IN THE SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE RAZA ALI KHAN

CIVIL PLA N0. 489 OF 2024

Civil Misc. No. 256 of 2024

(Against the judgment dated 03.07.2024, passed by the High Court in writ petition No. 2580 of 2023)

Muhammad Naseer Khan s/o Muhammad Khan r/o Dherray Tehsil and District Bagh.

…Petitioner

VERSUS

Ashir Bin Shujat s/o Muhammad Shujat Khan r/o Kalri Topi Tehsil and District Bagh presently confined in Judicial Lockup, Bagh and others.

…Respondents

Appearances:

For the Petitioner:	Mr. Zaffar Iqbal Azad, Advocate.
For Respondent No. 1:	Raja Sajjad Ahmed Khan, Advocate.

Date of hearing: 09.08.2024

JUDGMENT:

***Raza Ali Khan, J*:-** The impugned judgment herein is the decision of the High Court dated July 3, 2024, wherein the writ petition filed by the respondent was accepted.

2. The facts of the case are that a complaint was registered against the accused-respondent and co-accused at Police Station City Bagh on April 16, 2023, under sections 302, 147, 148, 149, and 337 of the Azad Penal Code (APC) for the murder of Israr Saleem. After completing the investigation, a report under section 173 of the Criminal Procedure Code (Cr.PC) was submitted to the Court of Competent Jurisdiction, in which additional charges under section 34 APC, section 15(2-a), and section 6 of the Anti-Terrorism Act, 2014 (ATA) were added against the accused-respondent and co-accused. The accused-respondent then filed an application before the Sessions Judge/Special Judge of the Anti-Terrorism Court in Bagh, seeking the deletion of section 6 of the ATA. After hearing arguments from both parties, the trial court dismissed the application on August 25, 2023. The respondent subsequently challenged this order before the High Court by filing a writ petition. After conducting the necessary proceedings, the High Court, through the impugned judgment dated July 3, 2024, accepted the writ petition and ordered the removal of section 6 of the ATA from the challan.

3. Mr. Zaffar Iqbal Azad, the learned counsel for the petitioner, argued that the impugned judgment of the

High Court is contrary to the law, the facts, and the record of the case. He contended that the trial court had rightly rejected the respondent's application, but the High Court, without providing any judicious reasoning, accepted the writ petition and deleted section 6 of the Anti-Terrorism Act (ATA) from the challan. He contended that the High Court's observation that the murder was committed as an act of personal vendetta should not be given weight, as there were sixteen accused, hailing from different areas and tribes, who were not related to each other, yet they assembled at the signal of respondent No.1 and brutally killed an unarmed individual with daggers in a public place. This, he argued, clearly indicates that they are an organized criminal gang, and the nature of their actions is sufficient to destabilize peace and tranquility in society. He also asserted that the incident was not the result of a personal vendetta but rather that the respondent is part of a gang previously involved in multiple criminal activities, thereby creating fear and threatening the general public. Therefore, he argued, section 6 of the ATA was rightly included in the challan, and the High Court's decision to delete it while accepting the writ petition is not legally sustainable.

4. On the other hand, Raja Sajjad Ahmed Khan, the learned Advocate representing respondent No.1, argued that the High Court's judgment was correctly passed. He pointed out that both the FIR and challan clearly show that the incident occurred due to two previous events in which the respondent had also sustained injuries and subsequently filed a complaint with the SHO of Police Station City Bagh, leading to his referral to the hospital on the same day. He contended that the grounds raised in the PLA are baseless, as no evidence was presented before the

trial court, along with the challan, to suggest any involvement of the respondent and co-accused in terrorist activities or as part of a terrorist group. He maintained that this case is a straightforward murder involving personal vendetta, and therefore, the investigating agency wrongfully and illegally added section 6 of the ATA against the respondent and co-accused. He concluded by stating that the High Court, after a detailed and thorough investigation, passed the impugned judgment, which is fully in accordance with the law and the facts of the case, and thus, this petition lacks merit.

