

Sushil Sharma vs.state

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Court : Delhi

Decided On : Dec-21-2018

Appellant : Sushil Sharma

Respondent : State

Judgement :

#8 IN THE HIGH COURT OF DELHI AT NEW DELHI W.P.(CRL) 3798/2018
SUSHIL SHARMA STATE Judgment delivered on:

21. 12.2018 Versus

... Petitioner

..... Respondent Advocates who appeared in this case: For the

... Petitioner

: Mr. N. Hariharan, Senior Advocate with Mr. Amit Sahni, Mr. Anshul Bajaj, Ms. Anamika, Mr. Vaibhav Mishra, Mr. Priyank, Ms. Anju Vaid, Mr. Sharang Dhulia, Mr. Aditya Vaibhav, Mr. Siddharth Yadav, Mr. Akhil Kumar Gola and Mr. Prateek Bhalla, Advocates For the Respondent : Mr. Rahul Mehra, Standing Counsel (Criminal) with Mr. Chaitanya Gosain, Advocate Mr. Abhishek Pandey, OSD (Legal), GNCTD with Mr. Prashant Kr. Verma, OIC (Legal) Prisons CORAM: HON'BLE MR. JUSTICE SIDDHARTH MRIDUL HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

JUDGMENT

SIDDHARTH MRIDUL, J (ORAL) 1. The constitutional courts have often reiterated the principle that those who feel called upon to deprive other persons of their personal liberty in the discharge of what they conceive to be their duty, must strictly and scrupulously observe the forms and rules of W.P.(CRL) 3798/2018 Page 1 of 24 law. [Ref: Ram Narayan Singh vs. State of Delhi reported as 1953 AIR277.

2. Predicated on the above doctrine and in the facts and circumstances of the case as elaborated hereafter, we are of the considered view that, the continued incarceration of the petitioner before us, does not admit of legal justification and lawful sanction.

3. We are, therefore, directing that he be set at liberty forthwith.

4. Sushil Kumar Sharma was tried for offences punishable under Section 302/120-B, read with Section 201 of the Indian Penal Code, 1860 (hereinafter referred to as IPC).

5. The Trial Court, by way of judgment and order dated 03.11.2003, was pleased to convict Sushil Kumar Sharma under Sections 302, 120-B, read with Section 201 IPC.

6. Sushil Kumar Sharma was sentenced to capital punishment. The death sentence awarded to him was confirmed by this Court on 19.02.2007.

7. Sushil Kumar Sharma assailed the confirmation of death sentence awarded to him before the Honble Supreme Court of India and the same was commuted by the latter to life sentence vide order dated 08.10.2013 in Crl. A. 693/2007, titled as Sushil Sharma v. The State of NCT of Delhi. W.P.(CRL) 3798/2018 Page 2 of 24

8. Before we proceed further, it would be profitable, relevant and germane to extract the observations of the Honble Supreme Court of India in the said judgment and order dated 08.10.2013 and we do so as follows: 83. We must now examine the present case in light of our observations in the preceding paragraphs. The appellant was the State President of the Youth Congress in Delhi. The deceased was a qualified pilot and she was also the State General Secretary of

