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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(CRL) 1577/2022
AMJAD ALI MUGHALPetitioner

Through: Mr. Vinayak Bhandari,
Ms. Jaisal Singh, Ms.
Teesta Mishra and Mr.
Ishaan Phukan, Advocates.

versus

THE STATE (GOVT. OF NCT) OF DELHI

.....Respondent

Through: Mr. Sanjay Lao, Standing
Counsel (Crl.) with Mr.
Abhinav Kumar and Mr.
Aryan Sachdeva, Advs.
SI Arvind Verma, PS
Gokulpuri.

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+ W.P.(CRL) 2592/2022, CRL.M.A. 25445/2024 (For early
hearing)
KHALID MEHMOODPetitioner

Through: Mr. Vinayak Bhandari,
Ms. Jaisal Singh, Ms.
Teesta Mishra and Mr.
Ishaan Phukan, Advocates.

versus

THE GOVERNMENT OF NCT OF DELHI AND ANR.

.....Respondents

Through: Mr. Amol Sinha, ASC
(Crl.) for State with Mr.
Kshitiz Garg, Mr. Ashivini
Kumar, Mr. Nitish
Dhawan and Ms. Sanskriti
Nimbekar, Advs.
SI Arvind Verma, PS
Gokulpuri.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

22.05.2025

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1. The present writ petitions have been filed essentially seeking premature release of the petitioners forthwith.
2. The petitioners had also assailed the Order F.18/102/2003-HOME(G)/PT-IX/2021/70 dated 17.01.2022, whereby the recommendations of the Sentence Reviewing Board ('SRB') were accepted and the request of the petitioners for premature release was rejected.
3. The brief facts of the case are that the petitioners were put to trial along with the other co-accused in a case arising out of FIR No. 79/1994, registered at Police Station Gokul Puri, for offences under Sections 3(1), 3(3), 3(5), 5 of the Terrorist and Disruptive Activities (Prevention) Act, 1987 ('TADA'). The petitioners were arrested in a raid conducted at Dayalpur and a large quantity of arms, ammunitions and explosives were recovered from the premises. The petitioners were convicted for the offences under TADA for conspiring and preparing to commit terrorist acts and to collect mass explosives. Consequently, the petitioners were sentenced to undergo rigorous imprisonment for life.
4. The conviction and sentence were confirmed by this Court and the Special Leave Petitions preferred by the petitioners were dismissed.
5. The learned counsel for the petitioners submits that the request for premature release made by the petitioners has been dismissed mechanically and without any application of mind.
6. He submits that co-accused Chand Mian has already been released after consideration by SRB, however, the petitioners are not being released merely because they are Pakistani nationals.



He further submits that the Pakistani national Mahfouz Ali, on whose disclosure the petitioners were arrested, was released from prison and deported to Pakistan way back in the year 2000.

7. He submits that the petitioners have undergone around 31 years in prison. He further submits that the petitioner Amjad has earned jail remission of more than 6 years and the petitioner Khalid has earned remission of about 4 years.

8. He submits that the ossification report of the petitioner Khalid which shows that he was a minor at the time of commission of offence has never been considered by SRB despite directions of this Court.

9. *Per contra*, the learned Standing Counsel and the learned Additional Standing Counsel for the State oppose the grant of any relief to the petitioners. They submit that the petitioners had come to India with the intention of killing innocent persons and they had specialised training in use of bombs, rocket launchers and other killing devices, and there is no arbitrariness in the order of rejection.

10. They submit that the petitioners have no inherent or indefeasible right to claim premature release on expiry of any particular term and their request for premature release was dismissed by SRB by a reasoned order.

11. I have heard the learned counsel and perused the record.

12. The petitioners have impugned rejection of their respective requests for premature release and also sought premature release by this Court.

13. It is trite law that this Court cannot substitute the discretion of the SRB and usurp the discretion that statutorily rests with the



State for granting the relief of premature release to a convict. In the case of ***State of M.P. v. Ratan Singh : (1976) 3 SCC 470***, the Hon'ble Apex Court held as under:

“9. From a review of the authorities and the statutory provisions of the Code of Criminal Procedure the following propositions emerge:

“(1) that a sentence of imprisonment for life does not automatically expire at the end of 20 years including the remissions, because the administrative rules framed under the various Jail Manuals or under the Prisons Act cannot supersede the statutory provisions of the Penal Code, 1860. A sentence of imprisonment for life means a sentence for the entire life of the prisoner unless the appropriate Government chooses to exercise its discretion to remit either the whole or a part of the sentence under Section 401 of the Code of Criminal Procedure;

*(2) that the appropriate Government has the undoubted discretion to remit or refuse to remit the sentence and where it refuses to remit the sentence **no writ can be issued directing the State Government to release the prisoner**”*

14. This Court, however, while exercising power under Article 226 of the Constitution of India is empowered to review as to whether the discretion of the SRB for allowing or disallowing a request for release has been exercised arbitrarily without following due procedure, and to set aside the order of SRB if necessary.

15. It is argued that the request of the petitioners for premature release has been rejected mechanically. The petitioners essentially apprehend prejudice from SRB on account of them being Pakistani nationals as one of the co-convicts has already been released.

16. This Court finds no merit in relation to the argument that the plea of the petitioners is not being allowed due to any prejudice owing to their Pakistani nationality. As pointed out by



the petitioners themselves, the Pakistani national on whose disclosure the petitioners were arrested has already been deported and sent back to Pakistan on recommendation of SRB. Moreover, the case of each convict is to be considered independently on its own footing and the mere grant of relief to the co-convict can thus not entitle the petitioners to parity in the present case. While the offence against the convicts may be same, the propensity varies as the petitioners are foreign nationals who came to India with the sole aim of carrying out terrorist activities.

17. A bare perusal of the concerned minutes of meeting in relation to the petitioners shows that the Additional Commissioner of Delhi Police (Crime) had strongly opposed their premature release. The Special Secretary Cum Director, Social Welfare Department, Delhi had also not supported the petitioners' release. In such circumstances, SRB suggested rejection of the request by taking into account the facts of the case, gravity and nature of crime, involvement in terrorist activity and objection of police department. In relation to the petitioner Khalid, certain additional factors led to the rejection, including unsatisfactory jail conduct, previous criminal history and possibility of committing the crime again.

18. The record indicates that the applications for premature release by the petitioners have been rejected on multiple occasions, even after filing of the present petitions. It is argued that there is close to no change in the observations of SRB in last many meetings. In the opinion of this Court, merely because the reasons for rejection have been similar, the same does not show that the rejection of the request is mechanical. In every meeting,



SRB has taken standard factors into consideration, including, the recommendation by police and social welfare department. It has been the opposition on both counts that has led to the continuous rejection by SRB. Additionally, the prior involvement of the petitioner Khalid along with his jail conduct has also been rightly taken note of by the SRB.

19. From the minutes of meeting, it is evident that the standard procedure has been duly followed in relation to the petitioners and the rejection of their requests is not arbitrary.

20. The petitioners have invoked jurisdiction of this Court under Article 226 of the Constitution of India. It is undisputed that the petitioners are Pakistani Nationals and have been convicted for conspiring and preparing to commit the terrorist act and large quantity of arms, ammunition and explosives were recovered from them. The facts of the case and the crime for which the petitioners have been convicted does not merit exercise of extraordinary discretionary jurisdiction under Article 226 of the Constitution of India.

21. The petitions are therefore, dismissed.

22. A copy of this order be placed in both the matters.

AMIT MAHAJAN, J

MAY 22, 2025

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