

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.4394 of 2014

Asad Javed

Versus

Federation of Pakistan through Secretary,
Interior & others

Date of Hearing: 11.2.2015.

Petitioner By: - Mr. Sher Afzal Khan Marwat, Advocate.

Respondent By:- Mr. Fazal-ur-Rehman Khan, learned Deputy Attorney-General with Muhammad Iqbal, Assistant Superintendent Jail Adyala, Rawalpindi, Rana Naveed Anwar, AD FIA.

J U D G M E N T

MUHAMMAD ANWAR KHAN KASL CJ:

Through this writ petition, petitioner/convict [Asad Javed son of Javed Akhtar] presently confined in Central Prison Adyala, seeks remissions in sentence awarded to him by the Crown Court at Southwark United Kingdom with effect from the date of his arrest by declaring the sentence undergone by him as sufficient in pursuance of Section 9(4) of the Transfer of Offender Ordinance, 2002 & his release after necessary computation of the remissions with effect from 10th November, 2003.

2- Facts, in brief, relevant for disposal, are that petitioner [Asad Javed son of Javed Akhtar] was arrested on 23.12.2003 on charge of conspiracy to supply drugs in UK and was convicted & sentenced to 25 years imprisonment on 23.7.2004. On 21.8.2010, after serving his sentence of 06 years 28 days, he was transferred from UK to Pakistan under Transfer of Offenders Agreement between Government of UK & Pakistan and was confined to

Central Prison Karachi for serving out his remaining sentence of 18 years 11 months & 02 days, however, on the basis of letter dated 16.09.2010 together with form of information containing fake date of his conviction, duration of sentence, sentence served in UK and remaining sentence to be served in Pakistan written by Malik Ali Muhammad, the then Section Officer, Ministry of Interior, Government of Pakistan. He was released on 08.11.2010 by giving remissions of 06 years 01 month 20 days. Subsequently, issue with regard to illegal remissions was brought to the notice of Ministry of Interior and as a result petitioner was re-arrested in the year 2014.

3- Learned counsel has contended that the sentence awarded by the U.K Court under the Misuse of Drugs Act, 1971 for conspiracy to supply drugs was excessively harsh in comparison to Articles 3 & 4 of Prohibition Order, 1979 or Section 9(c) of the Narcotics Control Act, 1997 and was thus to be reviewed to meet the requirement of Section 9 (4) of the Transfer of Offenders Ordinance, 2002.

4- It is next argued that petitioner's plea with respect to grant of remission was routed through Superintendent Central Jail, Karachi and Prison department Sindh, had sought guidance from the Law & Justice Division/respondent No.2 who through its letter No. 6/35/2010/Law, dated September, 27, 2010 replied that petitioner was entitled to the remissions for the period he remained in Jail at UK and ultimately he was released from Jail on November, 8, 2010, however, in the meantime, FIA initiated inquiry against one Ali Muhammad Malik, Section Officer, who had dealt with

the remission matter of the petitioner while posted at Law & Justice Division. It was alleged that he had removed letter dated 27th September, 2010 from the file and found that the legal opinion rendered by the said SO had not been authorized by the superiors and as a result FIR bearing No. 24/2014 was registered against Ali Muhammad Malik and others and petitioner was also implicated therein as abettor.

5- It is further asserted that being on the soil of the Pakistan, petitioner was entitled to equal treatment under the law governing remission of sentences under Article 45 of the Constitution of the Islamic Republic of Pakistan, Sections 401 & 402 Cr.P.C read with all the rules under Pakistan Prison Rules enabling convicts to avail remission.

6- It is also contended that major development in favour of the prisoners was made through Criminal Justice Act, 2003 and finally with the enactment of sentencing and punishment of Offenders Act, 2012 and Prison Service Order 6000, Payroll, release and recall had practically made the total determinate sentence to be remitted upto half of the total, thus in view of aforementioned enactments, petitioner is entitled to grant of remissions in his sentence and had to be released by November, 2010.

7- Reliance was placed on case laws titled as Imran Ali V. Province of Sindh & others [2007 P.Cr.L.J 1363, Karachi], Dr. Viktor Hacker V. Dr. Shahida Mansoor & others [PLD 2013 Islamabad 34], Muhammad Iqbal V. Province of Sindh through Secretary, Home Department & others [PLD 2011 Karachi 32], M. Afzal Nadeem V. Province of Sindh & others [PLD 2014 Sindh 132], Ghulam Murtaza & another V. The State [PLD 2009 Lahore 362], The State through Force Commander V. Abdul Qahir [PLD 2002 Supreme Court 321], Akhtar Hussain V. The

State [2005 pclr] 1958, Peshawar], Khawar & another V. The State [2003 P.Cr.L.J 811, Karachi], Ghulam Murtaza V. The State [PLD 1998 Supreme Court 152] & Shah Hussain V. The State [PLD 2009 Supreme Court 460].

