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

Reserved on: 27th September, 2022

Decided on: 14th December, 2022

+ **W.P CRL 1591/ 2019**
NAZIR KHAN

..... PETITIONER

Through: Mr. Prashant Mehta and
Mr. Charanpreet Singh,
Advocates.

V

THE STATE OF NCT OF DELHI RESPONDENT

Through: Mr. Sachin Mittal ASC, with
Mr. Nishant Chauhan
Mr. Alok Sharma and
Mr. Abhisehek Tyagi
Advocates for the State
along with Insp. Sanjeev
Kumar, Special Cell.

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CORAM:

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

1. The present writ petition is filed under article 226 of the Constitution read with section 482 of the Code of Criminal Procedure, 1973(hereinafter referred to as “**the Code**”) for seeking direction to the respondent to release Nazir Khan (hereinafter referred to as the “**the petitioner**”) after setting aside and quashing the order

dated 25.09.2018 qua the petitioner passed by Sentence Reviewing Board along with recommendations passed by the competent authority in its meeting held on 26.07.2018.

2. The relevant facts as reflecting from the record are that the petitioner along with other accused was put to trial arising out of FIR bearing no. 658/1994 registered at P.S. Connaught Place for the offences punishable under sections 147/148/149/342/365/384/34 IPC and sections 3/4 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (hereinafter referred to as “**TADA**”).

2.1 The Court of Designated Judge, TADA, New Delhi vide judgment dated 26.04.2002 passed in Session Case bearing no. 43/2001 convicted the petitioner and other co-accused for the offences punishable under sections 364 and 364A read with section 120B IPC; under section 3(4) TADA Act; under sections 121A, 122 and 124A IPC and under section 14 of the Foreigners Act, 1946.

2.2 The petitioner along with other convicts vide order on sentence dated 27.04.2002 was sentenced to death for offences punishable under section 364A IPC read with section 120B IPC besides awarding of other sentences and imposition of fine for different

offences as detailed in order on sentence dated 27.04.2022. The death sentence awarded to the petitioner was ordered to be subjected to the confirmation of the Supreme Court. The petitioner was also given benefit under section 428 of the Code. The sentences awarded to the petitioner under different provisions of IPC and TADA Act were ordered to be run concurrently.

2.3 The Supreme Court vide judgment dated 28.08.2003 passed in Criminal Appeal bearing no. 734/2003 titled as **Nazir Khan and others V State of Delhi** has altered the conviction of the petitioner under section 3(1)(i) TADA to section 3(1)(ii) TADA and further held that the incarceration for life sentence for the period of 20 years would be appropriate. It was further ordered that the petitioner and others would not be entitled to any remission for the period of 20 years. It was also observed that the imprisonment of life means imprisonment for the full span of life. The relevant part of the judgment dated 28.08.2003 reads as under:-

In the case at hand, the entire planning for commission of offence punishable under Section, 364A was masterminded and executed by Umar Sheikh who has managed presently to go out of net of law. In his case, death sentence may have been appropriate. But in case of the co-conspirators (the present six accused appellants) similar approach is not

warranted on the peculiar facts found/established. No distinctive feature has been indicated to impose two different sentences i.e. death sentence for three and life sentence for three others. There, is no appeal by the prosecution to enhance the sentence in those cases where life sentence has been imposed. It would be therefore appropriate to impose life sentence on all the six accused appellants.

In the ultimate, convictions of A-1, A-3 and 'A-8 under Section 3(l)(i) of TADA Act is altered to Section 3(l)(ii) of TADA Act. Their convictions under Sections 121A, 122 and 124 IPC and sentences imposed are maintained. The conviction under Section 364-A read with Section 120B IPC is maintained, as it is the conviction under Section 3(4) of the TADA Act and Section 14 of the Foreigners Act for the concerned accused appellant along with sentence imposed.

However, considering the gravity of the offence and the dastardly nature of the acts and consequences which have flown out and would have flown in respect of the life sentence, incarceration for the period of 20 years would be appropriate. The accused appellants would not be entitled to any remission from the aforesaid period of 20 years. As observed by this Court in Ashok Kumar v. Union of India (AIR 1991 SC 1792 and Satpal V. State of Haryana and Anr. (1992(4) SCC 172). "imprisonment for life" means imprisonment for the full span of life.

3. Home (General) Department), the Government of National Capital Territory of Delhi in its meeting held on 26.07.2018 regarding premature release of convicts through Sentence Reviewing Board (hereinafter referred to as “SRB”) considered cases of 154 convicts

including case of the petitioner for premature release and out of 154 cases, 25 cases were recommended for pre-mature release but case of petitioner was rejected as reflecting from office circular bearing no. F.18/102/2003-HOME(G)/Pt-1/2018/5827 dated 25.09.2018. The minutes were duly approved by the Competent Authority.

