

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.1060 of 2020

Asad Javed

**Versus**

Federation of Pakistan through Ministry of Interior and others

**Dates of Hearing:** 17.03.2021, 30.03.2021, 16.04.2021,  
15.06.2021 and 25.06.2021

**Petitioner by:** M/s Sher Afzal Khan Marwat and Ch. Usama  
Tariq, Advocates,

**Respondents by:** Mr. Arshid Mehmood Kiani, learned Deputy  
Attorney-General,  
Mr. Iftikhar Ali Shalwani, Additional  
Secretary, Ministry of Interior and Nisar Ahmad  
S.O.  
Mr. Zohaib Hassan Gondal, Advocate/learned  
State Counsel for respondent No.2

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**MIANGUL HASSAN AURANGZEB, J:-** The petitioner, Asad Javed, was tried and convicted by the Southwark Crown Court in the United Kingdom (“UK”) and sentenced him to 25 years imprisonment for the offence of conspiracy to supply Class-A Drugs (Cocaine). He was remanded in custody on 23.12.2003 and sentenced on 23.07.2004.

2. On 03.08.2002, the Transfer of Offenders Ordinance, 2002 (“the 2002 Ordinance”) was promulgated to provide for the transfer of a citizen of Pakistan convicted of an offence in a foreign country to Pakistan and a citizen of a foreign country convicted of an offence in Pakistan to that country. Section 3 of the said Ordinance provides *inter alia* that where an agreement for mutual transfer of offenders had been entered into between Pakistan and any specified country, the Competent Authority shall, by notification in the official Gazette, declare that the provisions of the said Ordinance shall apply in respect of such country. Section 2(c) of the said Ordinance defines “Competent Authority” to mean the Secretary, Ministry of Interior and Narcotics Control (Interior Division) or any other person as the Competent Authority may, by notification in the official Gazette, authorize to exercise powers and perform functions of the Competent Authority under the said Ordinance whereas Section 2(h) defines a “specified country” as a country which has entered into an

agreement for mutual transfer of offenders with Pakistan and notified as such by the Federal Government by notification in the official Gazette. Section 2(a) defines “agreement” as an agreement entered into between Pakistan and any other country relating to the mutual transfer of offenders between the two countries.

3. The execution of an agreement between Pakistan and another country is a *sine qua non* for the application of the provisions of the 2002 Ordinance with respect to such country. On 24.08.2007, the Governments of Pakistan and the UK entered into an agreement on the transfer of prisoners. The exchange of the instruments of ratification of the agreement on the transfer of offenders between Pakistan and the UK took place on 19.08.2008. A certificate to this effect was produced by the Ministry of Interior, Government of Pakistan (“MOI”). It is not disputed that the UK comes within the meaning of a specified country and has been notified as such. No provision in the said agreement is in conflict with any provision of the 2002 Ordinance.

4. While the petitioner was serving his sentence, he applied to be transferred to Pakistan so that he could serve his remaining sentence here. On 09.02.2010, the petitioner gave his consent to be transferred from the UK to Pakistan, and on 21.08.2010 he was transferred to Pakistan in accordance with the procedure prescribed for the transfer of offenders in the 2002 Ordinance. The sentence imposed on him in the UK was to continue to be enforced in Pakistan.

5. The record shows that the petitioner had served 6 years, 7 months and 28 days of his sentence in the UK when he was transferred to Pakistan on 21.08.2010. He had barely served 2 months and 16 days in prison in Pakistan when he was released on 08.11.2010 on the basis of a legal opinion rendered by a Section Officer, MOI. After it subsequently transpired that the dates mentioned in the said legal opinion regarding the duration of the petitioner’s sentence served in the UK and his remaining sentence to be served in Pakistan were incorrect, First Information Report (“FIR”) No.24/2014, dated 28.03.2014, under Sections 201, 222, 109, 420, 468, and 471 of the Pakistan Penal Code, 1860 read with Section 5(2)47 of the Prevention of Corruption Act,1947 was registered at

Police Station F.I.A. Crime Circle against *inter alia* the Section Officer and the petitioner. It is not disputed that the trial pursuant to the said FIR culminated in the acquittal of all the accused persons. The concerns voiced by the authorities in the UK regarding the petitioner's premature release resulted in the petitioner being taken in custody on 12.02.2014. He is presently lodged at the Central Jail Adyala, Rawalpindi ("Adyala Jail").

6. On 21.10.2014, the petitioner filed writ petition No.4394/2014 before this Court seeking the benefit of remissions in the sentence to be given to him. The said benefit was sought on the strength of Section 9(4) of the 2002 Ordinance, which reads thus:-

*"4) 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."*

7. Vide judgment dated 24.04.2015 reported as Asad Javed Vs. Federation of Pakistan (2015 P.Cr.L.J. 1340), this Court disposed of the said writ petition by holding that the petitioner was entitled to remissions for the whole of his sentence including the period served by the petitioner in the UK. Furthermore, this Court directed the MOI to re-issue the Roll of Sentence after going through the record of the petitioner's case.

8. The *intra* Court appeal filed by the Federation of Pakistan against the said judgment was allowed by the Division Bench of this Court vide judgment dated 01.02.2016 reported as Federation of Pakistan Vs. Asad Javed (PLD 2016 Islamabad 53). It was held that the writ petition filed by the petitioner was not maintainable, and that he was at liberty to approach the Secretary, MOI, who is the Competent Authority as defined in Section 2(c) of the 2002 Ordinance for seeking benefit under Sections 12 and 9(4) of the said Ordinance.

