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

+ W.P.(CRL) 1557/2019

KAMAL TYAGI @TINU Petitioner
Through: Counsel (appearance not given).

versus

STATE OF NCT OF DELHI Respondent
Through: Ms Nandita Rao, ASC for State.
SI Ajay Kumar, PS IGI Airport.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **03.09.2019**

1. The petitioner has filed the present petition impugning an order dated 14.05.2019, whereby the petitioner's application seeking transfer to a semi-open jail was rejected. The impugned order indicates that the petitioner's application was considered by the Competent Authority. The Selection Committee had found that the petitioner was not fit to be lodged in a semi-open jail and had, thus, not recommended the petitioner's case on account of lack of trustworthiness.

2. Ms Rao, learned APP appearing for the State has handed over an affidavit enclosing therewith the nominal roll, which indicates that the petitioner has served fourteen years one month and three days as on 30.08.2019. It is stated that he had earned remission of two years eleven months and nineteen days. It is also seen that the petitioner has been granted furlough on fifteen occasions. During the aforesaid period of bail, parole and

furlough, no misconduct has been reported. Further, the petitioner's conduct within the jail has also been reported as satisfactory.

3. The affidavit filed on behalf of the State indicates that the petitioner's request has been rejected in terms of Sub-rule (iv)(g) of Rule 1323 of the Delhi Prison Rules, 2018. The said clause reads as under:-

“1323. Procedure for selection

* * *

(iv) The case of each prisoner shall be screened, keeping in view of the following factors, namely:-

* * *

(g) Whether he is fit for being trusted for confinement in semi-open prison.”

4. It is stated that the petitioner is not fit for being trusted for confinement in a semi-open prison, as the petitioner had killed his own lawyer and the same indicates breach of trust between the client and his lawyer.

5. The said reasoning is clearly unsustainable. Although there is a bond of trust between a client and a lawyer, the said bond is more biased towards the duties owed by the lawyer to his client. Further, the fact that a client has killed his lawyer does not, in any manner, indicate that the said person is more untrustworthy than a person who has been convicted of killing of his family members or any other person with whom he had commercial dealings. Clearly, it cannot be suggested that a convict who has murdered a person with whom he has any dealings may be treated as trustworthy but if

the victim is a lawyer, he must be treated as untrustworthy for the purposes of Sub-rule (iv)(g) of Rule 1323 of the said Rules. The crime under Section 302 of the Indian Penal Code, 1860 by its very nature is heinous, however, it is difficult to further read nuance in the said crime, as sought to be done by the Selection Committee.

6. In view of the above, the impugned order is set aside. The Selection Committee shall consider the petitioner's case uninfluenced by the relationship between the petitioner and the deceased victim.

7. Order *dasti* under signatures of the Court Master.

SEPTEMBER 03, 2019
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VIBHU BAKHRU, J