3.1 The case of the petitioner for premature release subsequent to filing of present petition was also considered in the meeting of SRB held on 21.10.2021 and as per the minutes, the case of the petitioner for premature release was rejected by SRB.

4. The petitioner being aggrieved by decision of SRB taken in its meeting held on 26.07.2018 filed present petition wherein it is stated that the petitioner has already completed incarceration of 20 years without remission in December 2014. The petitioner is still incarcerated and has completed more than 25 years without any remission till date. The petitioner had applied to SRB for premature release which was rejected as reflected from order dated 25.09.2018 without assigning any reason and in violation of rules governing the premature release of a convict. The petitioner prayed as under:-

1. This Hon'ble Court may kindly allow this Writ Petition by issuing a writ in the nature of mandamus directing

release of the petitioner after setting aside and quashing the order dated 25/09/18 qua the petitioner, of the sentence reviewing board along with the non-speaking affirmation, of those recommendations by the competent authority, recommended vide its meeting held on 26/07/2018.

2. Pass any other order or orders as this Hon'ble Court may deem fit or proper in the circumstances of the case on favour of the applicant.

5. The respondent filed Status Report wherein besides narrating factual position stated that the petitioner has already undergone actual sentence of 27 years, 09 months and 15 days and earned remission of 01 year 06 months and 26 days as on 15.09.2022. The case of the petitioner had been placed 11 times before SRB for consideration of his case for premature release but was rejected by SRB in view of gravity of crime including kidnapping of foreign nationals to pressurise the Govt. of India to release 10 hard core terrorists. There was no arbitrariness in decisions and were rational. The case of the petitioner was also considered in the meeting of SRB held on 21.10.2021 and was rejected by SRB.

5.1 The Prison Department, Govt. of Delhi use to prepare cases of the life convicts to be placed before the SRB in terms of applicable SRB Guidelines dated 16.07.2004 and Delhi Prisons Rules, 2018 and cases of life convicts for premature release used to be discussed at length

by SRB. There are always appropriate reasons for recommendation or rejection of premature release so it cannot be said that no plausible reasons are assigned for recommendations and rejections. There is no arbitrariness in decision taken by SRB for premature release. The case of the petitioner is always timely prepared by the Prison Department and placed before SRB for consideration of his premature release but on each occasion after considering all factors, the case of the petitioner for premature release was not recommended by SRB. The respondent prayed for dismissal of petition.

6. The petitioner is primarily seeking judicial review of decision taken by SRB in its meeting held on 26.07.2018 whereby case of the petitioner for premature release was rejected and alleged that it was rejected without assigning any reason.

7. In a social welfare State like India large numbers of administrative/local authorities are being created to carry out welfare activities and these authorities are vested with discretion. The discretion when coupled with word 'Administrative' reflects that choosing from various available alternatives but reference to the rules of reasons and justice and not according to personal whims and

exercise of discretion should not be arbitrary, vague and fanciful. The suitable control over exercise of discretion is necessary otherwise administrative authority may abuse or misuse conferred power and may convert in arbitrary body. The discretionary power conferred on an administrative authority is not absolute and must be exercised within legal parameters. The judicial review is a tool by which legality or lack of it can be examined in exercise of administrative discretionary power or any administrative action. The judicial review ensures that an individual is given fair treatment by the authority and is designed to prevent excess and abuse of power by any administrative authority and any probability of favouritism.

7.1 It was held in case of **Chief Constable of North Wales Police V Evans**, (1982) 3 All E R 141 that the purpose of judicial review is to ensure that the individual receives fair treatment. **In Laker Airways Ltd. V Department of Trade**, (1977) 2 All E R 182, it was observed that discretionary power is to be exercised for the public goods and this exercise can be examined by the Courts. Lord Diplock in **Council of Civil Service Unions V Minister for the Civil Service**, (1984) 3 WLR 1174 observed that administrative action is subject to

judicial review on the grounds which are “Illegality”, “Irrationality” and “Procedural Impropriety”.

7.2 In India, negation of arbitrariness in the exercise of public power is considered to be cardinal component of the rule of law. The Courts in India have invalidated arbitrary exercise of administrative power. Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment. The Supreme Court in **E. P. Royappa V State of Tamil Nadu**, AIR 1978 SC 555 observed that Article 14 embodied a guarantee against arbitrariness. The Supreme Court in **Maneka Gandhi V Union of India**, AIR 1978 SC 597 observed that Article 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. It was also observed in **S. R. Bommai V Union of India**, AIR 1994 SC 1917 that the purpose of judicial review is to ensure that the individual is given fair treatment by the authority and is basic feature of the Constitution.

