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

% ***Reserved on : 27th August, 2024***

Pronounced on: 11th November, 2024

\+ **W.P.(CRL) 1485/2024, CRL.M.A. 14519/2024 & CRL.M.A. 14521/2024.**

VIJAY KUMAR SHUKLA .....Petitioner

Through: Ms. Vrinda Bhandari, Advocate (DHCLSC) and Ms. Anandita Rana,, Ms.Shrutika Pandey, Ms. Yamina Rizvi, Advocates with petitioner in-person.

versus

STATE NCT OF DELHI & ANR. .....Respondents

Through: Mr. Sanjeev Bhandari, ASC for State with Ms. Spriha Bhandari, Ms. Charu Sharma, Mr. Arijit Sharma, Mr. Vaibhav Vats, Mr. Sushant Bali, Mr. Ishan Swarna Sharma, Advs. with SI Dharmendra Sharma, PS Rajinder Nagar.

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

ANISH DAYAL, J.

"*Every saint has a past, every sinner has a future*"

– Justice V.R Krishna Iyer.

These words resonate deeply in the assessment by this Court of the plea of premature release after 26 years of incarceration.

1. The petitioner seeks directions for setting aside the Minutes of Meeting of the Sentence Review Board ("***SRB***") held on 30th June 2023 rejecting the premature release of the petitioner and order dated 21st November 2023 by which the Minutes of SRB were approved by the Hon'ble Lieutenant Governor, Delhi; ("***LG***"). Petitioner, therefore, seeks directions for premature release in FIR No.48/2001, PS Rajender Nagar for offences under Sections 302/186/353/34 of the Indian Penal Code, 1860 ('***IPC***'), Sections 25/27 of the Arms Act, 1959 and Section 68 of the Excise Act, 2009. Additionally, the petitioner prays that this Court frames guidelines to ensure that all decisions taken by the SRB are in consonance with the Delhi Prisons Rules, 2018 ("***DPR***").

Factual Background

2. Petitioner was convicted on 22nd September 2009, sentenced by order dated 24th September 2009 and was awarded life imprisonment. The appeal to this Court was dismissed on 17th December 2012. Petitioner had been in judicial custody since 2001 and the period undergone in custody is about 23 years and 5 months without remission and 26 years 11 months with remission. As per the Nominal Roll, his jail conduct had been satisfactory and parole was granted to petitioner from 24th May 2016 for a period of 1 month; from 23rd June 2017 for a period of 1 month; from 25th April 2020 for 8 weeks during the COVID-19 pandemic extended till February 2021; emergency parole from 06th June 2021 for 90 days during COVID-19 pandemic, extended till 05th April 2023. Petitioner surrendered on time, even during the COVID-19 pandemic, subsequent to the extension of emergency parole.

3. Aside from this, furlough had been granted from 23rd August 2016 for 3 weeks; on 07th December 2016 for 3 weeks; on 01st September 2017

for 2 weeks; on 01st February 2018 for 3 weeks; on 1st April 2019 for 3 weeks; on 25th August 2023 for 3 weeks and on 08th August 2024 for 2 weeks. There is no record that he misused the liberty granted when released either on parole or furlough.

4. Petitioner was awarded Certificates of Recognition by the Jail Superintendent on 26th January 2015 for "*good quality of work*"; on 26th January 2017 for "*good conduct, hard work and excellent services with sincerity in this jail*" and on 15th August 2017 for "*good conduct, hard work and excellent services*"

5. On 4th September 2017, petitioner was transferred from Regular Prison to Semi-Open Prison by an order of the Director General of Prisons, Tihar under the DPR and on 11th March 2020, was re-located to Open Prison within the Central Jail, Tihar Complex, as per the DPR.

6. Petitioner was successfully employed for duties in the Jail *inter alia* in 2015 worked at the storeroom, in 2018 in Semi-Open Office for 3 months and Semi-Open Jail Canteen for 7 to 8 months, in 2019 at Tihar Emporium for 5 to 6 months for maintenance and overall working of the emporium, in 2019-20 at SCOPE Plus, an NGO in Tihar Prisons in Tewa Hostels/Baraat Ghars and undertook press and ironing activities, in April 2023 at Semi-Open Office and finally in December 2023 at Tihar Jail's outlet established at Indian Oil Corporation Ltd. at J.B. Tito Marg, Masjid Moth, New Delhi outside jail from 8 A.M. to 8 P.M.

7. In July 2019, petitioner applied for premature release. The SRB rejected the request on the basis – (a) '*the facts and circumstances of the case*,' (b) '*not having lost the propensity of crime yet'* and (c) '*perversity of the crime*.' Consequently, in September 2019, basis this

recommendation, the release was rejected by the LG (*first rejection*). In February 2020, SRB rejected premature release yet again however, documents pertaining to such rejection were not made available to petitioner.

8. In August 2020, the SRB rejected the application yet again basis (a) '*the facts and circumstances of the case*' and (b) '*gravity and perversity of the crime*', consequent to which in October 2020, it was rejected by the LG (*second rejection*).

9. In December 2020, SRB rejected his release on the basis of factors of (a) '*the facts and circumstances of the case*', (b) '*gravity and perversity of the crime*' and (c) '*strong opposition by the police department*' consequent to which LG rejected the request for premature release (*third rejection*).

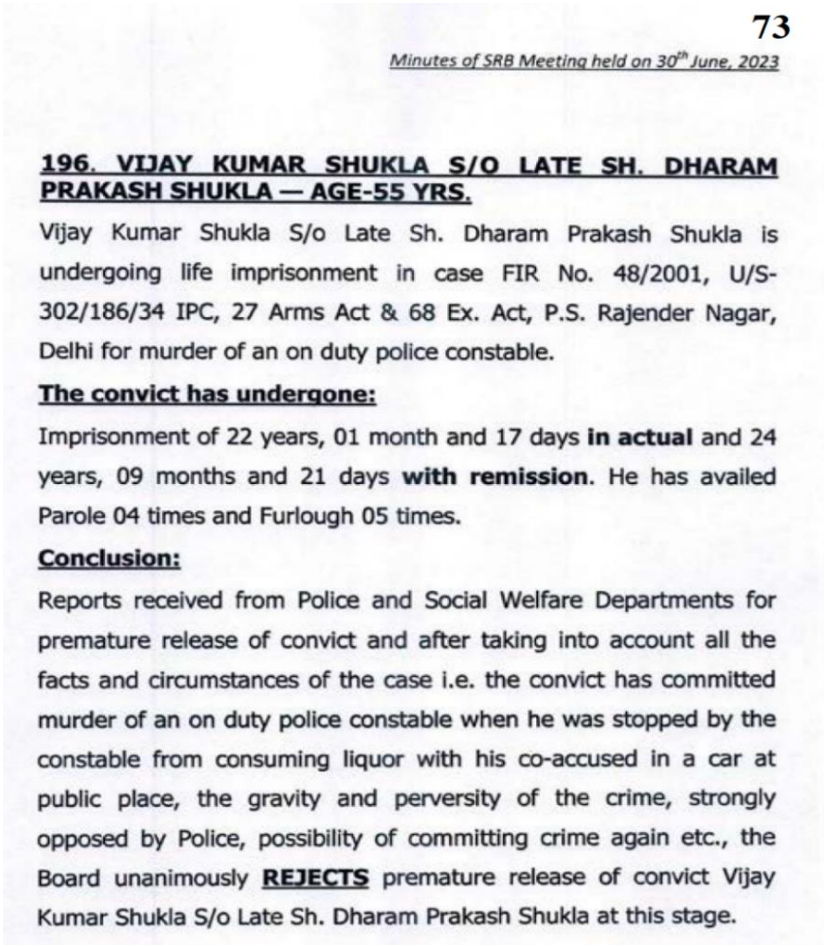
10. In June 2021, SRB rejected the request for premature release basis (a) '*the facts and circumstances of the case*', (b) '*gravity and perversity of the crime*' and (c) '*strong opposition by the police department*' consequent to which LG rejected the request for premature release (*fourth rejection*).

11. In October 2021, SRB rejected the request for premature release basis (a) '*the facts and circumstances of the case*', (b) '*gravity and perversity of the crime*' and (c) '*strong opposition by the police department*' consequent to which LG rejected the pre-mature release (*fifth rejection*).

12. Petitioner's counsel contended that he could not challenge any of his five rejection orders since petitioner was not even aware of orders

passed in the third, fourth and fifth rejections and became aware only during the process of filing the present petition.

13. What is impugned now is the sixth rejection on 21st November 2023 based on SRB report dated 20th June 2023 which based its rejection on (a) '*reports received from Police and Social Welfare Departments*' and (b) '*the facts and circumstances of the case i.e, nature of crime, gravity and perversity of the crime, opposition by police, the possibility of committing of crime*'. For the purpose of reference, extracts from the Minutes of the SRB, impugned herein, are reproduced as under:



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Minutes of SRB Meeting held on 30th June, 2023

196. VIJAY KUMAR SHUKLA S/O LATE SH. DHARAM PRAKASH SHUKLA — AGE-55 YRS.

Vijay Kumar Shukla S/o Late Sh. Dharam Prakash Shukla is undergoing life imprisonment in case FIR No. 48/2001, U/S-302/186/34 IPC, 27 Arms Act & 68 Ex. Act, P.S. Rajender Nagar, Delhi for murder of an on duty police constable.

