



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 02.08.2022

Date of decision: 16.09.2022

+ W.P.(CRL) 906/2022, CrI.M.A. No. 7644/2022 and 7645/2022

WAHID AHMED

..... Petitioner

Through: Mr. Sarthak Maggon, Advocate.

versus

STATE OF NCT OF DELHI & ORS.

..... Respondents

Through: Mr. Sachin Mittal, ASC for State with
SI Akhil Chaudhary.
Mr. Abhijit Shankar, Advocate Law
Officer Central Jail No. 3, Tihar.
Mr. Shrey Sharawat, Advocate for R-3
UOI.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J

1. The petitioner, Wahid Ahmed S/o Sh. Ismail Khan, vide the present petition under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., 1973, since convicted vide judgment dated 09.09.2010 in Sessions Case No.38/2009 of the Court of the learned ASJ, North-East, Karkardooma Courts, Delhi, along with the co-convicts Mazhar-Ul-Islam and Jafar-Ul-Islam his sons, for the



proved commission of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, and who, vide the order on sentence dated 21.09.2010 has been sentenced along with two other convicts, his two sons, to undergo Life Imprisonment for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, with the fine imposed of Rs.2000/- each, and in default of the payment of the fine to undergo two months of Simple Imprisonment,- seeks direction for premature release in relation to FIR No.615/2005, PS Seelampur.

2. The appeals filed by the petitioner herein and his two sons Jafar-Ul-Islam and Mazahar-Ul-Islam, bearing numbers CRL.A.1310/2010, CRL.A.1311/2010 and CRL.A.1245/2010 against the conviction and order on sentence referred to hereinabove, were dismissed vide judgment dated 11.08.2011 of the Hon'ble Division Bench of this Court.

3. The SLP filed by the petitioner herein and one co-convict bearing No. CRL.MP 8092-8093/2012 were dismissed vide order dated 02.04.2012 of the Hon'ble Supreme Court.

4. The review petitions filed by the petitioner herein and one co-convict seeking review of the order dated 02.04.2012 of the Hon'ble Supreme Court were dismissed vide order dated 31.07.2012 of the Hon'ble Supreme Court in Review Petition (Crl.) Nos. 336-337 of 2012.

5. The conviction of the petitioner and the sentence imposed vide judgment dated 09.09.2010 and order on sentence dated 21.09.2010 against the petitioner to undergo Life Imprisonment for the offence



punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860, and the fine imposed of Rs.2000/-, and in default of the payment of the fine to undergo two months of Simple Imprisonment, has thus attained finality till the learned Apex Court of this land. The deceased in this case was Smt. Shabana Anjum, wife of Mazhar-Ul-Islam, aged 29 years, and the daughter-in-law of the petitioner herein. The police was called into action on 11.10.2005 on receipt of a PCR call vide DD No. 14-A received at PS Seelampur of burning of a woman in House No. 1312, Gali No. 42, Jafrabad, Delhi, whereupon SI Har Prasad PW-11 and Constable Surender Kumar PW-8 reached the spot, where they learned that the injured had been taken to the GTB Hospital by the PCR Van. The injured was found at the GTB Hospital and was indicated to have sustained about 60% to 65% burn injuries and was declared fit for statement, and her statement was recorded, wherein she stated to the effect:-

“Statement of Smt. Shabana Anjum W/o. Mazhar-ul-Islam Aged about 29 years R/o. House No. 1312, Street No. 42, Jaffrabad, Delhi.

I reside at the aforesaid address. I am a house wife. My marriage was solemnized about eleven years ago. I have two daughters namely Amreen and Baby Riza Anjum @ Honey aged about 9 and 5 years respectively. My husband was harassing me for the last several months and he used to leave the house leaving me alone in the house. On 11.10.2005 at about 3.20 p.m. I was present at my house and my both daughters were playing outside the room in the veranda. My husband and brother-in-law (Jeth) came down from the terrace. Without giving me a chance to take care of myself, my brother-in-law Jafar-ul-Islam poured the kerosene oil on me and my husband lit the match stick and threw the same on me as a result



whereof my clothes caught fire. My father-inlaw Waheed Ahmad was exhorting to finish me today itself, actual words being “Aaj Ise Khatam Kar do, Baad me main sab dekh loonga ye aurat aise manne wali nahin hai”. Both my daughters were also witnessing this incident. These people have set me ablaze with the intention of killing me. Necessary legal action be taken against them. I have heard the statement and the same is correct.

RTI of Shabana Anjum”

6. The FIR No.615/2005, PS Seelampur on the complaint of Shabana Anjum was initially registered under Section 307 read with 34 of the Indian Penal Code, 1860, and on the demise of the injured/complainant/daughter-in-law of the petitioner herein on 05.12.2005 on her succumbing to injuries and on the postmortem on her body having been conducted on 06.12.2005 at the GTB Hospital, Section 302 read with Section 34 of the Indian Penal Code, 1860 was invoked. As per the postmortem report Ex. PW-1/A, the cause of death was septicemic shock due to superficial to deep ante mortem flame burns with the total area involved being 60% of total body surface.

7. PW-2 Amreen, daughter of the deceased and of Mazhar-Ul-Islam and the grandchild of the petitioner, in her statement before the Court stated to the effect:-

“On 11.10.2005 I and my sister Honey were playing in the verandah of the house. My mother was lying in the house. Then my father, my grandfather and my Tau ji came down. My father and my Tau ji entered the room where my mother was lying and my grandfather remained outside the room. On seeing them, my mother got up. My grandfather uttered about my mother, “Aaj



isse khatam kar do. Main baad mein sab dekh loonga.” Thereafter my Tau Jaffar-ul-Islam threw kerosene oil on my mother. Thereafter my father threw lighted match stick on the body of my mother and as a result whereof the clothes of my mother caught fire. My mother, myself and my younger sister ran out of the house crying. Some people from the street put off the fire of my mother. One of them informed the police telephonically and police came there. My mother, myself and my younger sister were taken to the hospital by the police in a police van. My mother was taken to emergency room of the hospital and myself and my younger sister were made to sit outside.”

8. The other child PW-3 Baby Riza Anjum @ Honey, daughter of the deceased and younger sister of PW-2 Amreen, also an eye witness to the incident, corroborated the testimony of her elder sister Amreen PW-2 as observed vide the judgment dated 11.08.2011 of the Division Bench of this Court in CRL.A.1310/2010.

9. The injuries sustained by the deceased were superficial to deep partially healed flame infected burns present over her neck, front of chest, abdomen over upper chest, both upper limbs completely, front of right thigh and back of chest and abdomen completely, and yellowish, green slough was present over burns at places and the cause of death was opined to be septicemic shock due to superficial to deep ante-mortem flame burns, and as observed in para 33 of the verdict of the Division Bench of this Court in CRL.A.1310/2010 dated 11.08.2011, at the time of admission, the burnt area of the chest, abdomen, lower chin, neck, both upper limb, back throat, back abdomen was approximately 60% to 65%.



10. The Division Bench of this Court in the said judgment dated 11.08.2011, which has been upheld by the Hon'ble Supreme Court Court vide order dated 02.04.2012 and 31.07.2012 in SLP bearing No. CRL.MP 8092-8093/2012 and Review Petition (Crl.) Nos. 336-337 of 2012, has concluded as observed in paragraph 37 of the verdict to the effect:-

*“37. From the statement, Ex.PW-11/A, of the deceased and the post-mortem report Ex.PW-1/A, it is proved that the incident took place on 11.10.2005 as alleged by the prosecution and jeth (brother-in-law) of the deceased threw kerosene oil on the deceased and husband of the deceased threw lighted match stick on her body and at the door, **Wahid Ahmed, father-in-law of the deceased, exhorted “Aaj Ise Khatam Kar Do, Baad Mein Main Sab Dekh Loonga”**. The said utterance was confirmed by eye-witness PW-2. Therefore, it is established, without any doubt, that all the three accused, in furtherance of their common intention, committed the murder of Shabana Anjum. There is hardly any ground to interfere with the judgment dated 09.09.2010 and the order on sentence dated 21.09.2010. The appellants are, therefore, not entitled for the benefit of conversion of conviction from Section 302 to Section 304 IPC.”*

11. The petitioner through the present petition submits

- that he is a first-time offender;
- that a false and frivolous case was registered against him; that the matter of the petitioner has been under consideration before the Sentence Review Board, when the petitioner became eligible for premature release on completion of 14th year of his incarceration, but that vide meeting dated 11.12.2020, his case for premature release was rejected, and



that on the date of the filing of the petition i.e., 13.04.2022, he had undergone the sentence of 14 years with about 17 years with remission;

- that his conduct in the Jail has been satisfactory as also during the period when he was allowed to be released on parole/furlough;
- that his conduct ought to be seen in comparison with other convicts who have been recommended for release during the course of the SRB meeting dated 11.12.2020.

12. The minutes of the SRB meeting dated 11.12.2020 have been reproduced by the petitioner in the petition as under:-

“182. WAHID AHMED S/O SH. ISMAIL KHAN — AGE-76 YRS.

Wahid Ahmed S/o Sh. Ismail Khan is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for committing murder of his daughter-in-law by pouring kerosene oil and setting her ablaze.

The convict has undergone:

Imprisonment of 12 years, 09 months and 22 days in actual and 15 years, 07 months and 20 days with remission. He has availed Parole 06 times and Furlough 17 times.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. The Deputy Commissioner of Delhi Police (Legal) has opposed his premature release 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 not supported his premature release in the meeting.

**Conclusion:**

After taking into account the facts of the case that the convict has murdered his daughter-in-law by pouring kerosene oil on her and setting her ablaze, the cruelty and perversity of the crime, it was decided to consider the case as per Section 433A of Cr.P.C. only which requires completion of actual 14 years of imprisonment. Accordingly, the Board REJECTS premature release of convict Wahid Ahmed S/o Sh. Ismail Khan at this stage.”

13. The petitioner has submitted further that the respondent had deliberately failed to upload the minutes of the subsequent meetings of the SRB of the years 2021 and 2022, and the said minutes reproduced were identical with the previous minutes in respect of the petitioner with limited additions and no application of mind.

14. The petitioner further submits that he has been enlarged on parole and furlough twenty-eight times and was granted bail for two years between 2008 and 2010, and that he had been released on emergency parole granted by the Screening Committee established under the aegis of the High-Powered Committee due to the Covid-19 pandemic.

