IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Salahuddin Panhwar
Justice Ishtiaq Ibrahim

Criminal Appeal No. 281/2023
(Against the judgment/order dated 4.12.2018
passed by the Peshawar High Court, Mingora Bench
(Dar-ul-Qaza), Swat in Crl. A. No. 206-M/2017)

Gul Nawab — Appellant(s)

Versus

The State and another — Respondent(s)

For the Appellant(s): Mr. Zafar Hayat, ASC
a/w appellant in-person

For the Respondent(s): Nemo

For the State: Mr. Danial Khan, Addl.AG, KPK
Mr. Amjad Ali Khan, Secretary, Home & Tribal Affairs Deptt., KPK
Mr. Rehan Gul Khattak, I.G. Prisons
Mr. Fazal Qayum, D.S. Home Deptt.
Mr. Atta Muhammad, L.O. Prisons Deptt.

Assisted by: Mr. Aqib Aman, Research Officer,
Ms. Tayyaba Munir, Messrs M. Qasim Najam & Subhan Malik, Law Clerks

Date of Hearing: 21.10.2026

ORDER

Muhammad Hashim Khan Kakar, J. This criminal appeal, by leave of the Court, is directed against the judgment rendered by the Peshawar High Court, Mingora Bench (Dar-ul-Qaza), Swat, whereby the conviction and sentence of life imprisonment awarded to the appellant, Gul Nawab, under section 302(b) of the Pakistan Penal Code **(PPC)** by the Sessions Judge/Zilla Qazi Shangla, Camp Court at Swat, were maintained, and the connected revision petition for enhancement of sentence filed by the complainant was dismissed.

2. The narrative of the prosecution, as unfolding from the record, is that on 28.10.2003 at 18:15 hours, the complainant, Khaiberin (PW-6), reported to the local police at Police Station Alpurai that on the eventful

day at about 15:00 hours, while he was busy cutting maize crop, the appellant, Gul Nawab, started a discussion with his brother, Master, who was sitting on the roof of his house, and suddenly fired at him with a Kalashnikov, resulting in his instantaneous death on the spot. The incident was witnessed by the complainant (PW-6) and the wife of the deceased, Mst. Akhtar Bacha (PW-5). Following a protracted period of abscondence spanning roughly 12 years, the appellant was arrested on 22.05.2015, resulting in his trial and conviction.

3. When this criminal appeal was taken up for hearing on merits, an examination of the judicial record and jail report of the appellant revealed a matter that caught our attention: the appellant, having been awarded the substantive sentence of imprisonment for life by the High Court in a case of premeditated murder under section 302(b) PPC, was discovered to be released from Central Prison, Mardan on 10.05.2025 after undergoing an actual, physical incarceration of 9 years, 11 months and 16 days while granting him with an extra, accumulated remission period of 15 years, 6 months and 14 days. As per jail report dated 09.10.2026 submitted by the Superintendent, Central Prison, Mardan, the details regarding appellant's period in jail is as follows:

1	Name of Convict petitioner with parentage	Gul Nawab S/o Sherin Zada
2	Sentence served out	09 Years 11 Months 16 Days
3	Sentence remained	Nil
4	Remission earned so far	15 Years 06 Months 14 Days
5	If released, then mention his date of release	10.05.2025
6	Date of arrest	25.05.2015
7	In case of confined in jail, then his probable date of release	Release on expiry of his sentence along with fine.

In addressing the legality of remissions, pre-sentence custody benefits, and the limits of executive clemency for heinous offenses like murder under Chapter XVI of the PPC, our jurisprudence is well-settled through landmark pronouncements. The binding principles regarding the limits of executive clemency, crimes which are not heinous, and the mandatory minimum period of substantive impriosnment for lifers were settled by a larger Bench of this Court in the case of *Nazar Hussain v. State* (PLD 2010 SC 1021) and subsequently reaffirmed in the case of *Government of Khyber Pakhtunkhwa v. Wali Khan* (PLD 2022 SC 253). In