The convict has undergone:

Imprisonment of 22 years, 01 month and 17 days **in actual** and 24 years, 09 months and 21 days **with remission**. He has availed Parole 04 times and Furlough 05 times.

Conclusion:

Reports received from Police and Social Welfare Departments for premature release of convict and after taking into account all the facts and circumstances of the case i.e. the convict has committed murder of an on duty police constable when he was stopped by the constable from consuming liquor with his co-accused in a car at public place, the gravity and perversity of the crime, strongly opposed by Police, possibility of committing crime again etc., the Board unanimously **REJECTS** premature release of convict Vijay Kumar Shukla S/o Late Sh. Dharam Prakash Shukla at this stage.

14. It is noted that petitioner was permitted to work at Tihar Jail's outlet established at Indian Oil Corporation Ltd. at J.B. Tito Marg, Masjid Moth, New Delhi which was outside the jail, *after* the impugned order dated 21st

November 2023, bearing out that petitioner's conduct was satisfactory and there was no apprehension in the minds of prison authorities that he was a flight risk. Petitioner's counsel further contended that when petitioner was out on parole, he was gainfully employed as a rickshaw driver; saved a total sum of Rs. 1,76,000/-, which he would use to buy a rickshaw and sustain himself once he was released. There had been a total of 10 occasions when he was released on parole and furlough. Petitioner's name, as noted above, was sent to SRB on six occasions, mechanically rejected all six times, without application of mind, and in complete disregard to his socio-economic background, good conduct, and potential to reform and lead a meaningful life.

Submissions on behalf of Petitioner

15. Ms. Vrinda Bhandari, Advocate nominated by the Delhi High Court Legal Services Committee (DHCLSC) appearing for the petitioner made extensive arguments in support of petitioner's premature release. She based her arguments essentially on the following points:

i. Petitioner had been in prolonged custody for the last about 26 years with remission;
ii. Petitioner's jail conduct was sterling and satisfactory;
iii. Petitioner was released at least 10 times on parole and furlough and had never misused his liberty;
iv. Rejection by SRB was purely on mechanical grounds without application of mind and completely overlooking the facts on record;
v. Petitioner had been consistently granted certificates of good conduct and good work in jail;
vi. Not only had he worked in Semi-Open Prisons, but also in Open Prison and was allotted a duty in Tihar Jail outlet at Indian Oil

Corporation Ltd. at J.B. Tito Marg, Masjid Moth, New Delhi which was outside jail where he was completely in an unsecured space from 8 A.M. to 8 P.M.;

16. Further, she essentially contended that SRB ought to follow rules and guidelines which are crystallised and prescribed in DPR, which they have completely disregarded in rejecting petitioner's plea for premature release six times.

17. For this purpose, she pointed out to the relevant Rules of the DPR, 2018, promulgated in the exercise of power conferred by Sections 71 of the Delhi Prisons Act, 2000 by the Government of India, NCT of Delhi. They are in force since 1st October 2018. Chapter XX relates to "*premature release*". Relevant provisions, to which petitioner's counsel has adverted to, are extracted hereunder for ease of reference:

> "***(i) Premature Release***
> *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*.
> (emphasis added)
> ……

(ii) Composition of the Sentence Review Board (SRB)

1247. The Government shall constitute a Sentence Review Board (SRB) to recommend premature release of life convicts in appropriate cases. This should be recommended by body having following members and may be reconstituted as per the orders of the Government from time to time:

a) Minister In-charge of Prisons – Chairman

b) Principal Secretary (Home), - Member Govt. of NCT of Delhi

c) Principal Secretary, Law, Justice & - Member Legislative Affairs, Govt. of NCT of Delhi

d) District and Sessions Judge, Delhi - Member

e) Inspector General of Prisons, Delhi - Member Secretary

f) Director of Social Welfare along with the Report of Chief Probation Officer, Govt. of NCT of Delhi- Member

g) A senior Police Officer not below the – Member Rank of Special Commissioner of Police, nominated by the Commissioner of Police

In case minister in charge of prisons is not available then Principal Secretary (Home) may Chair the meeting.

……

1249. SRB should meet at least once in three months at the notified place on a date to be noticed to its members at least 10 days in advance by the Member Secretary. The notice of such meeting shall be accompanied by complete agenda papers.

(emphasis added)

1250. However, the Chairman of the SRB can convene a meeting of the Committee more frequently, even at short notices, if necessary.

(iii) Eligibility for premature release

1251. 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.

(emphasis added)

1252. 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.

(emphasis added)

……

(iv) Procedure

1256. The Procedure to be followed for eventual consideration by the SRB under the rules for every life convict eligible shall be as follows:-

i. Every Superintendent in charge of a prison shall initiate the case of a prisoner at least three months in advance of his/her becoming eligible for consideration for premature release as per the criteria laid down for eligibility of premature release of life convicts.

ii. The Superintendent prison shall prepare a comprehensive note for each prisoner, giving his family and societal background as per the record of the case, the offence for which he was convicted and sentenced and the circumstances under which the offence was committed. The Superintendent shall also reflect fully on the conduct and behavior of the prisoner in the prison during the period of his incarceration, and during his/release on probation/ leave, change in his/behavioral pattern, and prison offences, if any, committed by him/and punishment awarded to him for such offences. A report shall also be made about his physical and mental health or any serious ailment with which the prisoner is suffering, entitling him for premature release as a special case. The note shall contain recommendation of the Superintendent i.e., whether he favors the premature release of the prisoner or not. In either case such recommendation shall be supported by adequate reasons.

iii. The Superintendent of the jail shall make a reference to the Deputy Commissioner of Police/ Superintendent of Police of the district, where the prisoner was ordinarily residing at the time of the

commission of the offence for which he was convicted and sentenced or where he is likely to resettle after his release from the Jail. However, in case the place where the prisoner was ordinarily residing at the time of commission of the offence is different from the place where he committed the offence, a reference shall also be made to the Deputy Commissioner of Police/ Superintendent of Police of the district in which the offence was committed in either case, he shall forward a copy of the note prepared by him to enable the Deputy Commissioner of Police/ Superintendent of Police to express his views in regard to the desirability of the premature release of the prisoner.

iv. On receipt of the reference, the concerned Deputy Commissioner of Police/ Superintendent of Police shall cause an inquiry to be made in the matter through a senior police officer of appropriate rank and based on his own assessment shall make his recommendations. While making the recommendations the Deputy Commissioner of Police/Superintendent of Police shall not act mechanically and oppose the premature release of the prisoner on untenable and hypothetical grounds/ apprehensions. In case the concerned Deputy Commissioner of Police/ Superintendent of Police is not in favor of the premature release of the prisoner, he shall justify the same with cogent reasons and material. He shall return the reference to the Superintendent of the concerned Jail not later than 30 days from the receipt of the reference.

v. The Superintendent of Jail shall also make a reference to the Chief Probation Officer and shall forward a copy of his note. On receipt of the reference, the Chief Probation Officer shall either hold or cause to be held an inquiry through a Probation Officer in regard to the desirability of premature release of the prisoner having regard to his family and social background, his acceptability by his family members and the society, prospects of the prisoner for rehabilitation and leading a meaningful life as a good citizen. He will not act

mechanically and recommend each and every case for premature release. In either case he should justify his recommendation by reasoned material. The Chief Probation Officer shall furnish his report with recommendations to the Superintendent of the Jail not later than 30 days from the receipt of the reference.

vi. On receipt of the report/ recommendations of the Deputy Commissioner of Police/ Superintendent of Police and Chief Probation Officer, the Superintendent of Jail shall put up the case to the Inspector General of Prisons at least one month in advance of the proposed meeting of the Sentence Review Board. The Inspector General of Prisons shall examine the case, bearing in mind the report/ recommendations of the Superintendent of Jail. Deputy Commissioner of Police/ Superintendent of Police and Chief Probation Officer shall make his own recommendations with regard to the premature release of the prisoner or otherwise keeping in view the general or special guidelines laid down by the Government for the Sentence Review Board. Regard shall also be had to various norms laid down and guidelines given by the Apex Court and various High Courts in the matter of premature release of prisoners.

(emphasis added)

1257. The Board shall follow the following Procedure and Guidelines while reviewing the cases and making its recommendations to the competent authority.

a) The Inspector General of Prisons with the prior approval of chairman shall convene a meeting of the Sentence Review Board on a date and time advance notice of which shall be given to the Chairman and Members of the Board at least ten days before the scheduled meeting and it shall accompany the complete agenda papers i.e. the note of the Superintendent of Jail recommendations of the Deputy Commissioner of Police/ Superintendent of Police, Chief Probation

Officer and Inspector General of Prisons along with the copies of documents, if any.

b) A meeting shall ordinarily be chaired by the Chairman and if for some reasons he is unable to be present in the meeting, it shall be chaired by the Principal Secretary (Home). The Member Secretary (Inspector General of Prisons) shall present the case of each prisoner under consideration before the Sentence Review Board. The board shall consider the case and take a view. As far as practicable, the Sentence Review Board shall endeavor to make unanimous recommendation. However, in case of a dissent, the majority view shall prevail and will be deemed to be decision of the Board. If equal numbers of members are of opposing views, the decision of the chairman will be final. However, the views of the opposing members should be recorded.

c) 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 the 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.

