



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Eleventh day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice R.SURESH KUMAR
and

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) . No.5827 of 2023

in

H.C.P. (MD) NO 1564 OF 2022

Muthukutty

(Now Confining at Palayamkottai
Central Prison).

... Petitioner/Detenu

Vs

1 The Additional Chief Secretary
to Government Home Prohibition and
Excise Department Secretariat
Chennai- 600009.

2 The District Magistrate and District Collector
Office of the District Magistrate
and District Collector
Thoothukudi District
Thoothukudi.

3 The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District.

... Respondents

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to grant 3 days temporary leave to Muthukutty, aged 44 years, S/o.Samydoss, now confining as Goonda at the Central Prison, Palayamkottai under preventive detention by the order passed by the R2 in vide his order in HS(M)Confdl.No.172/2022 dt.19/8/2022 for attend the funeral ceremonies of his father Muthukutty forthwith in HCP(MD) No. 1564 of 2022

Prayer in Habeas Corpus Petition(MD) No. . 1564/ 2022 :

Petition praying that in the circumstances stated therein and in the affidavit filed therewith, the High Court will be pleased H2-GO. To Issue a Writ of Habeas Corpus or any other Writ or Direction

<https://www.hc.madras.gov.in/jcts>



of the Respondent No.2 in H.S.(M) Confdl.No.172/2022 dt.12.12.22 and Quash the same and direct the Respondents to produce the body or person of the detenu by name Muthukutty, son of Samyboss, aged about 44 years, now detained as "GOONDA" at Palayamkottai Central Prison, before this Hon'ble Court and set him at liberty forthwith .

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ALAGUMANI R, Advocate for the petitioner and of MR.A.THIRUVADI KUMAR, Additional Public Prosecutor, on behalf of the Respondents, the court made the following order:-

(Order of the Court was made by R.SURESH KUMAR,J.)

Pursuant to the order passed by this Court yesterday, ie., on 10.04.2023, when the case was taken up for hearing today, the learned Additional Public Prosecutor appearing for the respondents has submitted that the order of this Court has been taken into account, accordingly, the second respondent, ie., the District Magistrate cum District Collector has passed the order on 10.04.2023 itself and he has produced the copy of the said order, where, inter-alia, it has been stated as follows:

“எனவே. பாளையங்கோட்டை மத்திய சிறையில் உள்ள தடுப்புக்காவல்

சிறைவாசி திரு.முத்துக்குட்டி (வயது 44/2022) த/பெ.சாமிதாஸ் என்பவரை அவரது தந்தையின் இறுதி சடங்கில் கலந்து கொள்ள 10.04.2023 அன்று ஒரு நாள் மட்டும் அவசர கால விடுப்பு (பரோல்) வழங்கி இதன் மூலம் உத்தரவிடப்படுகிறது.

மேலும் தடுப்புக்காவல் சிறைவாசி திரு.முத்துக்குட்டி (வயது 44/2022) த/பெ.சாமிதாஸ் என்பவரை உரிய பாதுகாப்புடன் பாளையங்கோட்டை மத்திய சிறையில் இருந்து அவரது தந்தையின் இறுதி சடங்கு நடக்கும் இடத்திற்கு அழைத்து சென்று, இறுதிசடங்கு முடிவடைந்த பின் பாளையங்கோட்டை மத்திய சிறையில் அடைத்திட உரிய பாதுகாப்பு நடவடிக்கைகள் மேற்கொள்ள தூத்துக்குடி மாவட்ட காவல் கண்காணிப்பாளர் கேட்டுக்கொள்ளப்படுகிறார்.”

2. However, the learned counsel for the petitioner would submit that pursuant to the said order dated 10.04.2023, the escort police party brought the detenu to the petitioner's house in the midnight on 10.04.2023 ie, around 12 to 12.30 a.m., and the detenu was permitted to be there at the house for two hours and around 2.30 a.m., the escort party taken back the detenu to the jail. However, between 12.30 a.m., and 2.30 a.m., no last rites or funeral can be taken place and because of which, the dead body of the detenu's father has been still kept at the house of the petitioner, unless the detenu comes back at the instance of the orders passed by the 2nd respondent dated 10.04.2023, enabling him to participate in the funeral or last rites to be performed to his father, the funeral or last rites cannot be undertaken.

