

ORDER SHEET
IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Misc. Appl. No. D- 79 of 2016 &
CrI.B.A.No. D- 734 of 2015.

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE.
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For katcha peshi.

Present:

Mr. Justice Naimatullah Phulpoto &
Mr. Justice Muhammad Humayon Khan.

Mr. Sher Muhammad Shar advocate for applicant/accused.
Mr. Iftikhar Ali Arain advocate for complainant.
Mr. Saleem Akhtar, Additional P.G. for the State.

Date of hearing: 20.09.2016.
Date of order: 27.09.2016.

ORDER

Muhammad Humayon Khan J., Through instant CrI. Misc. Application, applicant/accused Mashooque Ali has called in question order dated 11.12.2015, passed by learned Judge, ATC, Khairpur in special case No. 44 of 2015, whereby an application under section 23 ATA, 1997, moved on behalf of applicant/accused for transfer of case from Anti-Terrorism Court to regular jurisdiction was dismissed.

2. Brief facts leading to filing of instant application are that applicant/accused Mashooque Ali is facing trial before Anti-Terrorism Court, Khairpur for offences under section 377 PPC r/w section 7 ATA, 1997. According to prosecution case, on 13.5.2015 at 1900 hours, complainant Niamat Ali lodged an FIR against accused Mashooque Ali alleging therein that on 12.5.2015 at 2.00 p.m, above named accused forcibly committed sodomy with his son Usman Ali, aged about 11 years. FIR was registered under section 377 PPC. After usual

investigation, challan was submitted under section 377 PPC r/w section 7 ATA, 1997.

3. Bail application was moved before trial court, same was dismissed vide order dated 26.8.2015. Bail Application No. D-734 of 2015 has been filed before this court for similar relief/bail. Impugned order passed on application under section 23 ATA, 1997 has also been called in question, as stated above.

4. Learned advocate for applicant/accused mainly contended that section 377 PPC would not fall within the ambit of section 6 ATA, 1997 and trial before ATC under section 377 PPC r/w section 7 ATA, 1997 would be coram non judice. In support of his contentions, he relied upon case of **Bashir Ahmed v. Muhammad Siddique and others (P L D 2009 Supreme Court 11)**.

5. Learned Addl. P.G assisted by learned advocate for the complainant argued that offence under section 377 PPC r/w section 7 ATA from the facts of the case fell within the ambit of section 6 ATA, 1997. Learned Judge, ATC has rightly dismissed application for transfer of case to the court of ordinary jurisdiction.

6. In order to determine as to whether an offence would fall within the ambit of section 6 ATA, 1997, it is essential to have a glance over the allegations made in the FIR. Record of the case and surrounding circumstances are also to be examined. It is also necessary to examine that alleged offence have any nexus with the object of the case as contemplated under sections 6,7 & 8 thereof. We have examined the present case in the light of dictum laid down in the aforesaid case. From the perusal of FIR and other material, it transpires that allegation against the applicant/accused is that he was armed with pistol and he took son of

complainant to a room and committed sodomy with him by force and FIR under section 377 PPC was registered against him. On conclusion of investigation, section 7 ATA, 1997 was added.

7. It is manifest on the face of it that alleged act of sodomy was committed by accused in a room. Motive of the accused was to commit such unnatural offence. Application of section 7 ATA, 1997, which primarily requires spread of sense of insecurity and fear in the common men is lacking in the present case. Right reliance has been placed by learned advocate for the applicant/accused on the above cited authority. We, therefore, hold that learned Judge, ATC, Khairpur has no jurisdiction to try alleged offence, as it did not fall within the ambit of Anti-Terrorism Act, 1997 and it is triable by an ordinary court having jurisdiction. Consequently, order dated 11.12.2015, passed by learned Judge, ATC, Khairpur is not sustainable in law. Therefore, case is ordered to be transferred to the ordinary court having jurisdiction in the matter.

8. In view of above, Crl. Misc. Application, for transfer of case to ordinary court, is allowed. As regards to the pending bail application is concerned, same shall be deemed to be pending and it shall be decided expeditiously by the court having jurisdiction in the matter in accordance with law. Crl. Bail Application No.D-734 of 2015 in view of above stands disposed of.

JUDGE

JUDGE