

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22-06-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION No.12537 of 2015

T.Najeena

... Petitioner

vs

1. State of Tamilnadu
Rep. By the Secretary to Government
Home Department
Secretariat, Chennai 600 009

2. The Additional Director General of
Police and Inspector General
of Prison
Gandhi Irwin Road
Egmore, Chennai 600 008

3. The Superintendent of Prisons
Central Prison
Coimbatore, Coimbatore 641 018

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to consider the petitioner's husband's representations dated 5.2.2015 and 30.3.2015, and to release the petitioner's husband A.Thajudeen, son of Abdul Ghani, aged 53 years, Prisoner No.10662, now confined in Central Prison, Coimbatore, on leave.

For Petitioner : Mr.K.Raghavan

For Respondents : Mr.V.Subbiah
Special Government Pleader
for RR1 to 3

WEB COPY
ORDER

By consent, the writ petition itself is taken up for final disposal.

2.The petitioner is the wife of the convict viz. A.Thajudeen, who was convicted in S.C.No.2 of 2000, by the Special Court for Exclusive Trial of Bomb Blast Cases, Coimbatore, and vide judgment dated 1.8.2007, he was sentenced to undergo Imprisonment for Life.

3.The petitioner would state that her husband is in incarceration for nearly 17 years and since his foster mother viz. Abitha Bee, is suffering due to cancer and she also underwent a surgery recently and is still under medical observation, arrangements have to be made for the marriage of his son viz. Mujahidh, who was 5 years old, when her husband was arrested, and his release on ordinary leave is a necessity and in this regard, her husband has also submitted representations on 5.2.2015 and 30.3.2015, praying for one month leave to attend the above said issues, and since no orders have been passed, she came forward to file this writ petition.

4.The learned Counsel appearing for the petitioner, would submit that as against the judgment of conviction and sentence passed by the trial Court, though a Special Leave Petition has been filed by the petitioner and numbered, it is yet to be moved and in respect of other convicts, appeals have already been numbered and listed for final disposal.

5.The learned Counsel appearing for the petitioner, has drawn the attention of this Court to the order dated 13.10.2014, made in W.P.No.13744 of 2014, and would submit that in that case also, the husband of the petitioner therein was convicted in the very same Sessions Case and he has also preferred Special Leave Petitions in SLP (Crl) Nos.24293 to 24296 of 2010 and pendency of the said appeals, his wife prayed for emergency leave and this Court, taking into consideration the facts and circumstances, has granted the relief vide order dated 13.10.2014, and since the husband of the petitioner herein is similarly placed, he may be granted the relief.

6.Per contra, Mr.V.Subbiah, learned Special Government Pleader, who accepted notice on behalf of the respondents 1 to 3, has strongly opposed the prayer made by the petitioner, by contending that since the Hon'ble Supreme Court of India has already seized of the matter, the remedy open to the petitioner, is to move the Hon'ble Supreme Court of India for appropriate relief and this Court cannot entertain the writ petition.

7.The learned Special Government Pleader, on the merits of the case, would contend that as per the Prison Manual and Rules and Regulations, the petitioner's husband is not entitled to ordinary leave as a matter of right and on that ground also, the writ petition is liable to be dismissed.

8.It is not in dispute that the foster mother of the petitioner's husband is ill and the son of the petitioner viz. Mujahidh, is to get married. The petitioner in the affidavit filed in support of this petition, would specifically aver that when the petitioner's husband was arrested and taken into custody, Mujahidh was aged about 5 years, and now he is above 23 years and his marriage is to be solemnized and further that the presence of her husband is also required to give solace to his foster mother, who is suffering due to the terminal disease of cancer.

9.As rightly contended by the learned Counsel appearing for the petitioner, this Court vide order dated 13.10.2014, made in W.P.No.13744 of 2014, has considered the similar issue and granted relief to the husband of the petitioner therein and therefore, the husband of the petitioner herein is also entitled to the similar relief.

10.In the result, the writ petition is disposed of and the third respondent is directed to grant ordinary leave to the petitioner's husband A.Thajudeen (Prisoner No.10662, confined in Central Prison, Coimbatore) from 11.00 A.M. of 12.7.2015 to 5.00 P.M. of 27.7.2015, with necessary escort - the expenses of which shall be borne by the State Government in the facts and circumstances of the case and in accordance with the Prison Rules, taking into consideration the fact pleaded by the learned Counsel appearing for the petitioner, that the family of the petitioner is having a poor economic status. The petitioner's husband, on his release on ordinary leave, shall report before B1 Bazaar Police Station, Coimbatore, between 5.00 P.M. and 6.00 P.M. on those days, and immediately, on the expiry of the leave, he shall be taken back to the Central Prison, Coimbatore. No costs.

Sd/-
Assistant Registrar(J)

//True Copy//

nsv
To:

Sub Assistant Registrar

1. The Secretary to Government
Home Department
Secretariat, Chennai 600 009
2. The Additional Director General of
Police and Inspector General
of Prison
Gandhi Irwin Road
Egmore, Chennai 600 008
3. The Superintendent of Prisons
Central Prison
Coimbatore, Coimbatore 641 018

Copy To: The Inspector of Police,
Bazaar Police Station, Coimbatore.

+1cc to M/s.S.K.Raghavan, Advocate, S.R.No.30478
+1cc to the Government Pleader, S.R.No.30502

W.P.No.12537 of 2015

PPA(CO)
CA(02/07/2015)