5. I have heard the learned Advocates for the parties and carefully reviewed the case record. The central issue in this matter is whether the provisions of section 6 of the Anti-Terrorism Act, 2014 (ATA), are applicable to the case of the respondent. To arrive at a just conclusion, I have examined section 6 of the ATA, which outlines the punishment for acts of terrorism. For better understanding, the relevant section is reproduced hereunder: -

> "6**. Punishment for acts of terrorism:-**
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> (1) Whoever commits an act of terrorism under Section 5, whereby;
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> (a) death of any person is caused, shall be punishable, on conviction, with death or with imprisonment for life, and with fine; or
> (b) he does anything likely to cause death or endangers life, but death or hurt is not caused, shall be punishable, on conviction, with imprisonment of either not caused, shall be punishable, on conviction, with imprisonment of either description for a term which shall be not less than ten years but may extend to imprisonment for life and with fine;
> (c) grievous bodily harm or injury is caused to any person, shall be punishable, on conviction, with imprisonment of either description for a term

which shall not be less than ten years but may extend to imprisonment for life and shall also be liable to a fine; or

(d) grievous damage to property is caused, shall be punishable on conviction, with imprisonment, of either description for a term not less than ten years but may extend to imprisonment for life and shall also be liable to a fine; or

(e) the offence of kidnapping for ransom or hostage-taking has been committed, shall be punishable on conviction, with death or imprisonment for life; or

(f) the offence of hijacking, has been committed, shall be punishable on conviction, with death or imprisonment for life and fine; or

(g) the act of terrorism falls under Section 5(2)(e), shall be punishable with imprisonment which shall not be less than fourteen years but may extend to imprisonment for life;

(h) the act of terrorism committed falls under section 5(2)(f) and (g), shall be punishable, on conviction, with imprisonment of not less than two years and not more than five years and with fine; or

(i) the act of terrorism committed falls under clauses (h) to (n) of sub section (2) of section 5, shall be punishable, on conviction, to imprisonment of not less than five years but may extend to imprisonment for life and with fine; and

(j) any other act of terrorism not falling under clauses (a) to (h) above or under any other provision of this Ordinance, shall be punishable on conviction, to imprisonment of not less than five years and not more than ten years or with fine or with both.

(2) An accused convicted of any offence under this Ordinance shall be punishable with imprisonment of ten years or more, including the offences of kidnapping for ransom and hijacking shall also be liable to forfeiture of property."

6. A plain reading of the provisions mentioned above indicates that they are applicable only to acts of terrorism as defined under section 5 of the ATA, meaning

that section 6 of the ATA cannot be interpreted in isolation but must be read in conjunction with section 5 of the Act. If section 6 of the ATA were to be considered in isolation, it would result in classifying every case of murder, grievous injury, severe damage to private property, and acts likely to cause death, among others, as terrorism offenses, which would contradict the intent of this special law. Section 5 of the ATA is detailed across various subsections, with subsection (1) defining acts of terrorism, while the subsequent subsections describe actions that fall under this definition. Therefore, it is essential to reproduce section 5 of the ATA here for clarity, as it reads as follows: -

> "5. **Terrorism:** (1) In this Act "Terrorism" means the use or threat of action where:
> (a) the action falls within the meaning of sub-section (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 a foreign government or population or an international organization or create a sense of fear or insecurity in the 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 civilian, including damaging property by ransacking looting, arson or by any other means, Government officials, installations, security forces or law enforcing agencies:
>
> Provided that nothing herein contained shall apply to a democratic and religious rally or a peaceful demonstration in accordance with law.
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> (2) An "action" shall fall within the meaning of sub-section (1), if it;
> (a) involves the doing of anything that causes death;
> (b) involves grievous violence against a person or grievous body injury or harm to a person;

