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IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

MR. JUSTICE JAVED IQBAL
MR. JUSTICE FALAK SHER

CONSTITUTION PETITION NO.37 OF 2007

Syed Gohar Anis & others ... Petitioners

Versus

Federation of Pakistan & others ... Respondents

For the petitioner: Mr. Habibur Rehman, ASC
Syed Zafar Abbas Naqvi, AOR

On Court Call: Mr. Tariq Mehmood Khokhar, DAG
Col. Javed Iqbal Lodhi,
Director National Crises, National Management Cell.

Date of hearing: 18.7.2007

ORDER

During the course of arguments it transpired that record is not complete and accordingly adjournment is granted enabling the learned ASC to proper document the file. To be fixed after four weeks.

Judge

Judge

Islamabad, the
18th July, 2007
Iqbal Naseer

MP
24/7

IN THE SUPREME COURT OF PAKISTAN**(Original Constitutional Jurisdiction)****Const. Petition No. _____ / 2007**

1. **Syed Gohar Anis**
son of **Syed Anis-ur-Rehman**
through his brother namely
Babar Anis S/o. Syed Anis-ur-Rehman,
Muslim, adult, resident of
Flat No. B-10, Gulshan-e-Ali No.1,
Block No.7, F.B.Area,
Karachi.
2. **Mirza Samiullah Baig**
son of **Mirza Ahsanullah Baig,**
through his brother
Mirza Ghousullah Baig,
Muslim, adult, resident of
Flat No. A-1, K.D.A. Offices
Adjacent D.C. Office,
Sakhi Hassan, Karachi.
3. **Ashfaqe Ahmed**
son of **Fazal Ahmed,**
through his brother
Nasir Ahmad son of Fazal Ahmed
Muslim, adult, resident of
Flat No. A-9, Fire Brigade, Block-20,
Sohrab Goth, Federal B Area,
Karachi.
4. **Aasif Jameel**
son of **Shokat Ali**
through his sister
Nasreen Bano daughter of Shokat Ali,
Muslim, adult, resident of
House No. 9/10, Area 3-B,
Landhi No.3,
Karachi.

5. **Shaikh Noor Alam**
son of **Shaikh Jan-e-Alam**
through his brother
Shaikh Rizwan Alam
Muslim, adult, resident of
House No. 239, Thorani Goth,
Sector 12-C, Orangi Town,
Karachi.
6. **Mirza Tauseef Alam Baig**
son of **Mirza Ali Hussain Baig,**
through his brother
Mirza Nasim Ashraf Baig,
Muslim, adult, resident of
House No.FN-14/5, Malir Extension Colony,
Karachi.
7. **Zafeer Khan**
son of **M.Qadeer Khan**
through his brother
Muhammad Mukhtar Zaman Khan
Muslim, adult, resident of
House No.115, Area 3, Landhi No.3,
Karachi.
8. **Zafar Ahmed**
son of **Sagheer Ahmad,**
through his brother
Imtiaz Ahmad
Muslim, adult resident of
House No.48/6, Sector 5-G,
New Karachi, Karachi.
9. **Anwar Ansari,**
son of **Khalil-ur-Rehman,**
through his wife
Shamshad Khatoon
Muslim, adult resident of
House No. 144/2, Sector 5-D,
New Karachi, Karachi.
10. **Muhammad Javed**
son of **Muhammad Yameen,**
through his brother
Muhammad Shahid
Muslim, adult, resident of
House No.1331, Sector 5/J,
New Karachi,
Karachi.
11. **Faqeer Muhammad Parvaiz,**
son of **Deen Muhammad,**
through his Mother
Asmat Bibi
Muslim, adult, resident of
House No.2001, Sector L-1,
Surjani Town,
North Karachi, Karachi

12. **Abdul Aleem**
 son of Abdul Hameed
 through his brother
 Abdul Waheed,
 Muslim, adult, resident of
 House No. 17/51, Sector 5-F,
 New Karachi,
 Karachi.PETITIONERS/
 CATEGORY - 1

(Persons were arrested by the Authorities and thereafter disappeared
 and their whereabouts have not been traced ever since)