15. The petitioner submits that he is a retired government school teacher and he holds an impeccable and successful career record of thirty-eight years as an educator, that he has received a Letter of Appreciation from the Office of the Superintendent dated 17.02.2014 for his support to the jail administration in the smooth functioning of prison and also for his contribution towards *Padho and Padhao* (School of CJ-8/9), through which the education levels have shown much improvement and other inmates have also received educational



certificates. The petitioner submits that he has also received a certificate for participation in the Inter Jail Quiz Competition 2013.

16. It is further submitted by the petitioner that he seeks the grant of premature release, in as much as, he is an ideal convict and fulfils all objective criteria enumerated by the Sentence Review Board (SRB) as laid down under the order of 2004 as well as the Delhi Prison Rules, 2018. The petitioner submits further that though he has agitated several objections to the order bearing no. F.18/102/2003-HOME (G)/PtI1/2020/3432 order dated 23.10.2020 passed in the SRB meeting dated 05.08.2020/06.08.2020, whereby the case of the petitioner was considered at serial no. 156, the main relief prayed in the present petition is the grant of premature release due to the long, undeserved and substantial period of incarceration undergone by the him. The petitioner seeks to reiterate that he has been falsely implicated in the instant case and that he is innocent.

17. *Inter alia*, the petitioner submits that in view of the development and growth of the reformatory/restorative school of jurisprudence and practices vis-a-vis the retributive school of jurisprudence, the Court may consider the efficacy of reforming the convict so as to ensure that he becomes a useful and contributing member of society as opposed to dispensing with the convict in a straitjacket and retributive manner, leaving him incarcerated for a lengthy period of time. *Inter alia*, it is submitted on behalf of the petitioner that retributive jurisprudence follows the concept of imposition of appropriate sanction or punishment for violation of a penal law, but that the restorative/reformatory school of jurisprudence



recognizes and gives weight to the circumstances in which the crime was committed, propensity of the convict to commit such crime again, as well as the socio-economic conditions that prevailed when the crime was committed vis-a-vis the convict re-entering society as a useful and contributing member.

18. The petitioner thus submits that this Court ought to view the petitioner's case through the lens of rehabilitating and reforming the petitioner back into society as opposed to enforcing excessive, long and undeserved sentence, and seeks that the numerous good elements surrounding the case of the petitioner, including lack of any punishments imposed, family responsibilities, active participation in jail activities including certificate of appreciation from the office of Superintendent for the petitioner's support to the Jail administration in smooth functioning of the prison and for his sincere efforts resulting in increased education level of the inmates in the Tihar Jail Complex be considered, and that the petitioner has continued to maintain a good conduct and there is not a single punishment marked against him during his entire period of incarceration.

19. The petitioner further places reliance on the provisions of the Delhi Prison Rules, 2018 to contend that even the said rules support the rehabilitation of a convict as opposed to the punishment of the convict, and places reliance on Rule 1244 of Chapter XX dealing with premature release in the Delhi Prison Rules, 2018.

“CHAPTER – XX PREMATURE RELEASE

1244. The primary objective underlying premature release is reformation of offenders and their rehabilitation and integration into the society, while at



the same time ensuring the protection of society from criminal activities. These two aspects are closely interlinked. Incidental to the same is the conduct, behaviour and performance of prisoners while in prison. These have a bearing on their rehabilitative potential and the possibility of their being released by virtue of remission earned by them, or by an order granting them premature release. The most important consideration for premature release of prisoners is that they have become harmless and now have become eligible as useful members of a civilised society.”

20. Reliance is also placed by the petitioner on Rule 1255 of the Delhi Prison Rules, 2018, which reads to the effect:-

“1255. Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on ground of terminal illness or old age etc. may be dealt with under the provisions of Article 72 of the Constitution of India.”

21. The petitioner has put forth the minutes of the SRB Meeting held on 05.08.2020 and 06.08.2020 when his case was taken up, which minutes read to the effect:-

“Minutes of SRB Meeting held on 05.08.2020 and 06.08.2020

156. WAHID AHMED S/O SH. ISMAIL KHAN — AGE-75 YRS.

Wahid Ahmed S/o Sh. Ismail Khan is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for committing murder of his daughter-in-law by pouring kerosene oil and set her ablaze.

The convict has undergone:

Imprisonment of 12 years, 05 months and 03 days in actual and 15 years, 02 months and 01 day with



remission. He has availed Parole 06 times and Furlough 18 times.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. The Deputy Commissioner of Delhi Police (HQs) has opposed his premature release 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.

Conclusion:

*After taking into account the facts of the case that the convict has murdered his daughter-in-law by pouring kerosene oil and setting her ablaze and keeping in view the cruelty and the circumstances under which the crime was committed, the Board unanimously **REJECTS** premature release of convict Wahid Ahmed S/o Sh. Ismail Khan at this stage.”*

22. The petitioner has further submitted that he was considered eligible by the Sentence Review Board for being provided the benefit of Rule 1255 of the Delhi Prison Rules, 2018 which is *pari materia* with Guideline 3.4 of the 2004 Guidelines, and places reliance on:-

“1255. Cases of premature release of persons undergoing life imprisonment before completion of 14 years of actual imprisonment on ground of terminal illness or old age etc. may be dealt with under the provisions of Article 72 of the Constitution of India.”

“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.”



23. *Inter alia*, the petitioner submits that the prevalent short sentencing policy of the State at the time of conviction of the petitioner was the 2004 Guidelines brought into effect by the respondent No. 2, and the Delhi Prison Rules, 2018 do not apply to the petitioner. *Inter alia*, the petitioner submits that the only difference between Guideline 3.4 of the 2004 Guidelines and Rule 1255 of Delhi Prison Rules, 2018 is that the former has vested the power of granting premature release to the Governor under Article 161 of the Constitution of India and the latter has vested the said power to the President under Article 72 of the Constitution of India, and that by itself is inconsequential and not a bar on the exercise of the power of remission, commutation, reprieve or respite by the Governor, except in respect of punishment or sentence by a court martial, which exception is not applicable in the instant case.

24. The Article 72 and Article 161 of the Constitution are as under:-

“ARTICLE 72

Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases:

(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence

(a) in all cases where the punishment or sentence is by a court Martial;

(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;

(c) in all cases where the sentence is a sentence of death

(2) Noting in sub clause (a) of Clause (1) shall affect the power to suspend, remit or commute a sentence of death



exercisable by the Governor of a State under any law for the time being in force.

ARTICLE 161

Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases

The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.”

25. *Inter alia*, the petitioner submits that the power of the President and the Governor for grant of remission is amenable to judicial review, and the non-utilization or omission to utilize such discretion in meritorious cases for grant of premature release must also be considered.

26. *Inter alia*, it is submitted by the petitioner that the Sentence Review Board has failed to place the representations of the petitioner before the respondent No.2 i.e., the Lt. Governor, State of N.C.T. of Delhi, whilst acknowledging the eligibility of the petitioner to be duly considered under Guideline 3.4/Rule 1255 of the Delhi Prison Rules, 2018.

27. *Inter alia*, the petitioner submits that the SRB has considered and released other convicts before the completion of 14 years of imprisonment and several convicts placed similarly and convicted under similar offences have also been granted the prayer of premature release in the meeting dated 28.02.2020. The minutes of the SRB



Meeting dated 28.02.2020 have been put forth by the petitioner as under:-

“Minutes of the SRB Meeting dated 28.02.2020

39. NARENDER KUMAR SHARMA S/O SH. PURSHOTAM DASS - AGE-75 YRS.

Narender Kumar Sharma (Ex-Constable, Delhi Police) S/o Sh. Purshotam Dass is undergoing life imprisonment in case FIR No. 764/1980, U/S-302/34 IPC, P.S. Subji Mandi, Delhi for committing murder of a person during police custody.

The convict has undergone:

Imprisonment of 11 years, 02 months and 15 days in actual and 14 years, 11 months and 08 days with remission. He has availed Parole 09 times and furlough 28 times.

Recommendation by Police:

The Delhi Police has strongly opposed his premature release in its report. However, The Special Commissioner of Delhi Police (Crime) has not opposed his premature release in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended his premature release in its report, The Director, Social Welfare Department, Delhi has also recommended his premature release in the meeting.

*After taking into account all the facts and circumstances of the case i.e. the convict not having any previous criminal history, shown good aptitude for reforms, satisfactory jail conduct as well as during parole/furlough, family responsibilities, recommendation by police and welfare authorities in view of old age, the Board unanimously **RECOMMENDS** premature release of convict Narender Kumar Sharma S/o Sh. Purshotam Dass & to be dealt with in view of Rule 1255 of DPR, 2018/under the provisions of Article 72 of the Constitution of India.*



40. MOHD. RAEES S/O LATE SH. MOHD. SAYED — AGE- 75 YRS.

Mohd. Raees S/o Late Sh. Mohd. Sayed is undergoing life imprisonment in case FIR No. 162/1999, U/S-302/174-A/34 IPC, P.S. Chandni Mahal, Delhi for committing murder of his wife over property dispute.

The convict has undergone:

Imprisonment of 09 years, 10 months and 04 days in actual and 10 years, 07 months and 11 days with remission. He has availed I. Bail 01 time and Parole 09 times

Recommendation by Police:

The Delhi Police has opposed his premature release in its report. However, The Special Commissioner of Delhi Police (Crime) has not opposed his premature release in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended his premature release in its report. The Director, Social Welfare Department, Delhi has also recommended his premature release in the meeting.

*After taking into account all the facts and circumstances of the case i.e. the convict not having any previous criminal history, shown good aptitude for reforms, satisfactory jail conduct as well as during I. Bail/Parole, family responsibilities, recommendation by police and welfare authorities in view of old age, the Board unanimously **RECOMMENDS** premature release of convict Mohd. Raees S/o Late Sh. Mohd. Sayed & to be dealt with in view of Rule 1255 of DPR, 2018/under the provisions of Article 72 of the Constitution of India.*

41. VEER SINGH S/O SH. RAM SINGH — AGE-75 YRS.

Veer Singh S/o Sh. Ram Singh is undergoing life imprisonment in case FIR No. 216/1999, U/S 302/34



IPC, P.S. Lodhy Colony, Delhi for committing murder of his son in law over strained relations.