7.3 The power of judicial review is not without limitation and unrestricted. Judicial review is concerned with legality rather than merit of the case. The courts cannot substitute its own view in exercise of power of judicial review. The judicial review is not an

appeal against the decision taken by the concerned authority. Judicial review is stated to be protection and not a weapon. In **Tata Cellular V Union of India**, (1994) 6SCC651 observed that judicial review is concerned with reviewing and not with merits of the decision. The Supreme Court in **State of N.C.T. of Delhi & another V Sanjeev @ Bittoo**, Appeal Criminal bearing no 498/2005 decided on 04.04.2005 also observed that the scope of judicial review of administrative orders is limited to the legality of decision making process and not legality of the order and mere possibility of another view cannot be ground for interference.

8. The administrative authority which is vested with power to determine questions affecting the rights of individuals must exercise power in conformity with the rules of natural Justice requirement of passing reasoned orders by the administrative authorities is one of the important aspects of natural justice. Due to expanding horizon of judicial review, requirement to give reasons has become an indispensable part of judicial review. The Privy Council in **Minister of Natural Revenue V Wright's. Vanadian Ropes Ltd.**, (1947) AC 109 held that a Minister who had failed to give reasons for a special

tax assessment had not shown that it was correct and that the taxpayer's appeal must be allowed. In **R V Civil Service Appeal Board exp Cunningham**, (1991) 4 A AllER 310 an award of abnormally low compensation to an unfairly dismissed prison officer by the Civil Service Appeal Board, which made it a rule not to give reasons was quashed by the court of Appeal by holding that natural justice demanded the giving of reasons both in deciding whether dismissal was unfair and in assessing compensation. In England, in a series of cases it has been held that statutory tribunals must give satisfactory reasons in order that the losing party may know whether he should exercise his right of appeal on a point of law. (See also **Nortan Tool Co. Ltd. V Tewson**, [1973] WLR 234.

8.1 It is suitably established in India that an adjudicatory authority is required to give reasons for its decision. The Supreme Court in **Siemens Engineer and Manufacturing Co. V Union of India**, AIR 1976 SC 1785 reiterated the principle with an emphasis that the rule requiring reasons to be given in support of an order is a basic principle of natural justice which must inform the quasi-judicial process. It should be observed in its proper spirit and "mere pretence

of compliance with it would not satisfy the requirement of law". It was observed in **Maneka Gandhi V Union of India**, AIR 1990 SC 1984 that giving of reasons is a healthy check against abuse or misuse of power. The requirement of duty to give reasons was further crystallized in **S.N. Mukherjee V Union of India**, AIR 1990 SC 1984 and reasons due to which a reasoned decision must be passed were discussed. It was observed that reasoned decision: (i) guarantee consideration by the authority; (ii) introduce clarity in decisions; and (iii) minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. It was observed as under:

In our opinion, therefore, the requirement that reason must be recorded must be recorded should govern the decisions of govern the an administrative authority exercising quasi-judicial functions irrespective of fact whether the decision is subject to appeal, revision or judicial review. It may, however, be added that it is not required that the reasons should be as elaborate as in the decision of a court of law. The extent and nature of the reasons would depend on particular facts and circumstances. What is necessary is that the reasons are clean and explicit so as to indicate that the authority has given due consideration to the points in controversy.

8.1.1 The Supreme Court in *Rani Lakshmi Bai Kshetriya Gramin Bank V Jagdish Sharan Varshney& others*, (2009)4SCC496 held

that the purpose of disclosure of reasons is that people should have confidence in judicial and quasi-judicial authorities and minimize chances of arbitrariness. It was held as under:-

The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in the case of S.N.Mukherjee vs. Union of India reported in (1990) 4 SCC 594, is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimizes chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.

8.1.2 The Supreme Court in The Supreme Court in the case of Namit Sharma V Union of India, (2013) (1) SCC 745 regarding duty to give reasons held as under:-

It is not only appropriate but is a solemn duty of every adjudicatory body, including the tribunals, to state the reasons in support of its decisions. Reasoning is the soul of a judgment and embodies one of the three pillars on which the very foundation of natural justice jurisprudence rests. It is informative to the claimant of the basis for rejection of his claim, as well as provides the grounds for challenging the order before the higher authority/constitutional court. The reasons, therefore, enable the authorities, before whom an order is challenged, to test the veracity and correctness of the impugned order. In the present times, since the fine line of distinction between the functioning of the administrative and quasi-judicial bodies is gradually becoming faint, even the administrative bodies are required to pass reasoned orders. In this regard, reference can be

made to the judgments of this Court in the cases of Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India & Anr. [(1976) 2 SCC 981]; and Assistant Commissioner, Commercial Tax Department Works Contract and Leasing, Kota v. Shukla & Brothers [(2010) 4 SCC 785].

9. The counsel for the petitioner advanced oral arguments and also submitted written arguments. The counsel for the petitioner besides mentioning the factual position as mentioned hereinabove argued that the incarceration of 20 years of the petitioner has already been completed without any remission in the month of December, 2014 and the petitioner has already completed more than 27 years and 10 months of incarceration without any remission. The petitioner had applied to SRB for premature release which was rejected without assigning any reason.

