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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Decided on : 13th September, 2021

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**W.P.(CRL) 523/2021
CRL.M.A.3726/2021 (directions)**

SURENDER SINGH

..... Petitioner

Represented by: Ms.Neha Kapoor, Advocate.

versus

STATE OF NCT OF DELHI

..... Respondent

Represented by: Mr.Rajesh Mahajan, Additional
Standing Counsel for State with
Ms.Jyoti Babbar, Advocate with
Inspector Rajeev Ranjan, PS SOS-
II/Crime Branch.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

JUDGMENT: (ORAL)

The hearing has been conducted through Physical Mode.

1. By this petition, petitioner inter alia seeks quashing of the order dated 11th December, 2020 whereby the case of the petitioner for grant of premature release by the Sentence Review Board (in short SRB) was rejected and release of the petitioner on parole till such time his case is not considered by the Sentence Review Board.
2. Petitioner alongwith Shree Bhagwan was convicted in FIR Nos.411/1986 under Sections 302/397/406/392/34 IPC registered at PS



Connaught Place, Delhi for the offences of double murder while committing bank robbery. When the petitioner and co-accused Shree Bhagwan were arrested, recovery of the fire arms was affected from them resulting in registration of two FIRs under Section 25 Arms Act being FIR Nos.439/1987 and 440/1987. With the consent of the accused, the three charge-sheets were committed to the Court of Sessions, tried together and common evidence was led. The petitioner and the co-accused Shree Bhagwan were convicted and awarded life imprisonment. The two convictions were challenged by the petitioner before this Court in Crl. Appeal No.381/2003, which appeal was dismissed on 23rd July, 2007.

3. After having undergone the requisite sentence, the case of the petitioner was placed before the Sentence Review Board repeatedly including in the meeting dated 11th December, 2020 which have been challenged in the present petition..

4. According to learned counsel for the petitioner, Shree Bhagwan, the co-accused was released on the recommendation of the Sentence Review Board in its meeting dated 29th February, 2016 however, the petitioner was held eligible for consideration for premature release only after completion of twenty years in terms of the guidelines in vogue before coming into force of the Delhi Prison Rules, 2018. The petitioner's name was sent for consideration in Sentence Review Board meeting dated 19th July, 2019 however, despite filing application under the Right to Information Act, the petitioner was not provided the minutes of the meeting and the rejection order. Thereafter, on the basis of the minutes of the meeting of the Sentence Review Board available on internet, the petitioner came to know that his case was also put up in the meetings dated 4th October, 2018, 19th



September, 2019, 28th February, 2020, 5th/6th August, 2020 and 11th December, 2020 however, every time it was rejected on the ground of gravity of the offence. According to learned counsel for the petitioner, since the petitioner was convicted in the year 2003 his case is neither governed by the Sentence Review Board Guidelines, 2004 nor the Delhi Prison Rules, 2018. It is claimed that even as per the Delhi Prison Rules, 2018 the gravity of offence does not make a convict ineligible to be considered for pre-mature release.

5. Petitioner claims that Rule-1249 of the Delhi Prison Rules, 2018 has been violated by the respondent as the Sentence Review Board should meet atleast once in every three months. Reliance is placed on the decision of the Division Bench of this Court reported as 2019 (176) DRJ 481: 2019 Cri.LJ 4123 Sushil Sharma vs. State wherein this Court noted that the Sentence Review Board is required to exercise the discretion vested in it in a just and reasonable manner, after due and proper consideration of all the relevant material. It is claimed that the petitioner is aged 62 years and is suffering from ailments like hypertension, diabetes, asthma, urological ailments etc. and thus his case was required to be considered sympathetically.

6. A status report and an additional status report have been filed by the State. As per the status report as on 22nd July, 2021 the petitioner has undergone actual sentence of imprisonment for twenty two years and one day and earned remissions of five years, eight months and ten days. During this period, the petitioner has availed interim bail once in the year 2006 and ten times parole and eighteen times furlough. Further the petitioner was released on furlough w.e.f. 3rd May, 2021 to 24th May, 2021 which was converted into 90 days emergency parole from 14th May, 2021, which is



continuing till date due to the second wave of covid-19 pandemic. It is further stated that the case of the petitioner for premature release has been placed before the Sentence Review Board ten times, that is, in the meetings dated 12th May, 2014, 6th January, 2016, 1st September, 2016, 6th September, 2017, 26th July, 2018, 4th October, 2018, 19th July, 2019, 28th February, 2020, 5th/6th August, 2020 and 11th December, 2020, however, each time the same has been rejected. It is stated that the primary reason for rejection of the petitioner's premature release is the heinousness and serious nature of crime as the petitioner has been convicted for double murder while committing bank robbery and in the meeting dated 11th December, 2020 though the report of the Social Welfare Department recommended the release, however, on a discussion of all the facts, the members of the Sentence Review Board including the Director, Social Welfare Department concurred, opposing the premature release of the convict in the meeting. Even in the police report submitted the case of the petitioner for premature release was opposed.

