

LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.45901/2024

Imran Ahmad Khan Niazi

Vs.

Government of the Punjab and others

JUDGMENT

Date of hearing:	25.7.2024
For the Petitioner:	Barrister Salman Safdar, assisted by Usman Riaz Gill, Ch. Ishtiaq Ahmad Khan, Ali Hamza, Ch. Hussain Arshad, Muhammad Asif Khan, Zafar Iqbal Mangan, Mian Sajid Ali, Javed Iqbal, Umar Latif, Muhammad Sohail, Muhammad Tahir Tauseef Cheema, Kashif Bashir, Mian Imran Pasha, Arsalan Altaf, Mustafa Imran Shaukat, Amna Liaqat, Salma Riaz, Mohsin Murtaza Cheema, Zarish Fatima, Khaqan Meer, Malik Khalid Awan, Mazhar Ali Haider, Muhammad Abdullah and Syeda Zunaira Gillani.
For Respondents No.1, 3 & 4:	Ms. Shehzeen Abdullah, Acting Advocate General, along with Ch. Baleegh-uz-Zaman, Additional Advocate General; Sittar Sahil, Muhammad Farrukh Khan, Falak Sher Bakhsh Gill, Asghar Leghari; and Hussain Ibrahim, Assistant Advocates General.
For Respondents No.5 & 6:	Syed Farhad Ali Shah, Prosecutor General Punjab.
For Respondent No.7:	Zain Qazi, Assistant Attorney General for Pakistan.
For Respondent No.2:	Rao Abdul Jabbar Khan and Rana Nauman Gohar, Special Public Prosecutors.
Research assistance:	Sher Hassan Pervez and Asim Murtaza Cheema, Research Officers, LHCRC.

Tariq Saleem Sheikh, J. – The Petitioner is the ex-Prime Minister of Pakistan and the founder of Pakistan Tehreek-e-Insaf, one of the country's major political parties. He is currently facing various criminal cases regarding corruption and abetting terrorism (attacks on military installations and other public property).

2. On 9.5.2023, the NAB authorities arrested the Petitioner in connection with the *Al-Qadir Trust case*¹ from the premises of the Islamabad High Court, even though he had already applied for pre-arrest bail. The Petitioner challenged his arrest, which the Supreme Court of Pakistan declared unlawful by an order dated 11.5.2023 in Crl. Misc. Application No.641/2023, and directed his release.

3. The Petitioner continued to contest the cases against him, including the *Al-Qadir Trust case*, and managed to avoid arrest until his conviction in the *Toshakhana case*,² upon which he was apprehended on 5.8.2023. Although the Islamabad High Court suspended his sentence on 1.4.2024, he remained incarcerated in Central Jail, Adiala, Rawalpindi, due to other pending cases. Meanwhile, the trial in a private complaint titled “*Khawar Farid Maneka v. Imran Khan Niazi etc.*”, commonly known as the *Iddat* case, concluded in which the Petitioner and his wife, Bushra Bibi, were accused of offences under sections 496, 496B, and 34 of the Pakistan Penal Code. The Judicial Magistrate Section-30, Islamabad East, convicted both of them on 3.2.2024. However, they were acquitted on appeal by the Sessions Court on 13.7.2024.

4. After the Petitioner was acquitted in the *Iddat* case, there were no grounds for his continued detention. On 14.7.2024, when he was about to be released, the police arrested him in 12 criminal cases registered against him in Lahore around 14 months earlier.³ The following day, i.e., 15.7.2024, the

¹ This case revolves around allegations of corruption and misuse of power concerning a settlement between the then PTI government and a prominent real estate tycoon, which is said to have caused a loss of £190 million to the national exchequer.

² A complaint by the Election Commission of Pakistan under section 190 of the Election Act in respect of offences under sections 167 & 173 of the Election Act 2017.

³ The detail of these cases is as follows:

1. FIR 96/23 under section 302 PPC read with section 7 ATA (P.S. Sarwar Road, Lahore).
2. FIR 97/23 under section 324 PPC read with section 7 ATA (P.S. Sarwar Road, Lahore).
3. FIR 103/23 under section 353 PPC read with section 7 ATA (P.S. Sarwar Road, Lahore).
4. FIR 108/23 under section 353 PPC read with section 7 ATA (P.S. Sarwar Road, Lahore).
5. FIR 109/23 under section 353 PPC read with section 7 ATA (P.S. Sarwar Road, Lahore).
6. FIR 1271/23 under section 302 PPC read with section 7 ATA (P.S. Gulberg, Lahore).
7. FIR 1280/23 under section 353 PPC read with section 7 ATA (P.S. Gulberg, Lahore).
8. FIR 1283/23 under section 353 PPC read with section 7 ATA (P.S. Gulberg, Lahore).
9. FIR 768/23 under section 353 PPC read with section 7 ATA (P.S. Shadman, Lahore).
10. FIR 852/23 under section 353 PPC read with section 7 ATA (P.S. Race Course, Lahore).
11. FIR 1570/23 under section 395 PPC read with section 7 ATA (P.S. Mughalpura, Lahore).
12. FIR 367/23 under section 353 PPC read with section 7 ATA (P.S. Model Town, Lahore).

Home Department of the Government of Punjab issued Order No. SO(MP)20-7/2023, purportedly under section 21(2) of the Anti-Terrorism Act, 1997 (the “ATA”). The Government directed the Petitioner to appear via video link from the Adiala Jail before the Anti-Terrorism Court-I, Lahore, for proceedings related to his physical remand in the aforementioned 12 cases, citing concerns for law and order and the Petitioner’s security. Through this petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the Petitioner has assailed the vires of Order No. SO(MP)20-7/2023 dated 15.7.2024 (the “Impugned Order”).

