

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(214)

CRWP-7096-2020

Date of Decision : 15.10.2020

NEERAJ MASHI

....Petitioner

Versus

STATE OF PUNJAB AND OTHERS

....Respondents

(through video conferencing)

CORAM : HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Nandal Jindal, Advocate for the petitioner.

Mr. Sandeep Singh Deol, Deputy Advocate General, Punjab.

Harsimran Singh Sethi, J. (Oral)

Reply on behalf of the respondents has been filed in Court today. The same is taken on record.

Present petition has been filed by the petitioner for setting-aside the order dated 13.08.2020 (Annexure P-5), whereby the prayer of the petitioner for the grant of parole has been rejected by the respondents on the ground that in case the petitioner will be released on parole, he will again indulge in the same activities.

Learned counsel for the petitioner submits that the police also did not recommend the case of the petitioner by raising an apprehension of breach of peace and maintenance of public order. Learned counsel for the petitioner further submits that the grounds which have been given for declining the benefit of parole in the impugned order dated 13.08.2020 (Annexure P-5), are totally arbitrary and are in fact without any basis.

Learned counsel submits that the petitioner was granted the benefit of parole

by this Court on 02.03.2020 as the petitioner had already undergone a sentence of 07 years and 11 months out of total sentence of 10 years as on 19.02.2020. Learned counsel for the petitioner submits that though, a heavy personal/surety bond was imposed upon the petitioner but the petitioner availed the parole for a period of 10 days and surrender to the authorities without there being any allegations, which have now been made as a ground to decline the benefit of parole. Learned counsel for the petitioner further submits that the apprehensions or the grounds which are to be raised for declining the parole, should be based upon some material and not the subjective opinion of the authorities.

Upon notice of motion, the respondents have filed the reply. In the reply, which has been filed, it has been again stated that benefit of parole, though admissible to the petitioner under the Punjab Good Conduct Prisoner (Temporary Release) Act, 1962 (hereinafter referred to as 'Act, 1962) but the same has been declined on the ground that the petitioner might indulge in the similar activities for which he is behind bars and further that his release is likely to create breach of peace and maintenance of public order.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, the authorities have been given a power to determine the grant of parole, the same determination has to be exercised on the basis of the facts and circumstances of each and every case. The reasons, which are to be given by the authorities for declining a benefit are to be based upon a cogent reason supported by relevant evidence, which had led the authorities to arrive at a particular decision. For granting or for refusal of benefit of

parole, the reasons are to be based upon relevant material/evidence. In the present case, nothing has been produced before this Court that there is any evidence, which has been collected by the authorities, to say that the petitioner will indulge in the similar activities for which he is already undergoing sentence or there is a likely hood of breach of peace and maintenance of public order. In the absence of any material placed on record, the reasons given by the authorities to decline the benefit of parole cannot be sustained.

Apart from this, petitioner had already availed parole for a period of 10 days, given by this Court vide order dated 02.03.2020. The petitioner also surrendered after availing the said parole and it is not the case of the respondents during the said period, the petitioner ever indulge in the similar activities for which he is serving sentence or created any incident, due to which there was a breach of peace or maintenance of public order.

As per the settled principle of law, every order, even the quasi-judicial order, has to be a reasoned one and the reasons given to arrive at a decision are to be supported by evidence/material on record. The Hon'ble Supreme Court of India in case titled as '**M/s. Kranti Associates Pvt. Ltd. & Anr.** Vs. **Masood Ahmed Khan & Others**', 2010(9) SCC 496, held that the quasi-judicial authority must record reasons in support of its conclusions. The 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. The recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power. The relevant paragraphs No.15, 17, 48 and 51 of

the judgment are as under: -

“15. The necessity of giving reason by a body or authority in support of its decision came up for consideration before this Court in several cases. Initially this Court recognised a sort of demarcation between administrative orders and quasi-judicial orders but with the passage of time the distinction between the two got blurred and thinned out and virtually reached a vanishing point in the judgment of this Court in **A.K. Kraipak and others v. Union of India and others reported in AIR 1970 Supreme Court 150.**

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17. The expression 'speaking order' was first coined by Lord Chancellor Earl Cairns in a rather strange context. The Lord Chancellor, while explaining the ambit of Writ of Certiorari, referred to orders with errors on the face of the record and pointed out that an order with errors on its face, is a speaking order.

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48. But, however, the present trend of the law has been towards an increasing recognition of the duty of Court to give reasons (See **North Range Shipping Limited v. Seatrans Shipping Corporation, (2002) 1 WLR 2397**). It has been acknowledged that this trend is consistent with the development towards openness in Government and judicial administration.

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51. Summarising 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 (1994) 19 EHRR 553, at 562 para 29 and **Anya v. University of Oxford, 2001 EWCA Civ 405**, 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".

Perusal of above would show that the reasons are the must for passing the quasi-judicial or administrative order and the reasons must be supported with the evidence.

In the present case, the claim of the petitioner for the grant of parole has been rejected by the respondents by merely stating that the petitioner will again indulge in the same activities, for which he is serving the sentence and further the grant of parole can be a breach of peace or maintenance of public order, without there being any material/evidence to the said effect to arrive at that conclusion.

That being so, the order dated 13.08.2020 (Annexure P-5) is accordingly set-aside. The respondent-authorities are again directed to consider the claim of the petitioner for the grant of parole in the light of the relevant facts and evidence, if any, for which he is entitled for under the 1962 Act. Let the competent authority i.e. Deputy Commissioner pass a fresh order on the prayer of the petitioner for the grant of parole, admissible to him under the 1962 Act within a period of 15 days from the receipt of copy of this order.

Present petition is allowed in above terms.

October 15, 2020
kanchan/naresh.k

(HARSIMRAN SINGH SETHI)
JUDGE

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No