7. Pursuant to the directions issued by the National Human Rights Commission dated 26th September, 2003 the Lt. Governor of the Govt. of NCT issued guidelines for premature release of the prisoners undergoing life sentence based on the recommendations of the Sentence Review Board vide the notification dated 16th July, 2004 which were in force till the Delhi Prisons Rules, 2018 came into force. The relevant portion of the guidelines laid down are as under:

“Eligibility for premature release

3.1 Every convicted prisoner whether male or female undergoing sentence of imprisonment and covered by the



provisions of Section 433A Cr.P.C. shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual imprisonment i.e., without the remissions. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like:

- a) Whether the convict has lost his potential for committing crime considering his overall conduct in jail during the 14 year incarceration;*
- b) The possibility of reclaiming the convict as a useful member of the society; and*
- c) Socio-economic condition of the convict's family.*

Such convict as stand convicted of a capital offence are prescribed the total period of imprisonment to be undergone including remission, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. Total period of incarceration including remission in such cases should ordinarily not exceed 20 years.

Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in this connection.

- a) Convicts who have been imprisoned for life for murder in heinous crimes such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder; murder committed after conviction while inside the jail, murder during parole, murder in a terrorist incident, murder in smuggling operation, murder*



of a public servant on duty.

- b) Gangsters, contract killers smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.*
- c) Convicts whose death sentence has been commuted to life imprisonment.*

3.2 All other convicted male prisoners not covered by Section 433A Cr.P.C. undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 14 years of imprisonment inclusive of remission but only after completion of 10 years actual imprisonment i.e., without remissions.

3.3. The female prisoners not covered by section 433A Cr.P.C. undergoing the sentence of life imprisonment would be entitled to be considered for premature release after they have served at least 10 years of imprisonment inclusive of remissions but only after completion of 7 years actual imprisonment i.e., without remissions.

3.4 Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on grounds of terminal illness or old age etc. can be dealt with under the provisions of Art. 161 of the Constitution of India.

4.xxxxx”

8. Rules 1251 and 1252 of the Delhi Prison Rules, 2018 in relation to the eligibility for premature release of prisoners now applicable read as under:-

“1251. Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433A Cr.P.C. shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of actual



imprisonment i.e., without the remissions. It is, however, clarified that completion of 14 years in prison by itself would not entitle a convict to automatic release from the prison and the Sentence Review Board shall have the discretion to recommend to release a convict, at an appropriate time in all cases considering the circumstances in which the crime was committed and other relevant factors like: -

- a) Whether the convict has lost his potential for committing crime considering his overall conduct in Jail during the 14 years' incarceration.*
- b) The possibility of reclaiming the convict as a useful member of the society and*
- c) Socio-Economic condition of the Convict's family.*

1252. Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions but not less than 14 years of actual imprisonment. The following categories are mentioned in this connection:-

- a) Convicts who have been imprisoned for life for murder in heinous crimes such as murder with rape, murder with dacoity, murder involving an offence under the Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the Jail, murder during parole or furlough, murder in a terrorist incident, murder in smuggling operation, murder of a public servant on duty.*
- b) Gangsters contract killers smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.*
- c) Convicts whose death sentence has been commuted to life imprisonment."*



9. A perusal of the SRB guidelines notified on 16th July, 2004 clearly provides that a convict who had been awarded the sentence of imprisonment for life for heinous crime such as murder with dacoity was entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. Further the period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Rules 1251 and 1252 of Delhi Prison Rules, 2018 provide the same eligibility criteria for a convict being entitled to be considered for premature release, the only distinction being that the period of incarceration inclusive of remissions in such cases i.e. cases of murder with dacoity should not exceed 25 years has been excluded. When Shree Bhagwan was directed to be released, he had undergone a total period of 21 years 6 months and 1 day including remissions earned by him and when the petitioner was considered in the various meetings of SRB, he fulfilled the said eligibility criteria and in the meeting dated 4th October, 2018 till the SRB guidelines notified on 16th July, 2004 were applicable, the petitioner had undergone imprisonment of nearly 23 years and 11 months including remissions.