9.1 The counsel for the petitioner during arguments referred Circular dated 26.09.2003 vide letter no. 233/10/97-98 (FC) issued by National Human Rights Commission (NHRC) pertaining to prisoners undergoing life imprisonment for consideration of premature release. He argued that these Guidelines segregate prisoners undergoing life imprisonment in various categories which are prisoners completed 14 years in prison; completed 20 years in prison; completed 25 years in

prison and the prisoners are categorized in the these categories as per the offences committed. He further argued that as per these NHRC guidelines, the petitioner has become eligible for release within the category of 25 years as these guidelines specifically mentioned that the period of incarceration in such cases should not exceed 25 years.

9.2 The relevant extract of the NHRC guidelines are reproduced below:

3. Eligibility for premature release

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

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

With a view to bring about uniformity, the State/UT Governments are, therefore, advised to prescribe the total

period of imprisonment to be undergone including remissions, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. The Commission is of the view that total period of incarceration including remissions in such cases should ordinarily not exceed 20 years.

He by referring above Guidelines further argued that as per this category, the prisoner is entitled to apply for premature release to the Sentence Review Board after completion of 14 years of imprisonment and it is recommended that total period of incarceration including remission in such cases should ordinarily not exceed 20 years. The counsel for the petitioner further referred Guideline 3.1 which reads as under:-

Certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. The following categories are mentioned in this connection by way of illustration and are not to be taken as an exhaustive list of such categories:

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

incident, murder in smuggling operation, murder of a public servant on duty.

b) Gangsters, contract killers, smugglers, drug traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-meditation and with exceptional violence or perversity.

c) Convicts whose death sentence has been commuted to life imprisonment.

The counsel for the petitioner also argued that bare perusal of above extract of NHRC guidelines clearly show that the petitioner falls in the categories (a) murder in a terrorist incident and (c) convicts whose death sentence has been commuted to life imprisonment and as such after completion of incarceration of 20 years, the petitioner would be eligible to apply for pre-mature release. The petitioner has been incarcerated for more than 25 years and as the petitioner falls in the category wherein the period of incarceration inclusive of remissions should not exceed 25 years. The petitioner as per NHRC guidelines is eligible to be released.

9.3 The counsel for the petitioner also referred decision given by Division Bench of this court in **Sushil Sharma V State**, W.P.(Crl.) bearing no 3798/2018 decided on 21.12.2018 and argued that in said

decision aforesaid guidelines have been recognised and on the basis of these guidelines, the petitioner therein was released by this Court.

9.4 The constitutional right of the petitioner as guaranteed under Article 21 of the constitution cannot be suspended due to incarceration. SRB has declined the premature release of the petitioner on the ground that the police has not recommended his release. SRB is required to function strictly in accordance with the guidelines. The Supreme Court vide judgment dated 28.03.2003 passed in Criminal Appeal Bearing no.734/2003 titled as **Nazir Khan V State** has commuted the death sentence of the petitioner to the life imprisonment. It is argued that the respondent be directed to release the petitioner and the order dated 25.09.2018 passed by the SRB be set aside. The counsel for the petitioner relied upon the decision of the Division Bench of this Court passed in **Sushil Sharma V State**, WP (CRL) 3798/2018 decided on 21.12.2018.

10. The Additional Standing Counsel for the respondent primarily argued on basis of averments as mentioned in Status Report. He argued that the case of the petitioner was placed 11 times before SRB for consideration of his premature release but was rejected by SRB in

view of gravity of offences proved against the petitioner. The case of the petitioner was also considered in the meeting of SRB held on 21.10.2021 but was rejected by SRB.

10.1 The Additional Standing Counsel during arguments referred Delhi Prison Rules. Rule 1252 related to premature release of a life convict which is as under:-

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

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

10.1.1 As per Rule 1257(d), Rejection of the case of a prisoner for premature release on one or more occasions by the Sentence Review

Board will not be a bar for reconsideration of his case. However, the reconsideration of the case of a convict already rejected shall be after the expiry of a period of Six months from the date of last consideration of his case. It is prescribed that decision of the case of a convict of premature release should be through speaking order in writing.

10.1.2 As per Rule 1257(e), the recommendation of the Sentence Review Board shall be placed before the Competent Authority without delay for consideration. The competent authority may either accept the recommendations of the SRB or reject the same on grounds to be stated or may ask the SRB to reconsider a particular case. The decision of the competent authority shall be communicated to the concerned prisoner and in case the competent authority has ordered grant of remission and ordered his premature release, the prisoner shall be released forthwith with or without conditions.

10.2 The Additional Standing Counsel for the respondent in view of above submissions argued that petition is liable to be dismissed.

