

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Revision Appln. No. D-17 of 2025

Before:

Mr. Justice Amjad Ali Bohio, J.

Mr. Justice Khalid Hussain Shahani, J.

Applicants : 1) Nazeer Ahmed s/o Ghulam Nabi
2) Abdul Jabbar s/o Gulzar Ahmed (as per FIR Gadad)
3) Javed s/o Hakeem
4) Ghulam Akbar
5) Zaheer Ahmed
6) Akram Ali
All three sons of Ghulam Nabi
7) Hout Khan s/o Luqman
8) Abdul Waheed s/o Hoat Khan
9) Asif Ali s/o Ghulam Akbar
10) Aijaz Ahmed s/o Muhammad Khan
11) Muhammad Nawaz s/o Hamzo @ Muhammad
12) Nisar Ahmed S/O Gulzar @ Gadad
All by caste Mahar
Through Mr. Ajeebullah Junejo, advocate

The State through : Mr. Muhammad Raza Katohar, DPG

Date of hearing : 30.09.2025

Date of Order : 29.10.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – This Criminal Revision Application arises out of the impugned order dated 12th June, 2025 passed by the learned Judge, Anti-Terrorism Court-I, Sukkur in Special Case No.11/2025. The applicants seek to challenge the dismissal of their application filed under Section 23 of the Anti-Terrorism Act, 1997, wherein they sought transfer of the case to an ordinary Court having jurisdiction on the ground that the offence does not constitute terrorism within the meaning of the Anti-Terrorism Act, 1997.

1. The prosecution case, as emanates from FIR No.04/2025 dated 14th January, 2025 registered at Police Station Pano Aqil Cantt, is that the complainant Inspector Shohab Akbar along with his police staff proceeded for patrolling and received information that wanted accused of Crime No.274/2024 namely Nazeer, Abdul Jabbar and Jawed were present at their *otaq* with a robbed official rifle. The police party, under supervision of SDPO Pano Aqil, proceeded to the pointed place and allegedly encountered 30 to 32 persons who opened fire upon the police. During the encounter, accused Abdul Jabbar was arrested with a *Kalashnikov* but was subsequently rescued

by other accused persons. The accused allegedly snatched an official rifle from DSP Abdul Sattar Phul, damaged police vehicles, and tore the uniforms of police constables. The FIR was registered for offences under Sections 324, 353, 224, 225, 337-H(ii), 395, 186, 427, 148, 149 PPC read with Section 7 of the Anti-Terrorism Act, 1997.

2. The learned counsel for the applicants has raised the following grounds:

***First**, that the alleged offence arose from a land dispute wherein one of the applicants, namely Akbar and Manzoor Ahmed, had purchased land from Jam Zafarullah Khan Dharejo for Rs. 6,09,40,000/-, which aggrieved the political elements of Mahesar community whose lands are adjacent to the purchased land. This demonstrates that the FIR has been registered with mala fide intentions due to personal enmity and property dispute.*

***Second**, that the Hon'ble Supreme Court of Pakistan in various decisions, particularly in the landmark judgment of Ghulam Hussain v. The State (2020 SCMR 1494), has categorically held that offences stemming from personal enmity do not attract the provisions of the Anti-Terrorism Act, 1997. For an act to constitute terrorism under Section 6 of the ATA 1997, the action must fall within subsection (2) of Section 6 and must be designed to achieve the objectives specified in clause (b) or (c) of subsection (1) of Section 6.*

***Third**, that no general public was affected from the alleged incident, nor was any grievous injury caused. The incident allegedly occurred at 19:30 hours (after sunset) at a secluded location near the otaq of Ghulam Nabi Mahar in a rural area, where no independent witnesses were present. The alleged encounter could not have created terror in the public at large as required under Section 6(1)(b) of the ATA 1997.*

***Fourth**, that the nomination of about 15 persons with specific details regarding their weapons in an immediate encounter situation raises serious doubts about the veracity of the prosecution story. Furthermore, all witnesses are police officials who are interested parties, and no independent witness has been cited despite the place being allegedly thickly populated.*

***Fifth**, that essential case property including the torches allegedly used for identification, torn shirts of police officials, and broken mirrors of police vehicles have not been secured as case property, which creates further doubt about the prosecution version.*

***Sixth**, that no specific role has been assigned to the present applicants except mere presence and general allegations, which does not constitute commission of the alleged offence.*

3. The learned Judge of the Anti-Terrorism Court-I, Sukkur vide order dated 12th June, 2025 dismissed the application under Section 23 of the

ATA 1997, observing that "none of witnesses has been examined yet, therefore at this stage it cannot be said that Sections of A.T. Act, 1997 are misapplied in this case".