10. As held by the Constitution Bench of the Hon'ble Supreme Court in the decision reported as (2014) 4 SCC 242 V.Sriharan @ Murugan Vs. Union of India & Ors. following the earlier Constitution Bench decisions reported as AIR 1961 SC 600 Gopal Vinayak Godse Vs. State of Maharashtra & Ors. and (1981) 1 SCC 107 Maru Ram Vs. Union of India & Ors. in terms of Section 433A Cr.P.C. a sentence of imprisonment for life only means imprisonment for the rest of life of the prisoner subject to the



right of the prisoner to claim remission in terms of Article 72 and 161 of the Constitution of India as also under Section 432 Cr.P.C.

11. Even though the contention of learned counsel for the petitioner is that since the petitioner was convicted in the year 2003 he is entitled to be released on completion of 14 years and the guidelines as laid down are not applicable to the present case, it may be noted that the guidelines as applicable on the date when the case is being considered for premature release have to be looked into and not the guidelines on the date when the sentence was awarded; as was also done by this Court in Sushil Kumar Sharma (supra).

12. The Division Bench of this Court in the decision reported as Sushil Kumar (supra) dealing with the issue whether the SRB is bound by the guidelines contained in the Order No. F.18/5/94/Home(Gen) dated 16th July, 2004 formulated by the Govt. of NCT Delhi held that there could be no quarrel with the established legal position that once the State has formulated the guidelines for consideration of premature release of convicts, in accordance with law, any challenge in relation to the arbitrary, capricious and whimsical application thereof, is open to judicial review.

13. It is thus to be seen on the touchstone of the settled legal principles that whether the recommendation of the SRB dated 11th December, 2020 under challenge in this petition, rejecting the premature release of the petitioner is arbitrary, illegal and hence liable to be set aside.

14. Vide the minutes of SRB meeting dated 11th December, 2020 in the case of petitioner Surender Singh, S/o Dharam Singh, aged 59 years the SRB noted as under:



“148. SURENDER SINGH S/O SH. DHARAM SINGH- AGE-59 YRS.

Surender Singh S/o Sh. Dharam Singh is undergoing life imprisonment in case FIR No. 411/1986 & 439/1987, U/S 302/392/397/406/460/34 IPC & 25 Arms Act, P.S. Connaught Place & Punjabi Bagh, Delhi for committing double murder during Bank robbery/dacoity.

The convict has undergone:

Imprisonment of 21 years, 03 months and 11 days in actual and 26 years, 08 months and 24 days with remission. He has availed I. Bail 01 time, Parole 10 times and Furlough 18 times.

Recommendation by Police:

The Delhi Police has strongly opposed his premature release in its report as well as in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended his premature release in its report. However, the Director, Social Welfare Department, Delhi has opposed his premature release in the meeting. Hometown has raised no objection in its report.

Conclusion:

After taking into account all the facts and circumstances of the case that the convict had committed double murder during bank robbery/dacoity, gravity and perversity of the crime, strong objection by police authority, the Board REJECTS premature release of Surender Singh S/o Sh. Dharam Singh at this stage.”

15. What is not noted by the SRB is that by the judgment of conviction along with the appellant Surender Singh, Shree Bhagwan was also convicted in FIR No. 411/1986 under Section 460/302/392/397/34 IPC at PS Connaught Place, Delhi for committing double murder during bank robbery and the said Shree Bhagwan was also arrested along with the petitioner having in his possession pistol and cartridges for which two FIRs were registered i.e. 439/87 and 440/87 at PS Punjabi Bagh under Section 25 Arms Act of which FIR No. 439/87 was registered against the petitioner and FIR



No. 440/87 against Shree Bhagwan.

16. As per the judgment of learned Additional Sessions Judge convicting Shree Bhagwan and Surender Singh for offences punishable under Section 460/302/392/397/34 IPC, a finding was arrived at that finger prints recovered from the bank where double murder and robbery was committed matched with the specimen thumb impression of left hand of Shree Bhagwan besides recovery of two bundles of notes of 100 having slips of State Bank of Mysore and two bangles and one gold chain and three gold bars from the house of Shree Bhagwan. The currency notes were duly identified by the witnesses/ bank officials as notes belonging to the bank. As regards the present petitioner Surender, though chance prints recovered from the spot did not match with the petitioner, however on his disclosure three bundles of currency notes of ₹100 denomination each having pay slip of State Bank of Mysore, Connaught Place with the signatures of PW-18 were recovered.