9. Civil Petition No.826/2016 against the said judgment dated 01.02.2016 passed by the Division Bench of this Court was filed by the petitioner before the Hon'ble Supreme Court. Vide judgment

dated 18.04.2017 reported as Asad Javed alias Javed Akhtar Vs. Federation of Pakistan (2017 SCMR 1514), the said petition was dismissed. However, in the said judgment, the Hon'ble Supreme Court, after referring to Sections 9(1) to 9(4) and Section 12(1) and (2) of the 2002 Ordinance, held as follows:-

*“6. Perusal of the above provisions of law regulating the Transfer of Offenders would reveal that the convict by competent Court of Law of specified country can be transferred to Pakistan pursuant to mutual agreement between the two countries and if the convict is transferred to Pakistan then he would be governed by the laws of Pakistan as if it was a sentence imposed by a Court in Pakistan and in case the sentence awarded to the convict is not compatible with the laws of Pakistan, a Court of competent jurisdiction in Pakistan can adopt such a sentence to make it compatible with the law of Pakistan. As far as pardon/remissions in the sentence of imprisonment awarded to an Offender is concerned, it can also be granted/extended to him under the Laws of Pakistan and he can also claim any remission of his sentence of imprisonment to which he became entitled to on the date of his transfer in accordance with law relating to the remissions of sentence in such specified country. When we asked the learned Senior ASC, is there anything in black and white to reflect that the offender had earned any remission during his imprisonment in U.K, he could not lay hand on any such order of the concerned authorities in U.K. We also asked the learned Senior ASC as to whether the offender was ever refused any remission, he had earned, while serving his sentence of imprisonment in Pakistan but again he was unable to refer to any such refusal. Yes; the petitioner has to be dealt with under the law of the land to serve out his remaining sentence as provided in section 9(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) which also makes him entitled for grant of pardon or remission of sentence by the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force as provided in section 12(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) but for that purpose he has to approach the concerned authority as defined in the Law to ask for the relief.”*

10. On 10.07.2019, the petitioner filed writ petition No.2604/2019 before this Court seeking a direction to the MOI to release him forthwith on the ground that he had served half of his sentence. The petitioner's primary grievance in the said petition was that the MOI was not entertaining his application for release. Along with the said petition, the petitioner filed a copy of his application dated 16.07.2018 to the Superintendent, Adyala Jail (with a copy to the Secretary, MOI) wherein a request was made to grant him the benefit of remissions, and if this could not be done, he be sent back to the UK. Vide judgment dated 18.12.2019, the said writ petition was dismissed by this Court with the following observations:-

*“7. As noted above, the petitioner was tried and convicted of offences in United Kingdom, vide orders/judgment dated 07.07.2004. Though, the order whereby he was convicted and punished has not been appended but in his representation in other documents, the petitioner has categorically submitted, which is taken to be correct that he was awarded 25 years of imprisonment. It is the case of the petitioner that his conditional release date is mentioned as 22.06.2016, hence he is entitled to be released as he has served the sentence. It is noted that the said argument of the learned counsel for the petitioner has no substance inasmuch as under the law of United Kingdom, a person is entitled to conditional release on the terms and conditions decided by the Jail Authorities and it is not discharge from the sentence. The petitioner’s sentence would stand completed in 2031. However, as per the terms of the sentence, he could be considered for conditional release on 22.06.2016. The said concept of conditional release is alien to Pakistani Laws as such. Under the jail manual and other laws of Pakistan no such release order is to be passed. The petitioner while serving sentence in Pakistan can have the benefit of remissions in accordance with the provisions of Transfer of Offenders Ordinance, 2002 and all such benefits which are available under the said law. In this view of the matter, no direction can be made to the respondents for release of the petitioner, however, the learned counsel for the petitioner in alternative also made a request for decision of the representation by the petitioner; there is no impediment for grant of such relief to the petitioner.”*

11. While dismissing writ petition No.2604/2019, this Court directed the respondents in the said petition to decide the petitioner’s application expeditiously and preferably within eight weeks. *Intra* Court appeal No.6/2020 filed by the petitioner against the said judgment dated 18.12.2019 was dismissed as withdrawn vide order dated 08.04.2021.

12. On 30.03.2020, the petitioner filed the instant writ petition praying for the grant of bail until the decision in the *intra* Court appeal No.6/2020. It ought to be borne in mind that *Intra* Court appeal No.6/2020 was still pending when the instant writ petition was filed.

13. During the pendency of the instant writ petition this Court, vide order dated 30.06.2020, had directed the Secretary, MOI, who, as mentioned above, is designated as the “*Competent Authority*” under the 2002 Ordinance, to treat the writ petition as the petitioner’s representation and decide his grievance after affording an opportunity of a hearing to his authorized representative. Before deciding the matter, the MOI sought an opinion of the Law and

Justice Division, Government of Pakistan, on the following questions:-

- “i. If the plea of the petitioner for conditional release after completion of half way sentence is justified in the light of Transfer of Offenders Agreement between Pakistan and UK and “The Good Conduct Prisoners’ Probational Release Act, 1926” or otherwise.*
- ii. Whether the Federal government/its offices are empowered to deal and decide upon cases of conditional release of prisoners under “The Good Conduct Prisoners’ Probational Release Act, 1926” and if not, what is the appropriate forum which can be applied to in such cases.”*