3. In this context, when specifically asked by this Court, the learned Additional Public Prosecutor, on instructions, would submit that, the order dated 10.04.2023 has made it very clear that the detenu shall be permitted to go for one day leave on 10.04.2023 and the detenu shall be permitted to participate in the last



rites/funeral to be taken place and after completing the last rites and funeral, then only the detenu has to be brought back to the jail. The contents of this order has already been communicated to the District Superintendent of Police, Tuticorin for giving necessary escort for the detenu. Though the said order has been communicated to the Jail Superintendent and the detenu has been permitted to go with the escort, the escort party taking note of the order passed by the District Collector dated 10.04.2023, where the detenu has been permitted to participate in the funeral function only for one day i.e., 10.04.2023 and since they reached the place i.e., residence of the detenu only in the late night of 10.04.2023 after 12.00 mid night, the police authority thought of bringing back the detenu because the District Collector's order says that it is for one day special leave on 10.04.2023 for the purpose of attending the funeral.

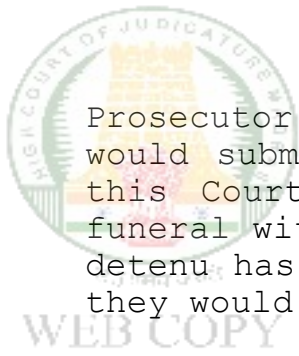
4. Because of which, the detenu had been brought back to the jail in the early morning.

5. In this context, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor would further submit that, the Deputy Superintendent of Police and other police officials had already gathered on the spot from the evening hours to see that no untoward incident takes place as the detenu has been in jail and this is a case of double murder, which is in the investigation stage and therefore, due to the sensitivity some untoward incident may happen, therefore, strict vigil has to be taken, so the police people thought that the funeral would be taken place immediately in the late night hours on 10.04.2023 itself, but that could not be made possible, and therefore the police party thought of bringing back the detenu to the jail. Therefore, on this aspect, the action on the part of the escort party cannot be found fault with, he contended.

6. We have considered the said submissions made by the learned counsel on either side and have taken note of the afore-stated development that has taken place last night.

7. The very purpose of giving such a special leave for one day or 48 hours as conferred under Section 15 of the Act 14 of 1982 read with relevant Government orders referred to is only enabling the detenu to participate in the funeral or last rites to be performed for any close relatives, mother or the father of the detenu and for the very purpose, we passed the order yesterday, i.e., on 10.04.2023, which has also been complied with by the District Collector, who passed a clear order and in the last paragraph of the order, it has been specifically stated that the detenu shall be permitted to participate in the last rites and till it is completed, he must be there and then only he shall be brought back to jail.

8. In view of the aforesaid, when this matter is taken up for hearing today, Mr.A.Thiruvadi Kumar, learned Additional Public



Prosecutor in the afternoon session at 2.30 p.m., on instructions would submit that, as per the directions issued in the morning by this Court, the detenu has been permitted to go and attend the funeral with escort party and the escort party also accompanying the detenu has already started from the Jail concerned at 2.00 p.m. and they would reach the place of funeral around 4.00 p.m.

9. Learned counsel appearing for the petitioner also on instructions would submit that, everybody is waiting for the arrival of the detenu and all final arrangements have been made for the funeral and it will be immediately taken place between 4.00 and 6.00 p.m. and before 6.00 p.m. everything would be over and the detenu would be no more required to stay beyond 6.00 p.m. at the funeral spot.

10. In view of the aforestated, this Court feels that since the detenu has already been taken from the jail by the escort party at around 2.00 p.m. today he shall be permitted to attend the funeral of his father, which has already been scheduled to be conducted between 4.00 and 6.00 p.m. today and after completing the funeral i.e., after 6.00 p.m. immediately the detenu can be brought back to the jail and this must be ensured by the respondent police.

11. In view of the aforestated, no further order is necessary in this criminal miscellaneous petition.

sd/-

11/04/2023

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11/04/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

RR/SJ

TO

- 1 The Additional Chief Secretary
to Government Home Prohibition and
Excise Department Secretariat
Chennai- 600009.
- 2 The District Magistrate and District Collector
Office of the District Magistrate
and District Collector
Thoothukudi District
Thoothukudi.



3 The Superintendent of Prison
Palayamkottai Central Prison
Tirunelveli District.

4 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

ORDER
IN
CRL MP(MD). No.5827 of 2023
in
H.C.P. (MD) NO 1564 OF 2022
Date :11/04/2023

PKP/VR/SAR- /11.04.2023/ **5P/5C**