Youth Congress (Girls Wing), Delhi. She was an independent lady, who was capable of taking her own decisions. From the evidence on record, it cannot be said that she was not in touch with people residing outside the four walls of her house. Evidence discloses that even on the date of incident at around 4.00 p.m. she had contacted PW- 12 Matloob Karim. She was not a poor illiterate hapless woman. Considering the social status of the deceased, it would be difficult to come to the conclusion that the appellant was in a dominant position qua her. The appellant was deeply in love with the deceased and knowing fully well that the deceased was very close to PW-12 Matloob Karim, he married her hoping that the deceased would settle down with him and lead a happy life. The evidence on record establishes that they were living together and were married but unfortunately, it appears that the deceased was still in touch with PW-12 Matloob Karim. the appellant was the deceased. The evidence on record shows that the appellant suspected her fidelity and the murder was result of this possessiveness. We have noted that when the appellant was taken to Lady Hardinge Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, It appears that possessive of extremely W.P.(CRL) 3798/2018 Page 3 of 24 therefore, to say that he was remorseless. The fact that he absconded is undoubtedly a circumstance which will have to be taken against him, but the same, in our considered view, would be more relevant to the issue of culpability of the accused which we have already decided against him rather than the question of what would be the appropriate sentence to be awarded which is presently under consideration. The medical evidence does not establish that the dead body of the deceased was cut. The second post-mortem report states that no opinion could be given as to whether the dead body was cut as dislocation could be due to burning of the dead body. There is no recovery of any weapon like chopper which could suggest that the appellant had cut the dead body. It is pertinent to note that no member of the family of the deceased came forward to depose against the appellant. In fact, in his evidence, PW-81 IO Niranjana Singh stated that the brother and sister-in-law of the deceased stated that they were under the obligation of the appellant and they would not like to depose against him. Murder was the outcome of strained personal relationship. It was not an offence against the Society. The appellant has no criminal antecedents. He is not a confirmed criminal and no

evidence is led by the State to indicate that he is likely to revert to such crimes in future. It is, therefore, not possible in the facts of the case to say that there is no chance of the appellant being reformed and rehabilitated. We do not think that option is closed. Though it may not be strictly relevant, we may mention that the appellant is the only son of his parents, who are old and infirm. As of today, the appellant has in death cell. spent more than 10 years Undoubtedly, the brutality alone would not justify death sentence the offence is brutal but W.P.(CRL) 3798/2018 Page 4 of 24 this case. The to the checks mentioned in the in above mitigating circumstances persuade us to commute the death sentence to life imprisonment. In several judgments, some of which, we have referred to hereinabove, this Court has made it clear that life sentence is for the whole of remaining life subject remission granted by the appropriate Government under Section 432 of the Cr.P.C., which, in turn, is subject to the procedural said provision and further substantive checks in Section 433-A of the Cr.P.C. We are inclined to issue the same direction.

84. We have already confirmed the conviction of the appellant for offence punishable under Section 302 of the IPC and for offence punishable under Section 120-B read with Section 201 of the IPC. In view of the above discussion, we commute the death sentence awarded to appellant-Sushil Sharma to life sentence. We make it clear that life sentence is for the whole of remaining life of the appellant subject to the remission granted by the appropriate Government under Section 432 of the Cr.P.C., which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive checks the Cr.P.C. in Section 433-A of (emphasis supplied) 9. A plain reading of the above extracted paragraphs clearly and unequivocally postulate that, the Honble Supreme Court of India found that it would be difficult to state that Sushil Kumar Sharma was remorseless. W.P.(CRL) 3798/2018 Page 5 of 24 10. The Honble Supreme Court further observed that, the medical evidence in the case did not establish that the dead body of the deceased was cut. In this behalf, it was also found that, in view of the second postmortem report, no opinion could be given as to whether the dead body was cut as dislocation could be due to burning of the dead body. It was also observed that, there was no recovery of any weapon like chopper that could suggest that Sushil Kumar Sharma had cut the dead body.

11. Lastly, the Honble Supreme Court of India was pleased to observe that, murder was the outcome of strained personal relationship and that therefore it was not an offence against society, since Sushil Kumar Sharma neither had criminal antecedents nor was he a confirmed criminal and that no evidence had been led by the State to indicate that he was likely to revert to such crimes in future.

12. The Honble Supreme Court of India, therefore, expressed its considered view that it was not possible in the facts and circumstances of the case to state that there was no chance of Sushil Kumar Sharma being reformed and rehabilitated.