13. **Aqeen Khan**
 son of Habib Khan
 through his Mother
 Qamar Jehan
 Muslim, adult, resident of
 House No.11/14, Sikandarabad,
 Liaquatabad,
 Karachi.
14. **Muzammil Hussain,**
 son of Ghulam Ahmad Taj
 through his Father
 Ghulam Ahmed Taj
 Muslim adult, resident of
 House No.159/7, Orangabad,
 Nazimabad,
 Karachi.
15. **Muhammad**
 son of Muhammad Hussain,
 through his brother
 Muhammad Yousuf,
 Muslim, adult, resident of
 House No.71/11, Sector 5-E,
 New Karachi,
 Karachi.
16. **Saleem Raza Rana**
 son of Sufi Alhaj Amanullah Khan
 through his father
 Alhaj Amanullah Khan
 Muslim, adult, resident of
 House No.L-160 Sector 5A-4,
 Nai Abadi, 2 minute Bus Stop
 North Karachi,
 Karachi.
17. **Abdul Rehman**
 son of Ramzan Ali
 through his wife
 Noor Jehan,
 Muslim, adult resident of
 House No. 1119, Lane No.24,
 Block J, Sector 11- ½,
 Orangi Town,
 Karachi.

18. **Abdul Khaliq**
son of Abdul Ghafoor
through his brother
Ahmad Hussain,
Muslim, adult, resident of
House No. 40, Street No.10,
Data Nagar, Sector 8,
Orangi Town,
Karachi.
19. **Muhammad Shafi**
son of Muhammad Rafiq
through his son
Muhammad Faisal Khan
Muslim, adult, resident of
Flat No. F-6, Minhas Plaza,
Civil Hospital Road,
Karachi.
20. **Muhammad Imran**
son of Muhammad Shams
through his sister
Aliya Raees,
Muslim, adult, resident of
Flat No. C-21,
Nadeem Arcade, Sector 14-B
Shadman #:3,
Karachi.
21. **Aasif Ahmed**
son of Master Abdul Salaam,
through his Father
Master Abdul Salam
Muslim, adult, resident of
House No.484, Area B-31,
Korangi # 1 ½
Karachi.PETITIONERS/
CATEGORY 2

(Persons of this category have since their disappearance neither been traced nor found or known either DEAD OR ALIVE).

V e r s u s

1. **The Federation of Pakistan**
through Secretary,
Ministry of Interior
Government of Pakistan
Pakistan Secretariat,
ISLAMABAD.
2. **The Ministry of Defense,**
through its Secretary,
Islamabad.

3. **The Province of Sindh,
through its Chief Secretary
Sindh Secretariat,
Karachi.**
4. **The Province of Punjab,
through its Chief Secretary
Provincial Secretariat,
Lahore.**
5. **The Province of N.W.F.P.,
through its Chief Secretary
Provincial Secretariat,
Peshawar.**
6. **The Province of Baluchistan,
through its Chief Secretary
Provincial Secretariat,
Quetta.RESPONDENTS**

**PETITION UNDER ARTICLE 184(3)
OF THE CONSTITUTION OF ISLAMIC REPUBLIC
OF PAKISTAN, 1973**

=====

HUMBLY SHEWETH :-

POINTS OF LAW :-

The points of law, herein below, enumerated, emanating in consequence of general public interest and importance, to enforce, the fundamental rights of the citizens and as to its determination the same are referred herein below :-

1. If the individuals or the Pakistani Nationals, arrested by the authorities having a power to do so, can proceed with the arrested persons without due process of law?
2. In case of such an arrest or disappearance, is not the obligation of the Provincial or the Federal Government, to disclose the reasons and rhymes of detention / disappearance and in either case, to procure

the person either to proceed with in accordance with law or restore the person to its abode?

3. Is it not the State Obligation, that in case of reported disappearance and on information, either persons connected therewith, or through a Media an independent investigation against the functionaries be conducted?
4. Are the relations of such displaced or disappeared persons without any reason, having not been known, liable to receive information from the State functionaries?
5. Whether the Courts below are not bound, to keep the Habeas Corpus Petitions, pending until the disappeared detenu is recovered through a State Agency?
6. Is it not obligatory upon the State, to disclose information as to the disappearance of a Pakistani citizen for no reason or rhyme and without legal justification?