5. Our criminal justice system requires the presence and attendance of an accused person at various stages, including pre-trial and during trial. Reference in this regard may be *inter alia* made to sections 167, 241-A, 265-C, 265-D, 265-E, 342, 344, 353, 361, 363, 498-A, 503, 512, 540-A of the Code of Criminal Procedure 1898 (hereinafter referred to as the “Code” or the “Cr.P.C.”). The ATA is a special law, and section 32 stipulates that it will have effect notwithstanding anything contained in the Code or any other law. The present case centers on remand proceedings under the ATA, which the police request when an investigation is not completed within twenty-four hours. It involves important questions involving the interpretation of the Constitution and the ATA. Therefore, by order dated 23.7.2024, this Court issued notice under Order XXVII-A CPC to the Attorney General for Pakistan and the Advocate General Punjab.

The submissions

6. The Petitioner’s counsel, Barrister Salman Safdar, contends that, firstly, the failure of the police to physically produce the accused before the Anti-Terrorism Court (ATC)⁴ when seeking a remand renders the remand order illegal. Ensuring that the accused is brought before the court within twenty-four hours of arrest is a critical safeguard against unjustified detention, as guaranteed by Articles 9 and 10 of the Constitution. Any law that bypasses it is unconstitutional. Secondly, the Impugned Order dated 15.7.2024, issued by the Secretary Home Department under section 21(2) of the ATA, is based on a misinterpretation of the law. Section 21(2) does not authorize the Government

⁴ Section 32 of the ATA stipulates that for the purposes of the Code an Anti-Terrorism Court shall be deemed to be a Court of Session. However, section 21E(3) states that for the purposes of remand the ATC shall be deemed to be a magistrate.

to waive the requirement of physically producing the accused at the remand hearing; any authority granted under this section pertains only to trial proceedings. Thirdly, section 21E(1) of the ATA deals with the issue of the remand of individuals arrested under the Act, requiring the physical production of the accused before the court within twenty-four hours of arrest. Only then can the police seek custody of the accused. The ATA does not allow remand proceedings to be conducted via video link or for the physical presence of the accused to be waived by any authority. Lastly, the term “Government” in section 21(2) of the ATA refers to the Cabinet, not an individual acting on behalf of the Provincial Government. For any notification under section 21(2) to be valid, it must be authorized by the Cabinet.

7. The Assistant Attorney General, Mr. Zain Qazi, submits that section 21(2) of the ATA empowers the Government to adopt measures necessary to protect judges, the accused, witnesses, prosecutors, defence counsel, and anyone involved in court proceedings. He states that the Petitioner has been requesting protection since an assassination attempt was made against him and has even filed petitions in various High Courts to secure this protection. The Government issued the Impugned Order to ensure his safety and address other security concerns. Therefore, no exception can be taken thereto.

8. The Assistant Advocate General, Punjab, Mr. Sittar Sahil, contends that the Home Department issued the Impugned Order in accordance with the law, considering both the Petitioner’s safety and the public interest. He argues that section 21E of the ATA, which deals with remand, should be interpreted purposively to meet modern-day requirements. The phrase “produce the accused before the court” in section 21E should be broadly construed to include virtual presence. He further submits that the ATA, in general, and section 21E, in particular, do not prohibit the production of the accused through video link for remand.

9. The Prosecutor General, Syed Farhad Ali Shah, argues that video conferencing represents a significant advancement in science and technology, allowing people to see, hear, and communicate with others remotely as if they were physically present. Therefore, video links and video conferences in court proceedings and for recording witness testimony are becoming increasingly

common worldwide. The Prosecutor General highlights that Pakistan's Parliament has also incorporated provisions in various laws to facilitate the use of modern technology. For instance, Article 164 of the Qanun-e-Shahadat Order, 1984, allows courts, depending on the nature of the case and circumstances, to admit evidence or witness testimony recorded through modern devices or techniques such as video calls, Viber, Skype, IMO, WhatsApp, Facebook Messenger, Line, and video conferencing.⁵ Clause (iii) of section 30B(1) of the Prevention of Electronic Crimes Act, 2016 (PECA), mandates that the Federal and Provincial Governments establish a victim and witness protection system through rules with features that should, *inter alia*, include recording testimonies through video-conferencing, audio-video links, and the use of modern devices. Section 30C(2) of PECA allows the court to hold trials through video links. Likewise, section 12(3) of the Juvenile Justice System Act, 2018, empowers the Juvenile Court to waive the physical presence of the juvenile and permit participation in court proceedings via an audio-visual technology link. Provincial legislatures are also making similar strides; for example, section 10 of the Punjab Witness Protection Act, 2018, provides for the recording of witness evidence through video links.

10. The Prosecutor General submits that our courts have increasingly endorsed the use of video links in various cases and has cited the following precedents in this regard: *Salman Akram Raja and another v. Government of Punjab and others* (2013 SCMR 203), *Khawaja Anwer Majid v. National Accountability Bureau and another* (PLD 2020 SC 635), *Ali Haider alias Papu v. Jameel Hussain and others* (PLD 2021 SC 362), *Mian Muhammad Nawaz Sharif v. The State and another* (PLD 2018 Islamabad 148), *Munawar Hussain and another v. The State* (2020 PCr.LJ 1184), and *Muhammad Israr v. The State and another* (PLD 2021 Peshawar 105). The Prosecutor General also referred to *Meera Shafi v. Ali Zafar* (PLD 2023 SC 211), a case arising from civil proceedings.