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.

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 Sentence Review Board 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."

(emphasis added)

18. Additionally, Chapter XXIII of DPR relates to Semi-Open and Open Prisons is relevant since the petitioner was allotted Semi-Open and Open Prisons duties at various points of time. The definitions of Semi-Open and Open Prisons and relevant rules under this Chapter, to which petitioner's counsel has referred, are extracted hereunder for ease of reference:

"*36) **OPEN PRISON** means any place within the prison complex so declared by the Government for temporary or permanent use for the detention of prisoners in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and are not locked up in prison cells. Prisoners may be permitted to take up employment outside the prison complex while serving their sentence*.

(emphasis added)

……

*49) **SEMI-OPEN PRISON** means any place within the prison complex so declared by the Government for temporary or permanent use for*

the detention of prisoners in which the prisoners are trusted to serve their sentences with minimal supervision and perimeter security and are not locked up in prison cells and do the work within the area demarcated by the Inspector General inside the prison complex as assigned to them from time to time while serving their sentence.

(emphasis added)

……

1323. ***Procedure for selection***

(i) Superintendents of Prisons shall prepare a list of prisoners eligible as per selection criteria and who are willing to be confined in semi-open Prison.

(ii) The Superintendent shall prepare case histories of such prisoners in the Form provided in Appendix 13 and then forward such lists together with case histories to the Selection Committee.

(iii) The Selection committee shall examine the said lists along with the case histories and files of the prisoners at the Prison Head Quarters.

(iv) The case of each prisoner shall be screened, keeping in view of the following factors, namely:-

(a) Health, physical and mental, to withstand confinement in a semi-open prison and certificate in this regard that he is fit to work.

(b) Behavior and conduct in prison and sense of responsibility displayed.

(c) Progress in work, vocational training, education and in other like matters.

(d) Group adjustability.

(e) Character and self discipline.

(f) Extent of institutional impacts (whether has reached peak point of training and treatment).

(g) Whether he is fit for being trusted for confinement in semi- open prison.

(v) The Selection Committee shall select prisoners as are eligible for being confined in semi-open prison as per selection criteria and submit a list of selected prisoners for the approval of the Inspector General of Prisons. On the list being approved, the selected prisoners shall as soon as possible be

transferred for confinement in the semi-open prison.

(vi) The complete record/files shall be kept by the In charge, Semi-Open Jail for record/reference.

(vii) The Prisoner whose Name was included in the list and the prisoners satisfying the Selection Criteria who are not shifted to Semi open shall be communicated the reasons for rejection of their case for being shifted to Semi open or open prison. Further, before rejecting the case, the prisoner should be given an opportunity to be heard/ to make a representation provided that his case was not covered in 1322.

(emphasis added)

……

1325. ***Criteria for selection***

I. The following convicted prisoners may be selected for confinement in Open prison who –

a) are found to be of good behavior and are physically and mentally fit.

b) have maintained excellent conduct inside the semi open prison and have performed labour allotted to them with due devotion and diligence and

i. the convict who have been sentenced for more than 3 years and upto 5 years and have completed six months in Semi open Jail.

ii. the convict who have been sentenced for more than 5 years and have completed one year in Semi-open Jail.

Provided that the convict must have served, including under trial period, at least 3/4th of his total punishment awarded including remission.

(c) Having good character and maintaining self-discipline.

(d) Have strong group adjustability and sense of responsibility.

(emphasis added)

……

> *1330. The convicts in open prisons may be allocated work at Tihar outlets within the territorial limits of Delhi. However, Prison Authority or Government will not be in any way bound to find employment for any prisoner lodged in Open Prison*."
>
> (emphasis added)

19. On the basis of these relevant provisions of the DPR, petitioner's counsel submitted as under:

a. Considering petitioner was initially in a Semi-Open Prison, he must have met with qualification/eligibility which is required as per Rule 1323. For such a selection, a list is prepared by the Superintendent of Prisons after screening each case, taking into account the physical and mental health, behaviour and conduct in prison, progress in work, vocational training, education, group adjustability, character and discipline, extent of institutional impacts and fitness for entrusting to semi-open prison. All these factors are counterintuitive to the potential and possibility of propensity to crime of any convict. Therefore, for the SRB to reach a conclusion that the petitioner was having a propensity for crime, was belied completely by selection for the semi-open Prison;

b. Considering that petitioner was thereafter allotted to Open Prison, for which the eligibility criteria under Rule 1325 applies, which is even more stringent, and involves good behaviour, physical and mental fitness, excellent conduct inside the semi-open prison, performance of labour with due devotion and diligence, good character and self-discipline, strong group adjustability and sense of responsibility; and having successfully completed more than one year in semi-open jail. Having passed

muster on all these factors, SRB's conclusion was, therefore, untenable, or illogical and without any basis;

c. Allocation of a prisoner to a Tihar outlet within Delhi is under Rule 1330 which is a special provision exercised at the discretion of the prison authorities. This allocation would certainly put aside any doubt on petitioner's conduct, reliability, responsibility, and eventual reformation;

20. Petitioner's counsel focussed heavily on Chapter XX for premature release to contend that they are essential aspects that imbue premature release of offenders. In this regard, she made the following submissions:

a. As per Rule 1244, the primary objective of premature release is '*reformation, rehabilitation, integration into society, balancing it out with protection of society from criminal activities*', incidental to that is conduct, behaviour and performance of prisoners. This is said to have a bearing on 'rehabilitative potential' and possibility of being released prematurely. The primary consideration is that they have become '*harmless'* and '*eligible as useful members of civilised society.*'

b. The constitution of SRB under Rule 1247 involves not only the Minister but also the Principal Secretary of Home, Law and Justice, District & Sessions Judge, Inspector General of Prisons, Director of Social Welfare and Senior Police Officer. It is a robust composition which ought to perform its role in taking a broad-based assessment on objective criteria. As per Rule 1249, SRB should meet at least once in three months; however, a Chairman can convene a meeting more frequently as per Rule 1250.

c. The eligibility for premature release involves having served a sentence of 14 years of actual imprisonment, without the remission, subject to discretion of SRB recommending release. Relevant factors for such eligibility are for SRB to assess whether the convict has '*lost his potential for committing crime*', '*overall conduct in jail during incarceration*', '*possibility of reclaiming the convict as a useful member of society*', '*social-economic condition of the convict's parents*'.

d. As per Rule 1252 (a), for convicts who are imprisoned for life, *inter alia* for murder of a public servant on duty (which was the case in this matter, petitioner being convicted for having murdered a police constable), it is prescribed that after 20 years, including remission, premature release can be considered. The petitioner has undergone 26 years plus.

e. The procedure to be followed by SRB is prescribed under Rule 1256 with the Jail Superintendent initiating the case three months in advance of eligibility for consideration for premature release, preparing a comprehensive note for the prisoner, including his family and societal background, offence for which he was convicted and sentenced, circumstances under which offence was committed. Most importantly, the Superintendent is to reflect fully on the conduct and behaviour of convict in prison and during his release on probation/leave and any prison offences committed by him. Recommendation of the Superintendent would be supported by adequate reasons.

f. Procedure to be followed by SRB is as per Rule 1257 and Sub Rule (c); SRB has to keep in view, the '*general principles of*

amnesty/remission', the paramount consideration being the welfare of the prisoner and the society at large. Most importantly, the Rules say that SRB shall not ordinarily decline a premature release of a prisoner merely on the ground that the police have not recommended his release. This, the petitioner's counsel states, is extremely important since even if there is negative recommendation by the police, the SRB is still empowered to affirm the premature release.

g. As per Sub Rule (d), repeated rejections would not be a bar for reconsideration, however, each reconsideration shall be spaced by a minimum period of 6 months. As per Sub Rule (e), the recommendation of SRB has to be placed before the competent authority without delay which may either accept or reject the recommendation or ask the SRB to reconsider. Most importantly, the decision of competent authority shall be communicated to concerned prisoner. Petitioner's counsel states that information of SRB's rejection, and recommendation and that by Govt. authorities at times does not reach petitioners at all while the proforma procedure is followed at SRB and competent authority.

21. In support of her contentions, petitioner's counsel relies on the following decisions:

a. ***Sushil Sharma v. State*** 2018:DHC:8159:DB, where the Court's observations and opinion are evident. The Special Leave Petition was dismissed in the challenge against the High Court's judgement. Relevant paragraphs are extracted as under:

> *"18. From the facts and circumstances of the present habeas corpus petition, two issues arise for*

the consideration of this Court, which are struck as follows:

a. Whether the Sentence Reviewing Board (for short 'SRB') is bound by the guidelines contained in the order No. F.18/5/94/Home(Genl.), dated 16.07.2004, formulated by the Government of National Capital Territory of Delhi (hereinafter referred to as 'guidelines') and;

b. Whether the rejection of Sushil Kumar Sharma's representation for premature release is violative of his vested rights under the guidelines.

