

Case No. Crl.Revision No.57693/2023

Muswar Hussain Shah, etc.

Sr.No.of order/ Proceedings	Date of order/ Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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Rana Ahsan Aziz, Deputy Prosecutor General.

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2. Learned Law Officer submits that the impugned order of learned Duty Judge, Anti Terrorism Court, is illegal and without lawful authority; that according to Section 21-E of Anti Terrorism Act, 1997, it was mandatory for the Court to grant physical remand not less than fifteen days at one time; that grant of remand for only two days by the Court is violative of said mandatory provisions of law and is liable to be set-aside.

3. We have heard the arguments advanced by the learned Law Officer and gone through the record.

4. Main thrust of the arguments of learned Law Officer is that grant of remand less than fifteen days at one time by the Anti Terrorism Court is violative of the mandatory provisions of Section 21-E of the Act *ibid*, however, while going through the request of the Investigating Officer, it is quite clear that he himself requested for physical remand of the respondents for fourteen days and one can see with a naked eye that subsequently in order to make out a case for violation of Section 21-E of the Act *ibid*, a cutting was made and the words “fourteen” were changed into “fifteen” by the Investigating Officer without even initializing the said cutting. Since the Investigating Officer, himself requested physical remand for less than fifteen days, therefore, the prosecution cannot press into service the violation of said Section by the Court. Moreso, the impugned order for grant of two days physical remand was passed on 17.08.2023 but the same was not challenged at the said time and the Investigating Officer felt satisfied in getting physical remand of respondents for period of six days on 19.08.2023 and then for five days on 24.08.2023 and thereafter himself placed a request before the Anti-Terrorism Court for sending them to judicial lock up which was duly accorded by the said Court. Subsequently, the prosecution woke up from deep slumber and rushed to this Court by complaining that mandatory provisions of Section 21-E of the

Act has been violated by the Anti Terrorism Court. The respondents have been sent on judicial remand at the request of Investigating Officer, therefore, after this development the prosecution is barred to agitate the grant of physical remand.

5. Besides above, according to learned Law Officer provision of Section 21-E of the Act *ibid* is mandatory in nature. Before proceeding further it is appropriate to go through the said section which reads as under:-

“21-E 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 to any other Investigating Agency joined in the investigation] for which the maximum period allowed may be [not less [fifteen days and not more] than thirty days at one time]: (emphasis supplied)

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.

(2)-----

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

6. The word “may” used in the above section is of pivotal importance. Ordinarily, the use of expression “may” is considered to be a permissive or enabling sense. In case reported as “ *Abu Bakar Siddique and others ..Vs.. Collector of Customs, Lahore and others (2006 SCMR 705)* the Apex Court has observed as under:-

“ It is well-settled that word ‘may’ is discretionary and an enabling word and unless the subject-matter shows that

the exercise of power given by the provision using the word ‘may’ was intended to be imperative for the person to whom the power is given, it might not put him under an obligation to necessarily exercise such power but if it is capable of being construed as referring to statutory duty, it will not be entirely for such person to exercise or not to exercise the power given to him under the law. The use of word ‘may’ in the statute in the plain meanings is to give discretion to the public authorities to act in their option in the manner in which such authorities deem proper but if the public authorities to discharge their functions in their option in a positive sense, the word “may,” used in the provision would be suggestive of conveying the intention of legislature of imposing an obligation. The word “may” usually and generally does not mean “must” or “shall” but it is always capable of meaning “must” if the discretionary power is conferred upon a public authority with an obligation under the law. The word “may” is not always used in the statute with the intention and purpose to given uncontrolled powers to an authority rather oftenly it is used to maintain the statues of the authority on whom the discretionary power is conferred as an obligation and thus, the legislative expression in the permissive form, sometime is construed mandatory.”

No doubt there are cases in which the word “may” is used in the imperative sense. Such instances are set out by Maxwell in “Interpretation of Statutes” and Craies in his “Statute Law”. In support of the proposition that when statutes authorise persons to do acts for the benefit of others or for public good or the advancement of justice, the use of the expression “may” has a compulsory force, Craies has cited *Julius v. Bishop of Oxford* (1888) 5 App. Cas.214, 225, 241), *B.v.Bishop of Oxford* (1879 4 Q B D 245,258) and *R.v.Barlow* (1693)2 Salk 609) while Maxwell has relied upon *R.v.Tithe Commissioners* (1850) 14 QB 474) and *R.D.C. v. Roberts* (1950 1 KB 716). It would be advantageous to reproduce the following paragraph from ‘Maxwell on

Interpretation of Statutes' Eleventh Edition, page 235:-

“ The Supreme Court of the United States- similarly laid it down that which public officers are empowered to do for a third person the law requires shall be done whenever the public interest or individual rights call for the exercise of the power, since latter is given, not for their benefit, but for his, and is placed with the depository to meet the demands of right and to prevent the failure of justice. In all such cases, the Court observed, the intention of the legislature, which is the test, is not to grant mere discretion, but to impose a positive and absolute duty.”