⁵ Section 164 of the Qanun-e-Shahadat Order was amended by Act XXXVII of 2023. Before amendment, it read as follows:

164. Production of evidence that has become available because of modern devices, etc. – In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

Provided that conviction on the basis of modern devices or techniques may be lawful.

11. The Prosecutor General contends that section 21 of the ATA reflects the Government's commitment to integrating technology into court processes, including the provision for recording evidence via video link. He argues that producing an accused before the ATC for remand through a video link is equivalent to physical production. Hence, the Impugned Order should not be subject to objection.

Opinion

12. International law requires that an arrested person be promptly brought before a court following his arrest. The International Covenant on Civil and Political Rights (ICCPR) explicitly addresses this issue in Article 9(3).⁶ The European Convention on Human Rights (ECHR) upholds this principle in Article 5(3). The American Convention on Human Rights and the African Charter on Human and Peoples' Rights include similar provisions.

13. The U.N. Human Rights Committee, which provides an authoritative interpretation of Article 9 of the ICCPR, emphasizes in its General Comment No.35 that immediate judicial oversight following an arrest is essential for protecting individuals from unlawful and arbitrary detention and ensuring their rights to a fair trial and due process. The Committee interprets the term "promptly" to generally mean within 48 hours, except in extraordinary situations. This period allows for adequate time to ensure procedural safeguards while minimizing the risk of prolonged detention without judicial oversight. The Committee also stresses that this judicial review must be meaningful. The judge must consider whether the detention is legally correct, assess whether it is necessary and proportionate, and determine whether there are alternatives to incarceration, such as granting bail. The Committee underscores that the above requirements apply to all individuals arrested or detained on criminal charges, including those held under administrative or pre-trial detention regimes.

14. General Comment No. 35 makes the physical presence of the detainee/accused before a judicial authority mandatory. The relevant excerpt from paragraph 34 is reproduced below:

⁶ Article 9(3) states: "Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release."

“The individual must be brought to appear physically before the judge or other officer authorized by law to exercise judicial power. The physical presence of detainees at the hearing gives the opportunity for inquiry into the treatment that they received in custody and facilitates immediate transfer to a remand detention centre if continued detention is ordered. It thus serves as a safeguard for the right to security of person and the prohibition against torture and cruel, inhuman, or degrading treatment.”

15. It is, however, pertinent to note that the General Comment has not explicitly addressed the issue of whether video links can be used for remand hearings. The omission of specific guidance on video link remand creates ambiguity, leaving national legal systems to navigate this issue independently.

16. To uphold the principles of the ICCPR, careful consideration and stringent safeguards are necessary when incorporating video link technology into judicial processes. Firstly, there must be a clear legal framework governing the use of video links, outlining the conditions under which they can be used and providing safeguards to protect the fair trial rights of the detainee. Secondly, the detainee must be able to participate fully in the proceedings, meaning they must hear and be heard clearly, see and be seen, and communicate confidentially with their legal counsel. Thirdly, the judge must be able to adequately assess the detention conditions and the detainee’s well-being, ensuring that they are not subjected to coercion or ill-treatment. Finally, the decision to use a video link should be made on a case-by-case basis, considering the specific circumstances. In other words, video links should be an option, not an automatic replacement. Strong justification is required if the detainee does not consent, such as exceptional public health concerns, logistical challenges, or security issues.

17. Article 10 of the Constitution of Pakistan (1973) outlines safeguards regarding arrest and detention. Clause (2) thereof provides:

(2) Every person who is arrested and detained in custody shall be produced before a magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the nearest magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

18. It is a fundamental legal principle that when a law’s wording is clear and perspicuous, courts must apply it as written because it is presumed that the text reflects the legislature’s intent. In such instances, there is no need to go beyond the text. S.M. Zafar explains:

“A statute is not open to construction as a matter of course. It is open only where the language used in the statute requires interpretation, that is, where the statute is ambiguous or will bear two or more constructions or is of such doubtful or obscure meaning that reasonable minds might be uncertain or disagree as to its meaning. Where the language of the statute is plain and ambiguous, and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation, and the court has no right to look for or impose another meaning. Such intention can be gathered only from the words actually used in the statute, and in a court of law, what is unexpressed has the same value as what was intended ... A plain and unambiguous statute is to be applied, and not interpreted, since such a statute speaks for itself, and any attempt to make it clear is a vain labour and tends only to obscurity.”⁷

19. In ***McCowan v. Baine***, [1891] AC 401, p.409, Lord Watson stated:

“It is said that, for some reason, the primary and natural meaning of the words is to be extended ... I am at a great loss to see why I think an Act of Parliament, an agreement, or other authoritative document, ought never to be dealt with in this way, unless for a cause amounting to a necessity or approaching to it. It is to be remembered that the authors of the document could always have put in necessary words if they had thought fit. If they did not, it was either because they thought of the matter and did not or because they did not think of the matter. In neither case ought the court to do it. In the first case, it would be to make provisions opposed to the intention of the framers of the document; in the other case, to make a provision not in contemplation of these framers.”

20. In ***M/s Hirralal Ratan Lal v. The Sales Tax Officer and another*** (AIR 1973 SC 1034), the Supreme Court of India (SCI) observed:

“In construing a statutory provision, the first and the foremost rule of construction is the literal construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

21. In ***B. Premanand and others vs. Mohan Koikal and others*** (AIR 2011 SC 1925), the SCI held:

“Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule ... The language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the court cannot correct or make up the deficiency ... Where the legislative intent is clear from the language, the court should give effect to it ... and the court should not seek to amend the law in the garb of interpretation.”

