with law. The learned Sessions Judge, Khairpur either to keep this case on his own board or entrust to any other Court having jurisdiction for its disposal according to law with further directions to proceed with the matter expeditiously and conclude the trial preferably within three months after receipt of this order.

Revisions stands disposed of in the above terms.

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Nasim/P.A