JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD

CASE NO. : W.P. NO.2131-2022

Muhammad Imran

Vs.

Assistant Director, Reclamation and proclamation, ICT, Islamabad etc.

Petitioner by	:	**Mr. Sajjad Haider Malik, Advocate**
Respondents by	:	**Mr. Zohaib Hassan Gondal, State Counsel** **Ms. Sania Hameed Pasha, A.C. Saddar, Islamabad.**
Date of decision	:	**24.08.2022**

AAMER FAROOQ J. The petitioner faced trial in case FIR No.178 dated 26.07.2010 under section 302 PPC registered with P.S. Golra, Islamabad; he was convicted vide judgment dated 19.01.2015 and was awarded life imprisonment under section 302-B PPC. He was also directed under section 544-A Cr.P.C. to pay compensation to legal heirs of deceased in the sum of Rs.2,00,000/- and in case of default, to further undergo simple imprisonment for six months; the petitioner was also extended benefit of section 382-B Cr.P.C. The petitioner was arrested pursuant to the FIR and remained behind the bars ever since; he is serving the sentence in Central Jail, Adiyala, Rawalpindi and the Jail Superintendent, Central Jail Adiyala, Rawalpindi, under Good Conduct Prisoners Probational Release Act, 1926, recommended his case for release on parole. After fulfillment of codal formalities, respondent No.2 rejected the proposal for release on parole, which is the subject matter of instant petition.

2. Learned counsel for the petitioner *inter alia* contended that the reasons, which prevailed with respondent No.2 in refusal to release the petitioner on parole, are extraneous and against the norms of justice. It was submitted that no cogent reasons have been given for rejection of the case of the petitioner to be released on parole and impugned order is untenable and without lawful authority.

3. Learned State Counsel *inter alia* contended that it is the discretion of respondent No.2 to either accept or refuse the request for parole and it is not as of right, which request, was turned down by respondent No.2.

4. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The factual aspect of the controversy is mentioned hereinabove hence needs not be reproduced.

6. The Superintendent Central Jail Adiyala, Rawalpindi recommended the case of the petitioner for release on parole under Good Conduct Prisoners Probational Release Act, 1926 (the Act). The matter was referred to respondent No.2, being the competent authority for Islamabad Capital Territory; the opinion of District Attorney was sought and after obtaining other information, recommendation/request was turned down vide orders dated 27.04.2022 & 17.05.2022.

7. The examination of impugned order shows that it has been observed by respondents No.1 & 2 that release on probation/parole is not a right and since the petitioner is serving life sentence, he ought not to be released, as he has killed his wife and may harm someone else too. In this regard, consent of complainant in the criminal case was also sought and opportunity was afforded for compromise/reconciliation.

8. Section 2 of the Act empowers the Government that 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, he may be released from prison by granting license spelling out terms and conditions regarding the supervision or authority of a servant of the state or other person who is willing to take charge of him. Under section 3 of the Act, license has to operate and remain enforced under the date on which the person released would, in the execution of the order of warrant authorizing his imprisonment, has

been discharged from prison had he not been released on license, or until the license is revoked, whichever is sooner. Under section 4 of the Act, the period, during which a person is absent from prison but has been released on license, shall be reckoned as the period, for which, he was imprisoned and serving sentence. The license shall be in such form as prescribed by the provincial government, however, under section 6, license may be revoked by the concerned/competent authority. The relevant provision of law, in this behalf, are sections 2, 3, 4, 5 & 6, which are reproduced 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 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 talk charge of him.*
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> *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 VIII of the Code of Criminal Procedure, 1898.*
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> ***3. Period for which licence is to be force.****—A licence granted under the provisions of section 2 shall be in force until the date on which the person released would, in the execution of the order of the warrant authorizing his imprisonment, has been discharged from prison had he not been released on licence, or until the licence is revoked, whichever is sooner.*
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> ***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.*
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> ***5. For of licence.****—A licence 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.*
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> ***6. Power to revoke licence****.—(1) The [Provincial Government] may at any time revoke a licence granted under the provisions of section 2.*

> *(2) An order of revocation passed under the provisions of sub-section (1) shall specify the date with effect from which the licence shall cease to be in force and shall be served in such manner as the [Provincial Government] may be rules prescribe, upon the person whose licence has been revoked."*