⁷ S.M.Zafar, *Understanding Statutes*, Edn. 2008, pp.483-4

22. In *Abdul Nafey v. Muhammad Rafique and others* (2023 SCMR 2096), the Supreme Court of Pakistan held:

“It is settled law that when meaning of a statute is clear and plain language of statute requires no other interpretation, then intention of Legislature conveyed through such language has to be given full effect. Plain words must be expounded in their natural and ordinary sense. Intention of the Legislature is primarily to be gathered from language used and attention has to be paid to what has been said and not to that what has not been said.”⁸

23. In *Dawood Abdul Ghaffoor v. Justice of Peace and others* (2021 PCr.LJ 1527), it was held that the literal rule of interpretation is nearly “biblical” when interpreting a statute. The other rules, i.e., purposive, teleological, or mischief rule, can only be resorted to when no intelligible result can be arrived at from a literal reading.

24. Article 10(2) of the Constitution safeguards the fundamental right of an arrested person to be brought before a magistrate within twenty-four hours. The terms “produced” and “excluding the time necessary for the journey from the place of arrest to the nearest magistrate” indicate a requirement for physical presence. This provision is vital in ensuring judicial oversight of the detention process, protecting the rights of the detainee/accused from the moment of arrest.

25. The law must be meticulously followed, in both letter and spirit, when a person’s liberty is at risk of being restricted or curtailed.⁹ However, courts may deviate from a literal or strict construction and resort to purposive interpretation when the literal meaning leads to an ambiguous, absurd, or unjust outcome. The purposive approach focuses on the law’s underlying purpose to ensure it achieves its intended objective. According to Aharon Barak, purposive interpretation involves three key elements: language, purpose, and discretion.¹⁰ The language of the text determines the range of semantic possibilities within which the interpreter acts as they choose the legal meaning from various explicit or implicit possibilities.¹¹ The purposive component is central to interpreting a legal text. It implies “the values, goals,

⁸ The Supreme Court also referred to the following cases in support of this statement of law: *Government of KPK v. Abdul Manan* (2021 SCMR 1871) and *JS Bank Limited v. Province of Punjab through Secretary Food, Lahore* (2021 SCMR 1617). Also see: *Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others v. Intizar Ali and others* (2022 SCMR 472).

⁹ *Raj Narain v. Superintendent, Central Jail, New Delhi, and another* (AIR 1971 SC 178), per Vaidialingham J.

¹⁰ A. Barak, *Purposive Interpretation of Law* (Sari Bashi transl.) (2005), pp. 88-91

¹¹ *ibid.*, p. 89

interests, policies, and aims that the text is designed to actualize".¹² Finally, Barak emphasizes that interpretive discretion is indispensable in determining the ultimate purpose of the norm: "It is the choice that purposive interpretation gives the judge from among a few interpretive possibilities, all of which are legal" in order "to formulate the purpose at the core of the text".¹³

26. At times, courts also interpret explicit constitutional – and statutory – provisions purposively to address modern challenges that the drafters of the text did not foresee. In ***Muhammad Aslam Awan v. Federation of Pakistan and others*** (2014 SCMR 1289), the Supreme Court of Pakistan noted that the meanings of constitutional words and concepts evolve with time and circumstances. In ***Province of Sindh and others v. MQM and others*** (PLD 2014 SC 531), it stated that "the Constitution of a country is a living organism and a particular provision, a term or word has to be interpreted dynamically and purposively to achieve the constitutional intent" (para 60). In ***Khurshid Soap and Chemical Industries (Pvt.) Ltd. and others v. Federation of Pakistan and others*** (PLD 2020 SC 641), the Supreme Court emphasized that the Constitution is organic and a living testament to the people's aspirations. The "living tree" doctrine allows the Constitution to change and evolve while acknowledging its original intentions, balancing predictability and flexibility. A static interpretation would render the Constitution obsolete, so interpreters must focus on the originators' intended accomplishments rather than the literal text alone. Judges must ensure both stability and change, as stability without change leads to degeneration, and change without stability leads to anarchy. This progressive interpretation preserves the Constitution's vitality, preventing it from becoming obsolete. The Supreme Court reiterated this view in ***Aam Log Ittehad and another v. The Election Commission of Pakistan and others*** (PLD 2022 SC 39), stating that the Constitution evolves and develops not just by way of textual changes (i.e., constitutional amendments) but also in a (continually) maturing understanding of the constitutional provisions. This means not just the very words of the Constitution but also the concepts and aspirations behind them. A well-known (and excellent) example of these established principles is the evolving meaning

¹² *ibid.*

¹³ *ibid*, p.91. Also see: T. Marinković, *Barak's Purposive Interpretation in Law as a Pattern of Constitutional Interpretative Fidelity*. : Baltic Journal of Law & Politics 9:2 (2016): 85–101 <http://www.degruyter.com/view/j/bjlp> DOI: 10.1515/bjlp-2016-0013

of “life” in Article 9. As landmark cases such as *Shehla Zia and others v. WAPDA* (PLD 1994 SC 693) demonstrate, this term should be applied conceptually and periodically reconsidered as its scope continues to broaden and deepen.

