

# HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

## Crl. Jail Appeal No.S-46 of 2021

Appellant : Salak alias Saleh s/o Muhammad Ramzan  
Jamali Through Mr.OM Parkash H. Karmani,  
Advocate  
Complainant : Arshad Ali s/o Nizamuddin Arain,  
Through Mr.Muhammad Irfan Chandio,  
Advocate  
The State : Through Ms.Safa Hisbani, A.P.G

Date of hearing : 15.10.2025, 29.10.2025 and 06.11.2025

Date of order : 18.11.2025

## ORDER

**JAWAD AKBAR SARWANA, J:** This criminal appeal disposes of the submissions made by the learned D.P.G. and A.P.G. for the State that this appeal involving scheduled offences under the Anti-Rape (Investigation and Trial) Act (“Anti-Rape Act”), 2021, cannot be heard and decided by the Single Bench of the High Court and may be transferred to the Division Bench of this Court. Learned D.P.G. and A.P.G. have argued that in the light of the orders passed by the Single Bench of the High Court in Cr. Appeal No.S-443/2019 dated 02.10.2025 and in Cr. Appeal No.S-173/2020 dated 06.10.2025, for consistency, these matters should also be transferred to the Division Bench. They contended (submissions made on separate days) that when the impugned judgment in criminal appeal arises out of an offence under the Pakistan Penal Code, which offence falls within the ambit of the Schedule of Offences under the Anti-Rape (Investigation and Trial) Act (“Anti-Rape Act”), 2021, then in terms of Section 18(4) of the Anti-Rape Act, 2021, ibid, such appeal is to be heard and decided by the Division Bench of the High Court and not the Single Bench. Therefore, D.P.G. and A.P.G. submit that these two criminal appeals should be transferred from the Single Bench to the Division Bench.

2. Counsels for the appellants oppose the submissions made by the learned D.P.G. and A.P.G. They argue that the appeal pending before the Single Bench of the Court arises out of a judgment which was announced before the coming into force of the Anti-Rape Act, 2021, on 04.12.2021. Furthermore, they contend that when the appeal was filed in the High Court, the said Act had not yet come into force. They also argue that the transfer of cases pertains to the trial of scheduled offences, and the said Act cannot be given retrospective effect for judgments announced and appeals filed and already pending in the High Court. Therefore, the Single Bench is competent to continue to hear this lis.

3. Heard learned D.P.G. and Counsel. For the reasons which are well articulated and discussed in a Division Bench Judgment of the Lahore High Court in the case of Imdad Ullah v. The State and Another, PLD 2025 Lahore 512, and as set out summarily in the preamble of the Anti-Rape Act, 2021, Parliament enacted the said law to ensure expeditious redressal of rape and sexual abuse crimes in respect of women and children through special investigation teams and special Courts providing efficacious procedures, speedy trial, evidence and matters connected therewith or incidental thereto. Although the Anti-Rape Act, 2021, was enacted on 04.12.2021 and extended to the entire country, under Section 1(3) of the said Act, the coming into force of the Act was to be on a date to be appointed by the Federal Government.

4. Section 3 of the Anti-Rape Act, 2021, provides that the Federal Government, in consultation with the Chief Justice of the High Court concerned, shall establish as many Special Courts throughout the country as it may deem necessary to try the Scheduled Offences under the said Act. Section 3 reads as follows:

***“Section 3. Establishment of Special Courts, etc.---(1) The Federal Government, in consultation with the Chief Justice of the High Court***

*concerned, shall establish as many Special Courts throughout the country, as it may deem necessary, to try the scheduled offences.*

*(2) The Federal Government, in consultation with the Chief Justice of the High Court concerned, shall appoint any person as a Judge of the Special Court, who is or has been a Sessions Judge or Additional Sessions Judge, or has been an advocate of the High Court for a period of not less than ten years, and is not more than sixty-eight years of age at the time of appointment.*

*(3) In addition to or in lieu of the establishment of Special Courts under subsection (1), the Federal Government may, in consultation with the Chief Justice of the High Court concerned, designate, throughout the country, as many Courts of Additional Sessions Judges or such other courts as Special Courts, as it may deem fit:*

*Provided that where gender based violence (GBV) courts or juvenile courts or child protection courts have already been designated, they shall be deemed to be the Special Courts under this Act:*

*Provided further that where more than one Special Court is designated or established in one jurisdiction, the concerned Courts of Sessions shall allocate the case.*

*(4) A Judge of the Special Court shall have the same powers and jurisdiction as are vested in the Court of Session under the Code.*