11. It is reflecting that the petitioner is a foreign national and was put to trial arising out of FIR bearing no.658/1994 registered at PS

Connaught Place. The petitioner and other co-accused vide judgment dated 26.04.2002 were convicted for the offences punishable under sections 364 and 364A IPC read with section 120B IPC; under section 3(4) TADA Act; under section 121A, 122 and 124A IPC and under section 14 of the Foreigners Act, 1946 passed by the Designated Court, TADA. The petitioner was awarded death sentence besides other sentences vide order on sentence dated 27.04.2002 passed by the Designated Court TADA. The death penalty of the petitioner was commuted to the life sentence by the Supreme Court vide judgment dated 22.08.2003 passed in **Nazir Khan and Ors V State Of Delhi** in Criminal Appeal bearing no. 734/2003 by the Supreme Court. The petitioner has completed incarceration of 20 years in the month of December, 2014 and as per the Nominal Role pertaining to the petitioner, he has already undergone actual sentence of 27 years, 09 months and 15 days and earned remission of 01 year 06 months and 26 days as on 15.09.2022. SRB in its meeting held on 26.07.2018 considered cases of 154 convicts including the petitioner for premature release and out of 154 cases, 25 cases were recommended for premature release but case of

petitioner was rejected as reflecting from office order bearing no. F.18/102/2003-HOME(G)/Pt-1/2018/5827 dated 25.09.2018. The minutes were approved by the competent authority. The case of the petitioner subsequent to filing of present petition was also considered by SRB in the meeting held on 21.10.2021 and was rejected.

12. Issue which needs judicial considerations is that whether the petitioner is entitled for premature release and SRB had rejected request of the petitioner for premature release in its meetings held on 26.07.2018 and subsequent to filing of present petition on 21.10.2021 without assigning suitable and adequate reasons.

13. The perusal of Guidelines issued by NHRC dated 26.09.2003 reflects that certain categories of convicted prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions and the period of incarceration inclusive of remissions even in such cases should not exceed 25 years.

13.1 Section 432 of the Code deals with the power of appropriate government to suspend or remit sentences. Section 433 of the Code deals with power of appropriate government to commute sentence

even without consent of the person sentenced. Section 433A of the Code put restriction on powers of remission or commutation in certain cases. The Lt. Governor of National Capital Territory of Delhi in pursuance of Guidelines dated 26.09.2003 and on similar lines, has constituted “the National Capital Territory of Delhi Sentence Review Board” to review the sentence awarded to a prisoner undergoing life sentence and to make recommendations to him about cases of premature release in appropriate cases. The procedure was also devised for consideration of suitable cases for premature release. The relevant clause 5(iii) is reproduced as under:-

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 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 in which the offence was committed by the prisoner and whether he has the propensity and is likely to commit similar or other offence again.

13.2 The Division Bench of this Court in **Sushil Sharma** observed that the Lieutenant Governor of Government of NCT of Delhi in

view of communication sent by National Human Rights Commission (NHRC) dated 26.09.2003 constituted the National Capital Territory of Delhi Sentencing Reviewing Board to review the sentences awarded to a prisoner undergoing life sentence and to make recommendations about appropriate cases of premature release. The Guidelines require SRB to strictly observe the general principles of amnesty and remission of sentence as laid down by the Government or by the Courts after considering welfare of the prisoner and society at large. SRB was further directed not to decline a premature release of prisoner merely on the ground that the police has not recommended his release and was required to take into account not only the circumstances in which the offence was committed by the prisoner but also whether he had the propensity and could be likely to commit a similar other offence again. SRB is required to exercise its recommendatory function strictly in accordance with the binding principles enunciated in the guidelines. The policy formulated by the Competent Authority is binding on SRB and has to be scrupulously observed, adhered to and followed. The Lieutenant

Governor i.e. the competent authority is not bound by the recommendations of the SRB.

14. The perusal of office order dated 25.09.2018 reflects that SRB in its meeting held on 26.07.2018 also considered case of the petitioner for premature release but case of petitioner was rejected. The office order dated 25.09.2018 reflects that SRB did not assign any reason for rejecting case of the petitioner for premature release. If any reason or reasons had been given by SRB at time of rejection of claim of the petitioner for premature release but those reasons were never communicated to the petitioner. As narrated hereinabove reasoned decision guarantee consideration by the authority, introduce clarity in decisions and minimize chances of arbitrariness in decision-making thereby ensuring fairness in the process. The disclosure of reasons generates confidence in decision making process of administrative authorities and minimizes chances of arbitrariness. The reasoning is soul of a decision and informed effected person regarding basis for rejection of claim and provides platform to challenge impugned order before the higher authority/constitutional court. The decision of SRB in rejecting premature release of the

petitioner without assigning any reason may not be legally sustainable.

