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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(CRL) 2518/2022 & CRL.M.A. 21913/2022,
CRL.M.A. 21914/2022, CRL.M.A. 19180/2023,
CRL.M.A. 22541/2025

ZAFAR UL ISLAM

.....Petitioner

Through: Mr. Sarthak Maggon, Adv.
with wife and daughter of
the petitioner.

versus

STATE OF NCT OF DELHI

.....Respondent

Through: Ms.Rupali Bandhopadhyaya,
ASC for the State with Mr.
Abhijeet Kumar and Ms.
Amisha Gupta, Advs. with
SI Sudhanshu Singh, PS
Seelampur.

CORAM:

HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER

% **14.08.2025**

1. The present petition is filed under Article 226 of the Constitution of India, 1950 read with Section 482 of the Code Criminal Procedure, 1973 ('CrPC'), inter alia, seeking premature release of the petitioner on the sentence already undergone by him and quashing of the minutes of the meeting of the Sentence Review Board dated 21.10.2021 (hereafter '**impugned order**') whereby the petitioner's application for premature release was rejected.

2. The petitioner *vide* judgment dated 09.09.2010 passed by the learned Additional Sessions Judge ('ASJ') in Sessions Case



No. 38/2009 was convicted for the offence under Sections 302/34 of the Indian Penal Code, 1860 ('**IPC**').

3. The petitioner *vide* order on sentence dated 21.09.2010 was sentenced to life imprisonment for the offence under Sections 302/34 of the IPC and fine of Rs. 2,000/- and to undergo simple imprisonment for a period of two months in default of payment of fine.

4. The learned counsel for the petitioner submits that the Sentence Review Board has rejected the application of the petitioner for grant of pre-mature release, without providing any cogent reason.

5. He submits that the petitioner is a first-time offender and his conduct in jail during his incarceration has been satisfactory.

6. He submits that the petitioner has a family who is completely dependent on him. He submits that the petitioner has a wife and aged parents who require constant medical attention and there is nobody other than the petitioner to take care of them.

7. *Per contra*, the learned Additional Standing Counsel for the State, at the outset, submits that the petitioner's application should be remanded back for fresh consideration by the Sentence Review Board.

8. It is undisputed that, the petitioner became entitled for being considered for pre-mature release upon completing 14 years of incarceration and considered by the Sentence Review Board *vide* meeting dated 21.10.2021.

9. The petitioner's application seeking pre-mature though recommended by the Social Welfare Department, was rejected *vide* minutes of the meeting dated 21.10.2021 by the Sentence



Review Board essentially taking into account the heinousness of the crime.

10. Undisputedly, pre-mature release is not a matter of right or entitlement, it is a discretionary exercise undertaken by the Executive.

11. An order of pre-mature release is founded on the convict's transformation, public interest and societal impact. The Executive, for such purposes, has constituted the Sentence Review Board comprising of representatives from Judiciary, Prison Administration, Social Welfare, Law Enforcement, etc. The purpose of varied members in the Board is their contribution towards bringing in the overall perspective for the purpose of evaluation.

12. Undisputedly, in the case of the petitioner, the Social Welfare Department after analyzing the history of the petitioner and also his behaviour during his custody and overall conduct, gave a Report and recommended that he may be granted pre-mature release.

13. The impugned order rejecting the pre-mature release of the petitioner indicates that Delhi Police neither recommended nor opposed the release, however, the Additional Commissioner of Delhi Police, who was present in the meeting, opposed the release *albeit* without mentioning any reason.

14. The order also indicates that the Special Secretary cum Director, Social Welfare Department, also did not support the pre-mature release of the petitioner. However, no reason has been found for such disapproval of his pre-mature release.

15. Thus, even though the Social Welfare Department has specifically recommended the release on the basis of the Report
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and Analysis, two members disapproved without mentioning any reason. The conclusion part of the order rejecting the pre-mature release only notes the heinousness of the crime committed by the petitioner.