Section 8 of the Act empowers the Provincial Government to make rules, which accordingly, were framed as Good Conduct Prisoners Probational Release Rules, 1927 (the Rules); in this behalf, Rule 7 of the Rules prescribes the procedure or the cases of prisoners who are eligible for release on parole under Rule 9 of the Rules. The ways, under which, the matter shall be taken up for parole, are on the application of the prisoner, on the application of the relatives or friends of the prisoner, on the recommendation of the Superintendent of the Jail and by Assistant Director on his visit to jails. Rule 8 ibid empowers the Superintendent of Jail to prepare the rolls of the prisoners to be considered for release on parole and forwarded it to the Assistant Director. Rule 9 provides that the rolls received from the Superintendents of jails shall be examined in the office of the Assistant Director and enquiry letter shall be issued to the Superintendents on the basis thereof.

9. The concept of parole, as provided in Black's Law Dictionary, was defined and explained by this Court in case reported as 'Asad Javed Vs. Federation of Pakistan' (PLD 2022 Islamabad 206) in the following manner:-

> ***"**Parole" is explained in Black's Law Dictionary in the following terms:--*
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> > *"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."*
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> *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 v. 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 v. 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"

In case reported as 'Muhammad Nawaz and another Vs. The State' (1987 SCMR 1399), about the concept of 'parole', as provided in the Act, the Hon'ble Supreme Court observed as follows:-

'These provisions have been promulgated by the Provincial Government for the benefit of those prisoners from whose good conduct and behaviour in the prison it could be presumed that they are likely to abstain from crime and lead a useful as well as industrious life if they were to be released from the prison. If such an inference could be drawn from the antecedents of a prisoner then the Provincial Government issues a licence permitting him to be released from the prison on the condition that he would be placed under the supervision of someone. Then the period during which such a prisoner is absent from the prison under a licence is to be reckoned as part of the period of imprisonment to which lie was sentenced. There certainly appears wisdom in the enactment of these provisions because these are for the benefit of a prisoner who has shown signs of ethical or moral improvement in his character while in the prison and due to that is being release from the prison on parole. It is in fact an inducement or encouragement to him to abstain from crime in the future and to lead a useful and industrious life. Apparently these provisions had not been brought to the notice of the Lahore High Court, Lahore which probably mistakenly might have been under the impression that the petitioners had been released on bail and it was under this impression that direction was given that they should now be arrested forthwith and sent to the prison.

In the light of these provisions we convert this petition into an appeal to this extent only. The petition is barred by 22 days. In the circumstances the delay is condoned and it is hereby directed that if the petitioners had been released on parole and they have not violated any conditions of the parole then the period spent out by them of the prison should be counted towards their sentence and that they need not be arrested in order to be seat to the prison again. The appeal is accepted to this extent"

10. In the instant case, it seems that nothing has been taken into account and no reason has been mentioned by respondent No.2 in turning down the request/recommendation for release of petitioner on parole. There is nothing adverse against the petitioner on record, which led respondents to exercise discretion against him. An effort was made

for reconciliation of petitioner with complainant, which was superfluous, as the referred exercise does not find mention in either the Act or the Rules. Respondents had to satisfy on the basis of rolls of register in the jail and upon inquiry made from the competent authority/Superintendent Central Jail that petitioner shall abstain from further committing the offence and would be beneficial to the society.

11. There is no cavil with the fact that it is the prerogative/discretion of respondents No.1 & 2 i.e. Deputy Commissioner to approve or reject the request of parole but said discretion has to be exercised in a reasonable or structured manner; no law permits absolute exercise of discretion. The parameters for exercise of discretion, in the instant matter, have already been provided under section 2 of the Act and the Rules framed there-under and it seems that nothing has been done by respondents No.1 & 2 in discharge of that obligation. In view of above observations, impugned order is untenable and is liable to be set aside.

12. For the above reasons, instant petition is allowed and impugned order dated 17.05.2022 is set aside; consequently, the matter of release of petitioner on parole, shall be deemed to be pending and decided in accordance with above mentioned law and the observations made hereinabove expeditiously preferably within a week from the date of receipt of this judgment.

(AAMER FAROOQ)
JUDGE

Approved for reporting

Zawar