Here in the instant case, the provision of above reproduced section directly relates to curtailing liberty of an accused. It is well settled by now that where two interpretations of law are possible, the interpretation beneficial to the accused should be preferred. Reliance is placed on case reported as “*Mst. Shahista Bibi and another ..Vs.. Superintendent, Central Jail, Mach and 2 others (PLD 2015 Supreme Court 15)*”, wherein it has been laid down as under:-

“ It is also hard and fast principle of interpretation of criminal law, which curtails the liberty of a person that it should be construed very strictly and even if two equal interpretations are possible then the favourable to the accused and his liberty must be adopted and preferred upon the contrary one.”

In view of what has been discussed above, we are unanimous in holding that power to grant physical remand of an accused for not less than fifteen days at one time to the Court is discretionary and not mandatory in nature. It is in exclusive domain of the Court dealing with such request to grant remand for a period which it feels necessary keeping in view facts and circumstances

of each case, therefore, the submission of the learned Law Officer that grant of remand less than fifteen days at one time by the Anti Terrorism Court is violative of Section 21-E of the Act *ibid*, being misconceived is repelled.

7. Physical remand of an accused cannot be granted in routine. A duty is bestowed upon a Court dealing with such request of remand to protect fundamental rights of life and liberty of a person enshrined in the Constitution of Islamic Republic of Pakistan, 1973. Article 4 of the Constitution reads as under:-

4. Right of individuals to be dealt

with in accordance with law, etc. —(1) To

enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan

(2) In particular—

(a) no action detrimental to the life, liberty body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do which the law does not require for him.”

Part-II of the Constitution provides fundamental rights to every citizen. Article 9 reads as under:-

9. Security of person.—No person shall be deprived of life or liberty save in accordance with law.

It is, therefore, in the above context that in Part B Chapter,11-B Volume-3 of Rules and Orders of

Lahore High Court, Lahore following principles are laid down for the guidance of all the concerned for granting physical remand.

“(i) Under no circumstances should an accused person be remanded to Police custody unless it is made clear that his presence is actually needed in order to serve some important and specific purpose connected with the completion of the inquiry. A general statement by the officer applying for the remand that the accused may be able to give further information should not be accepted.

(ii) When an accused person is remanded to Police custody the period of the remand should be as short as possible .

(iii) In all ordinary cases in which time is required by the Police to complete the inquiry, the accused person should be detained in magisterial custody.

(iv) Where the object of the remand is merely the verification of the prisoner's statement, he should be remanded to magisterial custody.

(v) An accused person who has made a confession before a Magistrate should be sent to the Judicial lock-up and not made over to the Police after the confession has been recorded. If the Police subsequently require the accused person for the investigation, a written application should be made giving reasons in detail why he is required and an order obtained from the Magistrate for his delivery to them for the specific purposes named in the application. If an accused person, who has been produced for the purpose of making a confession, has declined to make a confession or has made a statement which is unsatisfactory from the point of view of the prosecution he should not be remanded to Police custody.”

It has been specifically mentioned in the above principles that period of remand should be as short as possible. Sub-section 3 of Section 21-E of the Act *ibid* specifically provided that the Special Court under Anti Terrorism Act, 1997 while dealing with the matters of remand of an accused shall be deemed to be a Magistrate, therefore, it is incumbent upon such Court to strictly adhere to the provisions of sub section (3) of Section 167 Cr.P.C, which provides that “*A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing*” Reliance in this regard is placed on case reported as “*Raja Waheed Mehfooz ..Vs.. Special Judge, Anti Terrorism Court-II, Rawalpindi and 2 others (2016 P Cr.LJ 1773)*.” It is thus evidently clear that while dealing

with the request of physical remand of an accused the Anti Terrorism Court is not supposed to act merely as a post office and grant physical remand in a mechanical manner rather it is incumbent upon it to go through the entire record, apply its judicious mind and record the reasons in writing for acceding such request. Herein the instant case, the Anti Terrorism Court, while comprehending correct proposition of law rightly grant physical remand of respondents for a period, which it deems appropriate and no exception can be drawn therefrom.

Resultantly, instant petition being devoid of any force stands **dismissed in limine**.

(Aalia Neelum)
Judge

(Asjad Javaid Ghural)
Judge

Approved for Reporting

Judge

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