

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE YAHYA AFRIDI

MR. JUSTICE QAZI MUHAMMAD AMIN AHMED

**Civil Petition No. 4-P of 2020**

(On appeal against the judgment of the Peshawar High Court, Peshawar dated 01.11.2019 in Writ Petition No. 1788-P of 2019)

***Inspector General of Prison, Khyber Pakhtunkhwa, Peshawar, etc.***

*...Petitioner*

***versus***

***Habib Ullah***

*...Respondent*

For the petitioner:

Mr Zahid Yousaf Qureshi, Additional Advocate-General, KPK

For the respondent:

Mr. Asaf Fasih-ud-Din Vardag, ASC  
Ch. Akhtar Ali, AOR

On Court's Notice:

Mr Sohail Mehmood, Additional Attorney-General for Pakistan

Date of hearing:

30.09.2020

**ORDER**

**YAHYA AFRIDI, J-** Habib Ullah (“the respondent”) was booked and then tried by Anti-Terrorism Court in case FIR No. 58 dated 08.02.2003 under sections 364-A, 506, 512 and 452, PPC and section 13 of the West Pakistan Arms Ordinance, 1965 read with section 6 of the Anti-Terrorism Act, 1997 (“FIR”). After a regular trial, the respondent was convicted by the trial court, and the sentences awarded by the trial court were as follows: five years

rigorous imprisonment and fine for the offence under section 452, PPC read with section 6 of the Anti-Terrorism Act, 1997; five years rigorous imprisonment and fine for the offence under section 364-A, PPC read with section 6 of the Anti-Terrorism Act, 1997; and twenty years rigorous imprisonment for the offence under section 10(3) of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979. The appeal filed by the respondent against the conviction and sentence awarded by the trial court was dismissed by the High Court as well by this Court. The respondent moved the constitutional jurisdiction of the High Court seeking the grant of the remissions provided under the law, which was positively considered vide the impugned judgment. Hence, the present petition by the Inspector General of Jails, Khyber Pakthunkhwa.

2. The issue in hand is whether the respondent convicted and sentenced under Anti-Terrorism Act, 1997 ("**ATA**") and the Offences of Zina (Enforcement of Hudood) Ordinance, 1979 ("**Ordinance**") and presently serving his sentence in Central Jail Haripur, is entitled to be awarded remissions in his sentence under the law or otherwise.

3. As far as the ATA is concerned, section 21-F *supra* bars the award of any remission in the sentence of a person convicted under the said enactment. It reads:

**"21-F. Remissions.- Notwithstanding anything contained in any law or prison rules for the time being in force, no remission in any sentence shall be allowed to a person, who is convicted and sentenced for any offence under this Act."**

4. A careful reading of the Ordinance, on the other hand, provides no such bar on the grant of remission in the sentence of a person convicted for any offence thereunder.

5. It must be appreciated that the respondent does not claim any remission for the period of his sentence, he has already served, for the convictions under the ATA. He only claims that remissions under the law may be allowed to him for the period he is serving his sentence for the conviction under the Ordinance, and that too for the period after serving his sentence for the conviction under the ATA.

6. The learned Additional Advocate-General, KPK when confronted with the above claim of the respondent, explained that the law provides remissions in sentences awarded to a convict under Article 45 of the Constitution, the enabling provisions of The Code of Criminal Procedure, 1898 (Act No V of 1898) (**Cr.P.C.**), and the relevant The Khyber Pakhtunkhwa Prisons Rules, 2018 (**Rules**). He further candidly admitted that the respondent after serving his sentence under ATA would be entitled to the permissible remissions under the Rules and not under Article 45 of the Constitution in his sentence he serves for the conviction under the Ordinance. In this regard, he explained that, in view of the judgment passed by this Court in case of **Nazar Hussain v. The State (PLD 2020 SC 1021)**, the remissions under Article 45 of the Constitution could not be awarded to the respondent *qua* the sentence he serves for conviction under the Ordinance.

7. To have the latest position of the sentences and remissions earned by the respondent, a report from the Inspector General of Jails, Khyber Pakthunkhwa ("**report**") was sought. The report, recorded the required information as under:

"That the convict namely Habibullah S/O Abdullah (presently confined in Central Prison Haripur) was sentenced in case FIR No. 58 dated 08.02.2003 by the order of Anti-Terrorism Court, Mardan in the following cases:-

1. Under section 452-PPC r/w Section 6(b) of Anti-Terrorism Act (ATA) 1997 to 05 years RI with fine of Rs. 5,000/-
  2. Under Section 364-A, PPC r/w Section 6(b) ATA 1997 to 10 years imprisonment RI.
  3. Under Section 10(3) of the Offence of Zina (Enforcement of Haddood) Ordinance, 1979 to 20 years RI.
- All the above sentences were ordered to run concurrently with the benefit of section 382-B, Cr.P.C. and got finality upto the Honourable Apex Court.

Date of Sentence: 30-04-2003 w.e.f. 15.-02-2003.

<b>1. Labour Remission under Rule-204 KP Prison Rules-2018</b>	
2013 to 01-08-2020	467 days
<b>2. Annual Good Conduct Remission under Rule-211 KP Prison Rules-2018</b>	
2013-2020	150 Days
<b>3. I.G Prison Remission under Rule 216 of KPK Prison Rules-2018</b>	
30-05-2013	60 days
22-08-2014	60 Days
19-09-2017	60 Days
14-11-2014	60 Days
03-06-2019	60 Days
27-07-2020	60 Days
<b>Provincial Government Remission under Rule 216 of KP Prison Rules-2018</b>	
09-07-2013	60 Days
20-03-2014	60 Days
09-09-2016	60 Days
03-06-2019	60 Days
16-03-2020	60 Days
Probable date of release after earning above remissions	27-07-2020 (including Fine)

8. We agree with the contention of the worthy Additional Advocate-General, KPK that this Court in the case of **Nazar Hussain** (*Supra*), while endorsing the Government policy relating to "Grant of Remission to Convicts" of August 2009 has confirmed, *inter alia*,

that remission granted under Article 45 of the Constitution would not be extended to convicts serving sentence under section 10 of the Ordinance. This being so, we note that the High Court in its impugned judgment has erred to the extent of the grant of remission to the respondent under Article 45 of the Constitution. In so far as the remissions permissible under the Rules, the respondent is entitled to be granted the same, but after serving his sentence for the conviction under the ATA.

9. Accordingly, for the reasons stated hereinabove, this petition is converted into appeal and partly allowed. The impugned judgment of the High Court is modified by allowing the remissions to the respondent permissible under the Rules, while denying him the remissions under 45 of the Constitution. In case the petitioner has served out his sentence given the remissions, so granted by this Court, he be released from the jail forthwith, if not required to be detained in connection with any other case.

Judge

Judge

Judge

Islamabad  
30.09.2020  
Approved for reporting.  
Arif