

(2017) 02 DEL CK 0223

In the Delhi High Court

Case No : 42 of 2017

ARIF

APPELLANT

Vs

STATE

RESPONDENT

Date of Decision : 02-02-2017

Acts Referred:

Constitution of India, Article 226, Article 227 - Power of High Courts to Issue certain writs - Power of superintendence over all courts by the High Court
Code of Criminal

Citation : (2017) 02 DEL CK 0223

Hon'ble Judges : P.S.Teji

Bench : SINGLE BENCH

Advocate : Sumeet Verma, Abhijeet Sharma, Rajesh Mahajan, ASI Tejram

Judgement

1. The present petition has been filed under ArticleS 226 & 227 of the Constitution of India read with Section 482 Cr.P.C. for the parole for a period of three months on the ground to arrange funds for and to re-establish social ties with the family and with the society. The present petition has been filed being aggrieved by the order dated 10.11.2016.

2. Perusal of order dated 10.11.2016 shows that an application for the grant of parole was moved by the convict/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.

3. Perusal of noting shows that the parole was availed in continuity of earlier paragraphs 1 to 7 which deals with the earlier application rejecting the parole and present case starts from para 8. 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 and crime details of the case. 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. There is mentioning of verification of address and grounds taken by the convict but the same was opposed on the ground that it may disturb the law and order situation in the area and the convict may threaten the victim party and the possibility of jumping parole and committing similar offence cannot be ruled out. Next paragraph mentions about the period already undergone by the convict which is 4 years and 8 months. Thereafter it was forwarded by the Deputy Secretary (Home) to the Additional Secretary (Home). The Additional Secretary (Home) gave the noting "We may not accept his plea".

4. 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 Additional Secretary, the parole was rejected.

5. The challenge of the petitioner is that the present rejection order vide order dated 10.11.2016 is without any due consideration and application of mind. On the other hand, learned Additional Standing Counsel for the State 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 was ultimately rejected on 10.12.2015 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 10.12.2015 which was never under challenge.

6. 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 10.12.2015 and it is being subjected that the earlier application resulted into rejection order dated 10.11.2016.

7. As discussed above in detail that after the noting by the Deputy Secretary (Home), the remarks were given by the Additional Secretary (Home). For the purpose of clarification the same are being repeated "We may not accept his plea".

8. The noting made by the Additional Secretary (Home) does not find any basis and ultimately it was the recommendation of Additional Secretary (Home) which was accepted.

9. Perusal of record shows that as per the nominal roll of the convict, his jail conduct was satisfactory and he is maintaining his behaviour properly and confining himself with good inmate. Nothing adverse was reported against the convict regarding involving in any illegal and anti human activities.

10. After conviction, every applicant is to be treated as a convict. The sole ground of the charges in which the accused has been convicted cannot be made the ground for rejection of the parole and 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 on the basis of material available 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.

11. 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.

12. The present petition is accordingly disposed of.

13. Copy of the order be sent to the Jail Superintendent.