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% 19.11.2009

Present: Mr. Anurag Jain, Adv. for the Petitioner.
Mr. Ranjit Kapoor, Standing Counsel for the State.
Mr. Akshay Bipin and Mr. S.K. Saxena, Advs. for CBI.

+ W.P. (Crl.) No. 1440/2009

This is a petition for grant of parole for three months. The petitioner was convicted under Section 302/307/193/201/120B of IPC vide judgment dated 16th October, 2007. The appeal filed by him against his conviction and sentence was dismissed by this Court vide judgment dated 18th September, 2009. The petitioner wishes to challenge the order whereby his appeal was dismissed, by filing a Special Leave Petition before the Hon'ble Supreme Court, and therefore, wants parole to make arrangement to instruct the lawyer and file the Special Leave Petition after raising the requisite resources for this purpose.

2. The petitioner applied to the respondent vide despatch No. F.1/SC-J-1/ASW/2009/1218 dated 30th September, 2009 for grant of parole. The request of the petitioner for grant of parole was rejected vide order dated 16th November, 2009 on the ground that he has already availed 35 days interim bail in the current year i.e. w.e.f. 16th June, 2009 to 21st July, 2009.

3. The learned counsel for the petitioner states that, in fact, no parole was granted to the petitioner by this Court in June-July, 2009 and only an interim bail for 35 days was granted to him during the pendency of the appeal. In fact, since his appeal has been dismissed only on 18th September, 2009, there could have been no question of any parole being granted to him in June-July, 2009.

4. This is not the function of the Court to grant parole. It is for the Government to consider the request made by a convict for grant of parole and take appropriate decision thereon. If however, parole is refused on the grounds which are not relevant or the order refusing parole is based on extraneous consideration or is otherwise manifestly unjust and improper, it is open to the High Court, in appropriate proceedings, to grant parole to the convict.

5. Since the request of the respondent for grant of parole has been rejected on a factually wrong premise, presumably interpreting the interim bail as parole, the order passed by the respondent suffers from the vice of improper application of mind and cannot be sustained. The request for grant of parole in order to enable the petitioner to file a Special Leave Petition is genuine

and well-founded. The Special Leave Petition before the Hon'ble Supreme Court is the last resort for the petitioner, his appeal having already been dismissed by a Division Bench of this Court, he would naturally be anxious to engage a competent lawyer and do his best to defend himself. If on parole, he would be able to engage a lawyer of his choice and to suitably brief him so that his case can be adequately presented before the Hon'ble Supreme Court.

6. It has been verified by the respondent that the family of the petitioner is residing at H. No.106-A, DDA Flats, Pocket-IV, Mayur Vihar, Phase-I, New Delhi. The petitioner was an Inspector in Delhi Police. It is rather unlikely that he will not come back to undergo the remaining sentence imposed upon him in case he is released on parole.

7. Keeping in view the facts and circumstances of the case, it is directed that the petitioner be released on parole, after one week, for a period of one month, in order to enable him to file Special Leave Petition before the Hon'ble Supreme Court, subject to following conditions; (i) he shall furnish a surety bond in the sum of Rs.25,000/- before the Trial Court; (ii) he shall not leave Delhi for any reason whatsoever; (iii) he shall mark his presence

in Mayur Vihar Police Station on every Monday and Thursday at 9.00 a.m.; (iv) he shall abide by such other conditions as respondent may deem appropriate to impose within one week from today.

WP (Crl.) No. 1440/2009 stands disposed of.

Dasti.

V.K.JAIN, J

NOVEMBER 19, 2009

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