

IN THE HIGH COURT OF SINDH, KARACHI

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Shamsuddin Abbasi.

C.P. No.D-6210 of 2019

Zohaib RehmanPetitioner

Versus

Home Secretary,
& othersRespondents

Date of hearings: 07.09.2020 & 09.10.2020

Date of order: 09.10.2020

Mr. Raj Ali Wahid Kanwar, advocate for petitioner
Mr. Ali Haider Salim, DPG
Mr. Muhammad Yousuf Rahpoto, AAG
Mr. Mukesh Kumar Khatri, Assistant Attorney General

ORDER

Muhammad Iqbal Kalhoro, J. Petitioner's brother Junaid Rehman was tried along with co-accused in Special Case No.68/2004, registered at Police Station Gizri, Karachi South bearing FIR No.93/2004, U/s 365-A, 344, 34 PPC read with section 7 ATA, 1997 and was handed down, among other sentences, death penalty for committing offences u/s 365-A PPC and u/s 7(e) of Anti-Terrorism Act, 1997 vide a judgment dated 04.02.2005 by learned Anti-Terrorism Court No.V, Karachi. The challenge to the same remained unsuccessful up to the Honourable Supreme Court, which while deciding all connected appeals vide a judgment dated 28.09.2011 upheld reduction/modification of sentence to all the accused from death to imprisonment of life passed by this court vide a judgment dated 27.01.2007 on appeals against the original sentence.

2. Petitioner's case is that his brother's conduct throughout confinement in jail which spans over 15 years has been extraordinary in that he has been running and teaching computer training and English language classes in Central Prison, Karachi for more than 13 years, he has been a major contributor in rehabilitation and reformation of jail inmates; he has done masters in economics from University of Karachi, besides outshining in various courses like Certificate in Information System (CIS), Certificate in Information Technology (CIT), Quran Nazra, Quran Hafiz, Jugno Urdu Sabak Course, etc. Therefore, he is entitled to remissions as provided u/s 21-F, ATA, 1997 but the same have been

denied to him under an excuse of amendment in section 21-F, ATA, 1997 in March 2013 taking away government's power to grant remission in ATC cases save in the case of a child.

3. His counsel has urged that the law prevalent at the time of registration of the case would hold field and in the year 2004 section 21-F, ATA, 1997, as it stood, the government had the discretion / powers to grant remission in sentences inflicted under ATA, 1997; that the amendment, 2013 is not applicable in the case of petitioner's brother as it has no retrospective effect; which been held so by three members bench of this court in the case of **Junaid Rehman Ansari & others Vs. The State** (C.P. No.D-584 of 2009); that where a law is altered during pendency of an action, right of the parties would be decided as per law as it existed when the action was initiated and not under the law prevailing on the date of a judgment or an order; that the offence was committed in 2004 and even the final decision thereon was rendered on 28.09.2011, which is before the amendment 2013 in section 21-F, ATA, 1997. Therefore, the inaction on the part of respondents to consider remissions in favour petitioner's brother in view of amendment, 2013 in section 21-F is illegal and unsustainable in law.

4. Learned Law Officers appearing for the State have not been able to dispute the above facts and legal position prevalent in this case that issue of remission to the brother of the petitioner against his academic qualifications would be governed by the scheme u/s 21-F of ATA, 1997 prevalent before the amendment 2013 therein. Therefore, by consent this petition is disposed of with directions to the respondent to consider the case of petitioner's brother for remission on account of his academic qualification, if any, achieved before amendment, 2013, and decide it accordingly.

The petition stands disposed of in above terms.

JUDGE

JUDGE

Rafiq/P.A.