4. Having heard the learned counsel for the applicants and the learned Deputy Prosecutor General for the State, and having carefully examined the material on record, this Court proceeds to determine whether the impugned order is sustainable in law.

5. Section 23 of the Anti-Terrorism Act, 1997 provides:

"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."

6. The pivotal question is whether the alleged offence constitutes terrorism within the meaning of Section 6 of the Anti-Terrorism Act, 1997. The Hon'ble Supreme Court of Pakistan in the seminal judgment of *Ghulam Hussain v. The State* (2020 SCMR 1494), delivered by a seven-member bench presided by Chief Justice, authoritatively settled the scope and application of the Anti-Terrorism Act, 1997. The Supreme Court held that for an action or threat of action to be accepted as terrorism within the meanings of Section 6 of the ATA 1997, two cumulative requirements must be satisfied:

- i) *The action must fall within subsection (2) of Section 6 of the ATA 1997; and*
- ii) *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, or the use or threat of such action must be made for the purpose of achieving any of the purposes mentioned in clause (c) of subsection (1) of Section 6.*

The Court further held:

"It is further clarified that the actions specified or mentioned 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." The Court emphasized that any offence, regardless of how brutal and

heinous it is, cannot fall under the ambit of terrorism if it is not committed with the design or purpose specified in Section 6(1)(b) or (c) of the ATA 1997. Section 6(1)(b) and (c) of the ATA 1997 specify that the use or threat must be:

(b) 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) made for the purpose of advancing a religious, sectarian or ethnic cause, or intimidating and terrorizing the public.

7. Upon careful scrutiny of the FIR and the circumstances surrounding the alleged incident, several critical features emerge. The applicants have pleaded, and the State has not effectively rebutted, that the genesis of this case lies in a land transaction wherein applicants Akbar and Manzoor Ahmed purchased agricultural land for Rs. 6,09,40,000/- from Jam Zafarullah Khan Dharejo. This purchase allegedly aggrieved members of the Mahesar community whose lands are adjacent to the purchased property, creating personal enmity and property-related antagonism. The Hon'ble Supreme Court in *Ch. Bashir Ahmad v. Naveed Iqbal and Bashir Ahmed v. M. Siddique* held that even though offences may be serious and heinous, if they are not backed by any motive to destabilize the government or to spread fear in society, and the actions are based on personal vendetta, they do not fall within the purview of terrorism, no matter how heinous such crimes are.

8. The alleged incident, as per the FIR itself, occurred at 19:30 hours at a secluded location near the *otaq* of Ghulam Nabi Mahar in a rural area. The prosecution case does not demonstrate any design or purpose on the part of the accused to:

- *Coerce or intimidate the Government;*
- *Overawe the public or a section of the public;*
- *Create a sense of fear or insecurity in society at large;*
- *Advance any religious, sectarian, or ethnic cause.*

9. The Hon'ble Supreme Court in the case of *Hassan v. State* (2020 PCRLJN 14) observed that where an incident takes place in a secluded area not surrounded by any member of the public, there is no evidence to suggest that the action was taken with any design, intention and mens rea of causing terrorism. Since it was a secluded area, it did not have the impact of causing intimidation, awe, fear and insecurity in the public or society since there were

no members of the public around to witness or even hear the action. All the witnesses cited in the FIR are police officials who are interested parties inter se. The prosecution has not produced any independent witness despite the alleged incident occurring in what is described as a "thickly populated area." This creates a legitimate question about whether the incident was designed to create public terror or was merely an altercation between the police party and the accused persons arising from the execution of a prior case.