FACTS:

1. That the above named Petitioners are generally termed as “**MISSING PERSONS**”.
2. That the instant Petition has been filed, for and on behalf of the Petitioners (**Missing Persons**), through their “Next of Kin”, duly named above, against the aforementioned Respondents.
3. That the above named Petitioners have been divided into “**TWO CATAGORIES**” AND the Petitioners mentioned from *Serial No.1 to 12* who had been arrested by the Police and Law Enforcement

*Agencies, and thereafter disappeared. AND AS PER CATEGORY-
 II PERSONS DISAPPEARED AND NOT FOUND OR KNOWN
 EVEN THEREAFTER, ARE SHOWN AS PETITIONERS No. 13
 To 21.*

4. That the Petitioners and their families are the Citizens of Islamic Republic of Pakistan, hence their rights have been protected and safeguarded under the terms of Article 4, 8, 9, 10, 11, 13 and 15 of the Constitution of Pakistan.
5. That in the first category, the Petitioners from Serial No.1 to 12 have been found initially missing from their addresses, and then found to be arrested by the Police and Law Enforcement Agencies, and as yet not have been traced or produced by any Agency for the purpose of trial in accordance with Law.

That the category of these persons has been lucidly illustrated in a diagrammatic form, with their names, fathers names, residential locations, dates of missing, place of arrest, permanent and temporary residential addresses and the names of next of kin, the list forms part of this Petition and enclosed herewith, being marked as annexure "A".

6. That inasmuch as the Category No.2 is concerned, who have been found missing and disappeared, presumably taken away by the law enforcement agencies, without any legal cause or justification, and have not been either produced or brought to justice ever since, despite efforts, of their relations have yet not been traced, nor are in contact with their next of kin. Safety being the utmost obligation of the authorities/state as being the fundamental rights, preserved in the Constitution of Pakistan, obliterated.

7. That the missing persons, the above named Petitioners, through their relations, mentioned under category No.2, fathers names, residential locations, dates of missing, place of disappearance, permanent and temporary residential addresses and the names of next of kin, the list forms part of this Petition and enclosed herewith, being marked as annexure "B".
8. That the Petitioners' relations have ever since of their disappearance and absence from their houses/homes, having no recourse of law or protection, having been deprived of legal shelter and for that remorse and deprivation resort, inter alia by way of Petition to the functionaries of the State of Pakistan, the President of Islamic Republic of Pakistan, the Prime Minister, the Governor of the Province, the Chief Minister and all those who matters.
9. That Petition in Urdu Language, depicting the facts of their disappearance and Prayers as to their letters and records has been eulogized in this Petition and are being annexed herewith and marked as annexures "C", "C-1" to "C-11" respectively.
10. That it is humbly submitted that the Petitioners from Serial No.1 to 4 have also addressed their Petitions for Order to investigate, to the then Chief Justice of Pakistan, Mr. Syed Sajjad Ali Shah and the President of Pakistan and the Core Commander., copies whereof are annexed herewith being marked as annexures "D" and "E", respectively.
11. That having not found any remedial step from the Respondents as to the findings and or whereabouts/reports of the missing persons in

either category indicated above, the matter was brought to the notice of the Senate of Pakistan, as then it was.

12. That the Committee amongst the Senators of the Senate Secretariat, named as "Special Committee" duly constituted by the House, to look into the matters regarding the missing persons, amongst others, the above named Petitioners were included.

13. That from time to time, the Special Committee, so constituted, went into inquiry, investigation, probe, and search, wherein the statements were also taken, however, a report was submitted by the constituted committee, having come to the conclusion that despite probing and inquiring into the matter in depth, and efforts of the relatives of these missing persons, no trace was found, the Report is annexed herewith being marked as annexure "F".

