

IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(ORIGINAL JURISDICTION)

PRESENT

MR. JUSTICE IQBAL HAMEEDUR RAHMAN, CHIEF JUSTICE
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH
MR. JUSTICE DR. SYED MUHAMMAD ANWER
MR. JUSTICE AMEER MUHAMMAD KHAN

SHARIAT PETITION NO. 21/I OF 2022

Dr. Irfan Iqbal son of Sheikh Muhammad Iqbal, presently confined at Central Prison Rawalpindi.

PETITIONER

VERSUS

Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad.

RESPONDENT

Counsel for Petitioner: Mr. Hashmat Ali Habib and Mr. Tassawar Zulfiqar, Advocates

Counsel for Respondent: Mian Muhammad Faisal Irfan, DAG for Federation
Barrister Muhammad Usman Mirza, State Counsel on behalf of A.G. Islamabad
Mrs. Imrana Baloch, State Counsel / AOR on behalf of A.G Punjab
Barrister Ahsan Hameed Dogar, Advocate on behalf of AG Sindh
Mr. Anees Muhammad Shahzad, Advocate on behalf of AG Khyber Pakhtunkhwa
Mr. Atta Muhammad, Law Officer, IG (Prison) KP
Mr. Sulaiman, Law Officer, IG Inspectorate, Peshawar
Mr. Tahir Siddique, Deputy Superintendent, Adiala Jail, Rawalpindi.

Date of Institution: 29.08.2022

Date of Hearing: 15.04.2024

Date of Judgment: 19.04.2024

JUDGMENT

DR. SYED MUHAMMAD ANWER, J: Through the instant Shariat Petition, the petitioner sought two different reliefs. Firstly, he challenged Section 21-F of the Anti-Terrorism Act, 1997 (XXVII of 1997) for being against

the injunctions of Islam as laid down in the Holy Quran and Sunnah, and secondly, he sought a relief in *personam*. As far as the relief in *personam* is concerned, it does not fall within the jurisdiction of this Court. However, the other relief in his prayer relating to Section 21-F of the Anti-Terrorism Act, 1997 is analyzed and deliberated upon by us in this judgment.

2. Brief facts of the case are that Dr. Irfan Iqbal (petitioner) was booked in case FIR No.700, dated 18.12.2002, under Sections 302, 324, 109 PPC read with Section 7 of the Anti-Terrorism Act, 1997, P.S. Ganj Mandi, Rawalpindi and pursuant to a regular trial, the petitioner was convicted under Section 7(a) of the Anti-Terrorism Act, 1997 and sentenced to death with fine of Rs.300,000/-, or in default of payment thereof to undergo rigorous imprisonment for one year. The appellant challenged his conviction and sentence before the Lahore High Court, Rawalpindi Bench, Rawalpindi through an appeal, which was dismissed and the petitioner was additionally convicted under Section 302(b) PPC and sentenced him to death on that score as well. Feeling aggrieved thereof, the petitioner moved the apex court, whereby petitioner's conviction and sentence under Section 302(b) PPC was set-aside and the death sentence awarded under Section 7(a) of Anti-Terrorism Act, 1997 was reduced to life imprisonment vide judgment dated 23.11.2016.

3. On 24.08.2022, the petitioner filed an application as a Human Right Case in this Court praying therein that the Government has granted remission to prisoners on 14th August "Diamond Jubilee" to the exclusion of prisoners involved in blasts and anti-nationalism / terrorism, hence they are meted out with discrimination and discrimination is against the injunctions of Islam. Pursuant to the preliminary arguments of the learned counsel for the

petitioner, this Court converted the said application into the instant Shariat Petition vide order dated 17.11.2022.

4. Learned counsel for the petitioner, inter alia, contended that Article 227 of the Constitution of the Islamic Republic of Pakistan, 1973 provides that all existing laws shall be brought in conformity with the injunctions of Islam as laid down in the Holy Quran and *Sunnah* of the Holy Prophet (PBUH), whereas the insertion of Section 21-F in the Anti-Terrorism Act, 1997 is sheer violation of the Islamic injunctions. For ready reference, Section 21-F of the Anti-Terrorism Act, 1997 reads as under:

“21-F. Remissions. Notwithstanding anything contained in any law or prison rules of the time being in force, no remission in any sentence shall be allowed to person, other than a child who is convicted and sentenced for any offence under this Act, unless granted by the Government.”

In support of his contention, learned counsel for petitioner has relied upon Verses 58 & 65 of Surah An-Nisa, Verses 38, 42, 44, 45, 47 & 49 of Surah Al-Maida, Verses 22 & 26 of Surah Sad, Verse 46 of Surah Az-Zumar and Verse 8 of Surah Al-Alaq. He further contended that equality is a peculiarity of Islam and it stresses on elimination of discrimination between the rich and poor, master and slave, ruler and subject, etc., therefore, Section 21-F of the Anti-Terrorism Act, 1997 may kindly be declared repugnant to the injunctions of Islam.