The convict has undergone:

Imprisonment of 13 years, 09 months and 25 days in actual and 18 years, 01 months and 18 days with remission. He has availed Parole 03 times and Furlough 21 times.

Recommendation by Police:

The Delhi Police report has not been received. The Special Commissioner of Delhi Police (Crime) has no objection for his premature release in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended his premature release in its reports. The Director, Social Welfare Department, Delhi has also recommended his premature release in the meeting.

*After taking into account all the facts and circumstances of the case i.e. the convict not having any previous criminal history, shown good aptitude for reforms, satisfactory jail conduct as well as during parole/furlough, family responsibilities, recommendation by police and welfare authorities in view of old age, 01 co-accused already released by SRB held on 19.07.2019, the Board unanimously **RECOMMENDS** premature release of convict Veer Singh S/o Sh. Ram Singh & to be dealt with in view of Rule 1255 of DPR, 2018/under the provisions of Article 72 of the Constitution of India.”*

The petitioner thus submits that he ought to be considered at par with other convicts who have been released under similar circumstances without prejudicing his rights based on a false description of the offence. *Inter alia*, the petitioner submits that that in the minutes of the meeting, it has been stated that the petitioner has poured kerosene oil over his daughter-in-law and burnt her when in fact it was not the case of the prosecution that the act was committed by the petitioner, and it



was merely stated that the same had his consent and was committed at the behest of his two sons. The petitioner submits that his matter was taken up for consideration by the SRB meeting dated 25.06.2021, wherein he was again recommended for premature release citing his old age but his case was not put for consideration, though the cases of his sons i.e., Mazhar-Ul-Islam and Zafar- Ul-Islam the co-convicts, were taken up for consideration.

28. *Inter alia*, the petitioner submits that Chapter XX: Premature Release of Delhi Prison Rules, 2018 is a welfare legislation, and that it is pertinent to note that reformation and rehabilitation of the offenders is the ultimate objective of the prison administration. It is submitted by the petitioner that the 2018 Rules have been drafted to confer benefits on individuals or class of persons to ensure safe detention and efficient standard of treatment of prisoners which are consistent with the principles of dignity of the individual.

29. The petitioner has submitted the details of the SRB meeting held on 21.10.2021, qua his two sons/co-convicts, which read as under:-

Minutes of the SRB Meeting held on 21.10.2021.

41. MAZHAR-UL-ISLAM S/O WAHID AHMED — AGE-49 YRS.

Mazhar-Ul-Islam S/o Wahid Ahmed is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for murder of his wife by pouring kerosene upon her and setting her ablaze.

The convict has undergone:

Imprisonment of 14 years, 08 months and 10 days in actual and 17 years, 06 months and 13 days with remission. He has availed I. Bail 01 time, Parole 03



times and Furlough 09 times. He jumped parole w.e.f. 14.03.2012 and was rearrested in another case on 04.04.2013.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. However, the Addl. Commissioner of Delhi Police (Crime) has opposed the premature release of the convict in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended premature release of the convict in its report. However, the Special Secretary cum Director, Social Welfare Department, Delhi, has not supported his premature release in the meeting.

Conclusion:

After taking into account all the facts and circumstances under which the crime was committed, gravity and perversity of the crime, jumping of parole, unsatisfactory jail conduct having multiple punishments, convict's involvement in other criminal case during parole and possibility of committing crime again etc. the Board **REJECTS** premature release of the convict Mazhar- Ul-Islam S/o Wahid Ahmed at this stage.

42. ZAFAR-UL-ISLAM S/O WAHID AHMED — AGE-54 YRS.

Zafar-Ul-Islam S/o Wahid Ahmed is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for murder of his sister-in-law by pouring kerosene upon her and setting her ablaze.

The convict has undergone:

Imprisonment of 14 years, 09 months and 24 days in actual and 18 years, 01 month and 25 days with remission. He has availed Parole 12 times and Furlough 19 times.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. However, the Addl.



Commissioner of Delhi Police (Crime) has opposed the premature release of the convict in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended premature release of the convict in its report. However, the Special Secretary cum Director, Social Welfare Department, Delhi, has not supported his premature release in the meeting.

Conclusion:

*After taking into account all the facts and circumstances under which the crime was committed i.e., murder by pouring kerosene oil & setting the lady ablaze, gravity and perversity of the crime etc., the Board **REJECTS** premature release of the convict Zafar- Ul-Islam S/o Wahid Ahmed at this stage.”,*

and as also the minutes of the SRB meeting on 25.06.2021 qua his two sons, which read as under:-

“Minutes of SRB Meeting held on 25.06.2021.

13. MAZHAR-UL-ISLAM S/O WAHID AHMED — AGE-49 YRS.

Mazhar-Ul-Islam S/o Wahid Ahmed is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for murder of his wife by pouring kerosene upon her and setting her ablaze.

The convict has undergone:

Imprisonment of 14 years, 05 months and 10 days in actual and 17 years, 03 months and 07 days with remission. He has availed I. Bail 01 time, Parole 03 times and Furlough 08 times. He jumped parole w.e.f. 12.03.2012 and rearrested in other case on 04.04.2013.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. The Deputy Commissioner of Delhi Police (Crime & Legal) has



opposed the premature release of the convict in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended premature release of the convict in its report. However, the Chief Probation Officer, Delhi has not supported his premature release in the meeting.

Conclusion:

After taking into account all the facts and circumstances under which the crime was committed, gravity and perversity of the crime, jumping of parole, unsatisfactory jail conduct having multiple punishments, convict's involvement in other criminal case during parole and showing propensity to commit crime again etc. the Board REJECTS premature release of the convict Mazhar-Ul-Islam S/o Wahid Ahmed at this stage.

14. ZAFAR-UL-ISLAM S/O WAHID AHMED — AGE-54 YRS.

Zafar-Ul-Islam S/o Wahid Ahmed is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. Seelam Pur, Delhi for murder of his sister-in-law by pouring kerosene upon her and setting her ablaze.

The convict has undergone:

Imprisonment of 14 years, 03 months & 24 days in actual and 17 years, 07 months and 07 days with remission. He has availed Parole 11 times and Furlough 19 times.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed his premature release in its report. The Deputy Commissioner of Delhi Police (Crime & Legal) has opposed the premature release of the convict in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended premature release of the convict in its report. However, the Chief Probation Officer, Delhi has not supported his premature release in the meeting.

**Conclusion:**

*After taking into account all the facts and circumstances under which the crime was committed, gravity and perversity of the crime, non-recommendation by Police etc., the Board **REJECTS** premature release of the convict Zafar-Ul-Islam S/o Wahid Ahmed at this stage.”*

30. The petitioner submits further that in ***Irshad v. State of U.P. & Anr. W.P.(Crl.) No. 259/2021***, it had been directed by the Hon’ble Supreme Court vide order dated 28.06.2021 to the effect:-

“The petitioner seeks premature release on the submission that he has completed 13 years of actual custody and 14 years 6 months with remission in a conviction under Sections 302/149, IPC. It is submitted that he is 75 years of age and suffers from paralysis hindering daily activities. The Senior Superintendent of Police and District Magistrate has, therefore, recommended his release. It still awaits decision by the State Government.”,

and submits that directions were issued to the concerned authorities to take final decision on recommendation seeking premature release of that petitioner within a period of four weeks but that petitioner passed away, and that the Apex Court had taken a stringent view to investigate whether the delay in consideration was attributable to the State and further directed that the representations for premature release especially those agitated on the grounds of old age/terminal illness must be disposed of expeditiously.

31. The petitioner further submits that he has undergone life imprisonment of more than 14 years without remission, that his case for premature release has been blatantly rejected by the Sentence Review Board without citing any cogent reasons for such dismissal



apart from the perversity of the crime, and has disregarded the fact that he is an old and frail individual of around 80 years of age with chronic kidney disease and in need of constant and regular medical treatment and has already been considered under the Rule 1255 of the Delhi Prison Rules, 2018 and is thus liable to be granted premature release in compliance of the said rule.

32. The petitioner places reliance on the minutes of the SRB meeting dated 28.02.2020, where life-convicts had been granted premature release on account of their old age. The minutes of the said meeting have been submitted by the petitioner as under:-

“Minutes of SRB Meeting dated 28.02.2020

06. JAI DEVI W/O SH. NAVNEET — AGE-83 YRS.

Jai Devi W/o Sh. Navneet is undergoing life imprisonment in case FIR No. 120/1993, U/S 302/34 IPC, P.S. Vivek Vihar, Delhi for murder of her daughter-in-law by burning.

The convict has undergone:

Imprisonment of 14 years, 02 months and 02 days in actual and 17 years, 01 months and 20 days with remission. She has availed I. Bail 02 time, Parole 07 times and Furlough 20 times.

Recommendation by Police:

The Delhi Police has neither recommended nor opposed her premature release in its report, however the Special Commissioner of Delhi Police (Crime) has not opposed in the meeting.

Recommendation by Social Welfare Department:

The Social Welfare Department, Delhi has recommended premature release of the convict in its report. The Director, Social welfare Department, Delhi, has supported the premature release of the convict in the meeting.

After taking into account all the facts and circumstances of the case, the convict's old age, no previous criminal history,



*she has 37 shown good conduct in jail as well as during I. Bail/parole/furlough etc., the Board unanimously **RECOMMENDS** premature release of convict Jai Devi W/o Sh. Navneet.”*

33. The petitioner further submits that he is a first-time offender and has a glorious academic background, that he is not a habitual offender and does not pose a threat to the society as a whole. *Inter alia*, the petitioner reiterates his plea of innocence qua the incident. The petitioner further submits that he is in a deteriorating medical condition with chronic kidney disease amounting to 70% damage and in dire critical need of medical attention, and his advanced age has started taking toll on his health, and there is little improvement in the medical condition of the petitioner, and his acute health problems need regular check-up, timely and proper medications and care of his family members which can be availed only if premature release is granted to the petitioner. The petitioner further submits that if premature release as prayed by him is not allowed, he would be left at the mercy of the trepid and meretricious medical assistance provided by the prison authorities.

