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

+ **W.P.(CRL) 2091/2016**

MAHIPAL SINGH

..... Petitioner

Through: Mr. M.L. Yadav & Mr. Lokesh
Chandra, Advocates.

versus

STATE

..... Respondent

Through: Mr. Sanjay Lao, ASC and
Mr.Siddarth Sindhu, Advocate along
with SI Ombir Singh, PS-Welcome,
for the State.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
08.08.2016

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1. The petitioner has preferred the present petition, firstly, to assail the order dated 17.05.2016 rejecting the petitioner's application for parole passed by the Deputy Secretary (Home); and, secondly, to seek a direction that he be released for a period of three months so as to enable him to file a Special Leave Petition (SLP) before the Supreme Court of India.

2. The petitioner stands convicted vide FIR No.72/1992 under Section 302/ 330/ 342/ 34 IPC registered at Police Station – Welcome. The petitioner has been sentenced to undergo life imprisonment apart from being

subjected to fine of Rs.3,500/- in default whereof, he has been directed to 3 years and 2 months simple imprisonment. The criminal appeal being CrI.A. No.112/2000 preferred by the petitioner against his conviction by the Trial Court was dismissed by this Court on 19.10.2015. While his appeal was pending, he was on bail for nearly 16 years, that is, with effect from 27.07.2000 to 20.03.2016. In fact, on the submission of the petitioner, even though his appeal was dismissed by this Court on 19.10.2015, he was granted good 5 months to marry off his daughter. The petitioner surrendered only on 21.03.2016. Soon thereafter, he moved the application to seek parole on 23.04.2016 on the ground that he wishes to file a SLP. The petitioner had all the time in the world to file SLP after dismissal of his appeal by this Court on 19.10.2015 since he was required to surrender only after 5 months. He did not prefer a SLP during the said period and soon after surrender, he moved an application to seek parole to prefer a SLP. In these circumstances, his application for seeking parole was rejected by the Deputy Secretary (Home).

3. Learned counsel for the petitioner submits that the right to file SLP by engaging a private counsel cannot be denied to the petitioner merely because the petitioner is in a position to file SLP through the legal aid while remaining in custody and the same is no ground to deny parole to exercise his legal remedy. In this regard, he places reliance on the decision of this Court in ***Somesh Gupta Vs. State of the NCT of Delhi***, 2010 (1) JCC 630. In paragraph 11 of this decision, the Court observed as follows:

“11. As regards the second ground, as noted earlier, Special Leave Petition before the Hon’ble Supreme Court being the last

resort of the petitioner, if he wants to engage a private counsel of his choice. No fault can be found with such a decision. If the petitioner engages a lawyer of his choice and is able to brief him adequately, the lawyer would obviously be in a better position to place his case before the Hon'ble Apex Court effectively and to the satisfaction of the petitioner. The family members of the petitioners cannot be in a position to know all those facts, which are in his knowledge and therefore cannot be a substitute for him. Therefore, in my view, denial of parole on the ground that free legal aid being available in the jail, Special Leave Petition can be filed from the jail itself is not an appropriate ground and rejection of parole on such a ground without anything more cannot be sustained. No other ground has been given by the respondent for denying parole to the petitioner."

4. The application is opposed by the State by pointing out the conduct of the petitioner. As aforesaid, the petitioner did not prefer the SLP even though he had 5 months between the date of dismissal of his criminal appeal and date of surrender.

5. Having heard learned counsel for the parties, I am not inclined to grant parole to the petitioner. Pertinently, the period undergone after surrender on 20.03.2016 is less than 5 months as on date. The petitioner had ample time not only to get his daughter married but also to prefer the SLP if he was desirous of preferring the same by engaging a private counsel. The Court cannot countenance a situation where petitioner consciously and deliberately by his own acts/ omissions creates grounds to seek parole soon after his surrender. Under the relevant guidelines, the grant of parole to a convict normally cannot be considered till the expiry of at least a period of one year from the date of incarceration. The petitioner can prefer a SLP either through the legal aid while remaining in jail, or even by engaging a

private counsel. In case the petitioner engages a private counsel, he would be granted visitation so that the petitioner could adequately brief him in the matter. The decision relied upon cannot be cited as precedent in the above noted facts of the present case.

6. Dismissed.

AUGUST 08, 2016
B.S. Rohella

VIPIN SANGHI, J