17. From the judgment of learned Trial Court it is clear that the evidence against Shree Bhagwan for conviction in FIR No. 411/86 i.e. double murder while committing bank robbery was far more clinching as his thumb impression was found at the spot. However, despite having been convicted for the same offences, awarded same sentence and almost similar report with the only exception of age Shree Bhagwan S/o Dayanand, aged 68 years was directed to be released prematurely vide the minutes of SRB dated 29th February, 2016 and the case of the petitioner is being rejected repeatedly. The minutes of the SRB dated 29th February, 2016 qua Shree Bhagwan read as under:

“40. SREE BHAGWAN S/O DAYA NAND – AGE –68 Yrs.



The convict is undergoing life imprisonment in case FIR No. 411/86, u/S-460/302/392/397/34 IPC PS Connaught Place, Delhi for committing double murder and dacoity.

The convict has undergone an actual sentence of 16 years, 10 days and 21 days excluding remission as on 30th of November 2015. He has undergone a total period of 21 years, 06 months & 01 days including remission earned by him. He has availed parole 06 times and furlough 04 times. Nothing adverse reported against him during parole/furlough. He has participated in spiritual courses held in jail.

The Ld. ASJ opposed the premature release in view of nature and gravity of offence. The Delhi Police not opposed premature release in its report but opposed in the meeting in view of nature and gravity of offence. The home town police has not opposed his premature release. The Probation Officer, Delhi has recommended his premature release. The home town Probation Officer has not opposed his premature release.

After taking into account totality of facts, satisfactory work and conduct in jail, recommendations of Chief Probation Officer and old age factor, the Board RECOMMENDS the premature release of convict.”

18. While rejecting the case of the petitioner for recommendation for premature release the SRB in its meeting held on 11th December, 2020 noted that the Delhi Police has strongly opposed his premature release in its report as well as in the meeting and though Social Welfare Department recommended his premature release in the report, however, the Director Social Welfare Department opposed his premature release, and the Hometown had raised no objection in its report. In the meeting of the SRB dated 29th February, 2016 recommending the case of Shree Bhagwan, the learned ASJ opposed the premature release in view of the nature and gravity of the offence though the Police did not oppose the premature release in its



report but opposed in the meeting in view of the nature and gravity of the offence and in the Hometown report Police did not oppose his premature release and Shree Bhagwan was released taking into account totality of factors, satisfactory work and conduct in jail, recommendation of the probationary officer and old age factor.

19. As per the nominal roll of the petitioner as on 22nd July, 2021 the petitioner has undergone actual sentence of 22 years 1 day and earned remission of 5 years, 8 months and 10 days. The petitioner has availed interim bail once in the year 2006 followed by 10 paroles and 18 furloughs. The petitioner was further released on furlough w.e.f. 3rd May, 2021 to 24th May, 2021 for a period of three weeks which furlough was converted into 90 days emergency parole by the Director General (Prisons) from 14th May, 2021 and till date due to the pandemic, the petitioner is on emergency parole, which period will also be counted as the period undergone by the petitioner. Further the jail conduct of the petitioner is also satisfactory like that of Shree Bhagwan and there is no allegation that during the period of release on paroles or furlough, the petitioner ever mis-conducted or was involved in any offence, thereby fortifying that he has reformed himself.

20. As noted above, the reasons for rejection of the recommendations of the SRB was that the petitioner had committed double murder during bank robbery/dacoity thereby indicating the gravity and perversity of the crime and the objection of the Police authority. However, these factors were there even in the case of Shree Bhagwan. Thus the action of the SRB in not considering the case of the petitioner on parity with Shree Bhagwan in its meeting dated 11th December, 2020 is clearly an arbitrary exercise of jurisdiction.



21. The next issue which arises is having found that the jurisdiction exercised by the SRB was arbitrary and capricious, whether this Court can direct premature release of the petitioner. This Court is of the considered view that in a case where the Court returns a finding that power has been exercised by the authority arbitrarily and without considering complete facts, the proper course is that the matter should be referred back to the competent authority for reconsideration.

22. The writ petition is thus disposed of directing the Director General (Prisons) to place the case of the petitioner for consideration for premature release in the next meeting of the SRB alongwith the necessary documents showing parity between Shree Bhagwan and Surender as also the minutes of the SRB meeting dated 29th February, 2016 in case of Shree Bhagwan.

23. Petition and application are disposed of.

24. Order be uploaded on the website of this Court.

(MUKTA GUPTA)
JUDGE

SEPTEMBER 13, 2021
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