*(5) A Judge of the Special Court shall be appointed for a period of three years on such terms and conditions as may be determined by the Federal Government.*

*(6) A Judge of a Special Court shall only be removable before the expiry of his tenure if he is found guilty of misconduct.*

*(7) The disciplinary proceedings against a Judge of a Special Court shall be conducted in the same manner and under the same legal provisions and rules as prescribed for a District and Sessions Judge.*

*(8) During his tenure, a Judge of a Special Court may be transferred to another Special Court within the same Province, by the Chief Justice of the High Court concerned, for reasons to be recorded in writing.*

*(9) The trial of scheduled offences shall ordinarily be conducted in the Special Court within whose territorial jurisdiction the offences are committed."*

In view of the above, Section 3(3) states that, in addition to or in lieu of the establishment of Special Courts under Section 3(1), the Federal Government may, in consultation with the Chief Justice of the High Court concerned, designate as many courts of the Additional

Sessions Judges or such other courts as “Special Courts”, as it may deem fit.

5. Accordingly, in exercise of the power conferred by Section 3(3) of the Anti-Rape Act, 2021, the Government of Pakistan in consultation with the Chief Justice of the Sindh High Court, designated 27 Courts of the Additional and Sessions Judges as “Special Courts” and duly notified the Courts as “Special Courts” as per the notification published in the Official Gazette of Pakistan, published on 05.11.2022, Part II, Statutory Notifications (S.R.O.) No.2029(I)/2022, notification dated 11.10.2022. Thus, **the Anti-Rape Act, 2021, in the Province of Sindh came into force as of 05.11.2022.**

6. Section 16 of the Anti-Rape Act, 2021, provides as follows:

**“Section 16. Trial.**---(1) *The Court upon taking cognizance of a case, under this Act, shall decide the case expeditiously, preferably within four months.*

(2) *A Special Court shall not grant more than two adjournments during the trial of a case, out of which one adjournment shall be upon payment of costs by the person seeking adjournment. Where the defense counsel does not appear after two consecutive adjournments, the Court may appoint another defense counsel with at least seven years standing in criminal matters for the defense of the accused from the panel of advocates maintained by the special committee.*

(3) *If, in the course of a trial, the Court is of the opinion that any of the offences which the accused is alleged to have committed is not a scheduled offence, the Court shall record such opinion and try the accused only for such offences, which are scheduled offences.*

(4) *A Special Court may also try offences, not listed in the schedules, committed in connection with the scheduled offences, as if those offences were scheduled offences.*

**Explanation.**---*It is clarified that subsection (4) shall also be applicable where the provisions of the Anti-Terrorism Act, 1997 (Act XXVII of 1997) are invoked or invocable in respect of offences under this Act.”*

7. Section 18 of the Anti-Rape Act, 2021, states that any person aggrieved by the final judgment of a Special Court may file an appeal to

the High Court in whose jurisdiction the Special Court, which rendered the judgment, is situated. Section 18 reads as follows:

***“Section 18. Appeal.---(1) Any person aggrieved by the final judgment of a Special Court may file an appeal to a High Court in whose jurisdiction the Special Court tendering the impugned judgment, is situated.***

*(2) Copies of the judgment of the Special Court shall be supplied to the accused and the prosecution, free of cost, on the day the judgment is pronounced, whereafter the record of the trial shall be transmitted to the concerned High Court within three days of the decision.*

*(3) An appeal under subsection (1) may be preferred within thirty days of the final judgment by the Special Court.*

*(4) An appeal preferred under subsection (1) shall be decided by a division bench of the High Court, as soon as practicable, preferably within six months from its institution.*

*(5) While hearing an appeal, the High Court shall not grant more than two consecutive adjournments.*

*(6) Pending appeal, the High Court shall not release a person convicted by the trial court.*

8. While Sections 16 and 18 of the Anti-Rape Act, 2021, concern the trial and appeals, Section 23 of the said Act deals with matters relating to the transfer of cases, etc. Section 23 reads as follows:

***“Section 23. Jurisdiction and transfer of cases, etc.---(1) The scheduled offences shall be exclusively triable by the Special Court.***

*(2) Subject to subsection (3), upon commencement of this Act, the trial of scheduled offences pending in any court shall stand transferred to the Special Court having jurisdiction under this Act and such Court shall proceed with the case from the stage at which it was pending immediately before such transfer and it shall not be bound to recall or re-hear any witness who has given evidence and may act on the evidence and procedures already recorded and complied with, respectively.*

*(3) Each time when a new offence is inserted into any of the Schedules to this Act, subsection (2) shall come into operation, mutatis mutandis, from the date of such insertion.”*

