

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(216)

CRWP-1898-2019

Date of Decision : 13.09.2021

Sukhpreet Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

(217)

CRWP-3132-2021

Date of Decision : 13.09.2021

Rakesh Kumar

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: None for the petitioner
in CRWP No. 1898 of 2019.

Mr. Krishan Kanha, Advocate for the petitioner
in CRWP No. 3132 of 2021.

Mr. Sandeep Kumar, Deputy Advocate General, Punjab.

Harsimran Singh Sethi J. (Oral)

By this common order, two petitions, the details of which have been mentioned above, are being disposed of as the petitioners in both the petitions are raising the same grievance regarding denial of parole to them.

As far as CRWP No. 1898 of 2019 is concerned, the prayer of

the petitioner is for quashing the impugned order dated 06.11.2019 (Annexure P-2) by which the benefit of parole has been denied to him. The petitioner in the said petition was convicted under Sections 21 and 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 vide judgment dated 22.02.2019 passed by the learned Judge, Special Court, Patiala and was sentenced to undergo rigorous imprisonment for a period of 10 years along with fine. The said judgment dated 22.02.2019 is already under appeal in CRA-S-1393 of 2019, which stands admitted before this Court.

Similarly, the petitioner in CRWP No. 3132 of 2021 has also been convicted under Section 22 of the Narcotic Drugs and Psychotropic Substances Act, 1985 and Section 473 IPC vide judgment dated 11.02.2020 passed by the learned Special Judge, Ludhiana, by which the petitioner has been awarded sentence to undergo rigorous imprisonment for a period of 10 years along with fine. The said judgment dated 11.02.2020 is already under appeal in CRA-S-867 of 2020, which also stands admitted before this Court.

Both the petitioners, who are serving their sentence, applied for the grant of parole, which concession is available to them under the Jail Manual. The said prayer of the petitioner for the grant of parole has been rejected by the District Magistrates concerned on the ground that in case parole is granted to the petitioners, they are likely to indulge again in the same illegal activity of selling drugs, which is likely to harm the citizens of the country.

After notice of motion, reply has been filed in CRWP No. 1898 of 2019 but no reply has been filed in CRWP No. 3132 of 2021.

In the reply as well, the stand taken is that the State apprehends

that the petitioner will indulge in similar illegal activities of selling drugs, which is prejudicial to the citizens of the country.

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

Once, a convict is entitled for a benefit under Jail Manual, the denial of the same has to be based upon a cogent reason. The only contention, which has been raised by the State for declining the concession of parole to the petitioners is that the State apprehends that the petitioners will not conduct themselves properly, if granted parole and in all probabilities will indulge in illegal activities of selling the drugs, which is prejudicial to the citizens.

First of all, the said decision of non-grant of parole is on apprehensions. Nothing has been brought to the notice of this Court as to what material has come against the petitioners so as to conclude or even apprehend that the petitioners will not conduct themselves in a proper manner in case granted parole and also the fact that they will sell drugs while on parole. In the absence of any material to support the conclusion, the reason given in the impugned orders cannot be accepted.

It is a settled principle of law that every executive decision has to be a reasoned one and the reasons so arrived, have to be based upon the material on record. The executive decision cannot be based on whims and fancies of the Officer passing the order.

A Division Bench of this Court in LPA No. 939 of 2016 titled as Punjab University and another versus Union of India and another, has held that a decision not supported by any evidence and an irrational decision

would be absurd and illogical. Relevant paragraph of the said judgment is as under :-

“42. xxx xxx xxx xxx xxx xxx xxx

In judicial review it is to be kept in mind that the Court is not concerned with the decision that is taken by the authority nor concerned with the merits of the decision as the Courts do not substitute their decision in place of the impugned decisions taken by the authority. The Court, however, is concerned with the decision making process. The grounds on which judicial review of an administrative decision is subjected to, have been delineated upon by the Courts as illegality, irrationality and procedural impropriety. Besides, the dictate of law is that every administrative action must be reasonable. The principle of reasonableness has been applied by the Courts in every administrative decision and it comprises of three elements, i.e. (i) that the administrative authority should take all relevant facts into consideration; (ii) it should exclude all irrelevant facts from consideration; and (iii) the decision should neither be perverse nor irrational. A perverse decision would be an improper and contradictory decision but in the context of administrative decision it symbolizes a decision not supported by any evidence and an irrational decision would be an absurd and illogical decision, which no person properly advised on the facts of the case would come to.”

By applying the principle of law stated hereinbefore, in the present case, though a reason has been given but the same has not been supported by any material, which is also bad in law and, therefore, the impugned order dated 06.11.2019 (Annexure P-2) in CRWP No. 1898 of 2019 and order dated 24.02.2021 (Annexure P-1) passed in CRWP No. 3132 of 2021 cannot be sustained and are liable to be quashed and are

accordingly quashed.

A direction is issued to the District Magistrates concerned to re-consider the prayer of the petitioners for the grant of parole and pass appropriate orders afresh and the orders so passed should contain reasons, which are based upon the material on record. The fresh orders be passed within a period of six weeks of the receipt of the copy of these orders and be conveyed to the petitioners immediately.

It is made clear that in case the petitioners are aggrieved in any manner against the fresh orders to be passed, they will be at liberty to avail the appropriate remedy as available to them under the law.

Disposed of.

September 13, 2021
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No