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

**Date of Decision: 23<sup>rd</sup> May, 2025**

+ W.P.(CRL) 1/2025, CRL.M.A. 16269/2025

ASIF ALIAS NAEEM

.....Petitioner

Through: Mr. Sarthak Maggon and Mr. Raunak Parmar, Advocates.

versus

STATE OF NCT OF DELHI & ANR.

.....Respondents

Through: Mr. Amit Tiwari, CGSC with Mr. Ayush Tanwar, Ms. Ayushi Srivastava, Advs. For UOI.  
Mr. Sanjeev Bhandari, ASC with Mr. Arjit Sharma, Mr. Nikunj Bindal, Ms. Nishtha Dhall, Advs.  
Mr. Amit Tiwari, CGSC with Mr. Ayush, Ms. Ayushi, Advs. with PSI Manish Giri, PS GTB Enclave.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J. (Oral)**

**CRL.M.A. 16246/2025 (for early hearing)**

1. For the grounds and reasons stated in the application, the same is allowed and with the consent of the parties, the main petition is taken up on board today itself.

2. Application shall stand disposed of.

**W.P.(CRL) 1/2025**

3. The present writ petition, filed under Article 226 of the Constitution



of India, 1950, is directed against the decision of the Sentence Review Board,<sup>1</sup> as recorded in the minutes of meeting dated 30<sup>th</sup> August, 2024 and 18<sup>th</sup> September, 2024, whereby the Petitioner's request for pre-mature release was declined. The Petitioner further challenges the consequential order dated 4<sup>th</sup> December, 2024, whereby the said minutes were approved by the Deputy Secretary (Home), Government of NCT of Delhi.<sup>2</sup>

4. The Petitioner has been convicted in FIR No. 284/2004 under 396/412/449/34 of the Indian Penal Code, 1860<sup>3</sup> and Section 25/27 Arms Act, 1959<sup>4</sup> registered at P.S: M.S Park, Delhi, in connection with a murder committed during dacoity. By judgment dated 25<sup>th</sup> January, 2010, the Petitioner has been convicted for the offences under section 396/449/34/412 of the and Section 27 of the Arms Act, 1959. The Petitioner's appeal (Criminal Appeal No. 721 of 2010), before the Division Bench, against the conviction was partly allowed by judgment dated 19<sup>th</sup> February 2014. While affirming the conviction under Sections 396 and 449 read with Section 34 of the IPC, the Division Bench acquitted the Petitioner of the charges under Section 412 of the IPC and Section 27 of the Arms Act. A Special Leave Petition (Diary No. 21631 of 2019) preferred against the said decision was dismissed by the Supreme Court.

5. The Petitioner was repatriated to a prison in Bangladesh on 1<sup>st</sup> December, 2021, during the pendency of his challenge to citizenship status, raised in W.P. (Crl) No. 1057/2021. While the said petition remained undecided, the Government of Bangladesh accepted his repatriation pursuant

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<sup>1</sup> "SRB"

<sup>2</sup> Collectively referred to as the Impugned decision

<sup>3</sup> "IPC"

<sup>4</sup> "Arms Act"



to the bilateral agreement, between India and Bangladesh, concerning the transfer of sentenced prisoners. The Petitioner is presently lodged in a correctional facility in Dhaka, Bangladesh.

6. The Petitioner is aggrieved by the rejection of his representation for premature release by the SRB, as recorded in its meetings held on 30<sup>th</sup> August, 2024 and 18<sup>th</sup> September 2024. The reasons for rejection, as articulated are follows: -

**“ASIF @ NAEEM S/O SH, ABDUL RUB MUNSHI - AGE-38 YRS, (BANGLADESH NATIONAL)”**

*Asif @ Naeem S/o Sh. Abdul Rub Munshi is undergoing life imprisonment in case FIR No. 284/2004, U/S 396/449/412/34 IPC and 25/27 Arms Act, P.S. M. S. Park, Delhi for committing murder of a person during dacoity.*

**Eligibility for consideration of the case:**

*Only after undergoing imprisonment for 20 years including remission.*

**The convict has undergone:**

*Imprisonment of 19 years, 11 months & 24 days **in actual** and 24 years, 04 months & 18 days **with remission**. The said undergoing imprisonment is taken as per Custody/letter dated 02.01.2024 received from Bangladesh High Commission, New Delhi.*

*This case has been considered under the policy/order dated 16.07.2004 issued by the Govt. of NCT of Delhi i.e. policy that was existing on the date of conviction.*

**Conclusion:**

*The Board considered the reports received from Police and Social Welfare Departments and took into account all the facts and circumstances of the case. The convict had committed a heinous crime i.e. murder of a person during dacoity. Considering the gravity, perversity and nature of the crime, non-recommendation by Police authority, age of the convict etc., it is felt by the Board that possibility of committing crime by such a convict cannot be ruled out. Thus, the Board decided that it may not be in the interest of the society at large to recommend release of such a convict. The Board after discussion at length unanimously **REJECTS***