……

23. What we are, therefore, called upon to decide in the present proceedings is whether the SRB, which is a recommendatory body, made its recommendation qua Sushil Kumar Sharma, in accordance with the guidelines formulated for the said purpose and whether the SRB can deviate from the guidelines formulated in accordance with law by the Competent Authority for the consideration of representations made by 'lifers' for premature release.

……

27. In view of the foregoing requirements prescribed by the guidelines, the SRB cannot be heard to state that, they are not bound by them particularly, in view of the circumstance that they owe their existence to the guidelines. The SRB, is required to exercise its recommendatory function strictly in accordance with the binding principles enunciated in the guidelines, from where their discretion emanates. The policy formulated by the Competent Authority is binding on the SRB and has to be scrupulously observed, adhered to and followed.

……

29. At this juncture, we must record our appreciation for Mr. Rahul Mehra, learned Standing Counsel (Criminal) for his submission that the SRB being a recommendatory body owing its existence to the guidelines, is bound by them absolutely, although, the Lieutenant Governor,

who is the competent authority is, in turn, not bound by the recommendations of the SRB. The issue, therefore, rests there.

……

32. In Laxman Naskar vs. Union Of India reported as AIR 2000 SC 986, the Hon'ble Supreme Court of India promulgated that if the Government had framed any rule or made a scheme for early release of convicts, then those rules or schemes would have to be treated as guidelines for exercising its power under Article 161 of the Constitution. The Apex Court further observed that, the Government orders rejecting the prayer for premature release of convicts without considering the conduct-record of the convicts in jail, as well as, their potential to further commit crime and the socio economic conditions of the convicts' family, suffered from gross infirmities.

……

36. It must, however, be stated that, the SRB recorded the strong opposition of the Delhi Police to Sushil Kumar Sharma's premature release on the ground "that such release may create resentment in the society.

……

38. Inexplicably therefore, in the very next meeting of the SRB, held on 04.10.2018, after having once again recorded the positive recommendations of the Social Welfare Department, Government of NCT of Delhi, the Chief Probation Officer and the Prison Department and further recording the opposition of the Delhi Police, as above stated; the SRB cryptically observed that, "however, rest of the members have opposed the 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 the murder of his wife, brutality of the case; and thereby rejected his representation for premature release by a majority of 5:2.

……

39. A perusal of the above recommendations of the SRB clearly reflect that, the same are cryptic, unreasoned, contrary to the material on record and non-speaking.

……

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 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.

……

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.*
>
> *52. In view of the foregoing discussion, we are of the view that, the SRB rejected Sushil Kumar Sharma's representation for premature release arbitrarily and without due or proper application of mind, to the facts and circumstances of his case and in contravention of the express mandate of the State policy as contained in the extant guidelines.*
>
> *……*
>
> *55. The recommendations of the SRB in its meeting held on 04.10.2018 with respect to Sushil Kumar Sharma, that are called into question in the present case are hereby set aside and quashed as is the non-speaking affirmation, of those recommendations by the Competent Authority*."
>
> (emphasis added)

b. ***Satish @ Sabbe v. The State of Uttar Pradesh*** 2020 SCC OnLine SC 811, in life imprisonment having been granted to prisoners, details regarding the petitioner's entitlement for premature release were considered by Supreme Court; relevant extracts from said decision are as under:

> "*18. A perusal of the Government Orders displays that the statutory mandate on premature release has been completely overlooked. The three factors evaluation of (i) antecedents (ii) conduct during incarceration and (iii)likelihood to abstain from crime, under Section 2 of the UP 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 state authorities.*

19. It would be gainsaid that length of the sentence or the gravity of the original crime can't 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.3 As per the State's own affidavit, the conduct of both 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 doesn't 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 Uttar Pradesh, which has later been followed in Munna v. State of Uttar Pradesh, the relevant extract of which is reproduced as under:

> *"A reading of the order dated 22.01.2018 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 22.01.2018 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 concritised by their conduct in jail. It is revealed from the additional affidavit dated 05.09.2020 filed by Anita @ 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.

22. In the present case, considering how the petitioners have served nearly two decades of incarceration and have thus suffered the consequences of their actions; a balance between individual and societal welfare can be struck by granting the petitioners conditional premature release, subject to their continuing good conduct. This would both ensure that liberty of the petitioners is not curtailed, nor that there is any

> *increased threat to society. Suffice to say that this order is not irreversible and can always be recalled in the event of any future misconduct or breach by the petitioners.*"
>
> (emphasis added)

c. In ***Joseph v. State of Kerala*** 2023 SCC OnLine SC 1211, the Supreme Court was dealing with premature release of a life-sentence convict having served about 35 years in custody, including remission. The SRB had recommended release however, the State Government had rejected on three occasions.

> "*20. A reading of the observations of this court in State of Haryana v. Jagdish, which was followed in State of Haryana v. Raj Kumar, makes the position of law clear: the remission policy prevailing on the date of conviction, is to be applied in a given case, and if a more liberal policy exists on the day of consideration, then the latter would apply. This approach was recently followed by this court in Rajo v. State of Bihar as well.*
>
> ……
>
> *32. To issue a policy directive, or guidelines, over and above the Act and Rules framed (where the latter forms part and parcel of the former), and undermine what they encapsulate, cannot be countenanced. Blanket exclusion of certain offences, from the scope of grant of remission, especially by way of an executive policy, is not only arbitrary, but turns the ideals of reformation that run through our criminal justice system, on its head. Numerous judgments of this court, have elaborated on the penological goal of reformation and rehabilitation, being the cornerstone of our criminal justice system, rather than retribution. The impact of applying such an executive instruction/guideline to guide the executive's discretion would be that routinely, any progress made by a long-term convict would be rendered naught, leaving them feeling hopeless, and*

condemned to an indefinite period of incarceration. While the sentencing courts may, in light of this court's majority judgment in Sriharan (supra), now impose term sentences (in excess of 14 or 20 years) for crimes that are specially heinous, but not reaching the level of 'rarest of rare' (warranting the death penalty), the state government cannot – especially by way of executive instruction, take on such a role, for crimes as it deems fit.

……

37. Classifying - to use a better word, typecasting convicts, through guidelines which are inflexible, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India – read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other nonviolent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued

punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognizes the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.

……

38. In the petitioner's case, the 1958 Rules are clear – a life sentence, is deemed to be 20 years of incarceration. After this, the prisoner is entitled to premature release.28 The guidelines issued by the NHRC pointed out to us by the counsel for the petitioner, are also relevant to consider – that of mandating release, after serving 25 years as sentence (even in heinous crimes). At this juncture, redirecting the petitioner who has already undergone over 26 years of incarceration (and over 35 years of punishment with remission), before us to undergo, yet again, consideration before the Advisory Board, and thereafter, the state government for premature release – would be a cruel outcome, like being granted only a salve to fight a raging fire, in the name of procedure. The grand vision of the rule of law and the idea of fairness is then swept away, at the altar of procedure - which this court has repeatedly held to be a "handmaiden of justice".

> *39. Rule 376 of the 2014 Rules prescribes that prisoners shall be granted remission for keeping peace and good behaviour in jail. As per the records produced by the State, the petitioner has earned over 8 years of remission, thus demonstrating his good conduct in jail. The discussions in the minutes of the meetings of the Jail Advisory Board are also positive and find that he is hardworking, disciplined, and a reformed inmate. Therefore, in the interest of justice, this court is of the opinion, that it would be appropriate to direct the release of the petitioner, with immediate effect. It is ordered accordingly*."
>
> (emphasis added)

d. In ***Wahid Ahmed v. State of NCT of Delhi & Ors.*** 2022 SCC OnLine Del 2948**,** while dealing with premature release, this Court noted as under:

> "*70. The submission of the petitioner that he is 77 years of age, as brought through the Nominal Roll, is not refuted by the State. That there are no previous adverse antecedents against him, and that he is not involved in the commission of any other offence is also brought forth, as also his Jail conduct as being satisfactory as also reflected through the Nominal Roll. His non surrender on the date 13.05.2021 has not been acted upon by the Prison Authorities in view of the receipt of his mail dated 23.04.2022 and on account of the second wave of Covid-19 in 2021. Thus, it is brought forth that there is no misconduct attributed to the petitioner even in relation to his over-stay from 28.04.2021 to 13.05.2021 after release on furlough for three weeks from 06.04.2021 to 28.04.2021.*
>
> *71. The petitioner submits that he is now wholly harmless and has even been educating the Jail inmates having retired as a teacher from a Government School, that he is a useful member of a civilized society, and that in similar*

circumstances there have been several other inmates released before a period of 14 years of incarceration. The petitioner submits that there is nothing to indicate that the petitioner has any propensity towards crime left.