16. As noted in the previous order dated 04.08.2025 passed by this Court, the Hon'ble Apex Court way back on 30.09.2020 in the case of **Satish v. State of U.P. : (2021) 14 SCC 580**, had held that the length of the sentence or the gravity of the original crime cannot be the sole basis for refusing pre-mature release. It was held that any assessment regarding predilection to commit crime upon release must be based on antecedents as well as the conduct of the petitioner while in jail. It was held as under :

“18. A perusal of the government orders displays that the statutory mandate on premature release has been completely overlooked. The three-factor evaluation of : (i) antecedents, (ii) conduct during incarceration, and (iii) likelihood to abstain from crime, under Section 2 of the U.P. Prisoners Release on Probation Act, 1938, have been given a complete go-by. These refusals are not based on facts or evidence, and are vague, cursory, and merely unsubstantiated opinions of the State authorities.

19. It would be gainsaid that length of the sentence or the gravity of the original crime cannot be the sole basis for refusing premature release. Any assessment regarding predilection to commit crime upon release must be based on antecedents as well as conduct of the prisoner while in jail, and not merely on his age or apprehensions of the victims and witnesses. [Zahid Hussein v. State of W.B., (2001) 3 SCC 750 : 2001 SCC (Cri) 631] As per the State's own affidavit, the conduct of both the petitioners has been more than satisfactory. They have no material criminal antecedents, and have served almost 16 years in jail (22 years including remission). Although being about 54 and 43 years old, they still have substantial years of life remaining, but that does not prove that they retain a propensity for committing offences. The respondent State's repeated and circuitous reliance on age does nothing but defeat the purpose of remission and



probation, despite the petitioners having met all statutory requirements for premature release.

20. Indeed, the petitioners' case is squarely covered by the ratio laid down by this Court in *Shor v. State of U.P.* [*Shor v. State of U.P.*, (2021) 14 SCC 820] , para 5, which has later been followed in *Munna v. State of U.P.* [*Munna v. State of U.P.*, (2021) 14 SCC 589] , the relevant extract of which is reproduced as under : (*Shor case* [*Shor v. State of U.P.*, (2021) 14 SCC 820] , SCC pp. 821-22, para 5)

“5. A reading of the order dated 22-1-2018 shows that the Joint Secretary, Government of U.P. has failed to apply his mind to the conditions of Section 2 of the U.P. Act. Merely repeating 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. Conduct in prison has not been referred to at all and the Senior Superintendent of Police and the District Magistrate confirming that the prisoner is not “incapacitated” from committing the crime is not tantamount to stating that he is likely to abstain from crime and lead a peaceable life if released from prison. Also having regard to the long incarceration of 29 years (approx.) without remission, we do not wish to drive the petitioner to a further proceeding challenging the order dated 22-1-2018 when we find that the order has been passed mechanically and without application of mind to Section 2 of the U.P. Act.”

(emphasis supplied)

21. It seems to us that the petitioners' action of kidnapping was nothing but a fanciful attempt to procure easy money, for which they have learnt a painful life lesson. Given their age, their case ought to be viewed through a prism of positivity. They retain the ability to reintegrate with society and can spend many years leading a peaceful, disciplined, and normal human life. Such a hopeful expectation is further concretised by their conduct in jail. It is revealed from the additional affidavit dated 5-9-2020 filed by Anita alias Varnika (wife of Vikky) that during the course of his incarceration in jail he has pursued as many as eight distance-learning courses, which include (i) passing his intermediate examination, (ii) learning computer hardware, (iii) obtaining a degree in Bachelor of Arts; as well as numerous certificates in (iv) food and nutrition, (v) human rights, (vi) environmental studies. Vikky's conduct shines as a bright light of hope and redemption for many



other incarcerated prisoners. Compounded by their roots and familial obligations, we believe it is extremely unlikely that the petitioners would commit any act which could shatter or shame their familial dreams.”