13. In view of the above mitigating circumstances, the Honble Supreme Court of India commuted the death sentence awarded to Sushil Kumar Sharma to life imprisonment. W.P.(CRL) 3798/2018 Page 6 of 24 that 14. It was clearly expostulated, however, the life sentence awarded was for the whole of the remaining life subject to the remission granted by the appropriate Government under Section 432 of the Code of Criminal Procedure, 1973 (hereinafter referred to as Cr.P.C.), which in turn would be subject to the procedural checks mentioned in the said provision and further substantive checks stipulated in Section 433-A of the Cr.P.C.

15. Sushil Kumar Sharma has remained incarcerated admittedly for a period of over 29 years, including remission till date.

16. It is further an admitted position that, Sushil Kumar Sharma has old aged infirm parents, well into their 80 years and in need of succor attention and support from him in their twilight years.

17. Lastly, from a comprehensive perusal of the official record, which has been produced before us, the Probation Officer, as well as, the Jail Authorities; who are admittedly in close personal contact with Sushil Kumar Sharma, have repeatedly recommended his premature release from detention. is evident it that 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.W.P.(CRL) 3798/2018 Page 7 of 24 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 Sharmas representation for premature release is violative of his vested rights under the guidelines.

19. At the outset, it is relevant to observe that, Mr. Rahul Mehra, learned Standing Counsel appearing on behalf of the Government of NCT of Delhi, has fairly stated that, the proceedings for grant of premature release of convicts is not beyond the pale of judicial review, although, the scope and ambit of judicial review is narrow.

20. In this behalf, it is trite to observe that once the State has formulated guidelines for the consideration of premature release of convicts, in accordance with law, any challenge in relation to the arbitrary, capricious and whimsical application thereof, is open to judicial review. There can, in our considered view, be no quarrel with this established legal position. 21. A collateral issue relating to the question whether a sentence for the remainder of a convicts life requires him to be incarcerated for the remainder of his natural life or is subject to the power of remission vested in the appropriate Government, in terms of the mandate of the provisions of Section 432, 433 and 433-A of the W.P.(CRL) 3798/2018 Page 8 of 24 Cr.P.C., does not warrant or need a de novo determination by us, since the same is no longer res integra.

22. A Constitution Bench of the Honble Supreme Court of India in V. Sriharan alias Murugan vs. Union of India & Ors. reported as 2014 (4) SCC242 having noted the two earlier constitution Bench decisions in Gopal Vinayak Godse vs. The State of Maharashtra and Ors reported as AIR 1961 SC600 and Maru Ram vs. Union of India and Ors. reported as 1981 (1) SCC107 which were consistently followed in the subsequent decisions in Sambha Ji Krishan Ji vs. State of Maharashtra reported as AIR 1974 SC147, State of Madhya Pradesh vs. Ratan Singh & Ors. reported as 1976 (3) SCC470 and Ranjit Singh alias Roda vs. Union Territory of Chandigarh reported as 1984 (1) SCC31 Ashok Kumar alias Golu vs. Union of India & Ors. reported as JT1991(3) SC46 and Subhash Chander vs. Krishan Lal & Ors. reported as JT2001(4) SC444 observed that, imprisonment for life, in terms of the relevant provisions only means imprisonment for the rest of the life of the

prisoner, subject, however, to the right of the prisoner to claim remission etc. as provided under Article 72 and 161 of the Constitution of India to be exercisable by the President and the Governor of the State and also as provided under Section 432 of the Code of Criminal Procedure, 1973. W.P.(CRL) 3798/2018 Page 9 of 24 its recommendation qua Sushil Kumar Sharma, 23. What we are, therefore, called upon to decide in the present proceedings is whether the SRB, which is a recommendatory body, made 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.

24. In this behalf, it is relevant to observe that, after carefully considering the communication addressed by the National Human Rights Commission dated 26.09.2003, Lieutenant Governor of Government of NCT of Delhi (hereinafter referred to as the Competent Authority) was pleased to constitute the National Capital Territory of Delhi Sentence Reviewing Board, to review the sentences awarded to a prisoner undergoing life sentence and make recommendations in that behalf about cases of premature release as appropriate.

