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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 3399/2019**

OMBIR SINGH

..... Petitioner

Through: Mr Sarthak Maggon, Advocate.

versus

THE STATE

..... Respondent

Through: Mr Sanjay Lao, ASC with Mr
Karanjeet Sharma, Advocate for
respondent with Insp. K.K. Mishra,
PS Uttam Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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06.12.2019

CRL.M.A. 42007/2019

1. Allowed, subject to all just exceptions.

CRL.M.A. 42004/2019, CRL.M.A. 42005/2019 & CRL.M.A. 42006/2019

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

“a) Allow the present petition, in favour of the Petitioner by passing appropriate orders/ directions as well as issuance of writs in the nature of mandamus or certiorari or any other applicable writ and/ or directions or order to the Respondent for allowing pre-mature release of the Petitioner on the sentence already undergone by the Petitioner due to exceptional conduct displayed by the Petitioner by setting aside the minutes of the SRB dated 19.9.2019 for the SRB meeting held

on 17.09.2019 denying pre-mature release to the Petitioner.”

3. The petitioner seeks to impugn the minutes of the Sentencing Review Board (SRB) dated 19.09.2019 in respect to the meeting that was stated to be held on 17.09.2019. According to the petitioner, the petitioner’s case for premature release was considered and rejected by SRB.

4. The petitioner does not have a copy of the said minutes. However, the learned counsel appearing for the petitioner insists that the present petition be heard in absence of the same. He submits that the conduct of the petitioner in jail has been immaculate. The petitioner has also annexed certificates of conduct, as awarded to the petitioner. This includes a certificate dated 26.01.2015. The petition also discloses that the petitioner has acquired an additional qualification – diploma in computer application. It is also stated that he has been released on furlough on several occasions and there is no allegation that he has misused the said liberty. The petitioner submits that in view of the good conduct of the petitioner in jail and in view of his acquiring a valuable skill, he is entitled to a pre-mature release.

5. The petitioner was sentenced to serve life imprisonment for an offence under Section 376 of the IPC. He was also directed to pay a fine of ₹10,000/-. In addition, the petitioner was also convicted of offences under Section 324, 325 and 342 of the IPC and sentenced to serve three years, one and a half years and one year for those offences respectively. The petitioner claims to have undergone approximately sixteen years of custody and also earned remission of approximately four years. Thus, the petitioner claims that he has served a sentence of twenty years and thus, is entitled to be

considered for remission of the remaining sentence.

6. The learned counsel appearing for the petitioner states that the petitioner has been residing with his wife, who had deposed against him in the trial and he also has two children from her. The same also ought to be considered by SRB.

7. There is no dispute that SRB has considered the petitioner's case and rejected the same. It is well settled that the decision of the SRB is a subjective decision and they are required to take into account several factors, including the gravity of the offence, while considering the convict's application for a premature release.

8. In this case, the petitioner was convicted for the offence of raping a minor child. The judgment convicting the petitioner also indicates that the petitioner's conduct had been brutal towards the minor child, who was stated to be about twelve years of age. The right elbow of the child as well as the left hand of the child was fractured. The gynaecological examination of the minor victim revealed that posterior to the hymen, there was an injury which had turned blue and the same was suggestive of forced sexual intercourse.

9. Since good conduct in prison is not the only factor to be considered by SRB, directions for premature release of the petitioner cannot be issued.

10. As stated above, SRB is required to take into account the several factors including the gravity of the offence as noted above. Since the minutes of the SRB have not been annexed and the petitioner has filed the present petition without examining the same, this Court does not consider it apposite to entertain the present petition. The same is, accordingly, dismissed.

11. The respondent is directed to provide copy of the order of SRB to the petitioner within a period of one week from today. All rights of the petitioner are reserved.

VIBHU BAKHRU, J

DECEMBER 06, 2019
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