27. A Constitution occupies a special status in the legal system. It plays a role that no other legal text can fill.¹⁴ While interpreting a particular constitutional provision, the constitutional scheme and the express language employed cannot be ignored.¹⁵ Aharon Barak writes:

“Constitutional language – like the language of any legal text – plays a dual role. On the one hand, it sets the limits of interpretation. The language of the constitution is not clay in the hands of the interpreter, to be molded as he or she sees fit. A constitution is neither a metaphor nor a non-binding recommendation. On the other hand, the language of the constitution is a source of its purpose. There are other sources, to be sure, but constitutional language is an important and highly credible source of information. The fact that we may learn the purpose of a constitution sources external to it does not mean that we can give a constitution a meaning that is inconsistent with its explicit or implicit language. Interpretation cannot create a new constitutional text. Talk of judges amending the constitution through their interpretation of the constitution is just a metaphor. The claim that a constitutional text limits but does not command is true only for the limited number of cases in which, after exhausting all interpretive tools, we can still extract more than one legal meaning from the constitutional language and must, therefore, leave the final decision to judicial discretion. In these exceptional cases, language provides a general direction but does not draw a precise map of how to reach the destination. Usually, however, constitutional language sets not only the limits of interpretation but also its specific content.”¹⁶

28. As adumbrated, Article 10(2) of the Constitution aims to protect individuals’ fundamental rights by ensuring judicial oversight of detention, preventing abuse of power, and upholding the principles of justice and the rule of law. The requirement for physical production of an accused before a magistrate is a crucial deterrent to abuse and enhances the accountability of law enforcement agencies. Allowing video link remand in place of physical production can undermine these protections, especially in our country where custodial torture is a pervasive issue. The impersonal nature of video communication may not offer the same level of scrutiny as an in-person meeting, potentially leading the magistrate to miss subtle signs of distress, coercion, or mistreatment that would be more noticeable face-to-face.

¹⁴ D. Farber, “The Originalism Debate: A Guide for the Perplexed”, 49 Ohio St. L.J. 1085, 1101 (1989).

¹⁵ *Govt. of NCT of Delhi v. Union of India and another* [(2018) 8 SCC 501].

¹⁶ A. Barak, *Purposive Interpretation of Law* (Sari Bashi transl.) (2005), pp. 374-5.

Additionally, technical issues such as poor video quality, delays, or disruptions could impair the magistrate's ability to provide effective oversight.

29. To conclude, the existing language of Article 10(2) of the Constitution does not support video link remand hearings. Employing purposive interpretation to justify it would contradict both the text and the provision's intent. This cannot be permitted.

30. The Code provides a comprehensive legal framework for the administration of criminal justice in the country and applies unless a specific procedure is laid down by a special law that overrides it. Section 61 Cr.P.C. stipulates that no police officer shall detain a person arrested without a warrant for longer than is reasonable under the circumstances, and such detention shall not, in the absence of a special order from a magistrate under section 167, exceed twenty-four hours, excluding the time required for the journey from the place of arrest to the magistrate's court. Section 167(1) Cr.P.C. states that whenever a person is arrested and detained in custody, and it becomes apparent that the investigation cannot be completed within the twenty-four hours period fixed by section 61, and there are grounds to believe that the accusation or information is well-founded, the officer in-charge of the police station or the investigating officer, if he is not below the rank of Sub-Inspector, must immediately transmit to the nearest magistrate a copy of the relevant entries in the case diary and forward the accused to the magistrate. Section 167(2) states that the magistrate to whom the accused is forwarded under this section may, whether or not he has jurisdiction to try the case, authorize the detention of the accused in such custody as he deems fit for a term not exceeding fifteen days in total. If he lacks jurisdiction to try the case or send it for trial and considers further detention unnecessary, he may order the accused to be forwarded to a magistrate who has such jurisdiction. However, no Magistrate of the Third Class, and no Magistrate of the Second Class who is not specially empowered by the Provincial Government, shall authorize detention in police custody.

31. The Lahore High Court Rules and Orders, Volume III, Chapter 11, Part B, Rule 7 also mandates that "the accused must always be produced before the magistrate when a remand is asked for."

32. The remand under section 167 Cr.P.C. differs from that under section 344. Section 167 allows a magistrate, whether or not he has jurisdiction

to try the case, to remand the accused to either police or judicial custody, depending on the judicial determination. Remand to police custody under this section is specifically for the purpose of investigation. In contrast, section 344 applies where, due to the absence of a witness or any other reasonable cause, it becomes necessary for the court to postpone the commencement of any inquiry or trial. In such instances, the court may, at its discretion, postpone or adjourn proceedings and, if the accused is in custody, remand them by warrant. However, no magistrate can remand an accused to custody under section 344 for more than 15 days at a time. Remand under section 344 is strictly to judicial custody and can only be to a judicial lock-up. In short, section 167 deals with detention during the investigation, while section 344 pertains to detention during the inquiry or trial.

