

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

TUESDAY, THE 27TH DAY OF OCTOBER 2015/5TH KARTHIKA, 1937

WP(C).No. 11732 of 2014 (N)

PETITIONER(S):

**NAJIMI FAROOQ, AGED 40 YEARS, W/O. FAROOQ,
RESIDING AT T.C. NO. 35/474, P.D. NAGAR,
VALLAKADAVU P.O., THIRUVANANTHAPURAM -695 008.**

**BY ADVS.SRI.C.A.MAJEED,
SRI.K.H.ASIF,
SMT.RAAGA R.RAMALAKSHMI,
SRI.K.J.SHARATH KUMAR.**

RESPONDENT(S):

- 1. STATE OF KERALA,
REPRESENTED BY PRINCIPAL SECRETARY,
DEPARTMENT OF HOME AFFAIRS, SECRETARIAT,
THIRUVANANTHAPURAM -695 001.**
- 2. THE ADDITIONAL DIRECTOR GENERAL OF POLICE (PRISONS),
PRISON HEADQUARTERS, POOJAPURA,
THIRUVANANTHAPURAM -695 012.**
- 3. THE SUPERINTENDENT OF CENTRAL PRISON
AND SECRETARY TO JAIL ADVISORY BOARD,
CENTRAL PRISON, POOJAPURA,
THIRUVANANTHAPURAM -695 012.**
- 4. THE SUPERINTENDENT, VIYYUR CENTRAL JAIL,
VIYYUR P.O., THRISSUR DISTRICT - 680 010.**
- 5. THE JAIL ADVISORY BOARD,
VIYYUR CENTRAL JAIL, VIYYUR P.O.,
THRISSUR DISTRICT - 680 010,
REPRESENTED BY ITS CHAIRMAN.**

BY SR. GOVT. PLEADER SRI.ABDUL SALAM.

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27-10-2015, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

rs.

APPENDIX

PETITIONER'S EXHIBITS:-

- EXHIBIT-P1-** TRUE COPY OF THE REQUEST GIVEN BY THE WIFE OF THE PETITIONER OFFICER ON 17/06/2011 TO THE INFORMATION OFFICER, CENTRAL PRISON, POOJAPPURA.
- EXHIBIT-P2-** TRUE COPY OF THE REPLY DATED 20/07/2011 ISSUED BY THE SUPERINTENDENT OF CENTRAL PRISON, THIRUVANANTHAPURAM.
- EXHIBIT-P3-** TRUE COPY OF THE JUDGMENT DATED 26/03/2010 PASSED BY THIS HONOURABLE COURT IN WP(C).NO.29828/2009.
- EXHIBIT-P4-** TRUE COPY OF THE JUDGMENT RENDERED BY THIS HONOURABLE COURT IN WP(C).NO.25633/2011 DATED 24/10/2011.
- EXHIBIT-P5-** TRUE COPY OF THE ORDER ISSUED BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVERNMENT OF KERALA DATED 16/03/2013.
- EXHIBIT-P6-** TRUE COPY OF THE NEWS ITEM PUBLISHED DISPLAYING THE PETITIONER'S HUSBAND'S SKILLS BY THE JAIL DGP, MR.AGA. RAMAN.
- EXHIBIT-P7-** TRUE COPY OF THE NEWS ITEM PUBLISHED DISPLAYING THE PETITIONER'S HUSBAND CONDUCTING THE EVENT HEADED BY CARDINAL MAR CLEMUS CHATHOLICA BAVA.
- EXHIBIT-P8-** TRUE COPY OF THE PETITIONER'S HUSBAND RECEIVING THE CERTIFICATE OF COMPLETION OF COMPUTER EXAMINATION CONDUCTED BY THE IGNOU FROM THE THEN MINISTER.
- EXHIBIT P9-** TRUE COPY OF THE NEWS ITEM REPORTING THE NATIONAL RECOGNITION AWARD GRANTED TO THE PETITIONER FOR OUTSTANDING PERFORMANCE IN PAINTING.
- EXHIBIT P10-** TRUE COPY OF THE JUDGMENT PASSED BY THIS HONOURABLE COURT IN WP(C).NO.20997/2013 DATED 05/12/2013.
- EXHIBIT P11-** TRUE COPY OF THE REQUEST FOR PAROLE SUBMITTED BY THE PETITIONER BEFORE THE 5TH RESPONDENT DATED 04/03/2014.
- EXHIBIT P12-** TRUE COPY OF THE ORDER EVIDENCING THE PROCEEDINGS OF THE OFFICE OF THE SUPERINTENDENT, CENTRAL PRISON VIYYUR, DATED 02/12/2014.
- EXHIBIT P13-** TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY THE ASSISTANT SURGEON OF THE GOVERNMENT CENTRAL HOSPITAL, TRIVANDRUM TO THE PETITIONER'S HUSBAND'S MOTHER, MRS.MEHARUNNISSA, DATED 06/12/2014.