*premature release of convict Asif @ Naeem S/o Sh. Abdul Rub Munshi at this stage.”*

7. Counsel for the Petitioner submits that the aforementioned reasoning, adopted by the SRB, is flawed, non-speaking, and contrary to the applicable policy/order<sup>5</sup> dated 16<sup>th</sup> July 2004, issued by the Lt. Governor of the NCT of Delhi<sup>6</sup> and the Delhi Prison Rules, 2018. The challenge rests on the following grounds:

7.1. The Petitioner, has, as on date, undergone more than 25 years of incarceration including remission, thereby exceeding the maximum prescribed threshold under Clause 3.1 of the 2004 Policy. The said clause lays down the eligibility criteria for premature release in cases governed by Section 433A of the Cr.P.C., and reads as under:

***“Eligibility for premature release***

*3.1 Every convicted prisoner whether male or female undergoing sentence if the imprisonment and covered by the provisions of Section 433A Cr.PC 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 as convict to automatic release from the prison and the Sentence Review Board shall have the discretion 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.*

*Such convict as stand convicted of a capital offence are prescribed the total period of imprisonment to be undergone including remission, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is*

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<sup>5</sup> bearing no. F. 18/5/94/Home (Genl)

<sup>6</sup> “2004 policy”



*released. Total period of incarceration including remission in such cases should ordinarily not exceed 20 years.*

*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. 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, 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 life imprisonment.”*

7.2. It is further submitted that Clause 4 (ii) of the 2004 Policy imposes an affirmative obligation upon the Jail Superintendent to prepare a comprehensive report delineating not only the nature of the offence and the circumstances under which it was committed, but also the convict’s jail conduct, behaviour during parole or leave, physical and mental health, and the Superintendent’s reasoned recommendation. The relevant extract reads as under:

*“(ii) The Superintendent of the Jail shall prepare a comprehensive note in each case mentioning the family and social background of the prisoner along with the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. He will also project clearly the particulars of the conduct and behaviour of the prisoner in the jail during the period of his incarceration, behavioural conduct during the period he was released on probation leave/parole change in his behavioural pattern, and offences, if any, committed by him in jail and punishment awarded to him for such offence(s). A report shall*



*also be made about his physical and mental health or any serious ailment from which the prisoner is suffering, entitling his case for special consideration for premature release. The note shall also contain recommendations of the Jail Superintendent on whether or not he favours for the premature release of the prisoner and in either case it shall be supported by adequate reasons.”*

7.3. Further, emphasis must be placed on the objective criteria outlined in the 2004 Policy, as well as the provisions of the Delhi Prison Rules, 2018. The Petitioner’s plea for premature release is grounded in the considerable duration of incarceration already undergone. The core purpose of premature release is to facilitate the reformation and rehabilitation of convicts and their reintegration into society. These essential considerations, which should guide the evaluation of any request for premature release, are clearly articulated in Rule 1244 of the Delhi Prison Rules, 2018, which provides as follows:

*“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, behavior 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 member of a civilized society.”*

7.4. Building on the above framework, counsel for the Petitioner submits that the Petitioner demonstrably satisfies the essential criteria for premature release and that the SRB’s decision, far from being a reasoned rejection, is wholly devoid of engagement with the material circumstances on record. The following mitigating factors are specifically urged:

- (i) The SRB failed to consider the that the Petitioner is a first-time



offender, with no prior involvement in any criminal case apart from the present conviction.

(ii) The Petitioner's background was overlooked, particularly the fact that he is not a habitual offender and poses no continuing threat to public safety.

(iii) The Petitioner was a juvenile at the time of commission of the offence, having been arrested at the age of 15, and has spent the entirety of his adult life, over two decades, behind bars. He now seeks an opportunity to return to society and rebuild familial and community ties.

(iv) The Petitioner has remained in uninterrupted custody since his arrest and has never availed of bail, furlough, or parole during the entirety of his incarceration.

(v) It was not the Petitioner, but a co-convict (who later absconded), who delivered the fatal blow during the commission of the offence. This factual nuance, despite being evident from the record, finds no reflection in the SRB's deliberations.

(vi) The mitigating factor that the co-convict was an adult, likely exerting undue influence over the Petitioner - who was merely 15 years old at the time of the offence- was not considered.

(vii) The SRB has further failed to consider that it is highly improbable for a child of 15 years of age to possess the requisite *mens rea* to plan and execute an offence as grave as dacoity with murder.