34. The petitioner has placed reliance on the verdict of the Hon’ble High Court of Punjab and Haryana in ***Surender Versus State of Haryana and Others in CRWP-1625/2020***, with observations therein to the effect:-

“The petitioner has filed the present petition under Article 226 of the Constitution of India for issuance of writ in the nature of mandamus directing the respondents to release the petitioner prematurely in view of the Govt. Policy dated 12.04.2002 He has further contended that the petitioner has



*already undergone more than 14 years of actual sentence and more than 16 and 09 months of sentence including remissions. Further detention of the petitioner is illegal and against the said Govt. policy and violation of Article 21 of the Constitution of India. He has placed reliance on a judgment dated 24.07.2003 passed by this Court in **CRM-M-30109-M-2002 (Mahender Singh v. State of Haryana)**.*

*In the case in hand, the policy dated 04-02-1993 is applicable and as per clause 2 (a) thereof, the petitioner had to undergo 14 years of actual sentence and 20 years of total sentence including remissions on account of the fact that offences alleged to have been committed by him are covered under the said clause. Such distinction made in the policy is totally arbitrary and has certainly caused hardship to the petitioner, who has undergone more than 14 years, 03 months and 24 days of actual sentence and more than 16 years and 09 months with remissions. **Thus, it can safely be held that as per the judgment passed in Mahender Singh's case (supra), the offence committed by the petitioner does not fall under the heinous category for the reason that if a convict is involved in the murder of more than two persons, even then he is to be considered for premature release and the case in hand the petitioner has been convicted for commission of one murder. Therefore, the petitioner in this case was required to be treated at par and he is held entitled to the same/similar treatment for the purpose of premature release.** Consequently, the case of the petitioner is liable to be considered under clause 2(b) of the policy, which prescribes 10 years of actual sentence and 14 years of total sentence including remissions. Since the petitioner has now already undergone more than 14 years of actual sentence, which could not be disputed by the learned counsel for the State, the present petition deserves to be accepted.*

In view of the above, the present writ petition is allowed. The petitioner be set at liberty forthwith, if is not required in any other case."



35. The petitioner submits that the respondent has overlooked the fact that his wife is left alone in his absence and she too has an advanced age and facing difficulty to carry out her everyday tasks and is half paralyzed and is not in stable medical condition, and that being of an advanced age, the petitioner and his family are emotionally and financially dependent on each other. The petitioner has submitted through the petition the stated essential criteria required to be considered in the case of the premature release as under:-

“

<u>S.No.</u>	<u>Category</u>	<u>Remarks vis-à-vis the Petitioner</u>
1.	<i>Family and Social background of the Petitioner.</i>	<i>The Petitioner has an ailing wife who is in immediate need of medical care and attention due to her paralysis. The sons of the Petitioner are in jail and the Petitioner has 70% damaged kidneys and severe diabetes.</i>
2.	<i>Offence for which the Petitioner was convicted and sentenced.</i>	<i>Section 304/32 IPC</i>
3.	<i>The circumstances under which the offence was committed.</i>	<i>It is alleged that the Petitioner in a premeditated conspiracy put kerosene oil on his daughter-in-law and set her ablaze. It must be noted that the Petitioner has been falsely implicated in the murder of the deceased in the absence of any evidence to corroborate the prosecution's case which relies solely on circumstantial evidence which does not follow a conclusive chain of events. The Petitioner has been falsely implicated in the criminal case registered against</i>



		him. <i>The Petitioner approached various human right authorities and exhausted all appellate remedies available under law to the stage of filing a curative petition before a five-judge bench of the Hon'ble Supreme Court. It was not even the case of the prosecution that the incident was committed by the Petitioner and the limited allegation was restricted to the sons of the Petitioner having acted in concert of the will of the Petitioner.</i>
4.	<i>The particulars of the conduct and of the prisoner in the jail during the period of his incarceration.</i>	<i>Good Conduct: The Petitioner is an ideal and reformed jail candidate. The Petitioner has never been given any punishment during 17 years of incarceration which is reflective of the restraint and exemplary behaviour of the Petitioner.</i> <i>The Petitioner was presented with the Letter of Appreciation for his support to the Jail Administration in smooth functioning of Prison dated 17.02.2014 by the Office of the Superintendent.</i> <i>The Petitioner also utilized his background as an educator to lead the Padho aur Padhao initiative in Jail no. 8 and 9 whereby several prisoners benefited.</i>
5.	<i>Conduct during the period he was released in probation leave/parole.</i>	<i>SATISFACTORY- The Petitioner has never misused the grant of parole and was regularly reporting to the Prison Authorities.</i> <i>The Petitioner has been enlarged on parole and furlough 28 (twenty-eight) times and was granted bail</i>



		<i>for two years between 2008 and 2010. The Petitioner is currently released on emergency parole granted by the Screening Committee established under the aegis of the High-Powered Committee due to the Covid-19 pandemic.</i>
6.	<i>Offence, if any, committed by him in jail and punishment awarded to him for such offence.</i>	<i>No instance of punishment or complaint received during entire period of incarceration.</i>
7.	<i>Medical reports.</i>	<i>The Petitioner is suffering from Chronic Kidney Disease, Diabetes along with other ailments. The Petitioner has undergone 70% kidney damage and requires regular and acute medical attention.</i>
8.	<i>Recommendations of the superintendent.</i>	<i>The Petitioner was presented with the Letter of Appreciation for his support to the Jail Administration in smooth functioning of Prison dated 17.02.2014 by the Office of the Superintendent.</i>

36. The petitioner further submits to the effect that in view of the verdict of this Court in "*Sushil Sharma vs. State in W.P. (Crl.) 3798/2018*", he may not be subject to the constant discrimination of rejection on the grounds of being of Muslim origin and the prolonged period of incarceration already undergone by the petitioner which makes him eligible for premature release from the year 2020.

37. *Inter alia*, the petitioner submits that the SRB has not followed the statute under which it had been created and has erroneously denied premature release to the petitioner in its decisions/meetings from



2020, and had rejected the application of the petitioner for premature release mechanically. The petitioner places reliance on the verdict of the Hon'ble Supreme Court in ***Laxman Naskar Vs. Union of India and others AIR 2000 SC 986*** and the judgment of the Hon'ble High Court of Jharkhand in ***Limbu Hembrom Vs. The State of Jharkhand & Ors. in Writ Petition (Crl.) No. 190 of 2011*** to submit to the effect that the SRB is mandatory required to apply its mind and not to mechanically reject an application for premature release.

38. *Inter alia*, the petitioner places reliance on the observations of the Hon'ble Division Bench of this Court in W.P.(CRL) 3798 of 2018 in ***"Sushil Sharma vs State"*** to the effect:-

"3. It is settled position of law that life sentence is nothing less than lifelong imprisonment and by earning remissions a life convict does not acquire a right to be released prematurely; but if the Government has framed any rule or made a scheme for early release of such convicts then those rules or schemes will have to be treated as guidelines for exercising its power under Article 161 of the Constitution and if according to the Government policy instructions in force at the relevant time the life convict has already undergone the sentence for the period mentioned in the policy instructions, then the only right which a life convict can be said to have acquired is the right to have his case put up by the prison authorities in time before the authorities concerned for considering exercise of power under Article 161 of the Constitution. When an authority is called upon to exercise its powers under Article 161 of the Constitution that will have to be done consistently with the legal position and the Government policy/instructions prevalent at that time."

"5. All the "life convicts" before us have completed continued detention of 20 years including remission earned."



From the counter filed by the State, we find that the Government has also framed guidelines for this purpose. To consider the prayer for premature release of the "life convicts, police report was called for on the following points :-

- (i) Whether the offence is an individual act of crime without affecting the society at large;*
- (ii) Whether there is any chance of future recurrence of committing crime;*
- (iii) Whether the convict has lost his potentiality in committing crime;*
- (iv) Whether there is any fruitful purpose of confining this convict any more;*
- (v) Socio-economic condition of the convict's family.*

6. Though the police report did not cover all the above points, the prayer of "life convicts" for premature release was rejected mainly on the ground of objections by police. The police had only reported about the chances of the Petitioners committing crime again. It becomes apparent from the record that the Government did not consider the prayer for premature release as per the rules. The Government did not pay sufficient attention to the conduct record of the Petitioners while in jail nor did it consider whether they had lost their potentiality in committing crime. The relevant aspect, namely, that there is no fruitful purpose in confining them any more was also not considered nor the socio-economic conditions of the convict's family were taken into account. Thus, the orders of the Government suffer from infirmities and are liable to be quashed. "

"Although, the release of a 'lifer' is not automatic, the SRB is required in all cases to consider the circumstances in which the crime for which the 'lifer' has been convicted was committed, and other relevant factors including the lifer's potential for committing crime; considering the lifer's overall conduct in jail during the period of incarceration;



the possibility of the convict becoming a useful member of the society; and the socio-economic condition of the lifer's family."

"20. In this behalf it is trite to observe that once the State has formulated guidelines for the 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. There can, in our considered view, be no quarrel with this established legal position. "

"27. In view of the foregoing requirements prescribed by the guidelines, the SRB cannot be heard to state that, they are not bound by them particularly, in view of the circumstance that they owe their existence to the guidelines. The SRB, is required to exercise its recommendatory function strictly in accordance with the binding principles enunciated in the guidelines, from where their discretion emanates. The policy formulated by the Competent Authority is binding on the SRB and has to be scrupulously observed, adhered to and followed.

28. In this behalf, it would be trite to observe that, an authority must be strictly held to the standards, by which it professes its conduct to be judged. "

40. Although, there can be no quarrel with the proposition that the SRB has been vested with discretion under the extant guidelines, the same has to be exercised in a just and reasonable manner, after due and proper consideration of all the relevant material."

39. The petitioner further submits to the effect that the Sentence Review Board has utilized several terminologies throughout the minutes without establishing a clear standard of understanding of what the said terms mean and said terms have been reproduced herewith:



“Word/ Terminology used by SRB

- 1. Support*
- 2. Not Supported*
- 3. Neither support or oppose*
- 4. Recommended*
- 5. Not recommended*
- 6. Opposed*
- 7. Strongly opposed*
- 8. No objection*
- 9. Not objected”*

40. *Inter alia*, the petitioner submits that it is essential to clarify whether there is difference between the terminologies- ‘*strongly opposed*’, ‘*not recommended*’ and ‘*not supported*’ in addition to several other terminologies that have been utilized by the Sentence Review Board to create vague criteria and therefore circumventing the essential requirement of providing reasoning and justification for their decisions, and that the interpretation of the terminology used cannot be clarified upon, since the terms are used interchangeably in common parlance, ‘*for support is to agree with*’ and say yes to a suggestion or idea while recommend is to suggest that a particular action be done. The petitioner further submits that the use of such terms with no definite meaning in legal parlance, while phrasing of the decision, completely disorients the interpretation of the opinion of the Delhi Police and the Social Welfare Department. Thus, a lucid meaning to the terms in legal parlance be provided, whether recommended but not supported/ not recommended means not expressly supported/ recommended or controverted or abstained from any expression.