14. The opinion of the Law and Justice Division on the said questions is reproduced as follows:-

*“The Criminal Justice and Immigration Act, 2008 of United Kingdom and Good Conduct Prisoners’ Probational Release Act, 1926 cannot be equated with one another, since the object and territorial application of both statutes is entirely different from one another. While the Good Conduct Prisoners’ Probational Release Act, 1926 provides for the conditional release from prison of good conduct prisoners in certain cases before the completion of the term of imprisonment and the United Kingdom Law makes provisions for the management of offenders. Thus the Criminal Justice and Immigration Act, 2008 is not ipso-facto applicable in Pakistan and the same cannot be made a ground by the applicant for his release upon the completion of half way sentence. It also cannot be equated with or reciprocated with the Good Conduct Prisoners’ Probational Release Act, 1926. Moreover, the Supreme Court in the Civil Petition No.82/2016 in the case of present applicant has held that the petitioner has to be dealt with under the law of the land to serve out his remaining sentence as provided in section 9(2) of Transfer of Offenders Ordinance, 2002.*

*In view of the afore-mentioned judgment of the apex Court the applicant is subject to the law of Pakistan for carrying out his remaining sentence, therefore, he cannot claim the benefit of the law of United Kingdom. However, he is at liberty to approach the competent authority under the Transfer of Offenders Ordinance and the competent authority after satisfying itself that extending of the benefit of Good Conduct Prisoners’ Probational Release Act, 1926 being the law of land does not cause any prejudice to the legal nature and duration of a sentence so awarded by the transferring State could decide itself (if empowered under that law) or can direct any other authority so empowered in this behalf under that law to decide the same.”*

15. After taking into consideration the said opinion of the Law and Justice Division, and affording an opportunity of a hearing to the petitioner’s representative the Secretary, MOI, vide order dated 20.08.2020, held that the benefit of conditional release under the Criminal Justice and Immigration Act, 2008, which is an English statute, could not be granted to the petitioner since the said law was

not applicable in Pakistan. Furthermore, it was also held that the petitioner was entitled to be considered for relief under the provisions of the Good Conduct Prisoners' Probation Release Act, 1926 ("the 1926 Act") but since there was no probation department or jail in the Islamabad Capital Territory ("I.C.T."), and since the petitioner was undergoing his sentence in the Province of Punjab, he may approach the relevant Provincial Authorities through the jail administration.

16. Perusal of the said order dated 20.08.2020 shows that the stance taken on the petitioner's behalf during a hearing before the Secretary, MOI was that the petitioner was "*no longer claiming remissions*" and that he wanted to be conditionally released on completion of half his sentence on 22.06.2016 under the provisions of the Criminal Justice and Immigration Act, 2008. Furthermore, the petitioner's stance was that in Pakistan, the 1926 Act would be the law under which the benefit of conditional release could be given to the petitioner.

17. During the course of the arguments, this Court felt the necessity to hear a representative from the MOI for the just adjudication of this matter. Vide order dated 21.12.2020, this Court directed the Secretary, MOI to depute an officer not below the rank of an Additional Secretary to assist the Court on the next date of hearing. On 18.01.2021, the Additional Secretary, MOI tendered appearance and submitted that the MOI shall, through the Ministry of Foreign Affairs, liaise with the authorities in the UK to determine as to whether the petitioner would be entitled to automatic release after serving half of his sentence under the provisions of the Criminal Justice and Immigration Act, 2008 as well as the Criminal Justice Act, 2003, which is also an English statute.

18. The MOI, vide a detailed Office Memorandum dated 25.02.2021, requested the Ministry of Foreign Affairs to ask the authorities in the UK whether the petitioner would be entitled to automatic release after serving half his sentence under the provisions of the Criminal Justice and Immigration Act, 2008 as well as the Criminal Justice Act, 2003.

19. On 11.03.2021 the MOI brought on record letter dated 05.03.2021 from the Ministry of Foreign Affairs conveying to the MOI a facsimile message received from the Pakistan High Commission containing the response of the authorities in the UK. The Cross Border Transfer Section, Interventions and Operational Services of Her Majesty’s Prison and Probation Service had informed the Pakistan High Commission in London that *“had Mr. Javed remained in the UK under the Criminal Justice Act, 2003, he would have been released after serving half of his 25 year sentence imposed on him.”* Furthermore, it was stated that *“the British sentence would have been transferred to Pakistan on the basis of ‘continued enforcement’ however, he should be subject to Pakistani release arrangements.”*

20. On the basis of the said communication from the authorities in the UK, the petitioner filed an application (C.M.No.1376/2021) for an amendment in the prayer clause of this writ petition so as to seek his discharge. Vide order dated 05.04.2021, the said application was allowed whereafter an amended petition was filed.

21. Vide order dated 20.04.2021, this Court issued a notice to respondent No.3 (Superintendent, Adyala Jail) with the direction to submit a report as to the total period of the petitioner’s incarceration and accordingly calculate the remissions to which he was entitled to under the law. On the basis of the information provided by the Superintendent, Adyala Jail, the MOI submitted a report on 27.04.2021 setting out the details as to the sentence served by the petitioner, the remissions earned by him, and the remaining portion of his sentence. These details are as follows:-

|                          |                                                                                        | Years                             | Months | Days |
|--------------------------|----------------------------------------------------------------------------------------|-----------------------------------|--------|------|
| (1)                      | Sentence served in UK w.e.f. 23.12.2003 to 20.08.2010                                  | 06                                | 07     | 28   |
| (2)                      | Sentence served in Pakistan w.e.f. 21.08.2010 to 08.11.2010 & 16.04.2014 to 22.04.2021 | 07                                | 00     | 09   |
| (3)                      | Total sentence served                                                                  | 13                                | 08     | 07   |
| (4)                      | Remission Earned in Pakistan                                                           | 01                                | 05     | -    |
| (5)                      | Total sentence including Remission Earned                                              | 15                                | 01     | 07   |
| (6)                      | Remaining portion of sentence                                                          | 09                                | 10     | 23   |
| Probable date of release |                                                                                        | 28.12.2030<br>Subject to revision |        |      |



22. On 05.05.2021, the learned State Counsel tendered appearance before this Court and brought on record notification dated 22.04.2015 whereby the Assistant Commissioner / Sub-Divisional Magistrate (Saddar), Islamabad Capital Territory had been appointed as the Parole Officer under Section 2(b)(f) of the Good Conduct Prisoners' Probational Rules, 1927 ("the 1927 Rules"). He submitted that by virtue of President's Order No.1 of 1970, the 1927 Rules would have the status of "*existing laws*" and therefore were applicable to the I.C.T. by virtue of Section 19 of the said Order.