25. The guidelines, inter alia, required the SRB to strictly observe the general principles of amnesty and remission of sentence as laid down by the Government or by the Courts; the cardinal consideration being the welfare of the prisoner and society at large.

26. The SRB was further directed, not to decline a premature release the police have not of a prisoner, merely on the ground that W.P.(CRL) 3798/2018 Page 10 of 24 recommended his release; and were required to take into account not only the circumstances in which the offence was committed by the prisoner, but also whether he had the propensity and could be stated to be likely to commit a similar or other offence again.

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.

28. In this behalf, it would be trite to observe that, an authority must be strictly held to the standards, by which it professes its conduct to be judged.

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, the Lieutenant Governor, who is the competent authority is, in turn, not bound by the recommendations of the SRB. The issue, therefore, rests there. is bound by them absolutely, although, W.P.(CRL) 3798/2018 Page 11 of 24 if so warranted by the guidelines, 30. The SRB is consequently bound by law, to strictly adhere to the guidelines, in the discharge of their recommendatory function, to review the sentences awarded to a prisoner and refer them for release, to the Competent Authority. The discretion to formulate policy and to frame guidelines for premature release of prisoners, undoubtedly vests in the State, but once made, the same have to be followed without exception.

31. That brings us to the more important issue of, whether the SRB in rejecting Sushil Kumar Sharmas representation for premature release, has acted contrary to the canons of law, as well as, the guidelines.

32. In Laxman Naskar vs. Union Of India reported as AIR 2000 SC986 the Honble 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 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. further observed that, W.P.(CRL) 3798/2018 Page 12 of 24 33. In the present case, in order to better appreciate and adjudicate the instant issue, it would be just, proper and necessary to examine the minutes of relating to the consideration of the

premature release of Sushil Kumar Sharma. the meetings held by the SRB, 34. In its meeting held on 26.07.2018, the minutes of the SRB disclose that, the Social Welfare Department, Government of NCT of Delhi had recommended his release, in terms of the report of the Chief Probation Officer.

35. In addition, it is observed that, the Superintendent Central Jail No.2, Tihar, New Delhi, had also recommended Sushil Kumar Sharmas premature release based on his good jail conduct for the entire duration of his incarceration.

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

37. After considering the relevant inputs and taking into account the facts and circumstances of the case, the SRB then went on to observe that as the convict has no previous criminal history, good aptitude for reforms, good conduct in jail and on parole/furlough, recommendation of Welfare Department; the Board unanimously defers premature release of Sushil Kumar Sharma. W.P.(CRL) 3798/2018 Page 13 of 24 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, 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. rest of 39. A perusal of the above recommendations of the SRB clearly the same are cryptic, unreasoned, contrary to the that, reflect material on record and non-speaking.

40. Although, there can be no quarrel with the proposition that the SRB has been vested with discretion under the extant guidelines, the same has to be exercised in a just and reasonable manner, after due and proper consideration of all the relevant material.

41. Consequently, there is no manner of doubt in our minds, that the recommendation of the SRB, rejecting Sushil Kumar Sharmas representation for premature release, suffers from the vice of arbitrariness, whimsicality and illegality. W.P.(CRL) 3798/2018 Page 14 of 24 42. It and the Prison Authorities, which is incumbent upon us in this regard to observe that, the recommendations of the Social Welfare Department, the Probation Officer and unequivocally allude to the reformation of Sushil Kumar Sharma, have not been accorded due weightage, whilst determining his representation. clearly 43. The positive recommendations clearly underline and emphasize Sushil Kumar Sharmas readiness to be reintegrated in the society.

