

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR,**  
[Judicial Department].

**Writ Petition No.3970-P/2018**

Salamat Ullah son of Haji Abdul Qadeem,  
r/o Nasirpur District Peshawar.

Petitioner (s)

**VERSUS**

The State etc

Respondents

For Petitioner :-	<u>Mr. Ghulam Mohyuddin Malik, Advocate.</u>
State :-	<u>Mr. Rab Nawaz Khan AAG.</u>
Date of hearing:	<u>20.12.2018</u>

**JUDGMENT**

**ROOH-UL-AMIN KHAN, J:-** By invoking the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, **(the Constitution)**, Salamatullah, the petitioner, serving the sentence '*imprisonment for life*' in case FIR No.41 dated 14.06.2011, Police Station Anti Narcotics Force (ANF), Peshawar, seeks issuance of an appropriate writ directing the respondents to award/extend remissions in his sentence, extended by the Prime Minister and the President of Pakistan, the Chief Minister, Inspector General Prisons, Superintendent Jail, on account of blood donation and good conduct and released him on parole under the Good Conduct Prisoners' Probational Release Act, 1926.

2. Arguments of learned counsel for the parties heard and record perused.

3. It appears from contents of the cited FIR, that petitioner had been arrested on 14.06.2011 by the ANF officials on allegation of recovery of huge quantity of narcotics i.e. 48 Kgs chars and 14.100 Kgs opium, from secret cavities of motorcar No.RIW.8044, driven by him at the relevant time. He was tried and ultimately convicted and sentenced as mentioned above, by the learned Special Court (CNS), Khyber Pakhtunkhwa and vide judgment dated 18.10.2012. His appeals against conviction and sentence before this Court as well the Hon'ble apex Court, were dismissed, so his conviction and sentence have attained finality.

4. When summoned, the respondents filed their para-wise comments; according to which sentence of the petitioner has been given effect since 16.06.2011 and his probable date of release has been fixed as 09.11.2030. As per comments, remissions in the sentence for which the petitioner was entitled, have already been given to him in the following way:-

S.No.	Name of Remission	period
1.	Labour Remission	16 months
2.	Good conduct	04 Months & 15 days
3.	I.G. Spl. Remission	08 months
4.	Blood remission	02 months
5.	Supdt. Spl Remission	02 months
6.	Provincial Govt Spl Remission	11 months
7.	Education Remission	02 years.
	<b>Total Remission</b>	<b>68 months and 06 days</b>

Remissions awarded to the petitioner in his sentence, as is manifest from the table mentioned above, have not been rebutted by the petitioner through any cogent and concrete evidence. On the preceding date i.e. 27.11.2018, learned counsel for the petitioner sought time to file rejoinder to the comments. His request was acceded to but no re-joinder has been filed, meaning thereby that the petitioner has nothing to rebut the remissions awarded to him by the respondents. In this view of the matter, the petitioner having already been awarded remissions to which he was entitled, his prayer for further remission is merely a bald assertion on his part, therefore, the same is hereby turned down.

5. Adverting to the next prayer of the petitioner that that on account of his good conduct, he may be released on parole under section 2 read with section 5 of the Good Conduct Prisoner's Probationary Release Act, 1926 (*to be referred hereinafter as the Act of 1926*). Firstly, remission on account of good conduct has already been granted to the petitioner. Secondly, bare reading of Preamble of the Act of 1926, would reveal that powers with regard to conditional release of a prisoner on account of good conduct is solely vested with the **Provincial Government**. According to section 2 of the Act of 1926, if it appears to the Provincial Government from antecedents or conduct of a prisoner in the prison that he is likely to abstain from

crime and lead useful and industrious life, the Provincial Government may by license permit him to be released subject to certain conditions enumerated therein. For the sake of convenience and ready reference, sections 2 of the Act of 1926, is reproduced below:-

“**S.2** 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 license 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 license and willing to take charge of him.

Provided that a prisoner convicted and sentenced under any of the sections in Chapter XVI of the Pakistan Penal Code (XLV of 1860) **shall not be released on parole without the consent of the victim or as the case may be, his heirs.**

**Explanation:-** The expression “sentence of imprisonment” in this section shall include imprisonment in default of payment of fine and imprisonment for failure to furnish security under Chapter-VII of the Code of Criminal Procedure, 1898”.

Section 5 of the Act of 1926, speaks about the terms and condition of the license granted under section 2 (ibid), which is reproduced below:-

“**S.5** A license granted under the provisions of section 2 shall be in such form and shall contain

such conditions as the Provincial Government may, by general or special order by rules made in this behalf direct.”

The plain reading of section 2 of the Act of 1926 would depict that it empowers only the Provincial Government to release a person confined in prison under sentence of imprisonment on account of his good conduct. Since the petitioner has been convicted and sentenced under section 9 (c ) Control of Narcotic Substances Act, 1997, therefore, his case does not fall within the ambit of proviso attached to section 2 of the Act of 1926. According to comments of respondent No.3, the petitioner has served out 07 years 02 months and 20 days imprisonment of his substantive sentence. Under the Act of 1926, the Government has framed **“the Good Conduct Prisoner’s Probational Release Rules, 1927”**, wherein under rule 9 “Classes of offenders eligible for conditional release” have been given, pursuant whereof, in case of life imprisonment exceeding 14 years, a prisoner can be released under section 2 of the Act of 1926, provided he has served out **ten years of the substantive sentence** excluding remission other than educational remission. In this view of the matter, we are confronted with two situations, both not favouring the petitioner. Firstly, the petitioner has not served out 10 years of his substantive sentence so as to bring his case within the ambit of rule 9 of **“the Good Conduct Prisoner’s Probational Release Rules, 1927”**, and

secondly, power with regard to his release on parole on account of good conduct is vested with the Provincial Government, therefore, the petitioner having an appropriate and efficacious remedy to approach the Provincial Government for redressal of his grievance, he cannot invoke the constitutional jurisdiction of this Court under Article 199 of the Constitution. It is settled law that a writ jurisdiction can only be invoked by an aggrieved person who has no alternate and efficacious remedy for redressal of his grievance under the law. In this view of the matter, the instant writ petition to the extent of second prayer of the petitioner is not maintainable, however, the petitioner is at liberty to approach the proper forum for redressal of his grievance under the Rules of 1927 (ibide), if so advised.

6. For what has been discussed above, this writ petition is disposed of accordingly.

**Announced:**  
**20.12.2018**

*Siraj Afridi P.S.*

**JUDGE**

**JUDGE**