15. The case of the petitioner subsequent to filing of present petition as reflected from Status Report filed by the respondent, was also considered by SRB in the meeting held on 21.10.2021 and was rejected. The relevant minutes of meeting held on 21.10.2021 are reproduced verbatim as under:-

79. NAZIR KHAN @ SAIFULLA @ MOHD. AKRAM @ NAZRU S/O SH. HAZI LAL KHAN — AGE-51 YRS. (PAKISTAN NATIONAL)

Nazir Khan @ Saifulla @ Mohd. Akram @ Nazru S/o Sh. Hazi Lal Khan is undergoing life imprisonment in case FIR No. 658/1994, U/S 364/364-A r/w 120-B/121A/122/124A IPC & 14 F. Act, 3 (2) (1) TADA (P) Act, P.S. Connaught Place, Delhi for committing Kidnapping with conspiracy and terrorist activities (Kidnapped 04 Foreign Nationals to build pressure over Indian Govt. to release some dreaded militants from Indian jails. All these people were associated with Harquat-Ul-Ansar terrorist outfit).

The convict has undergone:

Imprisonment of 26 years, 10 months and 01 day in actual and 28 years, 04 months with remission. He has not availed any I. Bail, Parole or Furlough (Being Pakistan National).

Recommendation by Police:

The Delhi Police has strongly opposed his premature release in its report. Addl. Commissioner of Delhi Police (Crime) has also 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 Special

Secretary cum Director, Social Welfare Department, Delhi, has not supported for his premature release in the meeting. Hometown has verified nationality and submitted for favourable action in its report (By High Commission of Pakistan, New Delhi).

Conclusion:

After taking into account all the facts and circumstances of the case i.e. the crime was committed in a terrorist act (kidnapped 04 Foreign Nationals to build pressure over Indian Government to release dreaded militants from jails), gravity, perversity and nature of the crime, strongly opposed by police, the Board REJECTS premature release of Nazir Khan @ Saifulla @ Mohd. Akram @ Nazru S/o Sh. Hazi Lal Khan at this stage.

15.1 The perusal of minutes of meeting held on 21.10.2021 reflects that by that time, the petitioner has already undergone imprisonment of 26 years, 10 months and 01 day in actual and 28 years, 04 months with remission. The petitioner has not availed any interim bail, parole or furlough being national of Pakistan. The Delhi Police has strongly opposed premature release of the petitioner. The Additional Commissioner (Crime), Delhi Police has also opposed premature release of the petitioner in the meeting. The Social Welfare Department, Delhi has recommended premature release of the petitioner in its Report but the Special Secretary cum Director, Social Welfare Department, Delhi has not supported premature release of the petitioner in the meeting. Thereafter after taking into account

entire the facts and circumstances of the case i.e. the crime was committed in a terrorist act i.e. kidnapping of 04 foreign nationals to build pressure over Indian Government to release dreaded militants from jails, gravity, perversity and nature of the crime, strongly opposed by police, SRB rejected premature release of the petitioner. SRB as such while rejecting claim of the petitioner for his premature release has considered and deliberated all relevant facts and circumstances pertaining to the petitioner. SRB has properly considered gravity of offences committed by the petitioner which included kidnapping of 04 foreign nationals for release of dreaded militants, waging war against India etc. SRB has taken into account relevant considerations in rejecting premature release of the petitioner and decision is based on suitable and adequate reasons. The claim of the petitioner for premature release was not rejected merely on opposition of Delhi Police. The decision was taken considering national interest and welfare of the society at large. No prejudice shall cause to the petitioner if reasons were not given by SRB in its meeting held on 26.07.2018 while rejecting claim of the petitioner for premature release as SRB has given adequate and suitable reasons

while rejecting claim of the petitioner for premature release in its meeting held on 21.10.2021 subsequent to filing of present case. The case of the petitioner was considered by SRB in right perspective and after considering relevant factors. The premature release of a prisoner undergoing life sentence is within domain of SRB and court under judicial review cannot substitute its own view. There is much scope for the court in exercise of power of judicial review to interfere in decision taken by SRB in rejecting premature release of the petitioner as SRB has considered relevant factors and took a reasoned decision. SRB has arrived at a sensible decision after due application of mind and not arbitrary.

15.2 The Supreme Court in **State of Haryana V Mohinder Singh**, 2000 SCC (Cri) 645 held that prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued there under. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned. The Supreme Court in **Life Convict Bengal @ Khoka @ Prasanta Sen V B. K. Srivastava & others**, (2013) 3 SCC 425 after taking into

consideration several earlier decisions, upheld the decision of the State Government rejecting the application for premature release premised on the decision taken by the Sentence Review Board. A coordinate Bench of this court in **Shashi Shekhar @ Neeraj V State of NCT of Delhi & others**, Writ Petition (Crl.) No.1311/16 decided on 09.11.2016 relied on by the Additional Standing Counsel for the respondent also observed as under:-

18. Having considered the aforesaid submissions, and the several decisions relied upon by the learned counsel on both sides, it is, firstly, clear that life sentence is not limited to either 14 years, or 20 years, or even 25 years. A life sentence means the actual life imprisonment for the entire life of the convict. The same may be curtailed by the State by premature release. However, that is the discretion of the State Government to be exercised on the advice of the SRB. The SRB itself has to arrive at its opinion on the aspect of premature release on sound principles. It should have good reasons for allowing or disallowing the application for premature release made by a convict. The Courts cannot substitute the discretion of the State/ SRB with its own discretion. If the Court finds that the said discretion has not been properly exercised with due application of mind, the Court may set aside the order rejecting the application seeking grant of premature release and may remit the case back for reconsideration. However, the Court would not, on its own, undertake the exercise of considering whether or not to grant premature release to a convict.