44. The records clearly and unequivocally reflect that, Sushil Kumar Sharma is in semi-open jail and participating in the work of construction. further analyses and evaluates Sushil Kumar Sharmas incarceration in the following manner: It As per judgment of Honble court that the convict Sushil Kumar Sharma was deeply in love with the deceased and knowing full well that deceased was very close to Matloob Karim, He married her hoping that deceased would settle down with him and lead a happy life. They living together and were married but unfortunately it appears that deceased was still in touch with Matloob Karim. The convict suspected her fidelity and murder was result of his possessiveness. Murder was strained personal relationship. the outcome of 45. Further the Social Investigation Report of the Welfare Officer, Department of Social Welfare, GNCTD dated 31.05.2017 records the evaluation of the jail term of Sushil Kumar Sharma as follows: W.P.(CRL) 3798/2018 Page 15 of 24 SOCIAL INVESTIGATION REPORT This is with reference to the letter received from Central Jail No.2 for Social Investigation Report of the convict Sushil Sharma s/o Indermani Sharma R/o MP-27, Murya Enclave Pritampura Delhi for granting premature release by Sentence Reviewing Board. The details after conducting interview with the convict in the jail are as under:-

"Name of the convict Fathers Name Religion Educational Qualification Marital Status Occupation at the time of offence Present Address Sushil Sharma Indermani Sharma Hindu Graduate Unmarried Construction MP-27, Murya Enclave Pitampura Delhi Permanent Address -----do----- Age at the time of

offence 36 years Present age 59 years Date of Sentence 07.11.2003 Date of Admission in jail 26.07.1995 Quantum of Sentence Life Imprisonment FIR Number 4

Police Station Connaught Place Under Section 302/2

IPC Punishment during Jail (In Last One Year) Nil Training in Jail Art of Living, Computer, Vipasna and Yoga Mother and Father Meeting in Jail W.P.(CRL) 3798/2018 Page 16 of 24 Normal Health Status Overall conduct in Jail Satisfactory Criminal History As per jail records there is no other case pending against the convict. Bail/Parole/Furlough Convict availed 4 times Parole and 8 times furlough. Work in jail He is in semi open jail and doing work of construction. Family Detail Father Indermani Mother prem lata Sister Sister Family Economic Status 83yrs. Retired govt job (Bank) 78yrs. House wife Married Suman Anju Married Economic condition is average. As per the statement of Family Attitude towards convict Attitude of family members found positive towards the convict. family members he is being falsely implicated in this case. They are waiting desperately of the convict. Neighbours Attitude: There is no any adverse report has been found towards the convict from neighborhood any of his family members. They stated that convict lives peacefully at his home during parole and furlough. They are in favor in release of convict. Details of the Incident W.P.(CRL) 3798/2018 Page 17 of 24 As per the statement of the convict he was deeply in love with a girl but during that time he got to know that she was involved with other person. Convict was extremely possessive towards the girl and due to his possessiveness he murdered that girl. Future Planning After release from the jail he would settle with his family and will look after his old aged Parents. They are too old even they are not been able to walk without the help of stick side by side he will be engaged in his construction work again. Co-accused Nil. Analysis and Evaluation The convict spent most of the time in prison in disciplinary norms. He availed parole/furlough 8 times but he never tried to jump it. No criminal case is pending against him. No punishment was given to him during incarceration. He is not habitual offender by chance he became victim of the above mentioned incident. He has responsibility of his old aged parents. Economic condition of the accused is average. On the basis of the above facts and statement given by the convicts and as per the jail records his behavior is found satisfactory. No negative remarks given by the jail