……

73. A series of cases has been relied upon on behalf of the petitioner in the cases of Narender Kumar Sharma S/o Shri Purushtottam Das, Mohd. Raees S/o Late Shri Mohd. Syed and Veer Singh S/o Shri Ram Singh to submit that all these persons have been allowed to be released before the period of 14 years of imprisonment, and that in the instant case, the Social Welfare Department had recommended the premature release of the petitioner but vide the minutes of the SRB meeting on 21.10.2021 and 25.06.2021, though the Delhi Police neither recommended nor opposed the same, the SRB did not consider the case of the petitioner in contravention to Rule 1257 of the Delhi Prison Rules, 2018.

……

79. Taking thus the totality of the circumstances of the case into account, the age of the petitioner being 77 years, there being nothing to indicate his misconduct in the Jail, the lack of any propensity towards crime now and the factum that three other convicts in virtually identical situations have been granted the benefit of a premature release, it is considered appropriate to grant permission for release of the petitioner in relation to FIR No.615/2005, PS Seelampur, under Section 302 read with Section 34 of the Indian Penal Code, 1860, and the petitioner Wahid Ahmed is thus allowed to be released only on payment of the fine imposed of Rs.2,000/-, in as much as, a convict is not entitled to remission whilst undergoing sentence in default of payment of the fine, and thus, in the event of fine being paid, the petitioner is directed to be released forthwith."

(emphasis added)

22. Petitioner's counsel additionally relies on a few other materials, *inter alia* as under:

a. **Model Prison Manual for the Superintendence and Management of Prisons in India**, issued with the approval of the Ministry of Home Affairs, where premature release is dealt with in Chapter XVIII which provides a legal framework that is similar to that in DPR.

b. **Guidelines issued for premature release by NHRC on 26th September 2003**, prescribe mandatory release after 25 years of incarceration including remission.

23. Petitioner's counsel therefore states that for considering premature release, applicable rules at the time of conviction ought to be considered or alternatively more liberal dispensation which had existed, or extremely liberal rule /guideline envisaged by NHRC. In any event, by application of either of these, petitioner's case should pass muster.

Submissions by the ASC for the State

24. Additional Standing Counsel ('***ASC***') did not wholly refute the contentions raised by petitioner's counsel particularly in that DPR should be applicable. He additionally contended that the Report by SRB should be indicative, especially when convicts have served more than 24 years. Proper reasons in SRB report should be judicially reviewable and therefore, a non-speaking order may not be in order. He relied on the following decisions to assist the Court in this assessment:

a. In ***Union of India v. V. Sriharan*** (2016) 7 SCC 1, which was decided by the Constitutional Bench, reference was made to the

aspect that the ability of a Court to review requires reasons and even if there is power to Government to exercise its executive powers, particularly for power for remission, the Court has scope of reviewing such orders except for exceptional circumstances. In this regard following paras may be instructive which are extracted as under:

> "*110. While stoutly resisting the said submission made on behalf of the Union of India, Mr Dwivedi, learned Senior Counsel, who appeared for the State of Tamil Nadu contended that in the case on hand, this Court while commuting the death sentence of some of the convicts did not exercise the Executive Power of the State, and that it only exercised its judicial power in the context of breach of Article 21 of the Constitution. It was further contended that if the stand of the Union of India is accepted then in every case where this Court thought it fit to commute sentence for breach of Article 21 of the Constitution, that would foreclose even the right of a convict to seek for further commutation or remission before the appropriate Government irrespective of any precarious situation of the convict i.e. even if the physical condition of the convict may be such that he may be vegetable by virtue of his old age or terminal illness. It was also pointed out that in V. Sriharan v. Union of India [V. Sriharan v. Union of India, (2014) 4 SCC 242 : (2014) 2 SCC (Cri) 282] , order dated 18-2-2014, this Court while commuting the sentence of death into one of life also specifically observed that such commutation was independent of the power of remission under the Constitution, as well as, the statute. In this context, when we refer to the power of commutation/remission as provided under the Criminal Procedure Code, namely, Sections 432, 433, 433-A, 434 and 435, it is quite apparent that the exercise of power under Article 32 of the*

Constitution by this Court is independent of the Executive Power of the State under the statute. As rightly pointed out by Mr Dwivedi, learned Senior Counsel in his submissions made earlier, such exercise of power was in the context of breach of Article 21 of the Constitution. In the present case, it was so exercised to commute the sentence of death into one of life imprisonment. It may also arise while considering wrongful exercise or perverted exercise of power of remission by the statutory or constitutional authority. Certainly there would have been no scope for this Court to consider a case of claim for remission to be ordered under Article 32 of the Constitution. In other words, it has been consistently held by this Court that when it comes to the question of reviewing an order of remission passed which is patently illegal or fraught with stark illegality on constitutional violation or rejection of a claim for remission, without any justification or colourful exercise of power, in either case by the executive authority of the State, there may be scope for reviewing such orders passed by adducing adequate reasons. Barring such exceptional circumstances, this Court has noted in numerous occasions, the power of remission always vests with the State executive and this Court at best can only give a direction to consider any claim for remission and cannot grant any remission and provide for premature release. It was time and again reiterated that the power of commutation exclusively rests with the appropriate Government.

……

114. Therefore, it must be held that there is every scope and ambit for the appropriate Government to consider and grant remission under Sections 432 and 433 of the Criminal Procedure Code even if such consideration was earlier made and exercised under Article 72 by the President and under Article 161 by the Governor. As far as the implication of Article 32 of the Constitution by this

> *Court is concerned, we have already held that the power under Sections 432 and 433 is to be exercised by the appropriate Government statutorily, it is not for this Court to exercise the said power and it is always left to be decided by the appropriate Government, even if someone approaches this Court under Article 32 of the Constitution. We answer the said question on the above terms.*"
>
> (emphasis added)

b. In ***Ram Chander v. State of Chhatisgarh & Anr.*** (2022) 12 SCC 52, where the Supreme Court held that the government has discretion to remit or suspend sentences but its power is not absolute and must be exercised in accordance with the rule of law under Article 14 of the Constitution and should not be arbitrary and in any case the Court has the power to direct reconsideration. Relevant paragraphs are extracted as under:

> "*13. <u>While a discretion vests with the Government to suspend or remit the sentence, the executive power cannot be exercised arbitrarily.</u> The prerogative of the executive is subject to the rule of law and fairness in State action embodied in Article 14 of the Constitution. In Mohinder Singh[State of Haryana v. Mohinder Singh, (2000) 3 SCC 394 : 2000 SCC (Cri) 645] , this Court has held that the power of remission cannot be exercised arbitrarily. The decision to grant remission should be informed, fair and reasonable. The Court held thus : (SCC pp. 400-01, para 9)*
>
> > *"9. The circular granting remission is authorised under the law. It prescribes limitations both as regards the prisoners who are eligible and those who have been excluded. Conditions for remission of sentence to the prisoners who are eligible*

are also prescribed by the circular. Prisoners have no absolute right for remission of their sentence unless except what is prescribed by law and the circular issued thereunder. That special remission shall not apply to a prisoner convicted of a particular offence can certainly be a relevant consideration for the State Government not to exercise power of remission in that case. Power of remission, however, cannot be exercised arbitrarily. Decision to grant remission has to be well informed, reasonable and fair to all concerned."

In Sangeet [Sangeet v. State of Haryana, (2013) 2 SCC 452 : (2013) 2 SCC (Cri) 611] , this Court reiterated the principle that the power of remission cannot be exercised arbitrarily by relying on the decision in Mohinder [State of Haryana v. Mohinder Singh, (2000) 3 SCC 394 : 2000 SCC (Cri) 645] .

……

15. In Laxman Naskar v. State of W.B. [Laxman Naskar v. State of W.B., (2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , 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 [Laxman Naskar v. Union of India, (2000) 2 SCC 595 : 2000 SCC (Cri) 509] stipulated the factors that govern the grant of remission, namely

> *: (Laxman Naskar case [Laxman Naskar v. State of W.B., (2000) 7 SCC 626 : 2000 SCC (Cri) 1431] , SCC p. 598, para 6)……*"
>
> (emphasis added)

c. The Supreme Court while dealing with premature release of petitioner in ***Laxman Nascar v. State of W.B and Anr***. (2000) 2 SCC 595, laid down the factors to be considered while passing an order, which are extracted as under:

> "*6. From the counter filed by the State, we find that the Government has also framed guidelines for this purpose. To consider the prayer for premature release of the "life convicts", a police report was called for on the following points:*
> *(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."*
>
> (emphasis added)

d. ***Shashi Shekhar @ Neeraj v. State of NCT of Delhi*** 2016 SCC OnLine Del 6284, where Single Judge of Delhi High Court noted as to what entails within the meaning of life imprisonment; relevant paragraphs are extracted 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.

19. It is also well settled that the guidelines that may be framed for consideration of a case by the SRB cannot override the statutory scheme contained in the IPC. The said guidelines are to be taken into consideration by the SRB while considering any case placed before it. The SRB guidelines themselves show that the SRB has to exercise its discretion by considering the circumstance of each case placed before it - irrespective of the number of years that a convict may have spent behind the bars. Thus, the reliance placed by learned counsel for the petitioner on the guidelines, which provides that the period of incarceration (including remission) should not exceed 25 years cannot have the effect of effacing the life sentence awarded to the petitioner in the aforesaid three independent cases, where he stands convicted for dacoity and murder."