16. The counsel for the petitioner during arguments relied on **Sushil Sharma V State** decided by Division Bench of this court and argued

that in view of decision in Sushil Sharma case, the petitioner be granted pre-mature release.

16.1 In **Sushil Sharma** case, the petitioner was tried for offences punishable under sections 302/120-B IPC read with section 201 IPC. The trial court vide judgment dated 03.11.2003 convicted the petitioner therein under sections 302/120-BIPC read with section 201 IPC. The petitioner was sentenced to capital punishment. The death sentence awarded to the petitioner was confirmed by this court on 19.02.2007. The Supreme Court commuted the death sentence to life sentence vide order dated 08.10.2013 passed in CrI. A. 693/2007 titled as **Sushil Sharma V The State of NCT of Delhi**.

16.1.1 The Division Bench after referring relevant part of judgment dated 08.10.2013 observed that the Supreme Court found that it would be difficult to state that the petitioner was remorseless. It was further referred that the Supreme Court also observed that medical evidence in the case did not establish that the dead body of the deceased was cut. There was no recovery of any weapon like chopper that could suggest that the petitioner had cut the dead body. The Supreme Court also observed that murder was outcome of strained

personal relationship and that therefore it was an offence against society. The petitioner neither had criminal antecedents nor was he a confirmed criminal and no evidence was led by the State to indicate that the petitioner was likely to revert to such crimes in future. The Supreme Court also expressed its considered view that it was not possible in the facts and circumstances of the case to state that there was no chance of the petitioner being reformed and rehabilitated. In view of these mitigating circumstances, the Supreme Court commuted the death sentence awarded to the petitioner to life imprisonment. The life sentence awarded was for the whole of the remaining life subject to the remission granted by the appropriate Government under Section 432 of the Code which in turn would be subject to the procedural checks mentioned in the said provision and further substantive checks stipulated in Section 433-A of the Code.

16.1.2 The Division Bench also observed that the petitioner has remained incarcerated admittedly for a period of over 29 years including remission. The petitioner has old aged infirm parents and in need of attention and support from the petitioner. The probationary officer also repeatedly recommended for his pre-mature release.

16.1.3 The Division Bench deliberated two issues which are whether SRB is bound by the Guidelines contained in the order noF.18/5/94/Home(Genl.) dated 16.07.2004 formulated by the Government of National Capital Territory of Delhi and whether the rejection of the petitioner representation for premature release is violative of his vested rights under the Guidelines. The Division Bench also observed that imprisonment for life in terms of the relevant provisions only means imprisonment for the rest of the life of the prisoner but subject to the right of the prisoner to claim remission etc. as provided under Article 72 and 161 of the Constitution of India to be exercisable by the President and the Governor of the State and also as provided under section 432 of the Code.

16.1.4 The Division Bench further analysed recommendation of SRB and observed that it was apparent from minutes of the meeting held on 26.07.2018 from the record that the Social Welfare Department, Government of NCT of Delhi had recommended release of the petitioner in terms of the report of the Chief Probation Officer. The Superintendent Central Jail No.2, Tihar, New Delhi had also

recommended premature release of the petitioner due to his good jail conduct for the entire duration of his incarceration. However SRB recorded strong opposition of Delhi Police for premature release of the petitioner on ground that such release may create resentment in the society. SRB also observed that the convict has no previous criminal history, good aptitude for reforms, good conduct in jail and on parole/furlough, recommendation of Welfare Department but SRB unanimously deferred premature release of the petitioner. However SRB in next meeting of the SRB after recording the positive recommendations of the Social Welfare Department, Government of NCT of Delhi, the Chief Probation Officer and the Prison Department and opposition of the Delhi Police observed that rest of the members have opposed case for premature release in view of perversity of the crime and the circumstances under which the crime was committed and that the convict has committed murder of his wife, brutality of the case rejected premature release of the petitioner. The Division Bench observed that recommendations of SRB are cryptic, unreasoned and contrary to the material on record and non-

speaking and suffer from the vice of arbitrariness, whimsicality and illegality.

16.1.5 The Division Bench observed that rejection of representation of the petitioner for premature release was arbitrarily and without due or proper application of mind and in contravention of the express mandate of the State policy as contained in the Guidelines. The incarceration of a convicted prisoner like the petitioner did not result in the suspension of his constitutional rights and he is not denuded of the rights enshrined in every person including the convict within the mandate of the guarantee of liberty protected and emphasized under Article 21 of the Constitution of India. The recommendations of SRB with respect to the petitioner were set aside and quashed. The petitioner was ordered to be released.