(c) involves grievous damage to property, including Government premises, official installations, schools, hospitals, offices or any other public or private property including damaging property by ransacking, looting or arson or by any other means;
(d) involves the doing of anything that is likely to cause death or endangers a person's life;
(e) involves kidnapping for ransom, hostage-taking or hijacking;
(f) involves use of explosive by any device including bomb blast or having any explosive substance without any lawful jurisdiction or having been unlawfully concerned with such explosive;
(g) incites hatred and contempt or religious, sectarian or ethnic basis or stir up violence or cause internal disturbance;
(h) involves taking the law in own hand, award of any punishment by an organization, individual or group whatsoever, not recognized by the law, with a view to coerce, intimidate or terrorize public, individuals, groups, communities, Government officials and institutions, including the law enforcement agencies beyond the purview of the law of the land;
(i) involves firing on religious congregations, mosques, imambargahs, churches, temples and all other places of worship, or random firing to spread panic, or involves any forcible takeover of mosques or other places of worship;
(j) creates a serious risk to safety of the public or a section of the public, or is designed to frightened the general public and thereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil life;
(k) involves the burning of vehicles or any other serious form of arson;
(l) involves extortion of money ("bhatta") or property;
(m) is designed to seriously interfere with or seriously disrupt a communications system or public utility service;
(n) involves serious coercion or intimidation of a public servant in order to force him to discharge or to refrain from discharging his lawful duties;
(o) involves serious violence against a member of the police force, Armed Force, Civil Armed Forces or a public servant;

(p) involves in acts as part of armed resistance by groups or individuals against law enforcement agencies; or

(q) involves in dissemination, preaching ideas, teachings and beliefs as per own interpretation on FM stations or through any other means of communication without explicit approval of the Government or its concerned departments.

(3) the use or threat of use of any action falling within sub-section (2), which involves the use of fire-arms, explosives or any other weapon, is terrorism, whether or not sub-section (1)(c) is satisfied.

(4) Notwithstanding anything contained in sub-section (1), an action in violation of convention specified in Fifth Schedule shall be an act of terrorism under this Act.

(5) In this section "action" includes an act or series of acts.

(6) In this Act, terrorism includes any act done for the benefit of a prescribed organization.

(7) A person who commits an offence under this Section or any other provision of this Act shall be guilty of an act of terrorism.

(8) In this Act, a "terrorist" means

(a) an individual who has committed an offence of terrorism under this Act, and is or has been concerned in the commission, preparation or instigation of acts of terrorism.

(b) an individual who is or has been, whether before or after the coming into force of this Act, concerned in the commission, preparation or instigation of acts of terrorism, shall also be included in the meaning given in clause (a) above.

(9) The case under this Act shall only be registered if the act of terrorism has been committed strictly in accordance with the provisions in letter and spirit."

7. The word "terrorism" has also been interpreted by the superior Courts in a number of pronouncements. The apex Court of Pakistan in a case reported as *Mirza Shoukat*

Baig & others v. Shahid Jamil and others[1] has interpreted the word "terrorism" in the following manners:-

> "11. After having gone through the provisions as contained in section 6 of the Act we are of the firm opinion that "terrorism" means the use or threat of "action" where the "action" falls within the meaning of sub-section (2) of section 6 of the Act and creates a serious risk to safety of the public or a section of the public, or is designed to frighten the general public and hereby prevent them from coming out and carrying on their lawful trade and daily business, and disrupts civil life shall amount to terrorism as enumerated in section 6 of the Act."

In another case reported as *Zahid Imran and other v. The State and others*[2], the word "terrorism" has been defined as under:

> "40. .... There could be no second opinion that where the action of an accused person results in striking terror or creating fear, panic, sensation, helplessness and sense of insecurity among the peoples in a particular vicinity it amounts to terror and such an action squarely falls within the ambit of section 6 of the Act 1997."

