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

+ **W.P.(CRL) 2008/2019**

VIJAY KUMAR

..... Petitioner

Through: Mr Madhav Khurana, Mr Vignaraj
Pasayat and Ms Riya Arora,
Advocates.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Mr Rajesh Mahajan, ASC for State
with Ms Jyoti Babbar, Advocate.
SI Akash, PS Kapashera, New Delhi.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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04.12.2019

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.10.2018 whereby the Sentence Reviewing Board (SRB) has declined the petitioner's case for remission of his remaining sentence.
2. The petitioner was sentenced to undergo life imprisonment in a case arising out of FIR No. 168/2001, under Sections 302/386/511/34 of the IPC registered with PS Kapashera. He was convicted of kidnapping and murdering a twelve-year-old boy for extortion.
3. The petitioner has already undergone more than seventeen and a half years of actual custody. If the remission earned by the petitioner is added, the petitioner would have served incarceration for more than twenty-three and a half years. The petitioner has been released on parole on eight occasions and furlough on seventeen occasions. There is no allegation that

he has misused his release. It is also pointed out that the petitioner has now been placed in an open jail and thus, enjoys a considerable amount of freedom. There is no allegation that he has misused the same in any manner. Notwithstanding the above, the petitioner's case for remission of balance sentence has not found favour with SRB on the ground of perversity and the nature of the crime committed by him.

4. Undoubtedly, perversity and the nature of the crime is a vital consideration for determining whether the sentence awarded to a convict is required to be remitted. However, in addition to the above, there are other aspects that need to be considered as well. This includes the evaluation whether the convict can contribute to the society and whether his propensity to commit the crime has extinguished.

5. The learned counsel appearing for the petitioner has drawn the attention of this Court to several other cases where the nature of crime committed by the convicts was equally heinous. Nonetheless, SRB has recommended their case for remission of sentence, notwithstanding a negative report from the police.

6. Mr Mahajan, learned ASC counters the submissions made on behalf of the petitioners. He states that the scope of judicial review in regard to the recommendations of SRB is limited since the same is a subjective decision.

7. Indisputably, the scope of judicial review of the recommendations of SRB is restricted; however, it is not completely excluded even though the decision of SRB has an element of subjectivity.

8. In the present case, the learned counsel for the petitioner points out that there are other considerations that were required to be taken into account by SRB. It does not appear that the same have been considered. This Court also finds it difficult to reconcile the recommendations of SRB in the other cases where convicts had committed equally heinous and serious crimes and yet were recommended.

9. In the given circumstances, this Court considers it apposite that the petitioner's case be considered once again by SRB as and when it next convenes. SRB shall also consider other relevant factors in this case, including the fact that the petitioner has already been placed in an open jail and take an informed decision. It is so directed.

10. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

DECEMBER 04, 2019
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