



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 21.01.2016

CORAM:
THE HONOURABLE MR.JUSTICE P.R.SHIVAKUMAR
and
THE HONOURABLE MR.JUSTICE V.S.RAVI

H.C.P(MD)No.1616 of 2015

Aajara Begum

.. Petitioner

Vs.

1.State of Tamil Nadu

rep.by its Secretary to Government of Tamilnadu
Home, Prohibition and Excise Department
Fort St.George,
Chennai.

2.The Additional Director General of Police/
Inspector General of Prisons,
CMDA Towers,
Egmore, Chennai - 8.

3.The Superintendent of Prison,
Madurai Central Prison,
Madurai.

4.The District Collector and District Magistrate,
Madurai District, Madurai.

5.The District Collector and District Magistrate,
Dindigul District.

6.The Dean,
Madurai Government Rajaji Hospital,
Madurai.

.. Respondents

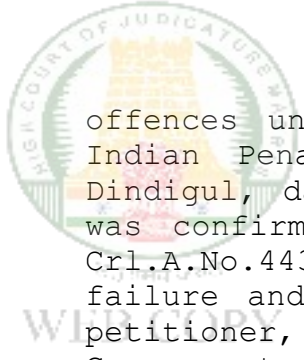
PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Habeas Corpus, to direct the respondents to produce the body and person of the detenu namely Meeran Mideen, aged 48 years S/o.Khadar Mideen who is life convict confining at Madurai Central Prison, now undergoing treatment at intensive care unit at ward No.115 in Madurai Government Rajaji Hospital and set him at liberty by release him under medical grounds forthwith.

For Petitioner
For Respondents

: Mr.R.Alagumani
: Mr.R.Ramachandran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.R.SHIVAKUMAR]



offences under Sections 120(b), 147, 148, 341 and 302 r/w 149 of the Indian Penal Code, by a Judgment of the Principal Sessions Judge, Dindigul, dated 19.07.2005 made in S.C.No.15 of 2002. The said Judgment was confirmed by this Court by its Judgment dated 13.12.2007 made in CrI.A.No.443 of 2005. Contending that her husband suffers from kidney failure and he has been advised to go for kidney transplantation, the petitioner, after making a representation to the Home Secretary, Government of Tamil Nadu for her husband's release on medical grounds, she has approached this Court with the present Habeas Corpus Petition, seeking a direction to the respondents to produce the detenu Meeran Mideen and set him at liberty.

2.The petitioner seems to have made such a prayer relying on Rules 632, 633 and 635 of the Tamil Nadu Prison Rules, 1983.

3.The learned Additional Public Prosecutor, representing the respondents vehemently oppose the prayer, contending that the present Habeas Corpus Petition is nothing but an attempt to escape from the clutches of law after convicted by the trial Court, which came to be confirmed by the High Court. Since the petitioner complained that her husband was terminally ill, this Court directed the constitution of a Medical Board to submit a report as to what is the nature of illness, if any, with which the detenu is suffering and what type of treatment is to be given. The said direction to constitute a Medical Board and submit a report was made in order to find out whether the husband of the petitioner would require a specialised treatment either in the Government Hospitals or in case such facility is not available there, in a private speciality hospital.

4.The Dean, Government Rajaji Hospital, Madurai has written a letter dated 06.01.2016 to the Director of Medical Education, Keelpauk, Channai requesting the constitution of a Medical Board, consisting of Nephrologists in the cadre of Chief Civil Surgeons as sufficient number of Nephrologist in the said rank are not available in the Government Rajaji Hospital, Madurai. Under the said circumstances, the matter stands listed today for further orders.

5.Today, the learned Additional Public Prosecutor took us through paragraph - 3 of the affidavit filed in support of the Habeas Corpus Petition and points out the fact that Special Leave Petitions were filed by the convicted persons including the husband of the petitioner, in Special Leave Petition (CrI) Nos.4545 - 4548 of 2008 before the Hon'ble Supreme Court, challenging the Judgment of the High Court confirming the Judgment of the Sessions Court, convicting the petitioner and others as indicated supra.

6.When asked about the fate of the said Special Leave Petitions, Mr.R.Alagumani, learned counsel for the petitioner submits that the said Special Leave Petitions are still pending, after notices were directed to be issued to the opposite party. When the Special Leave Petitions to file an Appeal against the Judgment of the High Court are pending before the Supreme Court, the petitioner seems to have made an attempt to seek an order by filing the present Habeas Corpus Petition, which will have an effect of making his Special Leave Petition infructuous. When Special Leave Petitions to prefer Appeals against the Judgment of the High Court



confirming the conviction and sentence are pending, it shall be open to the convicted person to seek necessary orders including an order for release on bail on medical grounds.

7. The learned counsel for the petitioner also admits that bail petitions were filed and those petitions have been directed to be listed along with the Appeals. If at all the petitioner wants any temporary relief, such as grant of temporary leave or parole under the Tamil Nadu Prison Rules, 1983, the appropriate authorities could have been approached for the same. On the other hand, the petitioner seems to have made an attempt to make his Special Leave Petition become infructuous by seeking an order for the premature release of the petitioner's husband on medical grounds. When an alternative remedy by way of seeking bail on medical grounds in the Special Leave Petition is available, that too, when such relief can be sought for and obtained from the Supreme Court, this Court shall not venture to grant the relief sought for in this Habeas Corpus Petition. The petitioner has to elect between the right to seek premature release on the ground that the detenu is suffering from terminal illness under the Prison Rules and the challenge made in the Special Leave Petition. The convict through the petitioner cannot seek simultaneously two remedies, out of which, the remedy sought for in this petition will be destructive of the proceedings before the Supreme Court.

8. Hence, we are of the view that the Habeas Corpus Petition is misconceived and the same lacks bona fide insofar as the prayer seeks the final release of the husband of the petitioner prematurely.

9. The finding arrived at by this Court that the Habeas Corpus Petition is misconceived and lacks bona fide so far as the relief sought for in this petition, does not mean that the petitioner cannot seek appropriate relief for the proper treatment of her husband. Hence, while coming to a conclusion that the relief sought for in the Habeas Corpus Petition for setting the husband of the petitioner at liberty cannot be granted, this Court is inclined to mold the relief by issuing a direction to the respondents 1 to 3 to take a decision based on the report of the Medical Board to be constituted regarding the place and nature of treatment to be given to the husband of the petitioner.

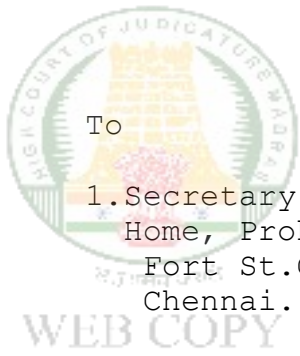
10. Accordingly, the Habeas Corpus Petition is disposed of disallowing the prayer for setting the husband of the petitioner at liberty and at the same time, directing the above respondents to take a decision based on the report of the Medical Board to be constituted regarding the place and nature of treatment to be given to the husband of the petitioner. Connected MP(MD)No.1 of 2015 is closed.

Sd/-

Assistant Registrar(crl.side)

/True copy/

Sub Assistant Registrar



To

1. Secretary to Government of Tamilnadu
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6. The Dean,
Madurai Government Rajaji Hospital,
Madurai.

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

+1cc to M/s.R.Alagumani, Advocate SR.No.3926

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H.C.P (MD) No.1616 of 2015
21.01.2016