(emphasis added)

e. ***Gurvinder Singh v. State (Govt. of NCT) of Delhi & Anr*** 2024:DHC:5035, where Single Judge of Delhi High Court notes petitioner's case for premature release to be reconsidered, relevant paragraphs are extracted as under:

> "*14. However, the petitioner is always at liberty to apply to the competent authority for grant of parole/furlough in accordance with Delhi Prison Rules, 2018. In the event any such application is made by the petitioner, it is directed that the competent authority shall consider it on its own merits and dispose of the same within the period stipulated under the said Rules.*"

Analysis

25. Petitioner seeks premature release after having served 26 years 11 months custody (including remission), the jail conduct being satisfactory, paroles and furloughs have been granted successively since 2016 onwards, certificates of good work have been issued by the Jail Superintendent on multiple occasions, qualified to be allocated semi-open office, semi-open jail canteen, semi-open prison, open prison and also finally at Jail's outlet established at Indian Oil Corporation Ltd. at J.B. Tito Marg, Masjid Moth, New Delhi outside jail from 8 A.M to 8 P.M.

26. This, succinctly encapsulates the journey of a convict from being an offender in a heinous crime towards reformation and rehabilitation, having successfully gone through the grist of jail procedures, in order to achieve, what can be metaphorically termed as a 'podium finish'.

27. This journey, exemplified by his jail resume, however, has not appealed to the Sentence Review Board, for which his case was qualified to be presented, essentially because of the gravity and perversity of the

crime that he committed 27 years back. The petitioner was convicted in FIR No. 48 of 2001 under Sections 302, 186 and 34 of Indian Penal Code 1860, Section 68 of the Excise Act, 1958 and Section 27 of the Arms Act, 1959. Petitioner was found guilty of murdering a police constable who had apprehended him for consuming liquor in a public place. At the time of the incident, the petitioner was found in possession of a loaded pistol and cartridges. In an attempt to escape, the petitioner fired at the constable, causing his death, and then fled the scene.

28. Since August 2020, almost every 6 months, his case has been rejected by the SRB noting the strong opposition by the Police Department, '*in the facts and circumstances of the case*, '*gravity and perversity of the crime*'.

29. Each time the SRB rejects the plea, in a pithily drafted, cursorily articulated proforma paragraph, not only is each of the rejections almost a copy-paste of an earlier rejection, but it lacks any embellishment or modicum of assessment or reasoning beyond the proforma factors on which SRB has right to reject. What is, therefore, before this Court are a set of previous rejections and the impugned rejection of 2023 parroting the same reasons.

30. The Court, therefore, faces two options: either to be persuaded by these repeated rejections and conclude that there must be a rationale underlying the SRB's consistent stance, or to evaluate whether the SRB has genuinely applied logic, rationality, reasonableness, and proper application of mind in accordance with the rules and guidelines it is bound to follow. The second option is prompted by the petitioner's 26-year-long journey being incarcerated, as noted above, which reveals an apparent and

significant discrepancy between that journey and the reasons cited by the SRB for its rejections. There seems to be an apparent and obvious mismatch between the elements of that journey and the reasons for the rejection by the SRB.

31. The underlying theme, fulcrum and *raison d'être* of premature release are fortunately well articulated in Rule 1244 Chapter XX, of DPR (which is extracted in paragraph 17 above). Premature release is achieving a balance in ensuring '*reformation, rehabilitation, and integration into society of an offender on one hand and protection of society on the other*'. For the purposes of this assessment, as stated by the Rule, is the conduct behaviour and performance of prisoners while in prison. The SRB is undoubtedly a recommendary body as per Rule 1247 (as extracted in paragraph 17 above). The body is constituted by Members of the Executive, District Judiciary, Police and Prison Authorities. The SRB, in achieving this recommendation, exercises '*discretion'*.

32. However, the exercise of this discretion is to be based on relevant factors, which *inter alia* are whether the convict has lost his propensity for committing crime considering his overall conduct, possibility of reclaiming the convict as a useful member of society; and socio-economic condition of the convict's family.

33. These aspects form part of a comprehensive note prepared by the Superintendent of Prisons as per Rule 1256 (ii) (extracted in paragraph 17 above), recommendation by Deputy Commissioner of Police. Superintendent of Police, as per Rule 1256 (iv); report of Chief Probation Officer as per Rule 1256 (v). On the basis of these three reports, the Inspector General (Prisons) is to make his recommendation. All this is

finally funnelled to the SRB, which has to apply guidelines, general or special, laid down by the Government or by the Courts. A cautionary note has been ensconced in Rule 1257 (c) for the SRB to not decline premature release '*merely on the ground that the police have not recommended this release*", as also not rejecting it merely because it has been rejected on one or more occasions earlier. The decision of the SRB is mandated to be through 'speaking order in writing'.

34. Subsequent to the recommendation, the competent authority can either accept or reject the same and that decision is to be communicated to the prisoner.

35. From a perusal of the impugned Minutes of SRB (extracted in paragraph 13 above), none of these aspects can be gleaned or ascertained. *Ex facie* reading of the impugned order bears out that only three aspects have been stated in the so-called speaking order. i.e. the original crime, gravity and perversity of it, strong opposition by police. This is further embellished by an open-ended '*etcetera'*, which in its own right is dispositive of non-application of mind. Rejecting premature release of a 26-year-old convict with an '*etcetera'* is an unfortunate short-cut, perfectly opaque and a disservice to the rules and guidelines which the SRB is mandated to follow.

36. Latin maxim *Nemo debet esse judex in propria causa* (no one should be a judge in their own cause) and *Audi alteram partem* (hear the other side) are foundational principles of natural justice. A "*speaking order*" or "*reasoned order*" is regarded as the third pillar of natural justice. An order is termed "reasoned" when it contains the rationale supporting it. The adjudicating body's duty to provide reasons ensures that such a

decision qualifies as a "*reasoned order*". The Supreme Court has consistently held that a "*speaking order*" must clearly state the grounds on which it is based. In ***Siemens Engineering & Manufacturing Co. of India Ltd. v. Union of India*** (1976) 2 SCC 981, the Supreme Court underscored that providing reasons for an order is not merely a formality but a fundamental principle of natural justice, ensuring that quasi-judicial bodies demonstrate transparency and fairness in their decision-making process. Relevant paragraph is extracted as under:

> "*6. Before we part with this appeal, we must express our regret at the manner in which the Assistant Collector, the Collector and the Government of India disposed of the proceedings before them. It is incontrovertible that the proceedings before the Assistant Collector arising from the notices demanding differential duty were quasi-judicial proceedings and so also were the proceedings in revision before the Collector and the Government of India. Indeed, this was not disputed by the learned Counsel appearing on behalf of the respondents. It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. That has been laid down by a long line of decisions of this Court ending with N.M. Desai v. Testeels Ltd. [C. A. No. 245 of 1970, decided on December 17, 1975] . But, unfortunately, the Assistant Collector did not choose to give any reasons in support of the order made by him confirming the demand for differential duty. This was in plain disregard of the requirement of law. The Collector in revision did give some sort of reason but it was hardly satisfactory. He did not deal in his order with the arguments advanced by the appellants in their representation dated December 8, 1961 which were repeated in the subsequent representation*

dated June 4, 1965. It is not suggested that the Collector should have made an elaborate order discussing the arguments of the appellants in the manner of a Court of law. But the order of the Collector could have been a little more explicit and articulate so as to lend assurance that the case of the appellants had been properly considered by him. If courts of law are to be replaced by a administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative Law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law. The Government of India also failed to give any reasons in support of its order rejecting the revision application. But we may presume that in rejecting the revision application, it adopted the same reason which prevailed with the Collector. The reason given by the Collector was, as already pointed out, hardly satisfactory and it would, therefore, have been better if the Government of India had given proper and adequate reasons dealing with the arguments advanced on behalf of the appellants while rejecting the revision application. We hope and trust that in future the customs authorities will be more careful in adjudicating upon the proceedings which come before them and pass properly reasoned orders, so

that those who are affected by such orders are assured that their case has received proper consideration at the hands of the Customs Authorities and the validity of the adjudication made by the Customs Authorities can also be satisfactorily tested in a superior tribunal or court. In fact, it would be desirable that in cases arising under customs and excise laws an independent quasi-judicial tribunal, like the Income Tax Appellate Tribunal or the Foreign Exchange Regulation Appellate Board, is set up which would finally dispose of appeals and revision applications under these laws instead of leaving the determination of such appeals and revision applications to the Government of India. An independent quasi-judicial tribunal would definitely inspire greater confidence in the public mind."

(emphasis added)

37. Even if one were to ignore the brevity of articulation by the SRB, as merely for administrative convenience, there's complete opacity in whether the cautionary elements of Rule 1257 (c) which ought to stare in the face of SRB, previous rejections, lack of police recommendation and welfare of the prisoner were considered and used as reasons ultimately leading to a negative recommendation.