41. The petitioner submits that the case of the petitioner has been defined within a restricted scope of a single sentence as under:-

“Sentence: Wahid Ahmed S/o Sh. Ismail Khan is undergoing life imprisonment in case FIR No. 615/2005, U/S 302/34 IPC, P.S. SeelamPur, Delhi for committing murder of his daughter-in-law by pouring kerosene oil and setting her ablaze.”

and that, in as much as, the SRB has erroneously considered the perversity of the crime but the strength of defences taken by the petitioner have not been considered of the case being formulated on the circumstantial evidence, that it has been erroneously held that the petitioner had poured kerosene oil on his daughter-in-law and set her ablaze, whereas the prosecution version only was to the effect that he had only consented to the commission of the offence. *Inter alia*, the petitioner submits that the approach undertaken by the Sentence Review Board in its inclusion of the “nature of crime” as a key determining factor in its decision-making process is flawed, and that it is not the “nature” but “circumstances under which the crime” was committed which must be considered while taking into account the grant of premature release to any convict.

42. *Inter alia*, the petitioner submits that in accordance with the minutes of meeting of the SRB dated 11.12.2020, the representation for premature release of the petitioner has been recommended by the Social Welfare Department, Delhi, and that it is pertinent to note here that the rejection of premature release of convicts by the police is common on grounds of causing disturbance to society, and that the petitioner through his conduct during the judicial custody and during



the period of parole/ furlough has been without any complaint of misconduct and has reported as when required of him. *Inter alia*, the petitioner submits his case for premature release has been further substantiated by the letter of appreciation dated 17.02.2014 received by the Office of Superintendent for his support to the Jail Administration in smooth functioning of Prison and for his contribution towards improvement in education level in Tihar Jail, affirming the petitioner's good behaviour during his period of imprisonment, and that this is evident of the Petitioner's good behaviour both inside and outside of the Jail Complex and that of the petitioner's will to remain a peaceful and wise person who refrains to engage in any illicit activities and is now a reformed individual.

43. The petitioner further submits that he has had a good record during his entire period of incarceration and has always returned to the Tihar Jail complex duly on time from his numerous spells of parole granted, and that he has been dedicated and loyal in his commitment to carrying out his work at Tihar Prison.

44. The petitioner further submits through para 29 of the petition to the effect:-

“29. The Board followed criteria under the Delhi Prison Rules, 2018 in recommending/rejecting the premature release of convicts, however, the manner in which the SRB exercises its discretion is a process that is haphazard, arbitrary and capricious as well as shrouded in secrecy. The manner of dispensing with the necessary consultation of each member of the Board in rejecting/recommending premature release has not been carried out in the SRB meeting dated 11.12.2020 and 05.08.2020 & 06.08.2020. There is nothing adduced or placed on record in the



minutes to show what each member of the Board considered of such circumstances or their objective assessment of the circumstances in which crime was committed. There is no mention or record of any objective criteria that the members of the Board relied on to reach to the conclusion of rejecting the premature release of the Petitioner and the same constitutes a grave violation of the principles of natural justice and basic tenets of administrative law as an executive body exercising its discretion in an arbitrary and capricious manner and the minutes are liable to be set aside.”

45. *Inter alia*, the petitioner places reliance on the verdict of the Hon’ble Supreme Court in *Shor v. State of Uttar Pradesh and Anr. W.P.(Crl) No. 58 of 2020* to submit to the effect that it has been held therein to the effect that u/s 2 of the United Provinces Prisoners Release on Probation Act 1938, what has to be seen by the State Government is **(i) antecedents (ii) conduct in the prison and (iii) the person, if released is likely to abstain from crime and lead a peaceful life**. It was further held that, merely stating the fact that the crime is heinous and that release of such a person would send a negative message against the justice system in the society are factors de hors Section 2 and that thus the Petitioner in said case was set free.

46. The petitioner also places reliance on the release of convicts vide meeting dated 11.12.2020 on stated similar grounds as under:-

RELEASE OF CONVICTS VIDE MEETING DATED 11.12.2020 ON SIMILAR GROUNDS OF THE CASE

Serial No., Name and age of the convict		09.MUKESH KUMAR S/O SH. MADAN LAL — AGE- 40 YRS
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NEUTRAL CITATION NO: 2022/DHC/003690

<i>Consideration</i>	<i>Nature of crime</i>	<i>FIR No.177/2006, U/S 302/147/148/149/34 IPC, P.S. Nabi Karim, Delhi for murder of a person over old issue/enemity.</i>
	<i>Sentence undergone</i>	• Imprisonment of 14 years, 03 months and 23 days in actual and 16 years, 08 months and 13 days with remission. • Bail 02 times, Parole 05 times and Furlough 12 times.
<i>Recommendations</i>	<i>Police Department</i>	<i>The Delhi Police has not recommended and strongly opposed his premature release in its report. The Deputy Commissioner of Delhi Police (Legal) has also opposed his premature release in the meeting.</i>
	<i>Social Welfare Department</i>	<i>The Director, Social Welfare Department, Delhi has supported his premature release in the meeting.</i>
<i>Conclusion</i>		<i>After taking into account all the facts and circumstances of the case, the convict not having any criminal history, satisfactory jail conduct during incarceration except one old punishment in 2012, having shown consistent good behaviour inside prison for last 8 years and thus shown reformatory attitude, nothing adverse reported during I. Bail, parole and furlough period etc., the Board RECOMMENDS premature release of convict Mukesh Kumar S/o Sh. Madan Lal.</i>
<i>Comments</i>		<i>The convict has been released despite the non-recommendation of the Delhi Police and no distinction has been made in respect of nonopposition being para material to</i>



		<i>recommendation</i> <i>Conclusion apply to the Petitioner as well who has been comparatively substantially more useful than the stated convict.</i>
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47. The petitioner further places reliance on release of convicts vide meeting dated 05.08.2020 and 06.08.2020 as under:-

RELEASE OF CONVICTS VIDE MEETING DATED 05.08.2020 & 06.08.2020 AND GROUNDS OF THE SAME

<i>Serial No., Name and age of the convict</i>		<i>160. DHARAMBIR S/O SH. SHOERAM, AGED 61 YEARS.</i>
<i>Consideration</i>	<i>Nature of crime</i>	<i>FIR No. 698/1997, U/S 302/498-A/34 IPC, P.S Mehrauli, Delhi for committing murder of his wife for demand of dowry by pouring kerosene oil on her and setting her ablaze..</i>
	<i>Sentence undergone</i>	<i>• Imprisonment of 14 years, 06 months and 19 days in actual and 18 years, 03 months and 12 days with remission.</i> <i>• Bail 01-time, Parole 05 times, Furlough 15 times</i>
<i>Recommendations</i>	<i>Police Department</i>	<i>The Deputy Commissioner of Delhi Police (HQs) has supported his premature release in the meeting.</i>
	<i>Social Welfare Department</i>	<i>The SWD, Delhi, has recommended premature release in its report. The Director, SWD, Delhi has also supported.</i>
<i>Conclusion</i>		<i>After taking into account the facts of the case, reformative attitude, his premature release supported by police and welfare authorities etc., the Board unanimously RECOMMENDS premature release</i>



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		<i>of convict.</i>
<i>Comments</i>		<i>Despite the gory nature of offence involving setting his own wife ablaze, the convict has been unanimously recommended for pre mature release</i>

<i>Serial No., Name and age of the convict</i>		<i>161. RAGHUVIR SINGH S/O SH. SHOERAM — AGE-61 YRS.</i>
<i>Consideration</i>	<i>Nature of crime</i>	<i>FIR No. 278/1991, U/S 302/498-A/34 IPC, P.S. Mehrauli, Delhi for committing murder of his bhabhi for demand of dowry by pouring kerosene oil on her and setting her ablaze</i>
	<i>Sentence undergone</i>	<i>• Imprisonment of 14 years, 10 months and 27 days in actual and 18 years, 10 months and 27 days with remission.</i> <i>• Bail 01 time, Parole 05 times and Furlough 18 times.</i>
<i>Recommendations</i>	<i>Police Department</i>	<i>The Delhi Police report has not been received. The Deputy Commissioner of Delhi Police (HQs) has supported his premature release in the meeting.</i>
	<i>Social Welfare Department</i>	<i>The Social Welfare Department, Delhi has recommended his premature release in its report. The Director, Social Welfare Department, Delhi has also recommended his premature release in the meeting.</i>
<i>Conclusion</i>		<i>After taking into account the facts of the case, reformatory attitude, his premature release supported by the Police and Welfare Department etc., the Board unanimously RECOMMENDS premature release of convict.</i>



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Comments		Despite the gory nature of offence involving setting his own bhabhi ablaze, the convict has been unanimously recommended for pre mature release.
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Serial No., Name and age of the convict		165. BHAGWAN DASS S/O SH. ARJUN SINGH — AGE 70 YRS.
Consideration	Nature of crime	FIR No. 90/2006, U/S 302 IPC, P.S. Jaffarpur Kalan, Delhi for murder of his daughter (over incestuous relationship with her uncle).
	Sentence undergone	• Imprisonment of 14 years, 01 month and 01 day in actual and 17 years, 05 months and 03 days with remission. • Parole 09 times and Furlough 13 times.
Recommendations	Police Department	The Delhi Police has no objection to his premature release in its report. The Dy. Commissioner of Delhi Police (HQs) has also supported his premature release in the meeting.
	Social Welfare Department	The Social Welfare Department, Delhi report has not been received. However, the Director, Social Welfare Department, Delhi, supported the premature release of the convict in the meeting.
Conclusion		After taking into account all the facts and circumstances of the case i.e. the convict has no criminal history, number of paroles/furloughs availed, the Board unanimously RECOMMENDS the premature release of convict Bhagwan Dass S/o Sh. Arjun Singh.
Comments		Despite the horrific nature of offence of murdering his own daughter, the convict has been unanimously