8- Learned counsel added that the ratio laid down in the aforementioned judgments of Superior Courts of Pakistan is that punishment awarded to a convict must be in consonance with the laws of the land and any severity in the Judgment of foreign court is to be brought in consonance with the Pakistani laws and that a Pakistani convicted by a foreign Court shall be entitled to the remission from the period of his 1st detention and a Court in Pakistan can amend such sentence by way of granting remission as is prevalent in Pakistan.

9- Conversely, learned counsel/Deputy Attorney-General repelled the above submissions by stating that petitioner was convicted for 25 years sentence by UK Court on charge of conspiracy to supply drugs on 23.7.2004. After serving out the sentence for 06 years 27 days he was transferred to Pakistan on 21.08.2010 under Transfer of Offenders Agreement between Government of UK & Pakistan and was required to serve remaining part of his sentence i.e. 18 years 11 months & 02 days in Central Prison Karachi, however, petitioner escaped from Central Jail Karachi on 08.11.2010 in collusion with official of Ministry of Interior & Prisons department soon after his arrival in Pakistan in August, 2010 despite the fact that there was no remission granted by the Transferring State [Government of United Kingdom] to be implemented by the Receiving State [Government of Pakistan] at the time of his transfer. It is further submitted that at the time of transfer

of the petitioner, he had agreed to serve his entire period of remaining sentence in Pakistan according to conditions contained in transfer order, but he managed his release with the connivance of accused Muhammad Ali Malik, the then Section Officer [Law] Ministry of Interior, Islamabad, and got his release from Central Prison Karachi on 08.11.2010 just after two months of his transfer from UK to Pakistan without completing his remaining sentence to be served in Pakistan.

10- The matter of his escape was initially brought to the notice of Ministry of Interior in the year 2012 upon the complaint of British High Commission [BHC] that convict/petitioner has been released from jail without completing his remaining sentence and after release, he went to Dubai and came back to Pakistan on 25.8.2012 according to travel history of IBMS.

11- In the year 2012, the UK Government asked for fingerprinting of the petitioner to confirm his presence in jail. On 27.8.2012, petitioner once again in collusion with Ibrar Hussain Sub-Inspector & Ali Muhammad Malik, the then SO had managed registration of fake FIR bearing No.307, dated 27.8.2012, under Articles 3/4 PEHO, Police Station Mustafa Town, Lahore, against himself and was imprisoned in Kot Lakhpat jail for one day, which coincidentally was the same day when the UK High Commission officials verified his presence in the offence of drug trafficking. At this time, petitioner was present in Kot Lakhpat Jail, Lahore on a minor different charge and a scheme was hatched to defraud the officials of UK High Commission and Home Department Punjab. Later,

Ministry of Interior took prompt action and re-arrested the petitioner in the year 2014.

12- It is also submitted that claim of petitioner that he has continuously served his sentence since 2003 in UK and in Pakistan is absolutely false because he is a dangerous criminal, who escaped from prison as soon as he arrived in Pakistan and later continued to illegally demonstrate his presence in jail, thus period of his illegal release must be added to his original sentence awarded by the UK Court.

13- It is further asserted that the crime was committed in United Kingdom and sentence was awarded under the law of UK, therefore, neither Section 9(c) of the Narcotics Control Act, 1997 nor Article 45 of the Constitution is applicable in the case. Further, there is no provision under Transfer of Offender Ordinance, 2002 with regard to grant of remission of sentence.

14- Additionally, it is stated that letter referred to was not sent by the Ministry of Law & Justice but by Mr. Ali Muhammad Malik, SO, who was in collusion with petitioner in planning and executing his escape from prison, thus grant of illegal remission of sentence also without the approval of competent authority and Muhammad Ali Malik being guilty is behind the bars for misusing his position in granting the illegal remission of sentence to three convicted persons who were transferred from UK to Pakistan.

15- It is further contended that according to Section 13 of Transfer of Offenders Ordinance, 2002 (XXXVII) an offender who is transferred to Pakistan as a citizen of Pakistan in any specified country shall not be subject to

any appeal or revision in any court of Pakistan, therefore, issue of remission in such cases does not arise.

