

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.1612 of 2017

Gayathri

... Petitioner

-vs-

1.The State of Tamil Nadu,
Represented by its Secretary,
Home Department,
Fort St.George,
Chennai - 600 009.

2.The Superintendent of Central Prison,
Central Prison, Vellore,
Vellore District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, to call for the records made in impugned order G.O.(D) No.668/Home (Prison-III) Department dated 26.05.2017, on the file of First Respondent herein and quash the same as illegal and direct the first respondent herein to grant two months leave to the detainee Lifer Sekar @ Gunasekar, son of Sachithanandan C.No.21210 now confined at Central Prison, Vellore.

For Petitioner : Mr.R.Sankarasubbu
For Respondents: Mr.V.M.R.Rajentran
Additional Public Prosecutor

O R D E R

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. The petitioner, via, the captioned petition, has sought a direction, qua, the respondents to grant two months leave to the detainee/Lifer Sekar @ Gunasekar.

1.1. The petitioner is the wife of the detainee/Lifer Sekar @ Gunasekar. The reason given by the petitioner is that betrothal of her daughter is to take place.

2. Notice in this petition was issued on 30.08.2017.

2.1. Vide proceedings dated 24.11.2017, we had asked the learned counsel for the petitioner to produce relevant materials to demonstrate that efforts are being made to find a bridegroom for the detenue's daughter.

2.2. Admittedly, for this purpose, once again, the matter was listed on 15.12.2017. Since, the counsel for the petitioner had only produced a typed copy of the bio-data of the prospective bridegroom, which, we were not inclined to entertain, unless an affidavit was filed, the matter was adjourned to today i.e. 22.12.2017.

2.3. Counsel for the petitioner has placed on record an affidavit dated 20.12.2017, before us, to support the plea that, one, Mr.Sridhar of Thirunallar has been identified as a prospective bridegroom for her daughter i.e. Ms.G.Ramya. In the affidavit, it is stated that Ms.G.Ramya has studied M.Sc., M.Phil., and, is presently, working as Assistant Professor in Auxium Arts and Science College, Katpadi, Vellore District. It is further stated that Ms.G.Ramya is working in the said college for a period of three years and is at moment aged about 27 years.

3. The learned Additional Public Prosecutor, it appears, has also verified the claim of the petitioner with regard to having found a prospective bridegroom for her daughter. A copy of the letter dated 21.12.2017, addressed by the Superintendent of Central Prison, Vellore District, to the learned Additional Public Prosecutor has also been placed on record.

3.1. The letter is indicative of the fact that there is in fact a person by the name Sridhar and that talks are on for a marriage proposal between Ms.G.Ramya and Mr.Sridhar.

3.2. The record shows that a representation on similar lines was made by the petitioner on 19.09.2016. In that representation a prayer was made for grant of ordinary leave for sixty (60) days to the detenue.

3.3. Since the prison authorities had rejected the representation vide G.O.(D).No.155, dated 07.02.2017, a writ petition was filed in this Court. This writ petition was numbered as W.P.No.4602 of 2017.

3.4. A learned Single Judge of this Court vide order dated 05.04.2017, had disposed of the writ petition with a direction to the official respondents i.e. the State to re-consider the request of the petitioner in line with Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 (in short "1982 Rules").

3.5. It appears that thereafter, the petitioner filed yet another representation dated 29.04.2017. The official respondents via order dated 26.05.2017, after taking into account both the earlier representation dated 19.09.2016 and the representation dated 29.04.2017, came to the conclusion that ordinary leave of 60 days could not be granted to the detainee as the petitioner had not placed on record any material evidence for sympathetic consideration of the request made in that behalf.

3.6. Being aggrieved by the stance taken by the respondents, the petitioner has approached this Court for grant of leave to the detainee.

4. Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor and also perused the records.

5. According to us, the State has misdirected itself in refusing the request for grant of leave as prayed for without making necessary enquiry as indicated above. On the suggestion of this Court, the Superintendent of Prison, Vellore District has confirmed via communication dated 21.12.2017, addressed to the learned Additional Public Prosecutor that the petitioner had in fact identified a prospective bridegroom, that is, one, Sridhar for getting her daughter Ms.G.Ramya married. Having regard to the fact that Ms.G.Ramya is now 27 years of age and is otherwise settled in life, facts which are not denied by the State, are aspects which ought to have been considered while exercising power under Rule 40 of the 1982 Rules. Furthermore, it is required to be noticed that Rule 20(iv) of the 1982 Rules specifically confers power to grant inter alia, ordinary leave, for the purpose of making arrangements for marriage of the prisoner's child.

5.1. Given this position to have the petitioner wait endlessly for the detainee to come out on leave so that a suitable match would be arranged for his daughter, in our view was a sufficient ground to exercise discretion vested in the State under Rule 40 of the 1982 Rules.

6. Therefore, for the reasons articulated above, we are of the view that leave can be granted to the detainee for a period of fifteen (15) days as against one month sought in that behalf by the petitioner vide her affidavit dated 20.12.2017.

6.1. Accordingly, the detainee will be released on leave, for a period of fifteen (15) days. Counsel for the petitioner says that since the auspicious period starts from 17.01.2018, leave be granted for a period of 15 days from that date. It is ordered accordingly.

6.2. The detainee, will surrender on expiry of the leave. The State will assess as to whether or not the detainee requires a police escort. If in the opinion of the State, police escort is required, then, police personnel will be deployed, who will accompany the detainee in civil dress.

7. The petition, is accordingly, disposed of.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home Department,
Fort St.George,
Chennai - 600 009.

2.The Superintendent of Central Prison,
Central Prison, Vellore,
Vellore District.

3.The Public Prosecutor,
Madras High Court,
Chennai.

4. The Joint Secretary to
Government Public (Law & Order),
Fort St. Gorge, Chennai-9.

सत्यमेव जयते

H.C.P.No.1612 of 2017

Dr.CS
EU(11/01/2018)

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