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		<i>recommended for pre mature release.</i>
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<i>Serial No., Name and age of the convict</i>		<i>183. SATBIR SINGH S/O SH. SORAM @ SHOERAM – AGE 58 YRS</i>
<i>Consideration</i>	<i>Nature of crime</i>	<i>FIR No.278/1991, U/S 302/498-A/34 IPC, P.S. Mehrauli, Delhi for committing murder of his Bhabhi for demand of dowry by pouring kerosene oil on her and setting her ablaze.</i>
	<i>Sentence undergone</i>	<i>• Imprisonment of 14 years and 22 days in actual and 17 years, 11 months and 07 days with remission.</i> <i>• Bail 01 time, Parole 04 times and Furlough 16 times.</i>
<i>Recommendations</i>	<i>Police Department</i>	<i>The Delhi Police has highly opposed his premature release in its report. The Deputy Commissioner of Delhi Police (HQs) has supported his premature release in the meeting.</i>
	<i>Social Welfare Department</i>	<i>The Social Welfare Department, Delhi has recommended premature release of the convict in its reports. The Director, Social Welfare Department, Delhi has also supported his premature release in the meeting.</i>
<i>Conclusion</i>		<i>After taking into account all the facts and circumstances of the case, satisfactory jail conduct throughout incarceration, number of Paroles and Furloughs availed, shown reformatory attitude, the Board unanimously RECOMMENDS premature release of convict Satbir Singh S/o Sh. Soram @ Shoeram.</i>
<i>Comments</i>		<i>That the Board has unanimously recommended for pre mature release of the convict not being considerate of the horrific nature of offence of committing murder of his Bhabhi for</i>



		<i>demand of dowry by pouring kerosene oil on her and setting her ablaze.</i>
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48. *Inter alia*, the petitioner submits that as per the 2004 Order bearing no. F.18/5/94/Home (GenI)/ of 2004, a District and Sessions Judge, Delhi is essential for the constitution of the Board as well as in the case of Additional Chief Secretary (Home) being present instead of Principal Secretary (Home), and that the SRB does not envision delegating of such authority to any other persons apart from those stipulated under the 2004 Order. The petitioner further submits that it is pertinent to note that the delegation or sub-delegation of authority/power has not been envisioned as per the Delhi Prison Rules, 2018 or SRB Order dated 16.07.2004 through which the Sentence Review Board has been constituted. The petitioner submits that the composition of the Sentence Review Board in its meeting dated 05.08.2020 & 06.08.2020 cannot be deemed to be valid in the eyes of law as there was no authority resting with members acting as authorized representatives. The composition of the SRB in its meeting dated 11.12.2020 has been reproduced herewith:

“A meeting of the Sentence Review Board (hereinafter referred to as Board) was held on 11th December, 2020 in the Conference Room Hall no. 03, “C” Wing, 2nd floor Delhi Sachivalya under the CHAIRMANSHIP OF HON’BLE HOME MINISTER, GOVT. OF NCT OF DELHI.

THE FOLLOWING WERE PRESENT:

***SH. SATYENDRA JAIN
HON’BLE HOME MINISTER***

CHAIRMAN



GOVT. OF NCT OF DELHI

SH. B.S. BHALLA *MEMBER*
PRINCIPAL SECRETARY (HOME)
GOVT. OF NCT OF DELHI

SH. SANDEEP GOEL *MEMBER*
SECRTARY
DIRECTOR GENERAL OF PRISONS
GOVT. OF NCT OF DELHI

SH. SANJAY KUMAR AGGARWAL *MEMBER*
PRINCIPAL SECRETARY (LAW & JUSTICE)
GOVT. OF NCT OF DELHI

SH. SATISH KUMAR *MEMBER*
ADDL. DISTRICT AND SESSIONS JUDGE
DELHI
(AS NOMINATED REPRESENTATIVE OF
D&SJ, HQs, DELHI)

MS. RASHMI SINGH *MEMBER*
DIRECTOR, SOCIAL WELFARE DEPARTMENT
GOVT. OF NCT OF DELH

SH. RAJESH RAO *MEMBER*
DEPUTY COMMISSIONER OF POLICE (HQ'S)
DELHI POLICE
(AS NOMINATED BY COMMISSIONER OF POLICE,
DELHI)"

49. The petitioner thus submits that the improper delegation of authority and change in representation ranks itself constitutes a violation of the basic tenets of administrative law thereby rendering the meeting dated 11.12.2020 and the order dated 23.10.2020 as a nullity in the eyes of law.

50. The petitioner further submits that the primary reason for rejection of the grant for premature release in the SRB meeting dated 11.12.2020, has been stated to be the alleged act to have been



committed by the petitioner, and that thereafter the Board unanimously rejected the premature release of the petitioner. The petitioner submits that in the present case, the Social Welfare Department, Delhi has recommended the premature release of the petitioner but it has acted contrary to the report in its meeting stating that the case can be considered for premature release, only when the requirement under section 433A of CrPC requiring completion of 14 years of imprisonment is fulfilled. The petitioner submits that in the interest of full disclosure and in accordance with the principles of natural justice, the reasons for such deviation must be recorded otherwise an order recording such deviation must be held as void and a nullity.

51. *Inter alia*, the petitioner submits that in terms of the order of the Govt. of NCT of Delhi bearing No. F.18/5/94/Home(GenI)/2004, and Delhi Prison Rules, 2018, it is incumbent on the respondent to prepare and initiate the case of the petitioner at least 6 months in advance from the date when the petitioner would become eligible for the consideration of premature release and the failure of the State to collate the relevant data within such period requires accountability in view of it being an administrative failure. The extract of the said order F.18/5/94/Home(GenI)/2004 has been put forth by the petitioner as under:-

***“Government of National Capital Territory of Delhi
Order bearing No. F.18/5/94/Home (GenI)/ 2004:***

...
***4. The following procedure shall be followed for
processing the cases for consideration of the Board: -***



Every Superintendent of a Jail in the Union Territory of Delhi who has prisoner(s) undergoing sentence of imprisonment for life shall initiate the case of the prisoners at least 6 months in advance of the date when the prisoner would become eligible for consideration of premature release as per the criteria laid down by the State Government in that behalf.”

“Delhi Prison Rules 2018 bearing No. F.9/87/2018/HG/5980 dated 01.10.2018. In the exercise of the powers conferred by Section 71 of the Delhi Prisons Act, 2000 (Delhi Act No.2 of 2002), the Government of the National Capital Territory of Delhi is pleased to make the following Rules namely, Delhi Prison Rules 2018.

...

1257. (C) While considering the case of premature release of a particular prisoner, the Board shall keep in view the general principles of amnesty/ remission of the sentence as laid down by the Government or by Courts as also the earlier precedents in the matter. The paramount consideration before the Sentence Review Board being the welfare of the prisoner and the society at large. The Board shall not ordinarily decline a premature release of a prisoner merely on the ground that the police have not recommended his release. The Board shall take into account the circumstances.”

52. The petitioner further submits that the report or opinion of the police of the concerned State cannot be considered to be the *sine qua non* to the recommending/rejection of the premature release of the petitioner, and that the Delhi Prison has neither opposed nor recommended the premature release in its report but that the Deputy Commissioner of Delhi Police (Legal) has not supported his premature release.



53. *Inter alia*, the petitioner placed reliance on the verdicts in *Kashmir Singh vs. State of Himachal Pradesh and Ors.*, MANU/HP/0084/2015, *Laxman Naskar vs Union of India &Ors.* (2000) 2 SCC 595 and *Sushil Sharma vs. State of NCT of Delhi, Writ Petition (Crl.) No. 3798/2018*, to contend to the effect that it has been held therein that the Board should not mechanically reject the recommendation for premature release where the police has opposed the same, and rather the Board must take into account circumstances in which the crime was committed and whether the petitioner had lost the propensity to commit crime again.

54. The petitioner further submits that the Department of Social Welfare, Delhi has taken cognizance of his case on its merit and given its recommendation for the premature release of the petitioner vide meeting of SRB dated 11.12.2020 and 05.08.2020 & 06.08.2020. The petitioner further submits that he has observed good behaviour in the consolidated period of almost 28 occasions that parole has been granted by the Government of NCT Delhi, and that he has never misused the liberty granted during furlough and has always observed exemplary conduct while on furlough on 17 (seventeen) occasions, which was increased through emergency parole.

55. *Inter alia*, the petitioner submits that in similar circumstances the Hon'ble Supreme Court has given due appreciation to the age of a convict whilst granting premature release vide order dated 11.10.2018 in the matter of *Ram Sewak V. State of Uttar Pradesh, W.P.(CrL) 61 of 2016*, wherein the convict was granted premature release who had been in judicial custody for 29 years, observing to the effect:-



"3. As on the date the petitioner has been in jail for over 29 years and according to the counter affidavit, with remission, the total sentence undergone is 36 years. The petitioner has also crossed the age of 60 years. It is not in dispute that under the Rules, a person who has crossed 60 years of age and served 16 years of sentence, without remission, is entitled to be considered for premature release.

4. Having regard to the peculiar facts and circumstances of the case, as emerging in the case of the petitioner, we are of the view that there is no point in directing further consideration by the State, since the petitioner otherwise satisfies the eligibility criterion for premature release.

5. Therefore, the writ petition is allowed. The petitioner is directed to be released forth with, in case he is not required to be detained in connection with any other case."

56. The petitioner has further submitted that the reasons provided by the Board for rejecting the application of the petitioner are not in consonance with the established principles of natural justice in giving the reasons in rejecting the recommendation for premature release despite his exceptional conduct and good behaviour. Reliance in relation thereto has been placed on behalf of the petitioner on the observations of the Hon'ble Supreme Court in ***Sunil Batra vs Delhi Administration***, (1978) 4 SCC 409.

57. *Inter alia*, the petitioner places reliance on the observations of the Hon'ble Supreme Court in ***State of Haryana vs. Jagdish***, 2010 4 SCC 216, wherein it has been held to the effect:-

"the policy which was prevalent and existing at the time of conviction would be applicable at the time of



consideration of seeking premature release by the SRB” and “The guidelines which are more liberal and beneficial would be applicable”.