9. I now turn to the material facts of the jail appeal. The brief background of Criminal Appeal No. S-46 of 2021, is that an FIR bearing Crime No. 88 of 2020 was registered at Police Station Sehwan, District

Jamshoro, by complainant Khadim Hussain against the appellant Shoukat under Section 376 P.P.C. Upon conclusion of the trial, the learned trial Court, vide judgment dated 16.02.2021 passed in Sessions Case No. 403 of 2020, convicted the appellant under Section 265-H(ii) Cr.P.C, for an offence punishable under Section 376(3) P.P.C. and sentenced him to suffer rigorous imprisonment for life and to pay a fine of Rs. 100,000/-. In default of payment, the appellant was further directed to suffer simple imprisonment for three months. Aggrieved by the said conviction and sentence, the appellant preferred the instant Criminal Appeal on 13.03.2021.

10. The learned D.P.G. submitted that as a result of the conviction falling within the ambit of Scheduled Offences under the Anti-Rape Act, 2021, this matter ought to be transferred to the Division Bench for further proceedings. To this end, the learned D.P.G. has contended that the Single Bench cannot hear the matter, and no further orders can be passed except by the Division Bench, which alone has competent jurisdiction over the subject matter of the crime concerning sexual offence(s).

11. The Anti-Rape Act, 2021, was enacted on 04.12.2021 and came into force in the Province of Sindh on 05.11.2022. Accordingly, when the crime occurred, the said Act had neither been enacted nor come into force. This was also the position when the trial Court announced the judgment dated 16.02.2021, and when the appeal was filed in the High Court on 13.03.2021, before the said Act came into force.

12. According to a plain reading of Section 23 of the Anti-Rape Act, 2021, above, it appears that once the Anti-Rape Act, 2021, came into effect, any ongoing trial of scheduled offences in any court is to be automatically transferred to the Special Court having jurisdiction under the Act. The Special Court will then proceed with the case from the

point at which it was pending immediately before the transfer. It is pertinent to mention here that all the references in Section 23 concern the transfer of cases of the trial of scheduled offences from any court to the Special Court. The section also cross-reference various stages of trial, i.e. recall or re-hearing of a witness who has given evidence and procedures already recorded and complied with. There is simply no reference to “appeals” or, for that matter, even any stages of appeals in Section 23. Finally, there is neither any implied nor express reference to the transfer of appeals from the Single Bench to the Division Bench under Section 23. As every word and phrase used by the Legislature must be given a precise meaning, it is apparent that while an appeal may be a continuation of trial proceedings, yet in the context of the Anti-Rape Act, 2021, which provides express statutory language for transfer of cases under Section 23, there is no mention of “appeals” in the said Act. There’s only a cross-reference to “trial” in Section 23 and the subject of “trial” is governed by Section 16 of the Anti-Rape Act, 2021, which section is distinct from Section 18, which deals with “Appeals”. The criminal appeal pending hearing before me is not a trial, and indeed, it is not a trial, given the statutory meaning of 'trial' under the Anti-Rape Act, 2021.

13. Finally, Section 18 of the Anti-Rape Act, 2021, which provides that under Section 18(4) that an appeal preferred under sub-section (1) shall be decided by a division bench of the High Court qualifies its applicability to those appeals that are to be filed under Section 18(4) of the Anti-Rape Act, 2021, i.e. commencing from the date when the Act came into force. Section 18 does not apply to those appeals which are pending or have already been filed in the High Court. Section 18(4) does not provide for the transfer of cases from a Single Bench or a High Court, nor does it state that Section 18(3) has retrospective applicability. Therefore, in the circumstances, in my opinion, appeals filed against judgments wherein the accused has been found either

guilty or acquitted under those sections of the PPC which are now part of the Scheduled Offences under the Anti-Rape Act, 2021, are not liable to be transferred from the Single Bench to the Division Bench of the High Court. All such matters may be heard and decided by the Single Bench. At the time of my writing, I am informed by the Office that several cr. appeals and cr. jail appeals filed prior to the coming into force of the Anti-Rape Act, 2021, involving Scheduled Offences under the said Act, have already been transferred from the Single Bench to the Division Bench of the High Court.

14. As the opinion recorded by me herein above is contrary to the Orders passed by my learned Sister Judge of this Court in Cr. Appeal No.S-443/2019 dated 02.10.2025 and in Cr. Appeal No.S-173/2020 dated 06.10.2025 at the High Court of Sindh, Circuit Court Hyderabad, Office, to kindly obtain instructions from the Hon'ble Acting Chief Justice to facilitate further proceedings.

**JUDGE**

AHSAN K. ABRO