8. After examining section 5 of the Anti-Terrorism Act, 2014, along with the relevant case law cited earlier, it can be concluded that 'terrorism' refers to the use or threat of action intended to create a serious risk to public safety, or a segment of the public, or to instill fear in the general public, thereby preventing them from engaging in lawful activities, carrying on their daily business, and disrupting civil life. However, when an act is committed out of personal enmity or private vendetta, even if the act is heinous in nature, it does not fall within the scope of the ATA unless it is intended to achieve one of the objectives

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[1] [PLD 2005 S.C 530]
[2] [PLD 2006 S.C 109]

outlined in section 5(1)(b) of the Act. This Court, in its recent judgment titled *Umari Arif and Others vs. Sessions Judge Muzaffarabad and Others*[3], has thoroughly explained the scope of the ATA, emphasizing that actions must be designed to accomplish any of the purposes specified in section 6 of the ATA. For better understanding, the relevant portion of the aforementioned judgment is reproduced hereunder: -

> "After going through subsection (1)(b) of section 5 of ATA, the sense becomes clear that if any act which causes death, grievous violence against a person or grievous bodily injury or harm to a person, grievous damage to property, kidnapping, hijacking etc. (contained in other subsections of section 5 of ATA), is designed/done with the object/purpose to coerce and threat or scare the Government or the public or a section of the public or community or sect or a foreign Government or population or an international organization or creates a sense of fear or insecurity in society; then the provisions of ATA shall be attracted. After going through the relevant provisions of law, we are of the considered view that the cases in which any act is done in furtherance of personal enmity or private vendetta, even if the same is heinous in nature but the object of the same is not as has been mentioned in section 5(1)(b) of ATA then such cases do not come within the ambit of ATA. The Supreme Court of Pakistan in the case titled *Ghulam Hussain and others v. The State & others* (delivered in criminal appeals No.95, 96 of 2019, civil appeal No.10-L of 2017 and criminal appeal No.63 of 2013), referred to by the learned counsel for the petitioners has very comprehensively elaborated the scope of ATA and after detailed discussion has held that the action must be designed to achieve any of the objectives specified in 6 of the Act. In the referred pronouncement, section 6 of Anti Terrorism Act, 1997 has been interpreted which is at par with

[3] [2020 SCR 222]

section 5 of ATA; although, in whole of the judgment guidance with regard to the application of Anti Terrorism Act, has been provided, however, we intend to reproduce here only the concluding paragraph of the same which reads as under:-

"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) 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."

9. In light of the discussion in the preceding paragraphs and the legal principles established in the cited judgments, I have carefully examined the case of the respondent. The FIR indicates that the complainant filed a written report against the respondent and 10 other named co-accused, along with 12 to 15 unidentified individuals. Specific allegations were made against the respondent and co-accused, stating that they were armed with daggers and attacked the complainant's party, inflicting injuries on various parts of Israr Saleem's body, which ultimately led to his death. Upon investigation, the agency concluded that

prior to the main incident, an altercation had occurred between the accused and the complainant/injured party, leading the accused to act out of intense anger and commit the offense as an act of personal revenge. This act was not intended to threaten or scare the governments, the public, any section of the public, the community, the sect, foreign government, or international organization. The learned counsel for the respondent also placed on record an application filed by the respondent before the SHO, indicating that another incident had taken place before the main occurrence, in which the respondent also sustained injuries and was referred to the hospital by the SHO on the same day. It is clear that the incident stemmed from personal vendetta. Therefore, it can be concluded that the provisions of the ATA are not applicable in this case, as the mere heinousness of an offense does not constitute terrorism unless it is committed with the specific design or purpose outlined in section 5(1) of the ATA.

In view of the above detailed discussion, I am constrained to concur with the judgment of the High Court, consequently, this petition for leave to appeal along-with application for interim relief stands dismissed.

JUDGE

Muzaffarabad,
12.08.2024