38. The record and jail resume of the petitioner is not disputed by the State. It is an admitted fact that the petitioner has had continuously satisfactory jail conduct, has been awarded certificate of recognition on three occasions, has been on parole on five occasions, furlough on seven occasions, no record of having misused his liberty, and more importantly, having served in the semi-open prison, the open prison, and finally at the Tihar Jail outlet, where he was outside jail from 8 A.M. to 8 P.M., in December 2023.

39. It is ironical that even despite the impugned rejection on 30th June 2023, and approval by the competent authority on 21st November 2023, the petitioner was allocated at the Indian Oil Corporation outlet in a completely open space from 8 A.M. to 8 P.M. in December 2020.

40. Clearly, pure and simple logic has got lost in the bureaucratic miasma. The very qualification for being in semi-open prison and open prison, as per Rules 1323 and 1325, involves an assessment of factors like physical and mental health, behaviour and conduct, progress in work, vocational training, education, group adjustability, character and discipline, fitness for being entrusted to responsibility, performance of labour with devotion and diligence, and various other connected factors. Having passed muster on all these stringent factors and establishing his grades consistently, it is a mystery as to why these did not appeal to the SRB or any of the authorities giving their input reports, i.e. Police, Probation Officer, the Inspector General of Police and the prison authorities.

41. It could possibly be that the case of the petitioner, which was one among a multitude of cases considered in the impugned minutes, was just another serial number which had to be addressed and not accorded an individualised assessment.

42. The State has not placed anything on record countering this assertion of petitioner's counsel and, in fact, has fairly reiterated the reviewability of such assertions; relying on ***V. Sriharan*** (*supra*), ***Ram Chander*** (*supra*), ***Laxman Nascar***, (*supra*) and ***Shashi Shekhar*** (*supra*).

43. In ***Sushil Sharma*** (*supra*), Division Bench of this Court categorically held that SRB cannot state that they are not bound by the

rules and guidelines to which they themselves owe their existence. Therefore, there is a necessity for due and proper application of mind, legal justification and lawful sanction.

44. The Supreme Court in ***Joseph*** (*supra*) highlighted "*typecasting convicts through guidelines which are too flexible based crime committed in distant past resulting in a danger of overlooking the reformative potential of each individual convict*". In this regard, the Court noted that insisting on continued punishment without considering the transformation of a prisoner undermines rationality and fairness. Persistence in penalizing someone who has reformed and no longer aligns with their past actions disregards the reality of personal change and violates Article 14 of the Constitution. A rigid adherence to guidelines that ignore positive conduct and rehabilitation perpetuates despair, denies the value of good behaviour, and reflects an unyielding societal harshness, negating the very principle of reformative justice. Relevant paragraph is extracted as under:

> "*37. Classifying - to use a better word, typecasting convicts, through inflexible guidelines, based on their crime committed in the distant past can result in the real danger of overlooking the reformative potential of each individual convict. Grouping types of convicts, based on the offences they were found to have committed, as a starting point, may be justified. However, the prison laws in India – read with Articles 72 and 161 - encapsulate a strong underlying reformative purpose. The practical impact of a guideline, which bars consideration of a premature release request by a convict who has served over 20 or 25 years, based entirely on the nature of crime committed in the distant past, would be to crush the life force out of such individual, altogether. Thus, for instance, a 19 or 20 year old individual convicted for a crime, which finds place in the list which bars premature*

> *release, altogether, would mean that such person would never see freedom, and would die within the prison walls. There is a peculiarity of continuing to imprison one who committed a crime years earlier who might well have changed totally since that time. This is the condition of many people serving very long sentences. They may have killed someone (or done something much less serious, such as commit a narcotic drug related offences or be serving a life sentence for other nonviolent crimes) as young individuals and remain incarcerated 20 or more years later. Regardless of the morality of continued punishment, one may question its rationality. The question is, what is achieved by continuing to punish a person who recognizes the wrongness of what they have done, who no longer identifies with it, and who bears little resemblance to the person they were years earlier? It is tempting to say that they are no longer the same person. Yet, the insistence of guidelines, obdurately, to not look beyond the red lines drawn by it and continue in denial to consider the real impact of prison good behavior, and other relevant factors (to ensure that such individual has been rid of the likelihood of causing harm to society) results in violation of Article 14 of the Constitution. Excluding the relief of premature release to prisoners who have served extremely long periods of incarceration, not only crushes their spirit, and instils despair, but signifies society's resolve to be harsh and unforgiving. The idea of rewarding, a prisoner for good conduct is entirely negated.*"
>
> (emphasis added)

45. As rightly pointed out, the petitioner's counsel's "*propensity for crime*" cannot be a random subjective assessment but has to be based on objective factors. The objective factors are quite well ensconced in the eligibility conditions, of a convict being in a semi-open prison and even more stringent requirements to qualify for an open prison. If those factors

are met in this case, the committing to a semi-open /open prison is done, and the 'report card' of the convict continues to be good, in the opinion of the Court would be supremely critical factors that ought to imbue any assessment for premature release.

46. In ***Khudiram Das v. State of W.B.*** (1975) 2 SCC 81, the Supreme Court observed that "the human mind does not function in compartments." The Court emphasized that when multiple impressions influence a decision, they collectively shape the decision-making process, making it impractical to separate which impressions contributed and which did not. Thus, when evidence before an authority is likely to impact the outcome, the Court is disinclined to accept assertions that such material was excluded from consideration. Relevant paragraph is extracted under:

> "*15. Now, the proposition can hardly be disputed that if there is before the District Magistrate material against the detenu which is of a highly damaging character and having nexus and relevancy with the object of detention, and proximity with the time when the subjective satisfaction forming the basis of the detention order was arrived at, it would be legitimate for the Court to infer that such material must have influenced the District Magistrate in arriving at his subjective satisfaction and in such a case the Court would refuse to accept the bald statement of the District Magistrate that he did not take such material into account and excluded it from consideration. It is elementary that the human mind does not function in compartments. When it receives impressions from different sources, it is the totality of the impressions which goes into the making of the decision and it is not possible to analyse and dissect the impressions and predicate which impressions went into the making of the decision and which did not. Nor is it an easy*

> *exercise to erase the impression created by particular circumstances so as to exclude the influence of such impression in the decision making process. Therefore, in a case where the material before the District Magistrate is of a character which would in all reasonable probability be likely to influence the decision of any reasonable human being, the Court would be most reluctant to accept the ipse dixit of the District Magistrate that he was not so influenced and a fortiori, if such material is not disclosed to the detenu, the order of detention would be vitiated, both on the ground that all the basic facts and materials which influenced the subjective satisfaction of the District Magistrate were not communicated to the detenu as also on the ground that the detenu was denied an opportunity of making an effective representation against the order of detention.*"
>
> (emphasis added)

47. The petitioner's counsel relies on the guidelines by the National Human Rights Commission of September 2003 prescribing mandatory release after 25 years of incarceration, including remission, being a policy more beneficial to the accused is also taken into account.

48. In ***State of Haryana and Ors. v Jagdish*** (2010) 4 SCC 216, the Supreme Court underscored the foundational principles of criminal jurisprudence centred around human dignity, rehabilitation, and the reformative approach to punishment. It emphasised that while justice necessitates that the guilty be held accountable, punishment must be tempered by a humane and socially constructive outlook. The Court highlighted that the objectives of punishment should focus on reformation and reintegration, ensuring that clemency and remission policies align with modern penological theories that view punishment not as retributive

but as a means to foster rehabilitation and prevent recidivism, taking into account the convict's potential for reintegration and the circumstances surrounding their offence. Relevant paragraphs are extracted as under:

> "*44. Liberty is one of the most precious and cherished possessions of a human being and he would resist forcefully any attempt to diminish it. Similarly, rehabilitation and social reconstruction of a life convict, as objective of punishment become of paramount importance in a welfare State. "Society without crime is a utopian theory." The State has to achieve the goal of protecting the society from the convict and also to rehabilitate the offender. There is a very real risk of revenge attack upon the convict from others. Punishment enables the convict to expiate his crime and assist his rehabilitation. The remission policy manifests a process of reshaping a person who, under certain circumstances, has indulged in criminal activity and is required to be rehabilitated. Objectives of the punishment are wholly or predominantly reformative and preventive.*
> *45. The basic principle of punishment that "guilty must pay for his crime" should not be extended to the extent that punishment becomes brutal. The matter is required to be examined keeping in view modern reformative concept of punishment. The concept of "savage justice" is not to be applied at all. The sentence softening schemes have to be viewed from a more human and social science oriented approach. Punishment should not be regarded as the end but as only the means to an end. The object of punishment must not be to wreak vengeance but to reform and rehabilitate the criminal. More so, relevancy of the circumstances of the offence and the state of mind of the convict, when the offence was committed, are the factors, to be taken note of.*
> *46. At the time of considering the case of premature release of a life convict, the authorities may require*

> *to consider his case mainly taking into consideration whether the offence was an individual act of crime without affecting the society at large; whether there was any chance of future recurrence of committing a crime; whether the convict had lost his potentiality in committing the crime; whether there was any fruitful purpose of confining the convict any more; the socio-economic condition of the convict's family and other similar circumstances.*
>
> *47. Considerations of public policy and humanitarian impulses—supports the concept of executive power of clemency. If clemency power is exercised and sentence is remitted, it does not erase the fact that an individual was convicted of a crime. It merely gives an opportunity to the convict to reintegrate into the society. The modern penology with its correctional and rehabilitative basis emphasises that exercise of such power be made as a means of infusing mercy into the justice system. Power of clemency is required to be pressed in service in an appropriate case. Exceptional circumstances e.g. suffering of a convict from an incurable disease at the last stage, may warrant his release even at a much early stage. Vana est illa potentia quae nun quam venit in actum means—vain is that power which never comes into play.*"
>
> (emphasis added)

49. *Salmond, on Jurisprudence*[1], deliberates on the objectives of criminal justice, distinguishing between deterrence and reformation. It is articulated therein that reformation seeks to alter the offender's character to reintegrate them as a constructive member of society, focusing on the individual before the court rather than potential offenders at large. Modern justice increasingly values this reformative approach, seen in practices

1 Salmond on Jurisprudence, 12th Edn. by P.J. Fitzgerald, Chapter 15

such as reduced imprisonment, the end of short sentences, and the use of probation and parole. However, while reform must be considered, its emphasis must remain balanced. The fundamental principle underlying the reformative theory emphasizes the rehabilitation of the offender and the commencement of a new chapter in his life.