authority during his conviction period. Convict wants to be settled with his family after release from the jail. of and circumstances convict may be granted premature release. Therefore Social Investigation Report is On the basis the above facts W.P.(CRL) 3798/2018 Page 18 of 24 submitted before Honble Members of SRB for further necessary action please. (emphasis supplied) 46. In this regard, it is incumbent upon us to consider the guidelines framed by the State in consultation with National Human Rights Commission, which provide for the eligibility criteria for the grant of premature relief to convicts and the factors to be taken into account, whilst making recommendations of appropriate cases for premature release. Clause 3.1 of the guidelines for premature release reads as follows: actual i.e. without imprisonment 3.1 Every convicted prisoner whether male or female undergoing sentence of life imprisonment and covered by the provisions of Section 433 A Cr.PC shall be eligible to be considered for premature release from the prison immediately after serving out the sentence of 14 years of 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 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; W.P.(CRL) 3798/2018 Page 19 of 24 b) The Possibility of reclaiming the convict as a useful member of the society; and c) Socio-economic condition of the convicts family. Such convict as stand convicted of a capital offence are prescribed the total period of imprisonment to be undergone including remission, subject to a minimum of 14 years of actual imprisonment before the convict prisoner is released. Total period of incarceration including remission in such cases should ordinarily not exceed 20 years. Certain of convicted categories prisoners undergoing life sentence would be entitled to be considered for premature release only after undergoing imprisonment for 20 years including remissions. The period of incarceration inclusive of remissions even in such cases should not exceed 25 years. Following categories are mentioned in his connection. a) Convicts who have been imprisoned for life for murder in heinous crimes such as murder with rape, murder with dacoity, murder involving an offence under the

Protection of Civil Rights Act 1955, murder for dowry, murder of a child below 14 years of age, multiple murder, murder committed after conviction while inside the jail, murder during parole, murder in a terrorist in smuggling operation, murder of a public servant on duty. b) Gangsters, drug killers traffickers, racketeers awarded life imprisonment for committing murders as also the perpetrators of murder committed with pre-mediation and with exceptional violence or perversity. c) Convicts whose commuted to life imprisonment. incident; murder smugglers, death sentence has been contract W.P.(CRL) 3798/2018 Page 20 of 24 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 lifers potential for committing crime; considering the lifers 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 lifers 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 Sharmas case, are entitled to be considered for premature release after undergoing imprisonment for 20 years including remission. W.P.(CRL) 3798/2018 Page 21 of 24 49. The said condition is further qualified by a cap in the period of incarceration of such lifer, inclusive of remissions, to a total period of 25 years.

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

51. In the present case, these reasons are conspicuous by their absence. Even, accepting the submission made on behalf of the State, to the effect that, the cap of 25 years in the guidelines do not warrant automatic release of a person sentenced

to imprisonment for life, we are of the view that, Sushil Kumar Sharmas 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. W.P.(CRL) 3798/2018 Page 22 of 24 52. In view of the foregoing discussion, we are of the view that, the SRB rejected Sushil Kumar Sharmas 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.

53. We are further of the view that, the incarceration of a convicted prisoner such as Sushil Kumar Sharma does not result in the suspension of all his constitutional rights and he is not denuded of the rights enshrined in every person including a convict, within the mandate of the guarantee of Liberty protected and emphasized under Article 21 of the Constitution of India.

54. The issues struck hereinabove are, therefore, decided in favour of Sushil Kumar Sharma and against the State.

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. W.P.(CRL) 3798/2018 Page 23 of 24 56. This only leaves us to the directions that are warranted in the facts and circumstances of the case.

57. In this behalf, it is observed that, a Division Bench of this Court in N.S. Jain vs. the Superintendent Central Jail Authority reported as 1985 (9) DRJ349 followed by another Division Bench of this Court in Rakesh Kaushik vs. Delhi Administration and Ors. reported as 1986 Cri LJ566 in similar circumstances, directed the immediate release of the lifer from jail.

58. We accordingly direct that, the State release Sushil Kumar Sharma forthwith.

59. The writ petition is accordingly allowed and disposed of. SIDDHARTH MRIDUL (JUDGE) SANGITA DHINGRA SEHGAL (JUDGE) DECEMBER21 2018 as/ns W.P.(CRL) 3798/2018 Page 24 of 24

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