Nazar Hussain's case, this Court deeply examined the law relating to remissions along with the relevant policies and held that while the President's constitutional power under Article 45 of the Constitution of the Islamic Republic of Pakistan **(the 'Constitution')** is unfettered by subordinate legislation, the exclusion of convicts involved in heinous offenses such as murder, terrorism, dacoity, and kidnapping etc. from receiving general or special remissions is entirely valid, based on an intelligible differentia, and fully compliant with Article 25 of the Constitution. Similarly, while referring to rules 140 and 217 of the Prisons Rules, this Court authoritatively observed that every life prisoner shall undergo a minimum of 15 years of substantive sentence of imprisonment. Furthermore, the stipulation with respect to section 401 of the Code of Criminal Procedure **(Cr.P.C)** was also highlighted whereby the cases of lifers are required to be referred to the Provincial Government for consideration '*after*' they have served out 15 years of substantive imprisonment. In *Wali Khan's* case, this Court emphasized that notifications granting remissions under Article 45 of the Constitution, which explicitly exclude convicts of murder etc., such prisoners cannot claim remissions against such statutory and policy-based exceptions. Expounding upon these principles, we are of the firm view that while the President's power under Article 45 of the Constitution to grant remissions is absolute and can override subordinate prison rules, executive and prison authorities possess no independent statutory or administrative competence to unilaterally or mechanically add routine/general remissions to truncate a life sentence below the mandatory minimum threshold of 15 years of actual, substantive imprisonment. The jail authorities cannot usurp constitutional powers, and any premature release of a life convict that bypasses the 15-year actual custody threshold by means of unauthorized administrative remissions is a nullity in law, rendering such release *void ab initio* and legally ineffective.

4. In pursuance of Court's notice, Mr. Amjad Ali Khan (Additional Secretary, Home and Tribal Affairs Department, Khyber Pakhtunkhwa), Mr. Rehan Gul Khattak (Inspector General of Prisons, Khyber Pakhtunkhwa) and Mr. Danial Khan (Additional Advocate General, Khyber Pakhtunkhwa) appeared before the court and disclosed that the Provincial Government had omitted sub-rule (ii) of rule 217 from the Khyber Pakhtunkhwa Prisons Rules, 2018 (which had previously barred

shortening a life sentence to less than 15 years), asserting that its omission read with the mandated duty to discharge prisoners under rule 220, lawfully entitled them to release the convict once the aggregate computation reached 25 years. When directly confronted by the Bench regarding how subordinate rules or omissions therein could override the parent statute and judgments of this Court, the authorities' defensive posture collapsed. In open Court they explicitly admitted that the Khyber Pakhtunkhwa Prisons Rules, 2018 had not been framed in conformity with the Prisons Act, 1894, and submitted a written report on the same day, acknowledging that the release of appellant was contrary to the existing law. This was accompanied by comprehensive reports and sworn affidavits, formally conceding that section 59(5) of the Prisons Act, 1894 imposes an inviolable statutory restriction of 15 years' actual imprisonment, that the omission in rule 217 was an unsustainable administrative fallacy, and that the release of appellant was illegal and *ultra vires*.

5. Under the Prisons Act, 1894 (Act IX of 1894), section 3(5) defines the "*remission system*" as rules regulating the award of marks and the consequent shortening of sentences. Section 59 confers rule-making powers upon the Provincial Government, but sub-section (5) thereof sets a clear statutory boundary that through grant of remissions a sentence of imprisonment for life is not shortened to a period of imprisonment less than 15 years, such provision is reproduced as under:

> "**59. Power to make rules.** The Provincial Government may make rules consistent with this Act-
>
> (5) for the award of marks and the shortening of sentences; so however, that a sentence of imprisonment for life is not shortened to a period of imprisonment less than 15 years;"

This legislative floor was inserted by the Parliament via Ordinance XII of 1972. It forms an unyielding statutory command: no system of marks or administrative sentence-shortening can ever reduce a judicial sentence of imprisonment for life to an actual custody period of less than fifteen (15) years.