33. Sections 61 and 167 Cr.P.C. and the High Court Rules echo the command of Article 10(2) of the Constitution. In section 167 Cr.P.C., “from the words ‘the magistrate to whom an accused person is forwarded under this section’, it is clear that the prosecution [is] under a duty to produce the accused person before the magistrate not only at the stage of obtaining initial remand but also on subsequent occasions having regard to the specific powers of the magistrate to authorise detention ‘from time to time’. The power to authorise detention was only in the event of the police forwarding an accused person to the magistrate; if there was no forwarding of the accused person, there [is] no authorisation of detention. As the authorisation of detention [is] only subsequent to the forwarding of the accused person, it necessarily implies that the accused person must be produced every time authorisation for detention [is] sought.”¹⁷

34. Therefore, even when viewed from the statutory perspective, the law’s mandate is that the accused person should be physically produced before the magistrate – although it may be somewhat burdensome for the State. In *Emperor v. Benoari Lal Sarma* (AIR 1945 PC 48), the Privy Council observed (per Viscount Simonds, L.C.): “Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used.” In *Government of the Punjab v. Abdur Rehman and*

¹⁷ *Kurra Dasaratha Ramaiah and others v. State of Andhra Pradesh* (1992 CriLJ 3485) (Full Bench, Andhra High Court).

others (2022 SCMR 25), the Supreme Court of Pakistan held that when the language of a statute is clear, hardship or inconvenience cannot justify modifying or altering its plain meaning.

35. Given the above, in *Senator Asif Ali Zardari v. State* (2000 MLD 921), the Supreme Court held that a remand order would be illegal if, at the time of its passing, accused was not produced before the court, which passed the remand order. In *The State v. Nasir Javed Rana* (PLD 2005 SC 86), the case involved a civil dispute over a property stemming from a power of attorney executed in 1966. The Supreme Court noted that the magistrate, inappropriately favouring one party, granted physical remand of an accused without following legal procedures. He passed the order granting the remand without having the accused produced before him and without due application of judicial mind. The Supreme Court deemed his actions a deliberate misconduct, compromising the court's integrity. Considering all these circumstances, it declared the magistrate unfit for judicial service, withdrew his judicial powers, and referred the matter to the Lahore High Court for further action.

36. It follows that the physical production of the accused before the magistrate for remand is a mandatory requirement. It can be excused only in exceptional circumstances, for example, when the accused is critically injured or seriously ill and hospitalized. Obviously, the law does not and cannot demand the impossible.¹⁸

37. Section 167 Cr.P.C. is unequivocal in its terms and does not allow for the remand of an accused via a video link. We have already pointed out that when the wording is explicit, the legislature's intent should be understood directly from the text, without resorting to interpretative aids. Consequently, any attempt to justify video link remand through purposive interpretation cannot be upheld.

38. We have interpreted Article 10(2) of the Constitution in much the same way as above. Since section 167 Cr.P.C. is phrased similarly to Article 10(2), interpreting it differently would conflict with the Constitution, which is impermissible.

¹⁸ *Ramesh Kumar Ravi alias Ram Prasad and others v. State of Bihar and others* (AIR 1988 Patna 199); *Kurra Dasaratha Ramaiah and others v. State of Andhra Pradesh* (1992 CriLJ 3485).

39. At this point, it may be beneficial to consider the legal framework in India. Article 22(2) of the Indian Constitution closely parallels Article 10(2) of Pakistan's Constitution (1973). It also mandates that the accused should be produced before the nearest magistrate within twenty-four hours of his arrest if he is required to be detained beyond that period.¹⁹ The British enacted the Code of Criminal Procedure 1898. After the Partition, both Pakistan and India adopted it. India later revised and re-enacted the Code in 1973, where section 61 of the 1898 Code became section 57 in the 1973 Code, retaining similar content. Section 167 of the 1898 Code was also carried over with the same numbering but was later amended to introduce the concept of *first* (initial) remand after arrest and *subsequent* remands (or remand extensions).²⁰ Through section 167(2) of the Indian Code of Criminal Procedure 1973, the Indian Parliament effectively allowed video remand without violating Article 22(2) of the Indian Constitution, though only to a limited extent. Various High Courts in India have established rules to regulate video link remand hearings to implement this amendment fully.²¹ The *Bharatiya Nagarik Suraksha Sanhita* 2023, the new law that replaces the 1973 Code, contains similar provisions under section 187.

40. We concur with the Prosecutor General that our Parliament and courts have allowed the use of video link technology in judicial processes. However, no existing statute explicitly permits remand hearings via video link. Even section 21(2) of the ATA, which he cited, pertains only to trial procedures. The judgments referenced are also not applicable, as they do not address the specific issue under consideration. In **Salman Akram Raja and another v. Government of Punjab and others** (2013 SCMR 203), the Supreme Court of Pakistan directed that in appropriate cases, evidence of rape victims

¹⁹ Article 22(2) of the Constitution of India is reproduced below for ease of reference:

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

²⁰ Proviso (b) to section 167(2) of India's Code of Criminal Procedure 1973 provided:

(b) no magistrate shall authorise detention of the accused in custody of the police under this section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage;

²¹ Delhi High Court notified Video Conferencing Rules vide Notification No. 325/Rules/DHC dated 01.06.2020. Rule 11.1 deals with remand.

should be recorded through video conferencing so that the victims, particularly the juvenile, may not have to come to the court. In *Khawaja Anwer Majid v. National Accountability Bureau and another* (PLD 2020 SC 635), the accused was bedridden with serious health problems. The Supreme Court granted him post-arrest bail on medical grounds *inter alia* subject to the condition that he would join the investigation as and when required by the NAB and ensure his representation before the Accountability Court either personally or through video link. In *Ali Haider alias Papu v. Jameel Hussain and others* (PLD 2021 SC 362), the Supreme Court explained the importance of modern forensic techniques and science in the criminal justice system. In *Mian Muhammad Nawaz Sharif v. The State and another* (PLD 2018 Islamabad 148), the issue related to recording the testimony of two witnesses residing in the United Kingdom through video link. In *Munawar Hussain and another v. The State* (2020 PCr.LJ 1184), this Court allowed the recording of a compromise statement of legal heirs of the deceased through a video link. Similarly, in *Muhammad Israr v. The State and another* (PLD 2021 Peshawar 105), the Peshawar High Court permitted the recording of a prosecution witness through a video link. In *Imran Ahmad Khan Niazi v. Federation of Pakistan etc.* (Writ Petition No.839/2023),²² the writ petitioner was facing multiple inquiries/ investigations, and criminal cases in Islamabad and other parts of the country. He requested that the High Court direct the State to facilitate his participation and appearance via video link. Although the court discussed section 167 Cr.P.C., it did not address the issue of physical remand through video link, as it was not relevant to the case. The court acknowledged the purposive approach, affirming that physical presence can be waived in certain circumstances. However, it emphasized that this approach must not overlook the statutory framework and the fundamental principles of the criminal justice system. The court ruled that the physical presence of the accused cannot be dispensed with in specific situations, such as at the time of admission (first hearing) and final adjudication of the pre-arrest bail

