ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Revision Application No.D-20 of 2021

Date	Order with signature of Judge

1. **For orders on office objections**
2. **For hearing of main case.**

14.12.2022

Mr. Sarfraz A. Akhund, Advocate for the Applicant
Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General
Complainant is present in person

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Naimatullah Phulpoto, J: Through this revision application, applicant/accused Sarang s/o Hussain Bux by caste Shar has called in question order dated 14.09.2021, passed by learned Judge, Anti-Terrorism Court, Khairpur, in Special Case No.15/2020, whereby an application under Section 23 of ATA, 1997, moved on behalf of the applicant for transfer of the case from Anti-Terrorism Court to the Court of ordinary jurisdiction, was dismissed.

2. Brief facts leading to filing of instant application are that applicant/accused Sarang Shar is facing trial before learned Judge, Anti-Terrorism Court, Khairpur, for offence under Section 377 PPC r/w section 7 ATA, 1997. According to prosecution case, on 29.07.2020 at about 1830 hours, complainant Rafique Ahmed Soomro lodged the FIR against the accused Sarang alleging therein that on 10.07.2020 at about 0700 p.m., above named accused committed carnal intercourse with his son Ayaz, aged about 15/16 years, in his otaq during tuition. It is alleged that applicant/accused is a teacher. FIR was registered under Section 377 PPC. However, after usual investigation, challan was submitted against the accused under Section 377 PPC r/w Section 7 ATA, 1997.

3. Learned advocate for the applicant/accused mainly contended that element of terrorism is missing in this case and learned Judge, Anti-Terrorism Court, 1997 has no jurisdiction to try this case. In support of his submissions, he placed reliance upon the judgment passed by Hon'ble Supreme Court in the case of ***Ghulam Hussain and others vs. The State*** *(PLD 2020 SC 61).*

4. Learned Additional Prosecutor General argued that in the view of above judgment passed in the case of *Ghulam Hussain*, Anti-Terrorism Court has no jurisdiction to try this case. Complainant opposed the prayer for transfer of case from Anti-Terrorism Court to the Court of ordinary jurisdiction.

5. In order to determine as to whether an offence would fall within the ambit of Section 6 of ATA, 1997, it is essential to have a glance over the allegations made in the FIR and other material collected during investigation. It is also necessary to examine that alleged offence have any nexus with the object of the case as contemplated under Section 6 of ATA, 1997. From the perusal of FIR and other material collected during investigation, it transpires that allegation against applicant/accused is that he committed carnal intercourse with the son of complainant in his otaq, at the time of tuition and complainant reported matter to the police.

6. From the close scrutiny of the case, it is clear that act of unnatural offence was committed by the accused in a otaq/room. In the case of *Ghulam Hussain* supra, it is 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 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 labeled or characterized as terrorism if such actions are taken in furtherance of personal enmity or private vendetta".

7. In the present case, element of the terrorism as declared in the aforesaid judgment is missing. Consequently, order dated 14.09.2021 passed by learned Judge, Anti-Terrorism Court, Khairpur, is not sustainable in law, the same is set-aside. Case is ordered to be transferred to the ordinary court having jurisdiction in the matter. In the view of above, Cr. Revision Application stands allowed in the above terms.

JUDGE

Faisal Mumtaz/PS JUDGE