14. That the Petitioners having been disappointed from the Report of the Inquiry Committee in entirety and are still in a state of pendulum, as to whereabouts of their loved ones, whether dead or alive, in either case, if the Petitioners' sufferings and anguish is taken into consideration, it would have a spiritual contentment and satisfaction to make further efforts, in getting it probed, inquired, by order of the Hon'ble Supreme Court of Pakistan.

15. That eventually the Chairman of the Committee named Senator Aftab Ahmad Shaikh raised a point of order before the Chair Person / Speaker of the Parliament and the minutes thereof were recorded, wherein Item No.1-B, the latest progress was brought on record as to

the missing persons, the minutes of the meeting is enclosed herewith being marked as annexure "G".

16. That throughout this period, the Press and Media have given the extensive publication as to the missing of the Petitioners amongst others and when no trace, assurance, hope, recovery or resorts, the Petitioners failed in that turmoil and as a last resort, prefer or to be either joined with the pending Petition of the like nature for the purpose of their legal remedies in public interest, or the Petition be taken on its footing and be dealt with according to law .

17. That the Petitioner in their individual capacity and group and class of persons, preferring this Petition before this Hon'ble Court on its Original Jurisdiction, being the citizens of Pakistan and have no recourse but to resort for remedial action, to this Hon'ble Court for Orders and Prayer on the grounds mentioned hereinbelow:

GROUNDS

- A. Arrest without legal justification, detention beyond 24 hours or disappearance of the citizens, without being traced by the authorities is gross breach or violation of fundamental rights as preserved under *Articles 4, 8, 9, 10, 11, 13, 14 and 15*.
- B. The State of Pakistan being the signatory to the Human Rights Convention and other allied treaties as enshrined by United Nations, oblige the State, protect and make laws, administer and enforce, so that the person or the property and its protection is

not violated by the authorities, sub-ordinate functionaries, or any legal entity, without legal justification.

- C. Whether the State of Pakistan is not to adhere to the rules, procedure, laws and enactments, whereby the protection of the persons is preserved and if arrested /disappeared, are produced or informed in accordance with law?
- D. Is it not State liable to remove conflict, if any in between the domestic and International Law (Human rights), protect preserve kidnappings, extra judicial killings, arrest and detention being not in accordance with law?
- E. State functionary acted against the norms of principle of policy as enshrined in Constitution.
- F. Act and omission in safeguarding per-se repugnant to Sharia.
- G. The petitioners have no other efficacious and adequate alternate remedy in law, hence, it is imperative for the Petitioners to invoke the Extra Ordinary Original Jurisdiction of this Hon'ble Court.
- H. The Petitioners crave leave of this Hon'ble Court to urge and plead further facts and grounds at the time of hearing of this Petition.

PRAYER :

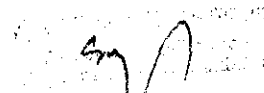
It is, therefore respectfully prayed, that this Hon'ble Court may be pleased to :-

- i. Direct the Respondents to investigate, locate, and trace, the disappeared persons and file the details thereof in this Hon'ble Court.
- ii. Direct the Respondents through public notice, electronic media and publish particulars of all persons, photographs (which may be supplied), who have disappeared and disclose their whereabouts, whether alive or dead.
- iii. Direct production in courts, of competent jurisdiction, of all the concerned officers of the Federal and Provincial Governments and their sub-ordinates, as to the prosecution, punishment or any such act or omission, which has been rendered to the persons, if any, in categories 1 and 2 and disclose their whereabouts.
- iv. Direct the Respondents, that all the Petitioners being traced to compensate the victims or their families, who have disappeared and could not be traced or illegally arrested and thereafter disappeared or presumably have been put to torture irreparably.
- v. Alternatively, this Hon'ble Court will be gracious enough to please constitute a Commission comprising of the persons at their

discretion, to investigate, so that they may be made available to their next of kin and relations.


- vi. Grant such other relief (s), which this Hon'ble Court may deem fit and proper, in the interest of justice.

FILED BY:



(S.ZAFAR ABBAS NAQVI)
Advocate-on-Record

DRAWN BY:



(HABIB-UR-RAHMAN)
Advocate Supreme Court

ISLAMABAD.

DATED: 08th May, 2007