(viii) The impugned decision rests on a conclusory, template-like rejection, which merely recites the nature of the offence without engaging with the Petitioner's conduct, rehabilitative prospects, or the reformatory ethos that guides the premature release framework. The failure to consider any of the above factors renders the decision not only non-speaking, but also contrary



to law

7.5 In addition, it must be noted that even the Jail Superintendent has recommended the Petitioner's release on account of satisfactory conduct, and the State's reliance on the heinous nature of offence alone is contrary to law and ignores the reformatory object of punishment.

7.6. The denial of premature release in the present case appears not only unjustified in law but also arbitrary in application, particularly when contrasted with similarly placed convicts who have been granted release after serving significantly shorter periods.

8. Per contra, counsel appearing for Respondent No.1, submits that the rejection of the Petitioner's request is supported by valid and reasoned findings recorded by the SRB in its meetings held on 30<sup>th</sup> August, 2024 and 18<sup>th</sup> September, 2024. He contends that the decision reflects due application of mind to the gravity and nature of the offence, the relevant policy framework, and the broader public interest. It is further submitted that the subsequent order dated 4<sup>th</sup> December, 2024, which merely accords approval to the SRB's recommendation, suffers from no legal infirmity and does not call for any interference.

### **Analysis**

9. As per the Impugned minutes of meeting, the Petitioner has completed over 24 years of incarceration, including remission. His request for premature release must be assessed in light of the applicable framework, namely, the Government of NCT of Delhi's policy dated 16<sup>th</sup> July, 2004, and the Delhi Prison Rules, 2018. Under the governing legal framework, the Sentence Review Board is duty-bound to exercise its discretion through a calibrated, reasoned, and case-specific assessment, firmly anchored in the



applicable statutory provisions and policy guidelines. They must consider a spectrum of relevant factors, including the nature and gravity of the offence, the period of actual incarceration, the convict's conduct during imprisonment, and the views of the Jail Superintendent, police authorities, and the Social Welfare Department. These inputs are not to be treated as perfunctory or determinative in isolation, but must be weighed collectively and contextually. The ultimate decision must demonstrate application of mind to the case-specific circumstances and reflect a fair and reasoned exercise of discretion. In the absence of such a considered process, the SRB's decision cannot be sustained.

10. At this stage, it is apposite to refer to the decision of the Division Bench of this Court in ***Sushil Sharma vs. State***,<sup>7</sup> where while addressing the issue of pre-mature release of a convict, the Court observed that the minutes and recommendations of the SRB must not be unreasonable, fanciful or whimsical in nature. The relevant portion of the said judgment reads as follows:

*“47. A plain reading of the above guidelines clearly reflects that, a convicted prisoner undergoing sentence of life imprisonment is eligible to be considered for premature release from prison, immediately after serving 14 years of actual imprisonment, without accounting for remissions. **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.***

*48. The categories of convicted prisoners, who stand convicted of a capital offence and whose death sentence has been commuted to life imprisonment; as in Sushil Kumar Sharma’s case, are entitled to be*

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<sup>7</sup> W.P.(CRL) 3798/2018



*considered for premature release after undergoing imprisonment for 20 years including remission.*

*49. The said condition is further qualified by a cap in the period of incarceration of such lifer, inclusive of remissions, to a total period of 25 years.*

*50. In view of the foregoing, in order to justifiably continue the incarceration of Sushil Kumar Sharma, beyond the maximum period stipulated in the guidelines, **it is incumbent upon the State to provide cogent and compelling reasons for his further detention.***

*51. In the present case, **these reasons are conspicuous by their absence.** Even, accepting the submission made on behalf of the State, to the effect that, the cap of 25 years in the guidelines do not warrant automatic release of a person sentenced to imprisonment for life, we are of the view that, Sushil Kumar Sharma's further incarceration by the State beyond the 29 years' incarceration with remissions, already undergone by him, does not admit of legal justification and lawful sanction, in the facts and circumstances elaborated hereinbefore."*

[Emphasis supplied]

The Division Bench categorically held that continuation of incarceration beyond the outer limit set under the applicable policy must be supported by cogent and specific reasoning. Thus, any decision regarding premature release must stem from a case-specific, evidence-based deliberation, duly reflecting application of mind to the relevant statutory framework and policy parameters. Vague or templated observations cannot sustain continued incarceration once the eligibility threshold has been crossed.

11. Although the minutes of the meeting record a perfunctory reference to the police report, it is evident that the decision was overwhelmingly predicated on the gravity and nature of the offence. The SRB appears to have mechanically invoked the seriousness of the crime and a speculative apprehension of future recidivism, without undertaking a balanced or



holistic evaluation of the other mandatory considerations under the 2004 policy and the Delhi Prison Rules, 2018. There is no substantive discussion on the Petitioner's conduct during incarceration, the absence of prior criminal antecedents, or the rehabilitative potential of a convict who has served over 20 years in actual custody. Nor does the SRB provide any cogent basis for concluding that the Petitioner poses a continuing threat to society. The apprehension of future criminality, as expressed in the impugned minutes, remains an unsupported generalisation, falling short of the reasoned assessment required under the governing legal framework.