23. On 18.05.2021, the petitioner's counsel submitted an application before the Assistant Commissioner (Saddar), Islamabad for the petitioner's release under Sections 2 and 3 of 1926 Act. Vide order dated 11.06.2021, the Assistant Commissioner (Saddar), Islamabad held that the Secretary, MOI was competent to issue directions to the Provincial Government in whose jurisdiction the petitioner was under detention to process his case for remissions and parole. It was also observed in the said order that although the petitioner had committed a crime outside Pakistan and had been transferred to Pakistan under the 2002 Ordinance under which the Secretary, MOI was incharge of the affairs of such prisoners, this did not imply that the matters relating to remissions or release on parole of such prisoners would be dealt with by the Parole Officer of the I.C.T.

**CONTENTIONS OF THE LEARNED COUNSEL FOR THE PETITIONER:-**

24. Learned counsel for the petitioner, after narrating the facts leading to the filing of the instant petition, submitted that on 23.07.2004, the petitioner was sentenced to imprisonment for a period of 25 years by a Court in the UK on the charge of conspiracy to traffic narcotics; that on 24.08.2007, an agreement was entered into between Pakistan and the UK on the transfer of prisoners from one country to the other; that on 21.08.2010, the petitioner was transferred to Pakistan in accordance with the terms of the said agreement as well as the provisions of the 2002 Ordinance; that after his transfer, the petitioner was to serve his remaining sentence in Pakistan; that under the laws of the UK, the petitioner would be

entitled to release after serving half of his sentence; that the petitioner served half of his sentence on 22.06.2016; that the petitioner was released from prison on 08.11.2010 but was again taken into custody on 12.02.2014; that the petitioner served 6 years, 7 months and 28 days of his sentence in the UK; that according to the report dated 27.04.2021 submitted by the Superintendent, Adyala Jail, the petitioner has served 7 years and 9 days of his sentence in Pakistan; and that since cumulatively the petitioner has served more than 13 years, 8 months and 7 days, which is more than half of his sentence, he is entitled to be released on parole.

25. Learned counsel for the petitioner further submitted that vide notification dated 22.04.2015 issued by the office of the District Magistrate, I.C.T., the Assistant Commissioner/Sub-Divisional Magistrate (Saddar), I.C.T. was appointed as the Parole Officer under Section 2(d) and (f) of the 1927 Rules; that the Assistant Commissioner, I.C.T. has the jurisdiction to decide the application dated 18.05.2021 submitted on the petitioner's behalf for his release on parole; that vide order dated 11.06.2021, an erroneous view was taken by the Assistant Commissioner, I.C.T. that since the petitioner was lodged in a jail situated in the Province of Punjab, the Secretary, MOI could give directions to the Government of Punjab to process his case for the grant of remissions and parole; that the Assistant Commissioner, I.C.T. had in the past passed several orders for parole and conditional release of convicts under the provisions of the 1926 Act; and that the Secretary, MOI, while deciding the petitioner's representation, had erroneously held that there was no probation department in the I.C.T., and that the petitioner could approach the provincial authorities through the jail administration.

26. Furthermore, it was submitted that the sentence awarded to the petitioner by the Court in the UK could not be enhanced or aggravated by the authorities in Pakistan; that had the petitioner been in prison in the UK he would have been entitled to automatic release under Section 244 of the Criminal Justice Act, 2003 (which is an English statute) on account of having served half of his sentence; that the Hon'ble Supreme Court had held that the petitioner was entitled to post and pre-conviction remissions; and that this Court

ought to declare that on the strength of the notification dated 22.04.2015, the Assistant Commissioner, I.C.T. had the jurisdiction to decide the petitioner's application for his release on parole, and issue a direction for the petitioner's application to be decided on merits.

**CONTENTIONS OF THE LEARNED DEPUTY ATTORNEY-GENERAL:-**

27. On the other hand, the learned Deputy Attorney-General submitted that although the UK's Ministry of Justice, vide email dated 02.03.2021, had informed the Pakistan High Commission in London that had the petitioner remained in the UK he would have considered for release after serving half of his 25-year sentence but in the said email it was clearly stated that the petitioner was subject to the Pakistani release arrangements; that the provisions of the Criminal Justice Act, 2003, being an English statute, could not be made applicable to the petitioner in Pakistan; that although the petitioner would be entitled to the remissions for the period of his sentence served in Pakistan but as per the information provided by the Superintendent, Adyala Jail, the petitioner would be entitled to release on 28.12.2030 with the benefit of remissions presently earned; that as per the information provided by the Head of the Foreign National Offenders Policy at the National Offenders Management Service in the UK, the petitioner's sentence expiry date was 21.12.2028; that there was nothing preventing the petitioner from applying to the Government of Punjab for his release on parole; that there is no jail in the I.C.T. and the petitioner has not been convicted for having committed an offence in the I.C.T.; and that since the petitioner is presently confined at the Adyala Jail which is within the Province of Punjab, he can apply to the provincial government for his release on parole. The learned Deputy Attorney-General prayed for the writ petition to be dismissed.

28. I have heard the contentions of the learned counsel for the petitioner as well as those of the learned Deputy Attorney-General and have perused the record with their able assistance. The facts leading to the filing of the instant petition have been set out in sufficient detail in paragraphs 2 to 23 above, and need not be recapitulated.

