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

+ W.P.(CRL) 286/2017

PRAMOD

..... Petitioner

Through Mr.Ajay Verma, Mr.Gaurav and
Ms.Divya, Advs.

versus

STATE

..... Respondent

Through Mr.Rahul Mehra, Standing Counsel
(Crl.) with Ms.Kamna Vohra, ASC,
Mr.A.K. Gupta, Deputy Secretary
(Home), GNCTD and SI Rakesh
Chauhan, PS New Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE P.S.TEJI

ORDER

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01.02.2017

The present petition has been filed under Article 226 of the Constitution of India read with Section 482 Cr.P.C. for the issuance of writ of certiorari against the order dated 13.12.2016.

Perusal of order dated 13.12.2016 shows that an application for the grant of parole was moved by the petitioner which was rejected. Since this is in continuation of order of the Deputy Secretary (Home), the original order was called and notings on the same were perused.

Perusal of noting shows that the parole was availed in continuity of earlier paragraphs 1 to 12 which deals with the earlier application rejecting the parole and present case starts from para 15. As per the undated application, the parole was sought for a period of

three months and the same was forwarded by the Superintendent (Jail) along with nominal roll, police verification report received from the Deputy Commissioner of Police and brief history of the case. On the basis of the same, the Deputy Secretary concerned proceeded with the file on the format. First is the ground taken by the convict, then there are guidelines, then there are details of the nominal roll, then there are police reports and then the case history is mentioned. There is mention of Para 16.10 of Parole/Furlough Guidelines 2010 stating therein that if no report is received by the Superintendent of Jail, it shall be presumed that the concerned police authorities have no objection to parole being granted. Next paragraph deals with the conduct of the convict which is reported to be satisfactory. After mentioning para 12.5 of Parole/Furlough Guidelines and the case of the convict, it was forwarded by the Deputy Secretary (Home) to the Special Secretary (Home). The Special Secretary (Home) gave the noting *“May like to reject in view of nature of crime. He has already availed 7 weeks of furlough during the year. Last furlough availed upto 26.08.2016”*.

Next column is meant for Principal Secretary (Home) who mentioned that *“Has done more than 13 years 11 months. Not been on parole since 2014. May kindly considered 4 weeks parole”*.

Next column is meant for the Minister concerned who gave comments *“Agree with para 23. Parole may not be given”*. Ultimately, the parole was rejected.

The challenge of the petitioner is that the present rejection order vide order dated 13.12.2016 is without any due consideration and

application of mind. On the other hand, Mr. Rahul Mehra, Standing Counsel (Crl.) submitted that the guidelines already issued are under review and whatever the lapse, the same is subject matter of review and shall be taken into consideration while framing fresh guidelines. It has been informed that earlier the application was moved by the convict in the month of March, 2015 which was ultimately rejected on 20.07.2015 and thereafter the present application was moved. It is further submitted that the application for the grant of parole is silent about the rejection of the earlier parole application vide order dated 20.07.2015 which was never under challenge.

There is another aspect of the matter that in the present matter, notice was issued to the Government of the NCT of Delhi on 27.01.2017 and fresh report was sought without any order on the file or by the Court which talks about the justification of seeking of parole.

From the totality of the material placed before the Court by both the sides, it appears that the matter has been dealt in a casual manner. The application filed by the convict does not mention about the rejection of earlier parole vide order dated 20.07.2015 and it is being subjected that the earlier application filed in March 2015 resulted into rejection order dated 13.12.2016.

As discussed above in detail that after the noting by the Deputy Secretary (Home), the remarks were given by the Special Secretary (Home). For the purpose of clarification the same are being repeated”

“May like to reject in view of nature of crime.

He has already availed 7 weeks of furlough

during the year. Last furlough availed upto 26.08.2016”.

The noting made by the Special Secretary (Home) does not find any basis particularly when the convict was already on parole in 2014 and further mentioning that he has already availed furlough of 7 weeks and lastly availed upto 26.08.2016. The noting of Principal Secretary (Home) by mentioning the fact that the convict has spent more than 13 years 11 months and not been on parole since 2014 and made the recommendation contrary to the Special Secretary (Home). Ultimately the file went to the Minister concerned who agreed with para 23 i.e. recommendation made by the Special Secretary (Home) and even the noting of the factual position mentioned by the Principal Secretary (Home) as well as for the grant of furlough was not brought on the record and ultimately it was the recommendation of Special Secretary (Home) which was accepted.

After the perusal of file, this Court is of the considered opinion that the consideration process needs to be streamlined. The recommendation has been made in a casual manner without application of mind.

This Court is of the considered opinion that whatever the remarks given at any stage by any authority it has to be borne out from the record and wherever any particular recommendation with regard to grant or non-grant of parole, that should be a reasoned one mentioning the factual position and reaching to the conclusion on the basis of record only and further that if the higher authorities are to adopt a particular view out of two views on the file then they

need to give reason for agreeing or disagreeing on a particular recommendation.

In the light of the facts and circumstances, this Court is of the considered opinion that non grant of parole order is not sustainable in the present case. The competent authority is directed to pass fresh order as per the observations made above within two weeks after due application of mind.

The present petition is accordingly disposed of.

Copy of the order be sent to the Jail Superintendent.

Copy of the order be given to both the sides.

P.S.TEJI, J

**FEBRUARY 01, 2017
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