²² https://mis.ihc.gov.pk/frmRdJgmnt?cseNo=Writ%20Petition-839-2023%20%7C%20Citation%20Awaited&cseTle=Imran%20Ahmad%20Khan%20Niazi-%20VS%20-FOP%20etc.%20&jgs=Honourable%20Chief%20Justice%20Mr.%20Justice%20Aamer%20Farooq&jgmnt=/attachments/judgements/158024/1/W.P._No.839-2023_638259931051968712.pdf

application,²³ the handing over of documents under section 265-C Cr.P.C., the framing of charge, and the recording of statements under section 342 Cr.P.C.

41. The case *Meera Shafi v. Ali Zafar* (PLD 2023 SC 211) pertains to civil proceedings. It concerns the evidence of a witness, specifically focusing on the interpretation of the word “attendance” used in Rule 4 of Order XVIII CPC. The Supreme Court held that the word “attendance” in Rule 4 can be extended to include “virtual attendance” and that it does not refer solely to “physical attendance” but also encompasses “virtual attendance” made possible by modern video conferencing technology.

42. In a nub, the authorities cited at the Bar by the Prosecutor General are distinguishable and of no help to him. None of them address the issue of video link remand hearing.

Remand under the Anti-Terrorism Act, 1997

43. The Anti-Terrorism Act 1997 (“ATA”) is a special law for preventing terrorism and sectarian violence and for the speedy trial of heinous offences.²⁴ Section 21E of the ATA deals with the issue of remand. Since it is central to the case, we reproduce it below *in extenso* for ease of reference:

21E. Remand.— (1) Where a person is detained for investigation, the Investigating Officer, within twenty-four hours of the arrest, excluding the time necessary for the journey from the place of arrest to the Court, shall produce the accused before the Court, and may apply for remand of the accused to police custody, or custody of any other investigating agency joined in the investigation for which the maximum period allowed may be not less than fifteen days and not more than thirty days at one time:

Provided that, where an accused cannot within twenty-four hours be produced before the Court, a temporary order for police custody or custody of any other investigating agency joined in the investigation not exceeding twenty-four hours may be obtained from the nearest Magistrate for the purpose of producing the accused before the Court within that period.

²³ In this case, the Islamabad High Court held that while the physical presence of the accused is “absolutely necessary” at the time of admission or the initial order of ad-interim bail before arrest, for subsequent proceedings – excluding final adjudication – the presence of the accused may be marked through video link, but only if the court permits it. The court should ensure that video link attendance is not used as a tactic to delay the proceedings.

In *Imran Ahmad Khan Niazi v. Special Judge, ATC., etc.* (PLD 2024 Lahore 486), the Special Judge, Anti-Terrorism Court, granted the accused ad-interim pre-arrest bail. However, during the pendency of this bail, the accused was convicted and sentenced in another case by the Additional Sessions Judge, Islamabad (West), and was subsequently taken into custody and imprisoned. This fact was brought to the Special Judge’s attention through a written application with a request for exemption from personal attendance. The Special Judge declined the request dismissed the pre-arrest bail application due to the accused’s non-appearance/non-prosecution. A Division Bench of this Court ruled that the Special Judge should have exempted the accused from personal attendance on the relevant date and allowed him to appear via video link. The Division Bench based its decision on the precedent set in *Farhan Masood Khan v. The State* [PLJ 2021 Cr.C. (Lahore) 550].

²⁴ Preamble of the Anti-Terrorism Act 1997.

(2) No expansion of the time of the remand of the accused in police custody or custody of any other investigating agency joined in the investigation shall be allowed, unless it can be shown by the Investigating Officer, to the satisfaction of the Court that further evidence may be available and the Court is satisfied that no bodily harm has been or will be caused to the accused:

Provided that the total period of such remand shall not exceed ninety days.

(3) The Court shall be deemed to be a Magistrate for purposes of sub-section (1):

Provided that ...

44. The ATA, enacted in 1997, has undergone several amendments over time. Section 21 of the Act was substituted/re-enacted, and section 21E was introduced through Ordinance XXXIX of 2001.²⁵ Section 21 allows the Anti-Terrorism Court to conduct trials on jail premises or through video links. However, section 21E, which specifically addresses the issue of remand, does not include any provisions for video link usage. It is completely silent on this matter. This suggests that video links are intended to be limited solely to trial proceedings. A general rule of construction of the Acts of Parliament is *expressio unius est exclusio alterius* (the express mention of one thing implies the exclusion of another). In ***Blackburn v. Flavelle*** [1881] 6 App Cas 628, the Act referred to two modes of sale: a conditional sale and a sale by auction. Section 18 of the Act expressly authorized a sale by auction. The Privy Council held that it excluded the right of conditional sale. “If there be any one rule of law clearer than another as to the construction of all statutes and all written instruments (as, for example, sales under powers in deeds and wills) in this: that where the legislature or the parties to an instrument have expressly authorized one or more particular modes of sale or dealing with property, such expressions always exclude any other mode, except as specifically authorized.”