29. As mentioned above, the petitioner was transferred to Pakistan under the provisions of the 2002 Ordinance read with the agreement dated 24.08.2007 executed between Pakistan and the UK on the transfer of offenders. He was transferred to Pakistan on 21.08.2010 after having served 6 years, 7 months and 28 days of his 25-year sentence in the UK. He was transferred to Pakistan on 21.08.2010 and remained in prison at Karachi until 30.09.2010 when he was released on the basis of letters dated 27.08.2010, 16.09.2010 and 27.09.2020 from the MOI. It was not until concerns were voiced by the authorities in the UK as to the petitioner's premature release that he was again taken into custody on 12.02.2014. Presently, the petitioner is serving his sentence in the Adyala Jail which is situated in the Province of Punjab.

30. The petitioner wants to be given the benefit of release on parole having served half of his sentence on the strength of the provisions of the Criminal Justice Act, 2003. Section 244(1) of the said Act provides *inter alia* that as soon as a fixed-term prisoner has served the requisite custodial period, it would be the duty of the Secretary of State to release him on license. The petitioner asserts that the requisite custodial period for his case would be half of his sentence. Learned counsel for the petitioner admits that had the petitioner been in prison in the UK, his release would not have been automatic but on the basis of a license issued by the Secretary of State. The petitioner bases his plea for release on parole after having served half of his sentence on Section 9(4) of the 2002 Ordinance, which has been reproduced in paragraph 6 above.

**THE PETITIONER'S ENTITLEMENT TO REMISSIONS:-**

31. Section 12(1) of the 2002 Ordinance provides *inter alia* that an offender who is transferred to Pakistan shall be subject to any remission of the sentence of imprisonment imposed on him in the specified country where he was convicted to which he may have become entitled to on the date of his transfer in accordance with the laws relating to remission of a sentence in force in such specified country. Section 12(2) of the said Ordinance provides that nothing in the said Ordinance shall be so construed as to limit or take away the power of the President to grant pardon or remission of sentence to

any offender under Article 45 of the Constitution or by any other authority under any law of Pakistan for the time being in force.

32. Clause 2(d) of Article 5 of the agreement dated 24.08.2007 between Pakistan and the UK provides that if the transferring State is prepared in principle to approve any prisoner's request for transfer, it shall provide the receiving State with a statement indicating how much of the sentence had already been served, including information on any pre-trial detention, remission and any other factor relevant for the enforcement of the sentence.

33. The documents brought on record by the MOI contain information regarding the nature and duration of the petitioner's sentence provided by the authorities in the UK at the stage of his transfer to Pakistan. These documents show that the petitioner was not granted any remissions in the UK prior to his transfer to Pakistan. Learned counsel for the petitioner also did not give any assistance on the question as to whether the petitioner had earned any remissions under the laws of the UK prior to his transfer to Pakistan. Perusal of the judgment reported as Asad Javed Vs. Federation of Pakistan (2017 SCMR 1514) also shows that the petitioner's counsel in the Supreme Court had also not rendered any assistance on the question whether the petitioner had earned any remissions during his imprisonment in the UK. In this regard, the relevant portion of the said judgment is reproduced herein below:-

*"...As far as pardon/remissions in the sentence of imprisonment awarded to an Offender is concerned, it can also be granted/extended to him under the Laws of Pakistan and he can also claim any remission of his sentence of imprisonment to which he became entitled to on the date of his transfer in accordance with law relating to the remissions of sentence in such specified country. When we asked the learned Senior ASC, is there anything in black and white to reflect that the offender had earned any remission during his imprisonment in U.K, he could not lay hand on any such order of the concerned authorities in U.K. We also asked the learned Senior ASC as to whether the offender was ever refused any remission he had earned while serving his sentence of imprisonment in Pakistan but again he was unable to refer to any such refusal..."*

34. As regards the petitioner's entitlement to remissions for the sentence served by him after his transfer to Pakistan, the Hon'ble Supreme Court has held in no uncertain terms that *"the petitioner has to be dealt with under the law of the land to serve out his remaining sentence as provided in Section 9(2) of the Transfer of*

*Offenders Ordinance, 2002 (XXXVII of 2002) which also makes him entitled for grant of pardon or remission of sentence by the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force as provided in section 12(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) but for that purpose he has to approach the concerned authority as defined in the Law to ask for the relief.”*

35. As per the report dated 27.04.2021 submitted on behalf of the Secretary, MOI, the remissions earned by the petitioner for the period of his sentence served in Pakistan were one year and five months. The said report also shows that with the remissions so far earned by the petitioner, his release date would be 28.12.2030. This report was submitted pursuant to the order dated 20.04.2021 passed by this Court and the same has till date not been assailed by the petitioner. The petitioner is entitled to the benefit of these remissions which are with respect to the duration of his sentence served in Pakistan but he cannot be given remissions under the laws of Pakistan for the period of his sentence served in the UK prior to his transfer to Pakistan.

**WHETHER THE PETITIONER IS ENTITLED TO BE CONSIDERED FOR RELEASE ON PAROLE, AND IF SO BY WHICH AUTHORITY:-**

36. There is no provision in the 2002 Ordinance that specifically entitles a convict transferred from a specified country to Pakistan to be released on parole. However, Section 9(2) of the said Ordinance provides that the enforcement of the sentence of imprisonment imposed on any offender who is transferred to Pakistan shall be governed by the laws of Pakistan whereas Section 9(3) provides that notwithstanding anything contained in Section 9(2), the Competent Authority shall, unless otherwise specified in the agreement, be bound by the “*legal nature and duration*” of the sentence of imprisonment imposed on any offender transferred to Pakistan.