50. In ***Narotam Singh v State of Punjab*** (1979) 4 SCC 505, the Supreme Court opined that the reformative approach to punishment should be an objective of criminal jurisprudence, aiming to foster rehabilitation without affronting the conscience of the community and ensuring social justice.

51. The issue between retributive and reformation justice has engaged the attention of many legal, social, and political scholars. Thomas L. Pangle the American political scientist in his revisitation of the Laws of Plato states:

> "*The punishment is to be inflicted, not for the sake of vengeance, for what is done cannot be undone, but for the sake of prevention and reformation*."

Conclusion

52. Considering these facts and circumstances as articulated above, this Court is therefore of the opinion that the impugned rejection by the SRB and its approval by the competent authority was not in consonance with the rules or guidelines applicable to that process, the impugned rejection order being arbitrary, irrational, illogical and disproportionate, ignoring relevant material which was there before the SRB.

53. This Court therefore directs that petitioner be released from custody forthwith.

54. Copy of this order be sent to the Jail Superintendent for information and compliance.

55. Accordingly, the petition is disposed of. Pending applications are disposed of as infructuous.

56. Judgment be uploaded on the website of this Court.

Further Directions

57. A few more aspects which have troubled the Court in the process adopted by SRB are:

a. The SRB does not meet with the frequency mandated as per Rules i.e. at least once in three months as per Rule 1249; (extracted in paragraph 17 above);

b. Recommendation of the SRB along with the decision of the competent authority is not communicated to prisoner;

58. It is expected that the authorities in question shall ensure that there is no dilation or omission in this regard in order to not violate the rights of prisoners. The constitutional safeguards enshrined under Articles 14 and 21 of the Constitution of India must be adhered to with utmost commitment. Article 14 guarantees equality before the law and the equal protection of the laws, mandating that no individual shall be discriminated against or subjected to arbitrary treatment. This foundational right underscore the principle of fairness, obligating the State to act in a just and non-discriminatory manner towards all, including those deprived of their liberty. Article 21, on the other hand, enshrines the right to life and personal liberty, ensuring that no person shall be deprived of these rights except according to procedures established by law. These provisions have been expansively interpreted by the Supreme Court to encompass the right

to live with dignity, humane treatment of prisoners, and procedural fairness. In the context of prison administration, any deviation or omission that compromises these constitutional mandates risks violating the prisoners' rights and undermines the rule of law. Therefore, strict compliance with these principles is essential to uphold justice and the fundamental human rights of those incarcerated.

59. This aspect has been earlier adverted to by the decision of Division Bench of this Court in ***Sushil Sharma v. State*** (*supra*), in particular to paragraph 27, which is extracted in paragraph 21 (a) above.

Post Script

The assistance of Ms. Vrinda Bhandari, counsel for petitioner and Mr. Sanjeev Bhandari, Standing Counsel for the State, is well appreciated. SRB procedures require better compliance and deeper consideration, keeping into account the principles of reformation and rehabilitation, which form part of criminal jurisprudence.

Ms.Vrinda Bhandari has handed up a very useful checklist for the Sentence Review Board to assess the various factors. Since it is a *bona fide*, well-intended exercise done by the counsel, the Court is reproducing the same without modification, as under, with the hope that this (in some form) can be usefully utilised by the SRB and the other authorities for assessment of a premature release case. The checklist is pegged on various Rules of DPR, as well as case precedents where the Courts have suggested and mandated certain additional factors. Checklist is reproduced hereunder:

Checklist for Sentence Review Board, New Delhi - Recommendation on Premature Release

This checklist is designed to assess whether convicts being considered by the Sentence Review Board should be released. It has been prepared by referencing the eligibility criteria for consideration by the Sentence Review Board as outlined in the Delhi Prison Rules, 2018, and relevant decisions from the apex court and high courts. This checklist ensures that pertinent materials are presented before the Sentence Review Board, enabling them to decide whether a convict should be released. Additionally, it aims to promote decisions based on predefined objective criteria rather than subjectivities, biases and insufficient information.

I. Details of the Convict, along with the nominal roll

(To be filled by the Prison Authorities and placed before the SRB along with a copy of the nominal roll)

Name of the Convict		
Present Age of the Convict		
Current Jail (along with type and duration of stay)		
Previous Jails where the convict was lodged (along with type and duration of stay)		
Convict's Age at the time of the offence		
Date & Quantum of Sentence		
Total Incarceration as on ……..	*with remission:* *without remission:*	
A Copy of the Nominal Roll Attached	*Yes*	*No*

II. Checklist for factors to be considered during premature release as per Clause 1251 of the Delhi Prison Rules against identified indicators

(To be filled by the Sentence Review Board and forwarded to the LG along with the recommendations)

Indicators	**Response**			
	Y	**N**	**Partly**	**Comments**
Circumstances in which the crime was committed (Rule 1251, DPR 2018)				
Did the convicts surrender themselves after the offence was committed?				

Was the convict a juvenile at the time of committing the offence?				
Have the convict's co-accused persons been released?				
Did the convict have any pending criminal cases at the time of the offence?				
Did the convict have convictions in any other case or cases at the time of the offence?				
Was the prisoner convicted based on circumstantial evidence?				
Did the convict play any active/overt role in committing the offence? (Wahid Ahmed vs. State of NCT of Delhi and Ors)[1]				
Lost potentiality to commit a crime considering his overall conduct in jail during incarceration (Rule 1251, DPR 2018)				
Does the convict surrender himself on time on each occasion when temporarily released?				
Any act of discipline or untoward incident, including acts of aggression or violence, reported when the convict was released on parole/furlough/bail?				
Any act of discipline or untoward incident, including acts of aggression or violence, reported during the incarceration of the convict?				
Has the convict been shifted to semi-open or open jail and enjoyed his liberty responsibly, without any incidents of default? (1321 & 1325 of DPR 2018)[2]				
Has any complaint been made against the prisoner during incarceration? (Wahid Ahmed vs. State of NCT of Delhi)[3]				
Has any major punishment been awarded to the convict during incarceration? Clause 1271 (b) of DPR, 2018)[4]				

[1] 2022 SCC OnLine Del 2948
[2] Chapter XXI of Delhi Prison Rules, 2018
[3] 2022 SCC OnLine Del 2948
[4] Chapter XXI of Delhi Prison Rules, 2018

Has any minor punishment been awarded to the convict during incarceration? (Clause 1271 (a) of DPR 2018)[5]				
Has the convict received good conduct certificates from the prison authorities during incarceration? (Kartik Sunbramaniam vs. State of NCT of Delhi)[6]				
Possibility of re-claiming the convict as a useful member of the society (Rule 1251, DPR 2018)				
Has the convict participated in any educational or vocational programs during incarceration? (Kartik Subramaniam vs. State of NCT of Delhi)[7]				
Has the convict acquired educational degrees, experiences and skills during incarceration or on release on parole/furlough/bail?				
Has the prisoner been gainfully employed and earned and saved money during incarceration or temporary release?				
Has the prisoner expressed willingness to carry out productive activity post-release?				
Was the prisoner working or employed at the time of his/her arrest? (Kartik Subramaniam vs. State of NCT of Delhi)[8]				
Socio-Economic condition of the convict's family (Rule 1251, DPR 2018)				
Is the convict the sole breadwinner of the family?				
Does the convict have any dependents in the family, including young children, spouse, old parents, etc.				
Do the prisoner's immediate family members have any serious medical issues? (Kartik Subramaniam vs. State of NCT of Delhi)[9]; (Wahid Ahmed vs. State of NCT of Delhi)[10]				

[5] ibid
[6] 2021 SCC OnLine Del 3594
[7] ibid
[8] Ibid
[9] ibid
[10] 2022 SCC OnLine Del 2948

"*The way things are does not determine the way they ought to be*"-

Michael J. Sandel, Justice: What's the Right Thing to Do?

(ANISH DAYAL)
JUDGE

NOVEMBER 11, 2024/SM/tk