10. The identification of 15 persons with their specific names, parentage, addresses, and respective weapons during an immediate encounter situation at night raises serious questions about the credibility of the prosecution version. In criminal jurisprudence, particularly after the Ghulam Hussain judgment, has firmly adopted a *mens-rea based approach rather than an actus-reus based approach* (also called effect-based approach) in determining whether an offence falls within the jurisdiction of Anti-Terrorism Courts.

11. The *mens-rea* based approach examines the intentions, motives, and mental state of the accused when determining the **cognizability** of the offence under the ATA. It is not sufficient that an action may have created fear as an unintended consequence; rather, the action must have been designed or intended to create such fear. In the present case, even if the alleged encounter and rescue of the accused created some apprehension among the immediate vicinity, this would be an unintended consequence of what appears to be a confrontation arising from personal enmity and land dispute, rather than an act designed to terrorize society at large.

12. It is pertinent to note that offences falling under the Third Schedule of the ATA 1997 (such as kidnapping for ransom under Section 365-K PPC) are not *per se* offences of terrorism. They require the additional element of mens rea specified in Section 6(1)(b) or (c) to attract the provisions of the ATA. The offences alleged in the present case include Sections 324, 353, 224, 225, 337-H(ii), 395, 186, 427, 148, 149 PPC. While some of these may be scheduled offences, their mere commission does not automatically confer jurisdiction upon the Anti-Terrorism Court unless the prosecution can demonstrate that they were committed with the specific design or purpose enumerated in Section 6(1)(b) or (c) of the ATA 1997.

13. The learned trial court dismissed the transfer application on the ground that "none of witnesses has been examined yet, therefore at this stage it cannot be said that Sections of A.T. Act, 1997 are misapplied in this case".

14. This reasoning is legally unsustainable. Section 23 of the ATA 1997 empowers and indeed requires the Anti-Terrorism Court to form an opinion based on the material available at the stage of taking cognizance. The question of jurisdiction cannot be postponed indefinitely until witnesses are examined. The FIR itself, along with the allegations made therein, must disclose whether the offence falls within the definition of terrorism under Section 6 of the ATA 1997. The Court is required to examine:

- *The nature of the allegations in the FIR;*
- *The background and motive of the alleged offence;*
- *Whether there is any allegation that the act was designed to achieve the objectives specified in Section 6(1)(b) or (c);*
- *Whether the incident was in furtherance of personal enmity or private vendetta.*

15. Numerous judgments of superior courts have held that the determination of jurisdiction under Section 23 of the ATA can and must be made at an early stage based on the FIR and available material, without waiting for the entire trial to conclude.

16. After careful consideration of the facts, the legal position as settled by the Hon'ble Supreme Court of Pakistan in *Ghulam Hussain v. The State* (2020 SCMR 1494) and other binding precedents, and the material available on record, we are of the considered opinion that:

- i. *The alleged offence arises from personal enmity and a land dispute between the parties rather than from any design or purpose to create terror in society, intimidate the government, or advance any religious, sectarian, or ethnic cause;*
- ii. *The incident allegedly occurred in a secluded area without any evidence that it was designed to create fear or insecurity in the public at large;*
- iii. *No independent witnesses have been cited, and all witnesses are interested police officials, which raises questions about whether the incident was designed to create public terror or was merely an altercation arising from prior enmity;*
- iv. *The essential ingredients of Section 6(1)(b) or (c) of the Anti-Terrorism Act, 1997 are conspicuously absent from the allegations made in the FIR;*

- v. *The offence, as alleged, does not fall within the definition of terrorism as authoritatively interpreted by the Hon'ble Supreme Court of Pakistan.*

17. In view of the foregoing discussion and analysis, this Criminal Revision Application is allowed. The impugned order dated 12th June 2025 passed by the learned Judge, Anti-Terrorism Court-I, Sukkur is set aside. Accordingly, Special Case No.11/2025 arising out of FIR No.04/2025, Police Station Pano-Aqil Cantt, is transferred to the Court of ordinary jurisdiction having territorial jurisdiction for trial in accordance with law. The Court of ordinary jurisdiction to which the case is transferred shall proceed with the trial from the stage at which it stands transferred, in accordance with Section 23 of the Anti-Terrorism Act, 1997 read with the provisions of the Code of Criminal Procedure, 1898.

JUDGE
JUDGE