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

+ **W.P.(CRL) 3344/2019**

ATBIR

..... Petitioner

Through: Ms Neha Kapoor and Mr Mohit
Bhadu, Advocates.

versus

STATE

..... Respondent

Through: Mr Rahul Mehra, Standing Counsel
with Mr Jamal Akhtar, Mr Amanpreet
Singh and Mr Anand Thumbayil,
Advocates for State with SI Mohd.
Kafeel, PS Mukherjee Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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28.02.2020

CRL.M.A. 41475/2019

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner has filed the present petition, *inter alia*, praying that directions be issued to the respondent to consider the name of the petitioner for shifting him to a semi open jail.

4. By an order dated 27.09.2004, the petitioner was awarded capital punishment in the case arising out of FIR No. 24/1996 under Sections 302/34 of the IPC, registered with PS Mukherjee Nagar. The petitioner was convicted for committing three murders, including the murder of his step mother, step brother and step sister. The petitioner's appeal against his

conviction and order of sentence was rejected by this Court by an order dated 13.01.2006. Thereafter, the petitioner preferred a special leave petition (SLP (Crl.) No. 870/2006) before the Supreme Court. The same was dismissed on 09.08.2010. Thereafter, the petitioner filed a Review Petition (bearing R.P. (Crl.) No. 518/2010) before the Supreme Court; however, the same was also dismissed by an order dated 02.03.2011.

5. Subsequently, the petitioner filed a mercy petition before the President of India and in exercise of his powers under Article 72 of the Constitution of India, the Hon'ble President commuted the petitioner's sentence from capital punishment to life imprisonment, *albeit*, with a rider *"that the prisoner shall remain in prison for the whole of the remainder of his natural life without parole and there shall be no remission of the term of imprisonment."*

6. The petitioner claims that the petitioner is entitled to be shifted to a semi open jail in terms of Rule 1321 of the Delhi Prison Rules, 2018 (hereafter 'the Rules'). Rule 1321 of the Rules, reads as under: -

"1321. Criteria for selection

- (i) The following convicted prisoners may be selected for confinement in semi open prison who –
 - a) are sentenced for 3 years and have served minimum 1 year of actual sentence as convict from the date of his conviction excluding remission in closed prison or
 - b) are sentenced to term exceeding 3 years up to 5 years and have undergone minimum two (02) years of actual sentence as convict from the date of his conviction excluding remission in closed

prison or

- c) are sentenced for exceeding 5 years and up to 10 years and have undergone three (03) years of actual sentence from the date of his conviction excluding remission in closed prison or
- d) are sentenced for exceeding 10 years and up to 14 years or life sentence, where as per the chapter of premature release or Sentence Review Board the case is referred after fourteen years of actual imprisonment and the convict have undergone five (05) years of actual sentence as convict from the date of his conviction, excluding remission in closed prison or
- e) are sentenced for a term more than 14 years or life sentence, where as per the chapter of premature release the case is referred after twenty years including remission, and the convict have undergone 7 (Seven) years of the actual as convict from the date of his conviction excluding remission in closed prison.

Provided that all the above categories of convict must have served, including under trial period, at least 2/3rd of his total punishment awarded including remission.

- (ii) Have maintained excellent conduct inside the prison during the period of his sentence and has performed labour if allotted to him with due devotion and diligence there should not be any punishment for any offence against such convict at least for last three years from the date of eligibility.
- (iii) Nothing adverse should have been noticed during his temporary release from the prison on parole/furlough, if eligible/availed and
- (iv) Have no appeal/other pending cases against him in any court either in Delhi or in India.”

7. Ms Kapur, the learned counsel appearing for the petitioner contends

that since the petitioner has been sentenced for a term of more than sixteen years, the petitioner would be entitled to be considered for being transferred to a semi open jail.

8. Mr Mehra, learned standing counsel for the State countered the aforesaid submission. He submitted that the petitioner's case cannot be considered in view of the specific condition that no parole or remission during the term of imprisonment would be granted. He contended that the entire object and purpose of shifting a prisoner to a semi open jail is to facilitate his integration with the society on his possible release on a future date. He states that since in the present case, there is a specific condition that the petitioner shall not be granted any remission and shall serve the sentence for remainder of his natural life without parole; no purpose would be served by transferring him to a semi open jail.

9. He also drew the attention of this Court to Sub-clause (e) to clause (i) of Rule 1321 of the Rules, which specifically provides that a convict must have served at least two-third of his total punishment awarded including remission, for his transfer to a semi open jail. He submits that since in the present case, the petitioner has to serve for his entire natural life in prison, this period cannot be computed.

10. The contentions advanced on behalf of the State are merited.

11. Although Rule 1321 of the Rules sets out the criteria for selecting prisoners who can be transferred to a semi open jail; the same would clearly be inapplicable in the case where there is a specific direction that the petitioner would not be released on parole or be granted remission and

would serve the sentence for the remainder of his natural life.

12. It is also relevant to note that since the petitioner's sentence was commuted to life imprisonment with the specific condition that he would not be entitled to parole or any remission, the provisions of Sections 432 and 433A of the Cr.P.C. are also inapplicable.

13. The status report has been filed, which indicates that the respondent also apprehends that the petitioner may flee or escape from the semi open jail. Since he is required to serve his entire natural life in imprisonment and there is no scope for his sentence to be reduced, the aforesaid apprehension cannot be stated to be unfounded.

14. In view of the above, the present petition is unmerited and is, accordingly, dismissed.

FEBRUARY 28, 2020
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VIBHU BAKHRU, J