37. Now, as regards the “*duration*” of the sentence imposed on the petitioner by the Court in the UK, the same is admittedly 25 years, out of which the petitioner served 6 years, 7 months and 28 days in the UK and till date he has served 7 years, 4 months and 12 days in

Pakistan (excluding the period between 30.09.2010 to 12.02.2014 when he was not incarcerated).

38. The petitioner's release on parole would not reduce the duration of his sentence. In this regard, Section 4 of the 1926 Act provides as follows:-

*"4. Period of release to be reckoned as imprisonment for computing period of sentence served.-- The period during which a person is absent from prison under the provisions of this Act on a licence which is in force shall be reckoned as a part of the period of imprisonment to which he was sentenced, for the purpose of computing the period of his sentence and for the purpose of computing the amount of remission of his sentence which might be awarded to him under any rules in force relating to such remission."*

39. A convict who is released on parole does not have his sentence suspended or remitted but his custody is shifted from the jail authorities to the parole officer. It is well settled that parole is a form of temporary release from custody, which does not suspend the sentence or the period of detention but provides conditional release from custody and changes the mode of undergoing the sentence. Parole does not suspend or curtail the sentence originally imposed by the Court as contrasted with a 'commutation of sentence' which actually modifies it. 'Parole' is explained in Black's Law Dictionary in the following terms:-

*"Release from Jail, prison or other confinement after actually serving part of sentence; conditional release from imprisonment which entitles parolee to serve remainder of his term outside confines of an institution, if he satisfactorily complies with all terms and conditions provided in parole order."*

40. This Court cannot order for the petitioner to be released on parole. At best, it can direct for the petitioner's application for parole to be decided on merits. In the case of Muhammad Ismaeel Vs. Secretary Home Department, Government of Punjab (PLD 2018 Lahore 114), the Hon'ble Lahore High Court has explained that *"probation is given to an offender by the judiciary under the Probation of Offenders Ordinance, 1960 (Ordinance No.XLV of 1960) whereas parole is authorized to the executive under Section 2 of The Good Conduct Prisoners' Probational Release Act, 1926. Probation and parole both serve the purpose of rehabilitation and reintegration of the offenders."* In the case of Salamatullah Vs. State (2019 PCr.LJ 1119), the Hon'ble Peshawar High Court dismissed a writ petition

through which a direction was sought to the Provincial Government to release the petitioner on parole. It was held that the power to conditionally release a convict for good conduct solely vested in the Provincial Government, and that the petitioner had the alternative remedy of approaching the Provincial Government for the redressal of his grievance.

41. The “*legal nature*” of the petitioner’s sentence can be gauged from the documents brought on record by the MOI. These documents include a communication dated 21.07.2016 from Mr. Graham Wilkinson, who is stated to be a civil servant at the Ministry of Justice in London, and was heading the Foreign National Offenders Policy at the National Offenders Management Service, and was responsible for the transfer of prisoners in and out of England and Wales. As per the information provided by him, the petitioner was remanded in custody on 23.12.2003; he was sentenced to 25 years imprisonment for the offence of conspiracy to supply Class-A Drugs (Cocaine); and his parole eligibility date was stated to be 22.06.2016 whereas his non-parole release date was stated to be 22.08.2020. Mr. Wilkinson had been authorized by the Secretary of State for Justice to provide the said information about the petitioner. The parole eligibility date and the non-parole release date have been explained in the said communication in the following terms:-

***“Parole Eligibility Date***

*The Parole Eligibility Date (PED) is the earliest date on which a prisoner can be considered for release. Release at this point is not automatic. A prisoner is considered for release by the independent Parole Board. Only if the Parole Board recommend release can the prisoner be released from custody. If the prisoner is not recommended for release at the first review, then he is entitled to annual parole review until he reaches his Non-Parole Release date.*

***Non-Parole Release Date***

*The Non-Parole Release Date (NPD) is the date on which the prisoner must be released from custody. This falls at the two-thirds point of the sentence. On release the prisoner is subject to a licence and supervision by the Probation Service. The prisoner is liable to be returned to custody to continue serving his sentence if he breaches the terms of his licence.”*

42. The aforementioned documents brought on record by the MOI make it clear that the “*legal nature*” of the petitioner’s sentence was such that had he not been transferred to Pakistan, he would have



been eligible for consideration for parole on 22.06.2016 whereas his non-parole release date would have been 22.08.2020.

43. The nature and the duration of a sentence imposed on a transferred offender in the transferring State cannot be aggravated in or by the receiving State. In this regard, Article 9(2) of the agreement dated 24.08.2007 between Pakistan and the UK is reproduced herein below:-

*“9(2) The Receiving State shall be bound by the legal nature and duration of the sentence as determined by the Transferring State. If, however, the sentence is by its nature or duration incompatible with the law of the Receiving State, that State may, by a court or administrative order and with the agreement of the Transferring State prior to transfer, adapt the sanction to the punishment or measure prescribed by its own law for a similar offence. It shall not, however, aggravate, by its nature or duration, the sanction imposed in the Transferring State, nor exceed the maximum penalty prescribed by the law of the Receiving State.”*  
(Emphasis added)

44. By virtue of Section 9(2) *ibid* the enforcement of the sentence of imprisonment imposed on the petitioner by the Court in the UK is to be governed by the laws of Pakistan. In Pakistan, a convict serving his sentence of imprisonment can by licence be permitted by the Provincial Government to be released on certain conditions under Section 2 of the 1926 Act which is reproduced herein below:-