45. When interpreting statutes, it is presumed that the legislature chooses its words carefully. Therefore, if a word or phrase is included, it is not considered redundant; similarly, if a word or phrase is omitted, such omission is not deemed inconsequential. A change in language implies a change in intent.²⁶ Courts are not empowered to read into or delete any words or provisions in an enactment unless specifically adopted or imported by reference. They do not legislate but interpret statutes according to their plain

²⁵ PLJ 2001 Fed. St. 445

²⁶ *Reference No.1 of 2012* [Reference by the President of Pakistan under Article 186 of the Constitution of Islamic Republic of Pakistan, 1973] (PLD 2013 SC 279).

and ordinary meaning, without importing or borrowing provisions from other laws, no matter how desirable such modifications may seem.²⁷ In section 21E of the ATA, the legislature deliberately chose not to allow video link remand. In *Mullins v Collins* [(1874) L.R. 9 Q.B. 292, 295], a man was prosecuted because his servant supplied a constable on duty with a drink. Section 16 of the Licensing Act 1872 consisted of a series of clauses headed “Offences against Public Order.” The section contained three sub-sections, the first of which defined offences which must be “knowingly” committed; the other two sub-sections omitted the word “knowingly”. It was held to be no defence on the accused’s part that his servant had done this without his knowledge. “The appellant,” said Archibald J., “has been convicted under the second sub-section, where the word ‘knowingly’ is omitted. This seems to point to the conclusion that the licensed victualler will be liable for the act of his servant although he himself has not knowingly committed an offence against the second sub-section.”

46. The offences under the ATA are the most heinous, and the perpetrators are dangerous criminals – or at least they are presumed to be so. Still, they have fundamental rights. Being hazardous criminals, they are more prone to custodial torture by the police than other criminals. The legislature has designedly chosen not to allow video link remand because it wanted to secure their fundamental rights more effectively.

47. Lastly, since the wording of section 21E of the ATA closely mirrors that of Article 10(2) of the Constitution and sections 61 and 167 Cr.P.C., there is no reason for us to interpret it differently from our interpretation of those provisions.

48. Earlier in this judgment, we observed that the existing language of Article 10(2) of the Constitution does not endorse remand hearings via video link. If Parliament decides to amend section 21E of the ATA and introduce changes similar to those India made to section 167 of the Indian Code of Criminal Procedure, 1973, it would be necessary for this Court to frame rules under section 554 Cr.P.C. to safeguard the rights of the accused and ensure adherence to the principles of the ICCPR. At present, no such rules exist.

²⁷ *Zahid Iqbal v. Hafiz Muhammad Adnan and others* (2016 SCMR 430).

49. Given the above, we hold that the use of video links is restricted to the trial. For remand, the investigating agency must produce the accused person physically before the court.

The Impugned Order

50. The Home Department has issued the Impugned Order dated 15.7.2024, purportedly under section 21(2) of the ATA, which reads as follows:

(2) For purposes of protection of the judges, accused, witnesses, prosecutors and defence counsel and anyone concerned with the Court proceedings, the Government may adopt such other measures as may be appropriate or may be prescribed and the Armed Forces shall also provide comprehensive protection and security to the judges, members, accused, witnesses, prosecutors, investigators, defence counsel and all those concerned in the Court proceedings. These measures may include the following namely:-

- (a) screens may be used during trial to shield witnesses, Judges and Prosecutors from public view;
- (b) trial may be held in jail premises or through video link;
- (c) witness protection programmes may be established by the Government through law or rules.

The Provincial Government shall take necessary steps to ensure that prisoners in jails do not have access to mobile phones.

51. It should be appreciated that section 21E of the ATA is a special provision that specifically addresses the issue of remand. In contrast, section 21(2) is a general provision that enables the Government to take necessary steps to protect judges, accused individuals, witnesses, prosecutors, defence counsel, and others involved in court proceedings. Section 21(2) cannot override section 21E and should not be interpreted in a way that nullifies or undermines it. Consequently, the Impugned Order dated 15.07.2024 is *ultra vires*, illegal, and void. The reliance on and interpretation of section 21(2) of the ATA to justify the physical remand of the Petitioner without physical production is erroneous. Section 21(2) does not grant the Government any authority over remand proceedings, as its scope is limited to matters related to trial proceedings.

52. Finally, the term “Government” in section 21(2) of the ATA refers to the Cabinet, not an individual executive acting on behalf of the Provincial Government. For any notification issued under this provision to be valid, it must first be authorized by the Cabinet in a formal meeting or by circulation in accordance with the Rules of Business. It is deemed illegal without such

authorization, per the law enunciated by the Supreme Court in ***Mustafa Impex v. Government of Pakistan*** (PLD 2016 SC 808). Since the Impugned Order was issued by the Secretary of the Home Department, Government of the Punjab, without the requisite Cabinet approval, it is void.

53. We accepted this petition and quashed the Impugned Order through a short order dated 25.7.2024. These are the reasons for our decision.

(**Anwaarul Haq Pannun**)
Judge

(**Tariq Saleem Sheikh**)
Judge

Naeem

Approved for reporting

Judge

Judge