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**EXHIBIT P14- COPY OF THE REPORT ISSUED BY DEPARTMENT OF NEUROLOGY,
GOVERNMENT MEDICAL COLLEGE, TRIVANDRUM.**

**EXHIBIT P15- COPY OF THE APPLICATION DATED 15/12/2014, SUBMITTED TO
THE 5TH RESPONDENT BY THE PETITIONER.**

RESPONDENT'S EXHIBITS:-

**ANNEXURE I COPY OF THE REPORT WITH FIR IN CRIME NO.938, VALIYATHURA
POLICE STATION AND CRIME NO.862, VANCHIYUR POLICE STATION.**

**EXT.R2A COPY OF THE REPORT OF THE DEPUTY COMMISSIONER OF POLICE,
THIRUVANANTHAPURAM CITY.**

**EXT.R2B COPY OF THE MINUTES OF THE PRISON ADVISORY BOARD,
CENTRAL PRISON, VIYYUR (PAROLE RECOMMENDATIONS).**

**EXT.R2C COPY OF THE KERALA PRISONS (AMENDMENT) RULES 2008
(RELEVANT PORTION).**

EXT.R2D COPY OF THE G.O.(RT) NO.682/14/HOME DATED 28/02/2014.

//TRUE COPY//

P.S. TO JUDGE

rs.

A.M.SHAFFIQUE, J

W.P.C.No.11732 of 2014

Dated this the 27th day of October 2015

J U D G M E N T

Petitioner has approached this court seeking for the following directions:

“i) Issue a writ of mandamus or any other writ, order or direction, calling for the records leading to Ext.P-1 to P-11 and direct the respondents to consider and pass appropriate orders for release of the petitioner's husband on parole in accordance with law, with immediate effect;

ii) declare that the denial to consider the petitioner's husband's application by the 5th respondent as illegal;

iii) pass such other writ, order or direction as prayed for by the petitioner in due course which shall be just and proper;

iv) award the cost of the petitioner.”

2. Petitioner is the wife of one Farooq who was convicted and sentenced to life imprisonment in S.C.No.745/99. It is stated that though his co-prisoners were released on parole, petitioner's husband was not granted the said opportunity. By interim orders

dated 25/11/2014 and 08/07/2015, this Court had directed release of the petitioner's husband on parole. During these period, petitioner's husband was on parole for fifteen days each. The contention of the petitioner is that though her husband is entitled for getting parole, police had given report stating that his presence in the locality will create law and order situation.

3. Counter affidavit has been filed by the 2nd respondent inter alia stating that parole is granted based on the guidelines issued under the Prison and Correctional Services (Management) Rules, 2014 (hereinafter referred to as 'the Rules'). It is stated that 35 cases were considered by the Jail Advisory Board on 20/01/2014 and 24 cases have been recommended by the Board for parole. Other cases were not recommended. This was based on the report given by the Deputy Commissioner of Police, Thiruvananthapuram which is produced as Ext.R2(a).

4. Another memo has been filed on behalf of the learned senior Government Pleader, producing the report submitted by the Superintendent of Central Prison, Viyyur, as directed by this Court on 08/07/2015. After referring to the parole granted in favour of the petitioner's husband in paragraph 7, it is stated as

under:

"7. During this period of parole, the SI of police Vanchiyoore registered a crime No.862/15 U/S 506(i) on 21/07/2015 against C.No.1146 Farooq with permission of Judicial First Class Magistrate-II Thiruvananthapuram. Again he was involved in another crime in Valiyathura Police Station limit and registered a crime No.938/15 under section 294(b), 506(i), 341, 34 IPC against him on 26/07/2015 and the enquiry is going on. As per the condition of the parole indulging in crime during the parole period is a violation of the provisions of the Kerala Prisoners and correction services rule (Management Rule 2014). In the interim order of this Hon'ble Court on 08/07/2015, it is stipulated that the convict prisoner should reside in Thrissur District from 21/07/2015. So Central Prison, Viyyur authority has directed the Commissioner of Police, Thrissur, Thiruvananthapuram and Sub Inspector of Police, Vanchiyoore to arrest him if there is a law and order problem and re admit in this prison, Thrissur for his sake as per rule 412 of the Act."

5. Thereafter, it is stated that the petitioner's husband voluntarily came to the prison after completion of the parole period and he was re-admitted in prison. It is further stated that

the conduct of the prisoner's husband inside the prison is satisfactory during the entire period.

6. Having regard to the aforesaid factual situation, the question to be considered is whether this Court can issue a mandamus directing the respondents to grant parole to the petitioner's husband.

7. Rule 397 of the Rules clearly indicates the procedure for granting parole. Normally parole is granted for a period of 60 days in a year. For the purpose of granting parole, necessary report has to be obtained from the concerned police officers regarding the conduct and other particulars of the prisoner. It is, based on the reports so obtained and the report of the Jail Superintendent, that the Jail Advisory Board considers the case of parole. Apparently, each case has to be considered on its own facts and based on the records made available. This Court cannot direct grant of parole especially when the police report is against the petitioner's husband. Jail Advisory Board has to consider the police report and all the necessary parameters including the prisoner's prior conduct at the time when he was sent on parole and thereafter it has to be decided whether future parole could be

granted or not.

8. Having regard to the aforesaid factual situation, I am of the view that it is for the Jail Advisory Board to consider the claim of the petitioner. In the said circumstances, this writ petition is disposed of as under:

It shall be open for the petitioner to submit an application for parole before the 4th respondent, who shall forward the same to the 5th respondent with all necessary reports and the 5th respondent shall consider the same as expeditiously as possible taking into consideration all the reports that are made available in terms with the Rules.

(sd/-)
(A.M.SHAFFIQUE, JUDGE)

jsr

True Copy

PA to Judge