*“2. Power of Government to release by licence on conditions imposed by it.—Notwithstanding anything contained in section 401 of the Code of Criminal Procedure, 1898, where a person is confined in prison under a sentence of imprisonment, and it appears to the Provincial Government from his antecedents or his conduct in the prison that he is likely to abstain from crime and lead useful and industrious life, if he is released from prison, the [Provincial Government] may by licence permit him to be released on condition that he be placed under the supervision or authority of a servant of the state or a secular institution or of a person or society professing the same religion as the prisoner, named in the licence and willing to take charge of him.”*

45. The procedure to be adopted for the release of a convict on parole is provided in Rule 4(a) of the 1927 Rules which reads thus:-

*“Conditional Release-- The Assistant Director, Reclamation and Probation, may, at any time, after consultation with the Superintendent release of well or otherwise prepare a list of the prisoners, who are well behaved persons. Their antecedents or conduct in prison appears to be likely, if released from prison, to abstain from crime and to lead a useful and industrious life, and may forward a list of such prisoners to the Government through the Director, Reclamation and Probation, with his recommendation for their release under the Act. The Government may thereupon permit*

*all or any of such prisoners to be released by licence under Section 2 of the Act.”*

46. The Secretary MOI's view that benefit under the Criminal Justice and Immigration Act, 2008, being an English statute, could not be extended to the petitioner is plausible since the provisions of the said statute do not apply *proprio vigore* (by its own force) in Pakistan. This view is also in consonance with the judgment dated 18.12.2019 passed by this Court in writ petition No.2604/2019 whereby the petitioner's plea for release on the basis of laws of the UK was spurned. However, the fact that had the petitioner been serving his sentence in the UK he would have been entitled to be considered for release on parole after having served half of his sentence can and ought to be taken into consideration by the authorities in Pakistan while considering his application for release on parole. It goes without saying that the petitioner's release would not be automatic but would depend on whether it appears to the Parole Officer on the basis of information provided by the jail authorities about his antecedents, conduct and behavior in the prison that he is likely to abstain from crime and lead a useful and an industrious life if released from prison under a licence and placed under the supervision or authority of a servant of the State etc.

47. Even if the petitioner had not been transferred to Pakistan, his parole eligibility date i.e. 22.06.2016 would have been the earliest date on which he could have been "considered for release." His release was by no means to be automatic on the said date but he would have been entitled to be considered for release by the independent Parole Board, and only if the Parole Board recommended his release could he have been released from custody. If the Parole Board at the first review had given no such recommendation, then he would have been entitled to an annual parole review until he reached his non-parole release date, i.e. 22.08.2020. The *non-parole release date* would have been the date on which the petitioner would have been released from custody on having served two-thirds of his sentence. Such release would have been subject to a license and supervision by the parole service in the UK. The petitioner would have been liable to be returned to custody

to continue serving his sentence if he breached the terms of his license.

48. As regards the Secretary, MOI's view that since there was no probation department or jail in the I.C.T., and the petitioner was undergoing his sentence in Punjab, he may approach the relevant Provincial authorities through the jail administration does not appeal to reason. By President's Order No.1 of 1970, called the Province of West Pakistan (Dissolution) Order, 1970, the Province of West Pakistan was dissolved and the four Provinces of Balochistan, the North-West Frontier Province, the Punjab, and Sindh were constituted in addition to two Centrally Administered Areas, namely, the Islamabad Capital Territory and the Centrally Administered Tribal Area. Under Article 6 of the said Order, the President was given exclusive power to legislate in relation to the I.C.T. Article 19 of the said Order provides that all existing laws shall continue in force so far as applicable and with necessary adaptations until altered, repealed or amended by the appropriate Legislature or other competent authority.

49. It is not disputed that the 1926 Act, *albeit* a Provincial law, was in force in the I.C.T. prior to the passing of the President's Order No.1 of 1970. By virtue of Article 19 of the President's Order of 1970, the 1926 Act continued to apply to the I.C.T. The President, in exercise of powers conferred under Article 6 of the President's Order No.1 of 1970, could have repealed the 1926 Act to the extent that it applied to the I.C.T. or could have passed an Order with respect to the laws regarding prisoners' release on probation or parole. This, the President did not do. Until the 1926 Act is not repealed or amended by the competent legislature, its provisions would continue to apply in the I.C.T.

50. As mentioned above, by virtue of Article 6 of the President's Order No.1 of 1970, the President was given the exclusive power to legislate in relation to the I.C.T. This power of the President continued until the enactment of the Constitution (Eighteenth Amendment) Act, 2010. Presently, under Article 142(b) of the Constitution (as amended by the Constitution (Eighteenth Amendment) Act, 2010), the Parliament has the exclusive power to

make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province.

51. President's Order No.18 of 1980, called the Islamabad Capital Territory (Administration) Order, 1980, which came into force on 01.01.1981 provides that the executive authority of the Federation in respect of the I.C.T. shall be exercised by the President, either directly or, to such extent as he thinks fit, through an Administrator to be appointed by him.

52. Pursuant to the provisions of Presidential Order No.18 of 1980, the President, vide notification No.F.17(2)/80-Pub dated 31.12.1980, directed *inter alia* that the Administrator shall have in respect of the I.C.T. all the powers and duties conferred or imposed on the Provincial Government under any law for the time being in force in the I.C.T. Vide President's Order No.2 of 1990, the words "*an Administrator*" in President's Order No.18 of 1980 were replaced with "*a Chief Commissioner.*"

53. Notification dated 22.04.2015 issued by the office of the District Magistrate, I.C.T. shows that pursuant to notification No.1(186)-Law/2016-2086, dated 10.06.2014 issued by the office of the Chief Commissioner, I.C.T., the Assistant Commissioner / Sub-Divisional Magistrate (Saddar), I.C.T., was appointed as Parole Officer under Section 2(d) and (f) of the 1927 Rules.