12. A striking feature that emerges from the record is the Social Investigation Report dated 16<sup>th</sup> December, 2021, prepared by the Prison Welfare Officer, which offers a detailed and favourable assessment of the Petitioner's background, conduct, and reformatory potential. The report specifically notes that, based on the Bone Age Report dated 5<sup>th</sup> March, 2013 (Hospital Registration No. 94868) issued by a panel of specialists at Deen Dayal Upadhyay Hospital, the Petitioner was estimated to be between 22 to 25 years old as of that date. When back-calculated, this places the Petitioner's age at approximately 10 to 13 years at the time of the incident, which occurred on the intervening night of 5<sup>th</sup>-6<sup>th</sup> August, 2004. The report also records that the Petitioner has undergone over 16 years of actual incarceration and more than 20 years including remission, without ever availing parole or furlough. His conduct in jail was noted to be consistently satisfactory, and he was assessed to exhibit a reformatory attitude. On this basis, and subject to verification of the Bone Age Report, the Welfare Officer recommended the Petitioner's case as fit for premature release. The report reads as follows:



**“Future Planning:** *To be a Tailor.*

**Analysis and Evaluation:** *The convict has undergone more than 16 years in actual and more than 20 years of his sentence along with remission including under trial period. He has never availed any Parole and Furlough as per the available Nominal Roll. The jail conduct of the convict is found satisfactory throughout the incarceration period.*

*The convict is claiming that he was a juvenile at the time of incident which also observed in the Bone Age Report bearing Hospital Registration No. 94868 dated 05.03.2013 conducted for assessment of the Age of convict by a panel of Deen Dayal Upadhyay Hospital, Hari Nagar, Delhi. The panel of specialist opined that the age of convict was about 22-25 years on 05.03.2013. On calculation of age assessment report, it is evident that the **age of convict was about 10-13 years at the time of incident** as the incident was taken place on intervening night of **05-06 August, 2004**.*

*Keeping in view of all the facts and circumstances of the case and taking into account of the satisfactory jail conduct throughout the incarceration period, no previous criminal history, reformatory attitude and the age of accused at the time of incident subjected to the verification of aforesaid Bone Age Report; the case of convict may be recommended for premature release.*

*The Social Investigation Report is submitted for further consideration please.”*

13. Further, the commutation roll also affirms that the Petitioner’s jail overall conduct during his incarceration in India was satisfactory. In the Court’s considered view, this is not a mere procedural detail but a critical factor that reflects directly on the Petitioner’s capacity for reformation. Additionally, the Petitioner has consistently maintained that he was not the individual responsible for inflicting the fatal injury, a fact which, though not determinative of guilt at this stage, may justifiably inform an assessment of relative culpability. These aspects, age of the Petitioner at the time of the offence, satisfactory custodial conduct, and sustained claim of limited involvement, must form an integral part of the evaluative process when considering the heinousness or depravity of the offence in the context of



premature release.

14. In view of the foregoing analysis, this Court finds that the Sentence Review Board's rejection of the Petitioner's request for premature release suffers from non-application of mind and fails to withstand judicial scrutiny. The decision reflects an unduly narrow consideration of the offence alone, without engaging with the mitigating circumstances, custodial conduct, reformatory potential, and statutory factors that are integral to the evaluative exercise mandated under the applicable policy and the Delhi Prison Rules, 2018. Such a perfunctory approach undermines the very object of the premature release framework, which is premised on a fair and individualized assessment of the convict's present suitability for reintegration into society.

15. Accordingly, the present petition is allowed in the following terms:

(a). The minutes of the Sentence Review Board meetings dated 30<sup>th</sup> August, 2024 and 18<sup>th</sup> September, 2024, insofar as they reject the Petitioner's representation for premature release, and the consequent order dated 4<sup>th</sup> December, 2024 issued by the Deputy Secretary (Home), GNCTD, are hereby set aside.

(b). The Respondents are directed to reconsider the Petitioner's case for premature release afresh, in light of the observations recorded hereinabove, strictly in accordance with the applicable policy dated 16<sup>th</sup> July, 2004 and the provisions of the Delhi Prison Rules, 2018, within a period of eight weeks from today.

(c) The order passed by the Sentence Review Board pursuant to such reconsideration be communicated to the Petitioner and uploaded on the official portal within one week of its approval by the Hon'ble Lieutenant Governor of Delhi.



16. Copy of the order be forwarded to the concerned Jail Superintendent for necessary information and compliance.
17. The petition, along with pending applications, stand disposed of.
18. The date fixed i.e. 8<sup>th</sup> July, 2025 stands cancelled.

**SANJEEV NARULA, J**

**MAY 23, 2025/neha**