

JUDGMENT SHEET

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Writ Petition No.1006-A of 2019

JUDGMENT

Date of hearing.....20.05.2020.....

Petitioner(s) ...(Muhammad Khalid Khan) by Mr. Muhammad Asjad Pervez Abbasi, Advocate,

Respondent(s)...(Inspector General of Prisons, Khyber Pakhtunkhwa and another) by Raja Muhammad Zubair, AAG alongwith Tariq Sheikh Law Officer, Central Prison, Haripur.....

AHMAD ALI, J.- Petitioner, Muhammad

Khalid Khan son of Fazal-ur-Rehman Khan invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, with the following prayer:-

“It is, therefore, humbly prayed that on acceptance of instant writ petition, respondents may graciously be directed to grant permission to the petitioner available under the Prison Act 1984 or ordinary and special remission for which other accused are entitled and direction be issued to the respondents to grant remission which is being granted by the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan 1973 on

special event and, any other relief which this honourable Court deems fit and necessary, may also be granted to the petitioner.”

2. In essence, the grievance of the petitioner in the instant writ petition is that the respondents without any jurisdiction have denied to extend the remissions to the petitioner.

3. The respondents in their comments repudiated the assertions made in the writ petition and contended that under section 21-F of the Anti-Terrorism Act (Amendment) Ordinance, 2001, the petitioner is not entitled to any kind of remission.

4. Arguments heard and record perused.

5. Perusal of the record reveals that petitioner is serving his sentence of life imprisonment in Central Prison, Haripur, awarded to him by the Judge, Anti-Terrorism Court-II, Rawalpindi, in case F.I.R No.240 dated 27.05.2001 under section 365-A, 109 and 7-ATA, registered in Police Station Air Port, Rawalpindi vide judgment dated 04.06.2002. The conviction and sentence of the petitioner were maintained by the learned Lahore High Court and the appeal of the petitioner was dismissed by the august Supreme Court of Pakistan vide judgment dated

06.06.2009. The precise question involved in the instant writ petition is whether the petitioner is entitled to the remissions and whether the provisions of Section 21-F inserted through Anti-Terrorism (Amendment) Ordinance, 2001, are applicable to the case of the petitioner or otherwise. Section 21-F of the Act *ibid* being relevant is reproduced below for convenience:-

“21-F. Remissions.---Notwithstanding anything contained in any law or prison rules or the time being in force, no remission in any sentence shall be allowed to a person, other than a child, who is convicted and sentenced for any offence under this Act, unless granted by the Government.”

The said amendment Ordinance was promulgated through Ordinance No.XXIX of 2001, which was published in the Gazette of Pakistan, Extraordinary, Part-I, dated 15th August, 2001. The case was registered against the petitioner vide F.I.R dated 27.05.2001, prior to the promulgation of the amended ordinance. Thus, the registration of F.I.R is prior in time, as such, the provisions of amended ordinance cannot be applied to the case of the petitioner retrospectively but the law existed at the time of registration of F.I.R would certainly be applicable to the case of the petitioner and he would be entitled for

the remissions. In this regard, reference can be made to case titled '*Muhammad Nawaz alias Asif alias Phallo Vs. The Superintendent Central Jail Gujranwala and others*' (2016 P.Cr.L.J 989).

6. Besides, this Court has already decided similar petitions i.e. W.P No.516-A/2019, W.P No.1161-A/2017, W.P No.185-B/2015, W.P No.763-P/2016 and COC No.12-A/2019, thus, this Court has to follow its earlier decisions, particularly, when similar question of law has been decided therein.

7. For the reasons mentioned hereinabove, the present writ petition is allowed and the respondents are directed to grant remissions to the petitioner admissible to him under the law prevailing at the time of registration of the case.

Announced.

Dt.20.05.2020.

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M.Saleem/*

(DB) Mr. Justice Shakeel Ahmad and Mr. Justice Ahmad Ali