54. Learned counsel for the petitioner has brought on record two orders dated 20.02.2019 issued by the office of the Assistant Commissioner (Saddar) and the office of the Chief Commissioner, respectively, which show that prisoners had been ordered to be conditionally released under the provisions of the 1926 Act. In one of the said orders, the Probation Officer had required the custody of the prisoner to be handed over to "*the Reader of the Assistant Commissioner (Saddar)/Parole Reclamation and Probation Department, Islamabad.*" The petitioner has also relied on Memorandum dated 30.12.2016 issued by the Chief Commissioner, I.C.T. wherein the Assistant Commissioner (Saddar)/Probation Officer, Islamabad was asked to decide a case for release on parole of a prisoner.

55. It ought to be borne in mind that the petitioner had not been convicted for an offence committed in the Province of Punjab. He has been lodged at Adyala Jail which is in the Province of Punjab pursuant to Section 9(1) of the 2002 Ordinance which provides *inter alia* that every offender being transferred to Pakistan from any specified country shall be formally handed over to the Inspector-General of Prisons so nominated by the Competent Authority and the concerned Inspector-General of Prisons shall have the authority to keep such offender in custody in any place as may appear to him to be appropriate for giving effect to the sentence of imprisonment imposed on such offender in such specified country for the period of the sentence as if it were a sentence imposed by a Court in Pakistan.

56. As per Article 3 of the agreement dated 24.08.2007 between Pakistan and the UK, the MOI is designated for the implementation of the provisions of the said agreement whereas under Section 2(c) of the 2002 Ordinance, the Secretary, MOI is the "Competent Authority." The Secretary, MOI, as the administrative head of the said Ministry, could not have abdicated his responsibility of referring the petitioner's case to the relevant Parole Officer (as per the notification dated 22.04.2015 issued by the office of the District Magistrate, I.C.T.) bearing in mind the fact that had the petitioner been in prison in the UK, his parole eligibility date would have been 22.06.2016 whereas his non-parole release date would have been 22.08.2020. Since the MOI was well aware of this fact, it is my view that not considering the petitioner for parole in accordance with the laws of Pakistan is tantamount to aggravating the nature of the petitioner's sentence imposed on him in the UK. Learned counsel for the petitioner very fairly submitted that it is not the petitioner's case that he is entitled to immediate release but for his case to be considered for parole bearing in mind the fact that he had served half his sentence (excluding the period between 30.09.2010 to 12.02.2014), and would have been entitled to non-parole release on 22.10.2020 had he been serving his sentence in the UK.

57. True, there is presently no prison in the I.C.T. but persons arrested for having committed offences in the I.C.T. and those convicted of having committed offences in the I.C.T. are lodged at

the Adyala Jail. In the case at hand, the petitioner has been convicted by a Court in the UK for having committed an offence in that country. He was transferred to Pakistan after having served 6 years, 7 months and 28 days of his 25-year sentence in the UK pursuant to Section 9(1) of the 2002 Ordinance. Under the said provision, the custody of an offender is to be formally handed over to the Inspector-General of Prisons *“so nominated by the Competent Authority.”* Since admittedly the Competent Authority under the said Ordinance is the Secretary of MOI, it is his nomination under Section 9(1) *ibid* that has caused the petitioner to be lodged at the Adyala Jail. Therefore, the petitioner was well within his rights to have applied to the Secretary, MOI seeking his release on parole, and this Court had also directed the Secretary to decide the petitioner’s application by a speaking order. But the Secretary, MOI could not have washed his hands of his obligation to have referred his case to the relevant Parole Officer along with the necessary documentation received from the Ministry of Foreign Affairs as well as the authorities in the UK regarding the legal nature and duration of his sentence for a decision on the petitioner’s application for release on parole.

58. In view of the above, the instant petition is disposed of in the following terms:-

- i. The order dated 20.08.2020 passed by the Secretary, MOI is set-aside only to the extent whereby the petitioner was left to approach the relevant Provincial Authorities through the jail administration;
- ii. The order dated 11.06.2021 passed by the Assistant Commissioner (Saddar)/Parole Officer, I.C.T. is set-aside only to the extent whereby the assumption of jurisdiction for deciding the petitioner’s application for release on parole was declined on the ground that the matters related to remissions/release of prisoners transferred under the 2002 Ordinance are not to be dealt with by the Parole Officer of the I.C.T., and that the petitioner’s application for remissions/parole is to be dealt with by the

Provincial Government where the petitioner is under detention.

- iii. The Secretary, MOI is directed to reconsider the petitioner's application in light of the observations made herein above and refer the matter to the Assistant Commissioner (Saddar)/Parole Officer, I.C.T. for deciding the petitioner's application for release on parole after obtaining a report from the jail authorities regarding the petitioner's antecedents and conduct in prison in order to determine whether or not he is likely to abstain from crime and lead a useful and industrious life if released from prison.
- iv. While deciding the aforementioned application, it ought to be borne in mind that as per the information obtained from the authorities in the UK and brought on record by the MOI, the petitioner's parole eligibility date and his non-parole release date would have been 22.06.2016 and 22.08.2020 respectively had he been in prison in the UK.
- v. The above-referred pending application shall be decided within a period of two weeks from the date of the receipt of this Order after affording an opportunity of a hearing to the petitioner's authorized representative, and a compliance report be submitted to the Registrar of this Court.

**(MIANGUL HASSAN AURANGZEB)  
JUDGE**

**ANNOUNCED IN AN OPEN COURT ON 20/08/2021**

**(JUDGE)**

**APPROVED FOR REPORTING**

*Qamar Khan\**