6. Under the Pakistan Prisons Rules, 1978, which were framed in pursuance of Prisons Act, 1894, the statutory mandate of section 59(5) was correctly reflected in rule 217(ii), which is as follows:

> "Rule 217. (ii) Remission, both ordinary and special, earned by a lifer shall be so much that a sentence of imprisonment for life is not shortened to a period of imprisonment less than fifteen years."

However, when the Government of Khyber Pakhtunkhwa notified the Khyber Pakhtunkhwa Prisons Rules, 2018, it omitted sub-rule (ii) from rule 217, retaining only the general one-third ceiling under sub-rule (i).

7. The first proposition is whether new rules framed by the executive authorities and specifically the omission of sub-rule(ii) can lawfully circumvent or operate beyond the scope of the parent statute, when that parent statute expressly commands that a sentence shall not be shortened below 15 years. It is a well settled principle of constitutional and administrative law that a delegate cannot exceed the boundaries marked out by the primary statute. The statutory vehicle cannot outrun the engine of its parent Act. Where a parent statute imposes a negative command or an express limitation upon the rule-making power, the executive has no competence to bypass, dilute, or omit that restriction through subordinate legislation. This Court has repeatedly enforced this limitation against administrative overreach, in *Shaukat Mahmood v. Election Commission of Pakistan* (PLD 2024 SC 653), this Court held:

> "Rules have to be consistent with the statute under which they are framed and with all that is deemed to be incorporated in the statute. Rule making authority cannot clothe itself with power which the statute itself does not give. Since the Rules are the wheels on which the hypothetical vehicle of the Act runs, it is tantamount that both work in harmony; otherwise, the Act would not be able to serve the purpose for which it was passed by the legislature... [T]he rule making body cannot frame rules in conflict with, or in derogation of, the substantive provisions of the law or statute, under which the rules are framed. Rules cannot go beyond the scope of the Act. Thus, we are inclined to hold that no rule can be made which is inconsistent with the parent statute... and the provisions of these rules or regulations, as the case may be, to the extent of their inconsistency with the parent statute or the rules shall be inoperative."

This omission was an administrative fallacy. An executive rule-making authority cannot repeal an Act of Parliament by omitting a clause from its rules. Section 59(5) of the Prisons Act, 1894 remains valid, binding, and controlling law across Federation. Any rule framed under section 59 must be construed as incorporating the 15-year statutory limit. Even otherwise, rule 140(1) of the Khyber Pakhtunkhwa Prisons Rules, 2018 themselves expressly reiterate the 15-year substantive imprisonment requirement and, therefore, the omission in rule 217 contradicts within itself. In *Nazar Hussain's* case, this Court has observed regarding rule 140, which is the same in both the Pakistan

Prison Rules, 1978 as well as Khyber Pakhtunkhwa Prisons Rules, 2018, as under:

> "29. ...Rule 140 lays down that imprisonment for life will mean 25 years' rigorous imprisonment and every life prisoner shall undergo a minimum of 15 years of substantive sentence of imprisonment. It also stipulates that the cases of lifers shall be referred to the Provincial Government after they have served out 15 years of substantive imprisonment for consideration with reference to section 401 of the Code of Criminal Procedure. ...The law on remissions both in Pakistan and India puts a limit on the total remissions that can be availed of by a convict undergoing life sentence."

8. Additionally, in the initial para-wise comments submitted on 20.10.2026, the authorities stated that the 5-year special remission granted by President in exercise of powers under Article 45 of Constitution through Federal Ministry of Interior Notification No.8/01/2018-Prisons dated 12.08.2022 operated as constitutional remissions for which the appellant was entitled. The scope of presidential remissions under Article 45 of the Constitution was evaluated by a larger Bench of this Court in *Nazar Hussain's* case (supra). This Court examined the National Remission policy formulated by the Ministry of Interior in consultation with the Law and Justice Division and the Chief Justice of Pakistan (vide letter No. D.2792/2009-DS (Admn.) dated August, 2009). The core relevant text of the policy provides:

> "i. Special remission of 90 days to the prisoners convicted for life imprisonment except those convicted for murder, espionage, anti-State activities, sectarianism, Zina (Sec.10 Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (also under Sec. 377, P.P.C.), robbery (Sec. 394, P.P.C), dacoity (Sec. 395-396 PPC), kidnapping/abduction (Sec. 364-A and 365-A), and terrorist acts (as defined in the Anti-Terrorism (Second Amendment) Ordinance, 1999 (No. XIII of 1999).
>
> ii. Special remission for 45 days to all other convicts except the condemned prisoners and also except those convicted for murder, espionage, subversion, anti-State activities, terrorist act...
>
> iii. Special remission at sub-paras. i & ii above will be admissible provided that the convicts have undergone 2/3rd of their substantive sentence of imprisonment."

The constitutional clemency power framed under Article 45 of the Constitution of the Islamic Republic of Pakistan, 1973, represents an unfettered power vested in the Head of State. Under established canons of constitutional construction, where the plain language of a constitutional provision is clear, and unambiguous, it operates as an absolute grant of authority that cannot be abridged, restricted, or curtailed by subordinate legislations, administrative notifications, executive policy guidelines, or prison rules. The doctrine of constitutional supremacy dictates that whenever a conflict arises between a primary constitutional mandate and subordinate instruments, such as national

policy guidelines or statutory prison codes, the constitutional provision must prevail. Article 45 grants the President unfettered power to remit any sentence passed by any court, tribunal, or authority. Where a presidential notification under Article 45 extending special remissions does not explicitly exclude convicts serving life imprisonment for murder, subordinate statutory laws or policies such as National Remission Policy, cannot read such an exclusion into the presidential dispensation or refuse to extend the benefit to that category of convicts. The underlying intent of presidential clemency globally and under Pakistan's constitutional architecture is, rehabilitative, and corrective. It offers a meaningful incentive for prisoners to reform while recognizing positive behavioral transformation in penal institutions. Excluding offences from presidential clemency when the Article from which this power is derived itself contains no such exclusion would frustrate the core objective of Article 45. Regarding the interplay with executive advice under the Rules of Business, Schedule V-B in item number 25 lists "*Grants of pardons, reprieves and respites and revision suspension or commutation of any sentence...",* omitting the specific statutory term "**remit**" present in Article 45. This shows the distinct nature of the President's discretionary authority to grant remissions directly under Article 45 and clarifying that it is not in any way under executive domain and instead is a direct power given to the President.

9. Having said this a critical issue arises – as happened in the case at hand - when the presidential remissions and general remissions cumulatively exceed the statutory minimum sentence threshold of 15-year physical imprisonment required for life convicts under jail codes. As observed by the Federal Constitutional Court in case number *F.C.P.L.A.833/2025, Suba Khan v. Superintendent Central Prison Mach*:

> *"In the case of a prisoner sentenced to imprisonment for life, Rule 217(ii) unequivocally mandates that the cumulative effect of all remissions shall not reduce the actual period of imprisonment to less than fifteen years."*

The presidential remission emanate directly from constitution and therefore remains inviolable and cannot be touched, cut, or reduced. As a result to ensure the minimum 15 year incarceration threshold for a lifer we are left with the general remissions which needs to be assessed and adjusted to ensure compliance with minimum statutory imprisonment threshold. When a situation arises where the aggregate of special remissions granted by the President exercising powers under

Article 45 of the Constitution and general remissions granted under subordinate prison rules decreases the sentence from 15 year incarceration threshold then the general remission must be calculated downward to the exact extent necessary so that, when combined with the unalterable special presidential remission, the total actual time served by the convict does not fall below the mandatory 15-year threshold. In the case at hand the breakdown of the sentences awarded to the appellant are as below:

S#	Type of Remissions	Under Law	Duration
1.	Labour Remission	Rule 208 KP Prison Rules 2018	2 years 1 month 27 days
2.	Good Conduct	Rule 211 KP Prison Rules 2018	7 months and 15 days
3.	Provincial Govt. Special Remissions	Rule 216 KP Prison Rules 2018	9 months
4.	Superintendent Special Remissions	Rule 216 KP Prison Rules 2018	6 months
5.	IG Prisons Special Remission	Rule 216 KP Prison Rules 2018	1 year
6.	Blood Special Remission	Rule 212 KP Prison Rules 2018	4 months
7.	Education Remission	Rule 215 KP Prison Rules 2018	5 years 2 months 2 days
8.	Presidential Special Remission on Golden Jubilee of Independence	Article 45 of Constitution	5 years

In the light of what we have discussed above, we are of the view that we cannot withdraw the special presidential remissions of 5 years extended on the special occasion of 75th anniversary of independence however to maintain the minimum 15 year threshold for lifer we consider it appropriate to reduce the general remission given under jail rules as they are in exercise of the executive powers under KP Prison Rules 2018. Item number 1-5 in the above given table makes a total period of 5 years and 12 days and are general remissions given under prison rules. These remissions if cut down can make up the total threshold to be of minimum 15 years incarceration and not less.

10. Closely connected with the issue discussed above, there is another matter of no less significance that calls for our attention. It concerns a

recurring administrative anomaly in the execution of sentences and in the redressal of grievances arising from it. The law on this subject is not left to the discretion of executive or prison authorities. It is governed by express statutory command. Section 400 Cr.P.C. lays down a clear mandate. Once a sentence has been executed, a complete account of the imprisonment the convict has actually undergone must be formally returned to the Court, together with a full and itemized statement of every remission granted to him. In contemplation of law, a sentence cannot be treated as discharged merely because the convict has walked out of the prison gates. The original warrant of conviction must be formally returned to the Court that issued it, with an endorsement certifying that the sentence has been executed completely and lawfully. This requirement is neither an empty formality nor a matter of clerical routine. It is the statutory mechanism by which the Court keeps oversight of the fate of its own sentence. It ensures that a punishment awarded after due judicial process is not diluted, curtailed or defeated in course of its execution.

11. The responsibility, however, does not rest with the executing authorities alone. The Courts themselves are equally obliged to enforce the mandatory requirements of section 400 Cr.P.C. strictly and to see that they are fully complied with. The Courts must remain vigilant that sentences awarded to convicts are carried out in full, in strict conformity with both the letter and the spirit of the law. Administrative laxity, indifference or unauthorized shortcuts must not be allowed to erode the finality and sanctity of judicial verdicts. A sentence pronounced by a Court of law and not faithfully executed undermines the authority of the Court, defeats the ends of justice and erodes public confidence in the administration of criminal justice.

12. For the foregoing reasons:

a. The appellant's release from jail after about nine years is declared to be without lawful authority. A convict sentenced to imprisonment for life shall remain in actual custody for at least fifteen years, including the period counted under section 382-B Cr.P.C.;

b. The appellant shall be taken into custody forthwith and committed to jail to serve the remainder of his sentence. The period he spent at liberty shall not be counted towards his

sentence. The Trial Court shall issue a fresh warrant for this purpose, and the District Police Officer shall ensure its compliance;

c. All Superintendents of districts and central jails/prisons shall return the warrant of every convict's fully executed sentence to the Trial Court under section 400 Cr.P.C. with an endorsement stating the manner of execution as set out in paragraph-9 above;

d. The Secretary, Home and Tribal Affairs Department, and the Inspector General of Prisons, Khyber Pakhtunkhwa, having committed in writing to enforce the statute floor of section 59(5) of the Prisons Act, 1894, are directed to implement their administrative instructions dated 21.10.2026 across all jails/prisons in the province; and,

e. The office shall send copies of this order to the Registrars of all the High Courts for circulation to the Sessions Courts and to the Inspectors General of Prisons of all provinces and the Islamabad Capital Territory for compliance.

13. The appeal be relisted for hearing on merits after ten days at the Principal Seat, Islamabad. This order is supplemental to our order of even date.

Judge

Judge

Judge

PESHAWAR
(Aqib, R.O., Tayyaba, Qasim & Subhan, Law Clerks)
21.10.2026

Approved for Reporting