17. The learned Additional Standing Counsel for the State, while placing reliance on a judgment passed by a coordinate bench of this Court in ***Santosh Kumar Singh v. State (Govt. of the NCT) of Delhi : W.P.(CRL) 1431/2023***, argues that if the Court is of the opinion that heinousness of offence cannot be a ground for rejecting an application for grant of pre-mature release, even then, the matter should be remanded back to the Sentence Review Board for fresh consideration.

18. It is relevant to observe that in the case of ***Santosh Kumar Singh v. State (Govt. of the NCT) of Delhi (supra)***, the petitioner therein had not been recommended by the Social Welfare Department for premature release, however, in the present case, as noted above, the application for grant of pre-mature release of the petitioner had been recommended by the by the Social Welfare Department. A perusal of the impugned minutes of meeting indicates that there was no other impediment in allowing the petitioner's request except the unreasoned disapproval of two members and gravity of crime committed by him. As observed in ***Satish v. State of U.P. (supra)***, the heinousness of the offence cannot be the sole reason for refusing premature release, and the said reasoning is untenable.

19. Therefore, the argument of the learned Additional Standing Counsel for the State of remanding the matter of the petitioner back to the Sentence Review Board for fresh considerations cannot be accepted on the facts of the present case.



20. It is true that an expert body in the form of Sentence Review Board has specifically been assigned the responsibility under statutory framework to pass any order on pre-mature release and the Courts while exercising power under Article 226 of the Constitution of India, shall not ordinarily supplant the same.

21. It is, however, equally well-settled that if it is found that the executive has failed to discharge the mandate entrusted to it by law, the Constitutional Court can assume the task onto itself and direct compliance after perusing the record.

22. The Hon'ble Apex Court in the case of **Satish @ Sabbe v. The State of Uttar Pradesh : Special Leave Petition (CRL.) No. 7369/2019** held that once it is settled that an arbitrary order has been passed by the executive, thereafter, the matter cannot be remanded back for fresh considerations. The relevant portion of the judgment is reproduced hereunder:

“16. It is no doubt trite law that no convict can claim remission as a matter of right. However, in the present case, the circumstances are different. What had been sought and directed by this Court through repeated orders was not premature release itself, but due application of mind and a reasoned decision by executive authorities in terms of existing provisions regarding premature release. Clearly, once a law has been made by the appropriate legislature, then it is not open for executive authorities to surreptitiously subvert its mandate. Where the authorities are found to have failed to discharge their statutory obligations despite judicial directions, it would then not be inappropriate for a Constitutional Court while exercising its powers of judicial review to assume such task onto itself and direct compliance through a writ of mandamus.”

23. As noted above, the record indicates that the petitioner's pre-mature release was in fact recommended by the Social Welfare Department, but was not supported by Special Secretary



cum Director, Social Welfare Department and the Additional Commissioner of Delhi Police, who were members of the Board.

24. However, they failed to provide any reason for such opposition. The conclusion of the order also indicates that the only reason given for not allowing the pre-mature release was the heinousness of the crime, which as noted above, has been held by the Hon'ble Apex Court to be not the sole criteria for rejecting the release.

25. It is not denied that the petitioner has already spent almost 21 years in custody including remission. The conduct of the petitioner in jail is also stated to be satisfactory.

26. Further, it is pertinent to note that the petitioner has a family who is dependent on him. He has a wife and aged parents who require constant medical attention and there is nobody other than the petitioner to take care of them.

27. In view of the aforesaid discussion, this Court is of the opinion that the petitioner is entitled for the grant of pre-mature release.

28. In view of the above, the present petition is allowed, the impugned order rejecting the petitioner's application for grant of pre-mature release is set aside and the petitioner is thereby directed to be released.

29. Pending application(s), if any also stand disposed of.

30. A copy of this order be communicated to the concerned jail superintendent for compliance.

AMIT MAHAJAN, J

AUGUST 14, 2025

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