

Crl.O.P.No.6878 of 2016**S.VIMALA, J.**

Habeas Corpus Petition No.595 of 2016 has been converted into Crl.O.P.No.6878 of 2016 as per the direction of the Division Bench and it has been placed before this Court.

2. The petitioner's husband is in judicial custody from 08.08.2014, having been arrested in Cr.No.746 of 2014 under Section 302 IPC on the file of T-2 Ambatur Estate Police Station. After investigation, the case has been altered into Section 341, 307, 302, 153(a) and 120(b) IPC and Section 16(1)(a), 17, 18 and 20 of Unlawful Activities (Prevention) Act, 1967 and final report has been filed in S.C.No.1 of 2015, before the Principal District Sessions Court, Tiruvallur.

3. It is the case of the petitioner that her mother-in-law, Irshad, W/o.Masthan, the mother of her husband, i.e. undertrial prisoner, Sathik Basha, expired on 23.03.2016 at about 3.00 P.M. at St. John Hospital, Bangalore and as her husband, Sathik Basha, has to attend the funeral ceremony and to perform his last rites, he has to be granted leave for six days.

3.1. It is also stated that representation was given to the Superintendent of Prisons, but, the petitioner has been informed that he has no such power to release the under-trial prisoner. Death Certificate dated 23.03.2016 has been produced in support of the contention raised regarding death. On this ground, the learned counsel for the petitioner seeks six days' leave with escort for the petitioner's husband.

4. No need to point out that mother occupies unique place in the life of all animates. Therefore, it is a case where leave has to be granted to the petitioner's husband, in order to enable him to perform his last rites to his mother. This last opportunity should not become lost opportunity.

5. Learned Additional Public Prosecutor appearing for the respondent submitted that as per the Tamil Nadu Prison Manual-III, Rule 14 if police escort is to be provided, (a) it is at the discretion of the Superintendent of Prison, who shall take the decision, considering the danger to the community; (b) the escort can be provided only if the petitioner applying for leave agreed to meet the entire cost of police escort, calculated in terms of the Tamil Nadu Travelling Rules.

6. This contention cannot be accepted as the powers conferred on the Superintendent of Prison, in exercise of the powers delegated under Sub-Section (5) of Section 432 of the Criminal Procedure Code (relating to suspension, remission and commutation of sentences) can be exercised only if the prisoner is a person who has been sentenced to imprisonment for an offence. In this case, the prisoner is an undertrial prisoner and not a convict prisoner. Therefore, the Superintendent of Prison has no authority to decide on the issue regarding allotment of escort.

7. Considering the gravity of the offence alleged, and considering the penurious circumstances of the prisoner, (is in continuous custody for nearly 18 months), this Court directs that the Police escort shall be provided and that it shall be so provided at the cost of the Government.

8. In the result,

a) The Remand Prisoner, namely, Sathik Basha, who is confined in Central Prison-I, Puzhal, is granted Leave for a period of four days, i.e. from 7.00 p.m. on 24.03.2016 to 6.00 p.m. on 27.03.2016, to attend the funeral ceremony of his mother at Bangalore.

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b) The Superintendent of Central Prison-I, Puzhal, is hereby directed to release the prisoner, Sadhik Basha, for the period mentioned in clause(a), on production of this order.

c) it is made clear that the remand prisoner should be brought back to the Central Prison-I, Puzhal, by 6.00 p.m. on 27.03.2016, without fail.

d) The Superintendent of Central Prison or anybody authorized shall provide proper escort to the remand prisoner in order to ensure the safety and security of the remand prisoner.

e) The Remand Prisoner should abide by the conditions to be imposed by the jail authorities.

This petition is ordered accordingly.

24.03.2016

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