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

+ **W.P.(CRL) 1041/2024**

RAMESH

..... Petitioner

Through: **Mr. B. Badrinath, Advocate.**

versus

**THE STATE (GOVT. OF NCT)
OF DELHI & ANR.**

..... Respondents

Through: **Mr. Rahul Tyagi, ASC (CrI.), Ms. Priya Rai, Mr. Sangeet Sibou, Mr. Jatin and Mr. Mathew M. Philip, Advocates with SI Yogender PS Anand Parbat, Delhi.**

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

02.04.2024

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CRL.M.A. 9832/2024 (exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

W.P.(CRL) 1041/2024

1. By way of present petition filed under Article 226 and 227 of the Constitution of India read with Section 482 Cr.P.C, the petitioner seeks directions for his premature release and setting aside of the order dated 21.11.2023 bearing Ref.No.F.18/102/2003-HG/2023/3385-86 accepting the recommendations/minutes of the meeting of Sentence Review Board ('SRB') held on 30.06.2023 thereby rejecting premature release of the petitioner.
2. Mr. B. Badrinath, learned counsel for the petitioner states that the petitioner had earlier approached the SRB with his representation seeking



premature release however each time, the same has been rejected on the same grounds without any further specification.

3. Issue notice.

4. Notice is accepted by the learned ASC (Crl.) for the State and has referred to the decision in Ram Chander v. The State of Chhattisgarh and Ors., reported as (2022) 12 SCC 52, wherein the Supreme Court has observed as under:-

“14. While the court can review the decision of the government to determine whether it was arbitrary, it cannot usurp the power of the government and grant remission itself. Where the exercise of power by the executive is found to be arbitrary, the authorities may be directed to consider the case of the convict afresh.

15. In Laxman Naskar v. State of West Bengal¹⁷, while the jail authorities were in favour of releasing the petitioner, the review committee constituted by the government recommended the rejection of the claim for premature release on the grounds that (i) the two witnesses who had deposed during the trial and people of the locality were apprehensive that the release of the petitioner will disrupt the peace in the locality; (ii) the petitioner was 43 years old and had the potential of committing a crime; and (iii) the crime had occurred in relation to a political feud which affected the society at large. The Court while placing reliance on Laxman Naskar v. Union of India (supra) stipulated the factors that govern the grant of remission, namely:

“6...(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.”

16. Based on the above factors, the Court found that the



government's decision to reject the claim of remission was based on reasons that were irrelevant or devoid of substance. The Court quashed the order of the government and directed it to decide the matter afresh. The Court held thus:

"8. If we look at the reasons given by the Government, we are afraid that the same are palpably irrelevant or devoid of substance. Firstly, the views of the witnesses who had been examined in the case or the persons in the locality cannot determine whether the petitioner would be a danger if prematurely released because the persons in the locality and the witnesses may still live in the past and their memories are being relied upon without reference to the present and the report of the jail authorities to the effect that the petitioner has reformed himself to a large extent. Secondly, by reason of one's age one cannot say whether the convict has still potentiality of committing the crime or not, but it depends on his attitude to matters, which is not being taken note of by the Government. Lastly, the suggestion that the incident is not an individual act of crime but a sequel of the political feud affecting society at large, whether his political views have been changed or still carries the same so as to commit crime has not been examined by the Government.

9. On the basis of the grounds stated above the Government could not have rejected the claim made by the petitioner. In the circumstances, we quash the order made by the Government and remit the matter to it again to examine the case of the petitioner in the light of what has been stated by this Court earlier and our comments made in this order as to the grounds upon which the Government refused to act on the report of the jail authorities and also to take note of the change in the law by enacting the West Bengal Correctional Services Act 32 of 1992 and to decide the matter afresh within a period of three months from today. The writ petition is allowed accordingly. After issuing rule the same is made absolute."

5. In view of the above, the impugned order is set aside and the present petition is disposed of with the direction that the petitioner's representation



be reconsidered by the SRB in light of the parameters laid down in Ram Chander (supra).

6. A copy of this order be communicated to the petitioner through the concerned Jail Superintendent.

MANOJ KUMAR OHRI, J

APRIL 2, 2024/rd