16- It is also contended that petitioner is not entitled to the remission as law of land does not apply in case where the offence was committed in United Kingdom and sentence has been awarded by the same Government while Government of Pakistan in this case is only accommodating the prisoner according to the terms and conditions of an International Agreement and is bound by the same to ensure that petitioner remains imprisoned till his legal release, therefore, the period spent illegally outside prison may be counted as tariff and be added to sentence.

17- Heard & record perused.

18- Primarily, question requiring determination is as to whether petitioner is entitled for relief of reduction in sentence pursuant to his claim that the same is excessive and non compatible to the laws of Pakistan. Authority of court in such situation is governed by Section 9(4) of The Transfer of Offenders Ordinance, 2002, which provides that "where the legal nature and duration of the sentence of imprisonment imposed on any offender transferred under Sub Section (1), is incompatible with any law of Pakistan, it shall be lawful for a court of competent jurisdiction in Pakistan to adopt such sentence to make it compatible with laws of Pakistan provided however that the sentence as adopted by such court in Pakistan corresponds, as far as practicable, to the sentence imposed on such offender in the specified country from which such offender was transferred to Pakistan".

19- Admittedly, petitioner was convicted on the charge of his involvement in supply of cocaine drug weighing 195 Kilogram. The "coca bush" as well as "coca

derivative” are included in the list of narcotics drug and manufacture drug under Control of Narcotics Substances Act of 1997 and an offence in relation to such Narcotics drug within the meaning of Sections 6,7, 8 of CNSA 1997 is punishable under section 9(c) of Act ibid wherein quantity of narcotic drug involved exceeds one kilogram, whereby the capital punishment or imprisonment for life, or imprisonment for term which may extend to 14 years and shall also be liable to fine which may be up to One Million rupees. However, in cases where quantity exceeds 10 KG, the proviso to Section 9(c) mentions that punishment shall not be less than imprisonment for life.

20- In the present case, quantity involved is 195 K.G way above the specified 10 Kilograms, therefore, had the petitioner been tried for same offence in Pakistan, he would not have been punished with lesser sentence.

21- At this juncture, it is pertinent to mention that under Section 57 PPC, imprisonment for life in Pakistan shall be reckoned as equivalent to imprisonment for 25 years. Consequently the sentence awarded by the foreign court cannot be termed excessive or incompatible with any law of Pakistan.

22- Reduction of sentence on the basis of foreign laws is not tenable as those laws are not enforceable in Pakistan and through Section 9 (2) of the Transfer of Offender Ordinance 2002 after transfer of convict to Pakistan the sentence is enforced in accordance with laws of Pakistan.

23- The next ground urged by the petitioner relates to entitlement for remissions given from time to time in

Pakistan for sentence served by him in foreign country as well as in Pakistan.

24- This contention finds merit from section 9(2) of the Transfer of offender Ordinance 2002, wherein enforcement of sentence of imprisonment imposed on any offender who is transferred to Pakistan shall be governed by the laws of Pakistan. This provision does not make any distinction between the period served by the transferred offender in sending countries or the period he is required to serve in Pakistan. On the contrary, the sentence is taken as a whole. The word 'sentence' is taken as whole and for enforcement remains subservient to Pakistani law.

25- The question of remission for the period of sentence served abroad earlier came up before the Hon'ble Sindh High Court in case titled "*Muhammad Iqbal Vs Province of Sindh and 2 others*" [PLD 2011 Karachi 32] wherein the claim of remissions for period of sentence served abroad was allowed. Relevant portion of the judgment is reproduced below;

"Be that as it may admittedly, the petitioner was convicted for trafficking 2700 grams of heroin i.e more than 2 kg. He was arrested on 25.10.2004 and charged with possession thereof and convicted. Consequently he remained in Sri Lankan Jail and was repatriated to Pakistan on 31.05.2009, if he had served the above term of sentence in Pakistan he would have earned till date at least normal remissions commensurate more or less with the remission earned by him in Pakistan. He would therefore, be entitled to considerable allowance of reduction in sentence"

26- The petitioner is held entitled for remission allowed for whole period of sentence, however, his release cannot be ordered at this juncture because calculation of remissions for which petitioner was entitled

is not conclusive and subject matter of FIR No. 24/2014 registered by the FIA, therefore, the same is required to be decided by the concerned executive authorities after re-assessing all aspects of the same.

27- In view of above, petition is disposed of while holding that petitioner is entitled for available remissions allowed in Pakistan for whole sentence period i.e the period served in foreign country as well in Pakistan and it is directed that the respondents shall immediately reissue the Roll of Sentence after going through the record of case.

CHIEF JUSTICE

Announced in Open Court, on this 24th day of April, 2015.

CHIEF JUSTICE

Mirza Amer Baig.

APPROVED FOR REPORTING