5. Conversely, the learned representatives of the respective provinces vehemently opposed the instant Shariat Petition and stressed that the impugned law is promulgated regarding the criminals who are imprisoned in jail for commitment of heinous crime of terrorism. According to them, the

term “terrorism” covers all acts of violence or threats for the sake of striking fear amongst people or tarrying them through threats of causing harm to them or endangering their lives, freedom, security or general conditions, as such, all the said acts are reckoned as mischief on earth (*fasad fil arz*), which Allah Almighty prohibited in Verse 77 of Surah Al-Qasas. Furthermore, it has also been stressed by the learned representatives of respective provinces and the Federation that the State may legislate for stringent punishments to curb *fasad fil arz* by using *siyasa* jurisdiction. They also argued that the question of refusal of remission granted by the President of Pakistan under Article 45 of the Constitution of the Islamic Republic of Pakistan, 1973 to a particular class of convicts is justified and has already been adjudicated upon by the august Supreme Court of Pakistan in the case of *Nazar Hussain*, reported as **(PLD 2010 SC 1021)** and opined that:

“.....For exercise of authority in Article 45 of the Constitution, classification of convicts on the basis of accusation is permissible as the President may, inter alia, like to grant remissions to those who are not accused of heinous offences and may refuse it to those accused of serious or terrorism related offences.”

[emphasis added]

Similarly, recently the apex court once again, vide order dated 30.09.2020, passed in CP No.4-P of 2020, has denied remission to an accused charged and convicted under Section 7 of the Anti-Terrorism Act, 1997. Lastly, it has been argued that the petitioner has failed to give any particular reference of the Holy Quran or Sunnah of the Holy Prophet (PBUH) in support of his contention that non-extension of remission under Section 21-F of the

Anti-Terrorism Act, 1997 is repugnant to the injunctions of Islam as laid down in the Holy Quran and *Sunnah* of the Holy Prophet (PBUH).

6. We have heard the learned counsel for the petitioner as well as the Deputy Attorney General together with the learned representatives of the respective provinces.

7. After hearing the arguments of the parties at length we have decided to dismiss this petition for the following reasons:

Firstly, the petitioner has failed to point out any specific Ayah or Ahadith to show that the impugned section is against the injunctions of the Holy Quran and Sunnah. All the verses of the Holy Quran relied upon by the petitioner are related to importance of equity and justice in Islam, about which there is no second opinion. Establishment of equity and justice in society is the cornerstone of Islamic teachings, this is part of our belief, but these verses, which are referred by the petitioner, are not relevant to the question in issue involves in this Shariat Petition that non-existence of remission to the accused of terrorism under Section 21-F of the Anti-Terrorism Act, 1997 is repugnant to the injunctions of Islam as laid down in the Holy Quran and Sunnah of Holy Prophet (PBUH).

Secondly, the different treatment of the criminals, who are convicted for commission of act of terrorism from the rest of the criminals by non-extension of remission is not discriminatory under the Islamic injunctions, because in Islam the punishments for different crimes are different depending on the seriousness and heinousness of any crime. The terrorism is one of the most heinous nature of crime in Islamic

criminal justice system. Therefore, its punishment is also very harsh and serious. The Holy Quran prescribed a rigorous punishment for committing terrorism being *فساد في الارض*, furthermore it is regarded as act of war against God and His Messenger (PBUH) in Verse 33 of Surah Al-Ma'idah, which reads as under:

أَنَّمَا جَزَاءُ الَّذِينَ يُحَارِبُونَ اللَّهَ وَرَسُولَهُ وَيَسْعَوْنَ فِي الْأَرْضِ فَسَادًا أَنْ يُقَتَّلُوا أَوْ يُصَلَّبُوا أَوْ تُقَطَّعَ أَيْدِيهِمْ وَأَرْجُلُهُمْ مِّنْ خِلَافٍ أَوْ يُنْفَوْا مِنَ الْأَرْضِ ذَلِكَ لَهُمْ خِزْيٌ فِي الدُّنْيَا وَلَهُمْ فِي الآخِرَةِ عَذَابٌ عَظِيمٌ

Indeed, the penalty for those who wage war against Allah and His Messenger and spread mischief in the land is death, crucifixion, cutting off their hands and feet on opposite sides, or exile from the land. This 'penalty' is a disgrace for them in this world, and they will suffer a tremendous punishment in the Hereafter.

On such basis the parliament inserted the impugned Section 21-F in the Anti-Terrorism Act, 1997 through the Anti-Terrorism (Second Amendment) Act, 2013 (XX of 2013). The impugned section limits the power of the President of Pakistan to grant remission to the accused of offence of terrorism.

8. The impugned section separates the criminals who are punished for commission of any act of terrorism from the rest of the criminals due to the gravity of the crime of terrorism, which is according to the injunctions of Islam as laid down in verses of the Holy Quran, especially Verse 33 of Surah al-Maidah, which is stated hereinabove is the most heinous crime in any society so much so that it is considered as an act of war against Allah and His Prophet (PBUH). Therefore, we are of the view that the impugned section is

not against the injunctions of Islam as laid down in the Holy Quran and Sunnah of the Holy Prophet (PBUH).

9. In view of the above, the instant Shariat Petition being not maintainable was ***dismissed*** vide short order announced in open Court on 15.04.2024 and these are the detailed reasons for the same.

**(JUSTICE DR. SYED MUHAMMAD ANWER)
JUDGE**

**(JUSTICE IQBAL HAMEEDUR RAHMAN)
CHIEF JUSTICE**

**(JUSTICE KHADIM HUSSAIN M. SHAIKH)
JUDGE**

**(JUSTICE AMEER MUHAMMAD KHAN)
JUDGE**

*Khalid/**

APPROVED FOR REPORTING.