58. Reliance has been placed on behalf of the petitioner on the verdict of this Court in *NS Jain v. Superintendent, Central Jail* W.P.(Crl) 129 of 1985 dated 22.07.1985 and on the case of *Rakesh Kaushik v. Delhi Administration & Ors.* (1986) CrLJ 566 and on the verdict of the Hon’ble High Court of Himachal Pradesh in *Kashmir Singh v. State of Himachal Pradesh & Ors. Criminal Appeal No 8015/ 2014.*

59. The State has vehemently opposed the prayer made by the petitioner seeking premature release submitting to the effect that the offence committed by the petitioner is one against society and that the offence in question under Section 302 read with Section 34 of the Indian Penal Code, 1860 had taken place on the exhortation of the petitioner herein, the father-in-law of the deceased. It has thus been submitted on behalf of the State that an erroneous message would be sent to the society if the petitioner convicted of an offence punishable under Section 302 read with Section 34 of the Indian Penal Code, 1860 with his two sons is released for such a barbaric act.

60. The observations of the learned Trial Court of the learned ASJ, North-East in Sessions Case No.38/2009 as reflected at page 152 are to the effect:-

“I have carefully gone through the case law relied upon by the Ld. Defence Counsels. In my view, the case law. relied upon by the Ld. Defence Counsels is not



applicable to the facts and circumstances of the present case.

I am of the considered view that the statements of PW-2 Amreen and PW-3 Baby Riza Anjum are consistent and corroborative. There are no infirmities in their statements. Nothing could come out in their cross examination which could shake their credibility.

*Hence, in my view, they are reliable witnesses and there is no reason to disbelieve their statements. Hence, from the statements of PW-2 Amreen and PW-3 Baby Riza Anjum @Honey coupled with the statement Ex. PW-11/A made by deceased Shabana Anjuna and the postmortem report Ex. PW-1/A, it is proved that on 11.10.2005 at about 3.20 p.m. at House No. 1312, Gali No. 42, Jafrabad Delhi, **accused JaffarUl-Islam threw kerosene oil on the deceased Shabana Anjum and accused Mazhar Ul Islam threw lighted match stick on her body, while accused Wahid Ahmed exhorted the other two accused to kill Shabana Anjum.** As a result of which Shabana Anjum sustained burn injuries and later on she succumbed to her burn injuries. Hence, it is proved that all the three accused persons in furtherance of their common intention committed the murder of Shabana Anjum,*

Therefore, I hold all the three accused persons”,

(emphasis supplied)

which indicates that the allegations held to have been established against the petitioner Wahid Ahmed are in relation to his exhortation of the other two co-accused i.e. his sons to kill the deceased, in as much as, it was the co-accused, since convicted, Jaffar Ul-Islam, the son of the petitioner, who has been held to have thrown the kerosene oil on the deceased Shabana Anjum with Jaffar-Ul-Islam being the brother of Mazhar-Ul-Islam, the co-accused, since convicted, i.e. the



husband of the deceased, and it is, vide the judgment of the learned Trial Court which has been upheld up till the Apex Court, established on record that it was Mazhar-Ul-Islam who threw the lighted matchstick on the body of the deceased Shabana Anjum whilst the petitioner herein exhorted the other two accused to kill Shabana Anjum, with it having been held vide the judgment dated 11.08.2011 of the learned Trial Court that it had been proved that all the three accused since convicted in furtherance of their common intention had committed the murder of Shabana Anjum.

61. The Nominal Roll dated 20.07.2022 received from the Superintendent of Police, Tihar Jail, Delhi indicates that the petitioner is aged 77 years and has undergone 13 Years 4 Months and 8 Days of incarceration as on 06.04.2021 with remission earned of 3 Years and 3 Days. There are no other cases against the petitioner as per the Nominal Roll as per column No.13 and 14 therein; his Jail conduct as per the column No.17 is shown to be satisfactory, and as per column No.18, his overall conduct for the last one year has also been satisfactory with punishment 'nil', however, at column No.20, 'any misconduct reported during Interim Bail/Parole/Furlough', it was recorded to the effect that the convict was released on two weeks' furlough on 06.04.2021 and he was to surrender on 28.04.2021, but he did not surrender on the due date but he was granted emergency parole by the Govt. of NCT of Delhi vide its order dated 14.05.2021.

62. The other two convicts in the matter Jaffar-Ul-Islam, son of Wahid Ahmed, and Mazhar-Ul-Islam, son of Wahid Ahmed, are also



indicated to be on emergency parole as per the Nominal Roll dated 20.07.2022.

63. Vide order dated 21.07.2022, in as much as, the submission was made on behalf of the petitioner that there had been a deliberate concealment of facts in the Nominal Roll sent vide the communication dated 20.07.2022 by the Superintendent Jail, Delhi submitting to the effect that period from 07.04.2021 till the date of the Nominal Roll, i.e., 20.07.2022 had not been taken into account and that it was reported in column No.20, and that Annexure A attached to the Nominal Roll qua the details of interim bail/ parole/ furlough granted/availed by the convict in FIR No.615/2005, Police Station Seelampur, under Sections 302/34 of the Indian Penal Code, 1860, at Serial No.24, mentioned to the effect:-

24	03 Weeks	Furlough (converted in to Emergency Parole)	06.04.2021	Till further order	DG(P)/GNCTD
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thus submitting to the effect that furlough was converted to emergency parole from 06.04.2021 which continued till further orders of the DG(P) of the GNCTD, and that thus, the mention of the misconduct of the applicant petitioner as mentioned in Column No.20 of the Nominal Roll is wholly erroneous. An explanation was thus called for from the Superintendent Jail, Delhi to explain the discrepancies pointed out on behalf of the petitioner and the Superintendent Jail, Delhi was also directed to submit the updated Nominal Roll.

64. The updated Nominal Roll has since been received vide the communication dated 28.07.2022 from the Superintendent Jail, Delhi



which explains that the period from 07.04.2021 till the date of the Nominal Roll that was dated 20.07.2022 has not been taken into account as the convict has been lastly released from Jail on 06.04.2021 and his period during the Furlough/Emergency Parole can only be taken as part of sentence, subject to his timely surrender as well as his non-violation of conditions on completion of Furlough/Emergency Parole, and that as per the letter of the Superintendent of Prison, Central Jail No.3, Tihar Jail dated 28.07.2022, in all the Nominal Rolls of convicts who are on Interim Bail/Parole/Furlough at the time of submission of the Nominal Roll, the custody periods are to be mentioned till the date of release from Jail on last Interim Bail/Parole/Furlough. The updated Nominal Roll also indicates that the petitioner herein was released from the Jail on 06.04.2021 on Furlough for a period of 03 weeks and his due date of surrender was fixed for 28.04.2021, and that, on 23.04.2022 an email was received in the office of the Superintendent Jail, Delhi from the convict i.e., the petitioner herein, stating that he is 78 years old, that he has taken the second dose of Covishield vaccine on 22.04.2022 and he had certain complications relating to his health, and furthermore, on 26.04.2021, a letter was sent to the Govt. of NCT of Delhi to allow release of convicts on Emergency Parole for 08 Weeks to all those convicts who were earlier released on Emergency Parole during the first wave, and that the date of surrender of the petitioner/inmate/convict was 28.04.2021, but he could not surrender due to these reasons, and furthermore, in compliance of directions dated 07.05.2021 of the Hon'ble Supreme Court, the GNCTD granted Emergency Parole to



890 convicts who had availed similar relief during the previous year, for 90 days, vide order dated 14.05.2021, without going through the process of scrutiny and recommendation by the concerned committee, and since the name of the petitioner was there in that list, 90 days' emergency parole was granted to him. The updated Nominal Roll further indicates that those convicts/UTPs out on Emergency parole/ Interim Bail due to Covid have not been asked to surrender as yet in compliance of directions dated 16.07.2021 of the Hon'ble Supreme Court order in W.P.(C) No. 1/2020.

65. Necessary correction at serial No.24 in the details of interim bail/furlough granted/availed by the convict was however stated to have been made by the Superintendent Prison, Delhi.

66. The Annexure A to the Nominal Roll received vide communication dated 28.07.2022 from the Superintendent Prison, Delhi states at serial No.24, 25 and 26 to the effect:-

“

24.	03 Weeks	Furlough	06.04.21	28.04.2021	DG(P)
25.	16 Days	Over stay	28.04.21	13.05.21	No coercive action was taken against the convict in view of his e-mail received on 23.04.2022 and also on account of 2 nd wave of Covid-19
26.	90 Days	Emergency parole	14.05.21	Till date Note:- Convicts have not	GNCT of Delhi



				<i>been asked to surrender as yet, in compliance of Hon'ble Supreme Court order dated 16.07.21 in W.P. (C) No. 1/2020</i>	
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”

The petitioner thus is presently out on emergency parole from 14.05.2021 vide orders of the GNCT of Delhi, and in as much as, he had to surrender on 28.04.2021 but was not able to do so on account of the second wave of Covid-19. As per the Nominal Roll itself, no coercive action was taken against him.

67. The proceedings in W.P. (C) No. 1/2020 are still pending before the Hon'ble Supreme Court and the order dated 16.07.2021 of the Hon'ble Supreme Court continues to be in operation. The petitioner is thus out on emergency parole.

68. The submission of the petitioner that he is 77 years of age, as brought through the Nominal Roll, is not refuted by the State. That there are no previous adverse antecedents against him, and that he is not involved in the commission of any other offence is also brought forth, as also his Jail conduct as being satisfactory as also reflected through the Nominal Roll. His non surrender on the date 13.05.2021 has not been acted upon by the Prison Authorities in view of the receipt of his mail dated 23.04.2022 and on account of the second wave of Covid-19 in 2021. Thus, it is brought forth that there is no misconduct attributed to the petitioner even in relation to his over-stay from 28.04.2021 to 13.05.2021 after release on furlough for three weeks from 06.04.2021 to 28.04.2021.



69. The petitioner submits that he is now wholly harmless and has even been educating the Jail inmates having retired as a teacher from a Government School, that he is a useful member of a civilized society, and that in similar circumstances there have been several other inmates released before a period of 14 years of incarceration. The petitioner submits that there is nothing to indicate that the petitioner has any propensity towards crime left.

