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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 16.11.2015

W.P.(CRL) 2601/2015

SUNIL KUMAR

..... Petitioner

Through: Mr. Sunil Upadhyay and Mr. Sanjeev
Sharma, Advocates

Versus

STATE NCT OF DELHI & ANR

..... Respondents

Through: Mr. Jamal Akhtar, Advocate for Mr.
Rahul Mehra, Standing Counsel
(Criminal) with SI Bishambar Dayal,
PS- Connaught Place, New Delhi for
R-1

Mr. Sanjeev Bhandari, SPP for R-2

CORAM:

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J (ORAL)

1. The present is a petition under Article 226 of the Constitution of India praying for a direction to the official respondent to release the petitioner on parole in order to enable him to make financial arrangements for the education of his son.

2. The petitioner is aggrieved by the order dated 30.10.2015 whereby his application for parole on the above ground was rejected by the competent authority for the following reasons:-

“rejected in view of the following:-

1. Para 12.5 of parole/furlough guidelines 2010 which provides that ‘Parole would ordinarily be not granted except, if in the discretion of the Competant Authority special circumstances exist for grant of parole.’ (c) If prisoner is a convict for multiple murders and the convict has committed double murder.
2. The convict is not entitled for parole as per para 11.5 of parole/furlough guidelines, 2010 which provides that ‘A minimum of six months ought to have elapsed from the date of termination of the previous parole.’ The convict has last availed one month parole up to 27.04.2015 by the order of DHC.”

3. Insofar as the ground with regard to six months not having elapsed from the date of termination of previous parole is concerned, the same are infructuous in view of the circumstances that six months have in fact elapsed since the petitioner surrendered before the jail authorities on the expiry of the period of parole granted to him by this Court. Insofar as the other reason attributed for denial of parole to the petitioner is concerned, the Competent Authority has not stated any reason why the discretion purportedly vested in them under the parole guidelines has been exercised in the manner in which

it has. The discretion vested in a quasi-judicial authority cannot be exercised in a whimsical and arbitrary manner and any decision in that behalf by a quasi-judicial authority must clearly state the reasons for the exercise of discretion vested in it particularly, when the discretion exercised is to negate the right of a convict to be released on parole periodically.

4. In **Kranti Associates Private Limited vs. Masood Ahmed Khan and Others** reported as (2010) 9 SCC 496 the Hon'ble Supreme Court observed as under:-

“47. Summarizing the above discussion, this Court holds:

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.
- (b) A quasi-judicial authority must record reasons in support of its conclusions.
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- (e) Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.
- (f) Reasons have virtually become as indispensable a component of a decision making process as

observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

- (g) Reasons facilitate the process of judicial review by superior Courts.
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.
- (j) Insistence on reason is a requirement for both judicial accountability and transparency.
- (k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.
- (l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.
- (m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See: *David Shapiro in Defence of Judicial Candor* (1987) 100 Harward Law Review 731-737).
- (n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now

virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See: *Ruiz Torija v. Spain*, (1994) 19 EHRR 553, at 562 para 29 and *Anyia v. University of Oxford*, 2001 EWCA Civ 405 (CA), wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

- (o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

5. The Hon'ble Supreme Court in **Kranti Associates** (*supra*), has given an indispensable status to reasons in administrative decisions. The Supreme Court observed that recording of reasons serves the principles of justice and puts a valid restraint on arbitrary exercise of quasi-judicial powers exercised by administrative authorities. Reasons also expedite the process of judicial review by superior courts.

6. In the present case, it has been observed that the petitioner has been released on parole earlier and is not stated to have misused the liberty granted to him by this Court.

7. In view of the foregoing, I see no impediment in granting parole to the petitioner. The petitioner is directed to be released on parole for a period of

four weeks from the date of his release subject to his furnishing a personal bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with one surety of the like amount to the satisfaction of the Superintendent, Central Jail, Tihar subject to the following conditions:-

- (i) The petitioner shall provide the SHO, Police Station-Connaught Place, New Delhi with his mobile telephone number which he undertakes to keep operational.
- (ii) The petitioner shall not leave the National Capital Territory of Delhi during the period of parole, without the prior permission of this Court.
- (iii) The petitioner is directed to surrender before the jail authorities at the expiry of the period of parole.

8. The writ petition is allowed and disposed of accordingly.

9. A copy of this order be given *dasti* under the signature of Court Master to counsel for the parties.

SIDDHARTH MRIDUL, J

NOVEMBER 16, 2015

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