

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

223

CRWP-316-2022

Decided on :07.07.2022

Bhupinder Singh @ Rupinder Singh @ Bunty

. . . Petitioner

Versus

State of Punjab and others

. . . Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

PRESENT: Mr. Harmanpreet Singh, Advocate
for the petitioner.

Mr. Sukhbeer Singh, AAG, Punjab.

VIKAS BAHL, J. (Oral)

This is the fourth Criminal Writ Petition filed under Article 226 of the Constitution of India read with the Punjab Good Conduct Prisoners Temporary Release Act 1962 for the issuance of a writ in the nature of Certiorari for quashing of order passed by the District Magistrate, Ludhiana dated 20.12.2021 (Annexure P-4) denying parole to the petitioner.

Learned counsel for the petitioner has submitted that the petitioner was convicted vide judgment dated 13.02.2020 in FIR No. 85 dated 16.09.2017 under Section 15 of the NDPS Act, 1985 and was sentenced to undergo rigorous imprisonment for a period of 10 years and against the same, the petitioner has preferred an appeal which is pending before this Hon'ble High Court and the petitioner has been in custody since the last 3 years and 22 days. The petitioner had applied for parole for a period of 8 weeks for the repair of his house and to look

after his mother and the same was not recommended by the Commissioner of Police, District Ludhiana-respondent No. 3. It is further submitted that the non-recommendation was non speaking inasmuch as, there was no evidence/material forthcoming as to how peace and harmony of the local area could be disturbed upon his release and thus, the petitioner had filed Criminal Writ Petition before this Court and this Court vide order dated 30.11.2021 had directed the District Magistrate, Ludhiana-respondent No. 2 to take the final decision with respect to the application of the petitioner for the temporary release on parole within a period of 15 days from the receipt of certified copy of the said order and after taking into consideration, the judgment passed by the coordinate Bench of this Court in ***Neeraj Masih Vs. State of Punjab and others*** decided on 15.10.2020 in CRM-M-7096-2020. It is argued that thereafter, respondent No. 3- Commissioner of Police, Ludhiana had passed the impugned order dated 20.12.2021 in which also it had been stated that since the petitioner had been convicted in a case where commercial quantity of contraband had been recovered, there was a chance that the petitioner could attempt to sell narcotic substance while on parole and the recommendation for the parole release of the petitioner had not been made by the Commissioner of Police, Ludhiana on the ground that since the petitioner could make an attempt to sell narcotic substance while on parole, thus, the petitioner could be a threat to the local peace and harmony. It is further argued that the impugned order is again based on

surmises and conjectures without there being any material on record and only on the basis of the subjective opinion of the authorities. Reliance has been placed upon the judgment of ***Neeraj Masih*** (*supra*) and on the basis of the same, it is submitted that the impugned order deserves to be set aside as the matter deserves to be reconsidered by respondent No. 2.

Learned State counsel, on the other hand, has opposed the present petition and has submitted that since the petitioner was involved in a case under the NDPS Act and recovery effected was of commercial quantity, thus, the Commissioner of Police, Ludhiana has not recommended the release of the petitioner on parole as there is a possibility that the petitioner might attempt to sell narcotic substances. It is further submitted that the petitioner is involved in one more case under the NDPS Act i.e. FIR No. 98 dated 04.09.2015 in which the trial is pending.

This Court has heard learned counsel for the parties and has perused the paperbook.

A coordinate Bench of this Court in ***Neeraj Masih's*** case (*supra*) held as under:-

“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.

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*As per the settled principle of law, every order, even the quasijudicial 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.

x x x x x x x x

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."

A perusal of the judgment reproduced hereinabove would show that it has been observed therein that once the authorities have been given the power to determine the grant of parole, the same has to be exercised on the basis of the facts and circumstances of each and

every case and the reasons for granting or refusing the grant of the said benefit is to be based on cogent reasons supported by relevant evidence/material. It is further observed that merely stating that the petitioner would indulge in similar activities or that there is likelihood of breach of peace and maintenance of order, in the absence of any material placed on record, cannot be sustained as a reason given by the authorities to decline the benefit of parole and accordingly, the impugned order therein was set aside and the respondent authorities were redirected to consider the case of the petitioner therein for grant of parole in the light of the relevant facts and evidence.

In the present case, the petitioner has been convicted under Section 15 of the NDPS Act vide judgment dated 13.02.2020 and has been sentenced to undergo rigorous imprisonment for a period of 10 years and against the same, the appeal filed by the petitioner has been admitted by this Court and is pending adjudication. The petitioner is stated to be in custody since the last 3 years and 22 days and the petitioner had applied for parole on the ground of repairing his house and to look after his mother and in support of the same, he has also relied upon the Panchayatnama (Annexure P-7) in which it has been stated that the age of the mother of the petitioner is approximately 58 years and she remains ill. Reliance has also been placed upon the Jamabandi (Annexure P-5). The case of the petitioner was not recommended by the Commissioner of Police, Ludhiana- respondent No. 3 and thus, the petitioner had approached this Court by filing

Criminal Writ Petition No. 11250 of 2021 and the said case was disposed of by this Court vide order dated 30.11.2021 in the following terms:-

“Keeping in view the abovesaid facts and circumstances, the present Criminal Writ Petition is disposed of with direction to respondent No.2-District Magistrate, Ludhiana to take the final decision with respect to the application of the petitioner for temporary release on parole in FIR No.85 dated 15.09.2017 registered under Section 15 of the NDPS Act at Police Station Sadar Sangrur, regarding which the recommendation has been made vide letter dated 01.06.2021, within a period of 15 days from the date of receipt of certified copy of the present order and after taking into consideration the judgment passed by the Coordinate Bench of this Court in Neeraj Masih's case (Supra).

It is, however, clarified that in case, the said decision has already been taken, then the present Criminal Writ Petition would be rendered infructuous with liberty to the petitioner to file fresh petition challenging the same.”

In pursuance of the said order, the impugned order has been passed, in which also it has been merely stated that there is a likelihood that the petitioner, if released on parole, would sell the narcotic substances and thus, he would be a threat to the local peace and harmony. Neither there is any relevant evidence, nor any other material to support the said observation. The impugned order is thus in the teeth of the judgment passed by the coordinate Bench in **Neeraj Masih's case**

(supra), as the same has been passed based on surmises and conjectures.

Keeping in view the abovesaid facts and circumstances, the order dated 20.12.2021 is set aside and the respondent authorities are again directed to consider the claim of the petitioner for the grant of the parole in the light of relevant facts and evidence, if any, and also under the relevant provisions of law and respondent No. 2 is directed to pass a fresh order on the plea of the petitioner for grant of parole, within a period of 15 days from the date of the receipt of a certified copy of the present order.

Accordingly, the present petition is allowed in the abovesaid terms.

(VIKAS BAHL)
JUDGE

July 7th,2022

Mehak

Whether reasoned/speaking?
Whether reportable?

Yes/No
Yes/No