70. As has been observed hereinabove, as indicated vide the judgment of the learned Trial Court, though the petitioner stands convicted for the commission of the murder of his daughter-in-law in furtherance of his common intention with his two sons, the co-convict Jaffar-Ul-Islam, who threw the kerosene oil on the deceased Shabana Anjum and the co-convict Mazhar-Ul-Islam, the other son of the petitioner and the husband of Shabana Anjum, who threw the lighted matchstick on her body, when the petitioner exhorted his sons to kill Shabana Anjum,- the overt act actually committed by the petitioner is his exhortation as brought forth to his two sons to kill the deceased and thus the petitioner has been held up to the Hon'ble Apex Court to have had a common intention with his two other sons i.e., Jaffar-Ul-Islam and Mazhar-Ul-Islam, to kill Shabana Anjum.

71. A series of cases has been relied upon on behalf of the petitioner in the cases of Narender Kumar Sharma S/o Shri Purushtottam Das, Mohd. Raees S/o Late Shri Mohd. Syed and Veer Singh S/o Shri Ram Singh to submit that all these persons have been allowed to be released before the period of 14 years of imprisonment, and that in the instant case, the Social Welfare Department had



recommended the premature release of the petitioner but vide the minutes of the SRB meeting on 21.10.2021 and 25.06.2021, though the Delhi Police neither recommended nor opposed the same, the SRB did not consider the case of the petitioner in contravention to Rule 1257 of the Delhi Prison Rules, 2018.

72. Further, the minutes of the SRB meeting 05.08.2020 and 06.08.2020 indicate that the Delhi Police neither recommended nor opposed the premature release that the Social Welfare Department Delhi recommended the petitioner's premature release but the Director of Social Welfare Department opposed the same, and in as much as, it had been concluded to the effect:-

“Conclusion:

After taking into account the facts of the case that the convict has murdered his daughter-in-law by pouring kerosene oil and setting her ablaze and keeping in view the cruelty and the circumstances under which the crime was committed, the Board unanimously REJECTS premature release of convict Wahid Ahmed S/o Sh. Ismail Khan at this stage.”

73. In as much as, factually the petitioner had not poured the kerosene oil on his daughter-in-law nor had he lit the matchstick and taking his age into account of 77 years and his satisfactory conduct in the Jail, coupled with the factum that though the State seeks to submit that the offence committed is grave, which it undoubtedly is, the factum that in similar circumstances with virtually identical allegations, Jai Devi W/o Sh. Navneet convicted under Section 302/34 Indian Penal Code, 1860 in FIR No.120/1993, PS Vivek Vihar for murder of her daughter-in-law by burning was recommended for



premature release by the SRB and that she has since been released on 15.02.2021 cannot be overlooked.

74. The minutes of the SRB meeting dated 05.08.2020 and 06.08.2020, indicate that Dharambir S/o Shoeram in FIR No.278/1991, PS Mehrauli, undergoing life imprisonment under Sections 302/498A/34 of the Indian Penal Code, 1860, for committing murder of his wife for demand of dowry by pouring kerosene oil on her and setting her ablaze was recommended for premature release, and likewise, Raghuvir Singh S/o Shoeram aged 61 years in the very said case in FIR No.278/1991, PS Mehrauli, under Sections 302/498A/34 of the Indian Penal Code, 1860 for committing murder of his Bhabhi for demand of dowry by pouring kerosene oil on her and setting her ablaze was recommended for premature release, and Satbir Singh S/o Shoeram aged 58 years undergoing life imprisonment in that very case for committing murder of his Bhabhi for demand of dowry by pouring kerosene oil on her vide minutes of the SRB meeting dated 05.08.2020 and 06.08.2020 was recommended for premature release.

75. The said convicts Dharambir S/o Shoeram, Raghuvir Singh S/o Shoeram and Satbir Singh S/o Shoeram convicted under Sections 302/498A/34 of the Indian Penal Code, 1860, in virtually similar circumstances stand released on 12.03.2021, 26.10.2020 and 26.10.2020 from the Jail.

76. There is nothing brought forth on the record by the State to indicate that it has assailed the said premature release of the convicts i.e., Dharambir S/o Shoeram, Raghuvir Singh S/o Shoeram and Satbir



Singh S/o Shoeram in FIR No.278/1991, PS Mehrauli, qua the commission of offences punishable under Sections 302/498A/34 of the Indian Penal Code, 1860, in which the allegations levelled were to the effect that the said three accused persons had set ablaze the wife of Dharambir and sister-in-law of Raghuvir Singh and Satbir Singh for not meeting demands of dowry.

77. In the notification F.No.18/191/2015/HG/1428-1438 dated 27.03.2020 issued by the Home Department, Govt. of NCT of Delhi as observed in ***Virender vs. State (GNCT) of Delhi*** in W.P.(CRL.) 798/2021, it is indicated that the period of emergency parole which was extended from time to time and orders granting extensions noted for the period of emergency parole would be counted towards the sentence of the prisoners. The said notification reads to the effect:-

'Whereas, Hon'ble Supreme Court of India, vide its order dated 16.03.2020 in SMWP(C) No. 1/2020, has observed that there is an imminent need to take steps on an urgent basis to prevent the contagion of COVID-19 in our prisons:

2. And Whereas, Government. of National Capital Territory of Delhi has initiated various measures including the notification of Delhi Epidemic Disease COVID-19 Regulations 2020 under the Epidemic Disease Act 1897 for prevention and containment of Corona Virus pandemic;

3. Now, therefore, the Government of National Capital Territory of Delhi, keeping in mind the emergent situation of threat of COVID-19 epidemic in Delhi Prisons and in exercise of powers conferred under Rule 1212 A (inserted in the main Rules ,Vide gazette Notification No F.18/191/2015/HG/ 1379-1392 dated 23.03.2020) of the Delhi Prisons Rules 1018. has decided



to grant upto eight weeks emergency parole, which shall be counted towards the sentence of the prisoners.

4. The Government. has further decided to constitute a committee, to screen and recommend the cases of gram of emergency parole to the convicts. The committee consist of:-

- 1. DG(prisons) Chairman*
- 2. Spl Secretary (Home) Member*
- 3. DIG(prisons) Member*
- 4. ADM (West) Member*
- 5. Suptd Prison HQ Member*

5. The following categories of convicts would be considered for grant of emergency parole by the above committee :-

(1) All convicts who are presently outside the prison either on furlough or an parole:-

Such convicts who are out of prison on furlough/parole would be granted eight weeks of emergency parole. The remaining portion of their on-going furlough/parole would be treated as suspended/lapsed on grant of emergency parole. The prisoners would now be required to report back to their respective jail on expiry of the emergency parole . Intimation to all such convicts in this regard would be ensured by the prison authorities.

(2) All convicts who have availed parole/furlough in the past :-

Such convicts who have availed parole/ furlough in the past and have overall satisfactory conduct would be granted eight weeks of emergency parole on furnishing of personal bond.

(3) All convicts not falling under S No 1 or 2 above but otherwise eligible.

Such cases will also be considered by the Committee for appropriate orders.

B. Terms & conditions

1. All the convicts released on emergency parole will surrender themselves on expiry of the parole period as granted or on recall or any other condition as deemed fit.



2. All pending applications for grant of regular parole would be deemed to have been withdrawn in view of grant of emergency parole to the eligible convicts.

3. DG(Prisons) will cause to maintain a proper record of convicts released on emergency parole.

C. Delegation of Power :-

1. The powers to consider the cases for grant of emergency parole except those falling under Rule 1211 of the Delhi prison rules, 2018, on the recommendation of the committee constituted under para 4 is delegated to DG(prison) till 30.04.2020

D. Cases falling under Rule 1211 of Delhi Prisons Rule

1. The cases of grant of emergency parole to the eligible convicts falling under Rule 1211, will be submitted to the Home Department , either individually or as a class, for appropriate orders.

Note : For the purposes of this order, it is hereby clarified that a „satisfactory conduct“ would mean that the convict has not indulged in any major misconduct during his incarceration in the last three years or during parole/ furlough in the past. Minor incidents of misconduct, if any, on the part of the convict may be ignored. However in exceptional cases, where the Superintendent feels that despite a major conduct on the part of the convict earlier, he has shown good signs of improvement and reformation in his behavior and his going out on emergency parole will not be detrimental to the interest of the society, he may recommend the name of such convict for grant of „Emergency Parole to the DG (Prison)“.

78. As laid down in *Virender vs. State (GNCT) of Delhi* in W.P.(CRL.) 798/2021 in a verdict dated 06.07.2021, vide observations in para 15 thereof, which read to the effect:-

“15. Thus from the notification issued by the Government granting emergency parole it is evident



that release was in the nature of remission as the sentence was being undergone and not mere suspension of sentence as in the case of parole. The rules clearly prescribe that a convict is not entitled to remission while undergoing sentence in default of payment of fine. Thus the contention of learned counsel for the petitioner that the petitioner had undergone substantial sentence in default of payment of fine while on emergency parole cannot be accepted.”,

the period from which the petitioner has been released on emergency parole has to be taken into account for consideration of the nature of remission of the sentence being undergone by him.

79. Taking thus the totality of the circumstances of the case into account, the age of the petitioner being 77 years, there being nothing to indicate his misconduct in the Jail, the lack of any propensity towards crime now and the factum that three other convicts in virtually identical situations have been granted the benefit of a premature release, it is considered appropriate to grant permission for release of the petitioner in relation to FIR No.615/2005, PS Seelampur, under Section 302 read with Section 34 of the Indian Penal Code, 1860, and the petitioner Wahid Ahmed is thus allowed to be released only on payment of the fine imposed of Rs.2,000/-, in as much as, a convict is not entitled to remission whilst undergoing sentence in default of payment of the fine, and thus, in the event of fine being paid, the petitioner is directed to be released forthwith.

80. However, the petitioner would be allowed to be released in this FIR only on payment of the fine of Rs.2,000/-, in as much as, in terms



of Rule 1176 II of the Delhi Prison Rules, 2018, persons sentenced in default of payment of fine are not eligible for ordinary remission.

81. Rule 1176 II of the Delhi Prison Rules, 2018, provided as under:-

“ 1176. Non-Eligibility: The following types of prisoners will not be eligible for ordinary remission:

.....

II. Prisoners sentenced in default of payment of fine only,

.....

.....”

82. The petition and the accompanying applications are disposed of accordingly.

83. Copy of this order be sent to the Superintendent Jail, Delhi concerned.

SEPTEMBER 16, 2022
HA

ANU MALHOTRA, J.

न्यायमेव जयते