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

+ W.P.(CRL) 3708/2016

PUSHPENDER

..... Petitioner

Through Mr.Ajit Kumar, Adv.

versus

STATE (NCT OF DELHI)

..... Respondent

Through Mr.Rahul Mehra, Standing Counsel
(Crl.) with Ms.Richa Kapoor, ASC,
Mr.A.K. Gupta, Deputy Secretary
(Home) and SI Om Parkash, PS
Badarpur.

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 mandamus against the order dated 07.11.2016.

Perusal of order dated 07.11.2016 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 noting on the same was perused.

Perusal of noting shows that the parole was availed in continuity of earlier paragraphs 1 to 29 which deals with the earlier application rejecting the parole and present case starts from para 30. As per the undated application, the parole was sought for a period of

two months and the same was forwarded by the Superintendent (Jail) along with nominal roll, brief facts on crime, application of the convict and police verification report. On the basis of the same, the Deputy Secretary concerned proceeded with the file on the format. First is the grounds taken by the convict, then there are guidelines, then there are details of the nominal roll, then there is case detail and then there are police reports. Then there is mention of police verification report which shows that there is every possibility of jumping the parole by the convict because he has no permanent address in Delhi and the possibility of committing similar offence by the convict cannot be ruled out. Thereafter it was forwarded by the Deputy Secretary (Home) to the Special Secretary (Home). The Special Secretary (Home) gave the noting "*Gang rape convict. No emergent ground. Adverse police report. 3 weeks furlough availed very recently i.e. upto 07.09.2016. May like to reject*".

Next column is meant for Principal Secretary (Home) and the next column is meant for the Minister concerned who just put their signatures and ultimately as per the noting of the Special Secretary (Home), the parole was rejected.

The challenge of the petitioner is that the present rejection order vide order dated 07.11.2016 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 which was ultimately rejected on 31.12.2015 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 31.12.2015 which was never under challenge.

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 31.12.2015 and it is being subjected that the earlier application filed resulted into rejection order dated 07.11.2016.

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”

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Adverse police report. 3 weeks furlough availed
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reject”.*

The noting made by the Special Secretary (Home) does not find any basis particularly when the convict was already on parole in 2016 and further mentioning that he has already availed furlough of 3 weeks and lastly availed upto 07.09.2016. The noting of Special Secretary (Home) recommending rejection of parole of the convict has been approved by the Principal Secretary (Home) and ultimately the file went to the Minister concerned who agreed with the same.

Perusal of record shows that in para 35 of the notings, it is

mentioned that :

“Police authority has verified the address of the convict. Police has opposed the parole of the convict and states that there is every possibility of jumping the parole by the convict because convict has no permanent address in Delhi. The possibility of committing similar offence by the convict cannot be ruled out.”

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 the non-verification/conformation has to be on the basis of the material available on record and it should not be in a casual manner but on the inquiry conducted by the police. 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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