17. The facts related to the present petitioner are absolutely different from the petitioner in **Sushil Sharma** which is apparent from order on sentence dated 27.04.2002 pronounced by the Designated Judge, TADA, New Delhi, the relevant portion is reproduced verbatim as under:-

1. I have heard accused persons on the question of sentence. The accused persons instead of arguing on the question of

sentence have repeatedly stated that they were innocent and have been falsely implicated. They did not want to say anything on the question of sentence. Accused Nazir Khan @ Khan @ Saifulla @ Mohd. Khan @Mohd Akarm @ Nazir Abdul Rahim and Nasar Mehmood Sodgzy @Aftab Ahmed @ Abdullah are Pakistani Nationals and had receive training in terrorism in Khost, Afganistan. Accused Mohd Sayeed Mahood @ Ayub @ Topiwala and Nurul Amin are the three Indian terrorists. Accused Nurul Amin had received training in Dhakain a camp, accused Mahmood @ Aub @ Topiwala had also been to Pakistan and while working as Mauzin in Jama Masjid, he actively helped the terrorists in preparing the hideouts, acted as information conduit and went to Pakistan Embassy for affixing visas of other person as at the instance of one Farooq. Accused Mohd. Sayeed for greed of money and having one Maruli Van After the operation had decided to co-operate the terrorists in the crime of kidnapping of foreigners and keeping them hostage. It is he show drove the van with foreigners to the hide- outs, where foreigners were chained. He has also arranged house at Hapur Road, U.P.

3. Anti India literature of Harqat U1 Ansar, a terrorist outfit, to which these accuse persons and Ahmed Umar Syed Sheikh belonged was recovered from one of the hide-outs belonging to them Accused Nazir Khan, Abdul Rahim and Nasar Mehmood Sodozy having been brain-washed by terrorist training and after receiving the training, they entered India. All the terrorists had been trained to indulge an destructive activities they are will trained in firing rocket-launchers hand-grenades, AK- 47 Rifles, Mortar guns. For them life of innocent persons has no value taking life to innocent persons amount to fulfilling of their object to creating terror. They had entered India with the intention "of dismembering the Indian territory of Kashmir and with the intention of getting other terrorist liberated, so that their object of waging an unholy war against India is fulfilled.

4. I consider that these there accused persons do not deserve leniency of any king. Misplaced sympathy encourages more persons to enter into this filed. One of the object of punishment must be given so that other foreign mercenaries do not dare to enter India and create chaos here and before thinking of entering India for fulfilling their nefarious designs, they must know, what end they can meet. These terrorists by distribution literaue of malicious propaganda against India, create hatred in the mind of section of people whose sympathy they want to again. They act at the instance of foreign powers and role of ISI has been stated clearly by them in their disclosure statement. If such parsons are to be prevented from entering India for flaring up communal riots and from exiting the sentiments of a community the punishment to be awarded to them must be deterrent.

17.1 The petitioner is a foreign national i.e. national of Pakistan and had received training in terrorism activities in another country. Anti India literature of a terrorist outfit was also recovered from one of the hide-outs belonging to the convicts. The petitioner was brain-washed by terrorist training and entered in India after receiving the training with intention to attack national integrity and to get other terrorist liberated so that object of waging war against India is fulfilled. The convicts kidnapped foreign nationals to pressurize government for release of dreaded terrorists. After considering totality of circumstances and manner in which offences were committed and executed, the petitioner cannot be put at par with **Sushil Sharma**

who committed murder of his wife. The decision delivered by the Division Bench of this court does not provide any help to the case of the petitioner.

18. India is a democratic country governed by rule of law under aegis of written constitution which embodied certain fundamental rights available to all and infringement of which is corrected and cured by judicial system and process. Article 21 of Constitution provides that no person shall be deprived of his life or personal liberty except according to a procedure established by law. Article 21 is at the heart and soul of the Constitution. It is the most organic and progressive provision in our living Constitution. The fundamental right to personal liberty is extended natural persons and is fundamental to very existence and living as human beings. It makes a man's life meaningful, complete, and worth living. The right to personal liberty can only be deprived except according to procedure established by law. The petitioner in present case was always treated with procedure established by law and his request for premature release was rejected in accordance with law.

19. The present petition is devoid of any merit, hence dismissed. However the petitioner shall be at liberty to submit fresh representation for his premature release in altered circumstances. The respondent through SRB shall also be at liberty to reconsider premature release of the petitioner in accordance with law.

20. Copy of this judgment be sent to the petitioner through concerned jail superintendent for information and further necessary action if any.

SUDHIR KUMAR JAIN, J.

DECEMBER 14, 2022/sk/sd

