

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
And
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2314 of 2017

Shamma

... Petitioner

-vs-

The State represented by :

1. The Home Secretary,
St. George Fort,
Chennai-600 009.
2. The Additional Director General of Police,
(Head of Prisons),
C.M.D.A. Towers,
Egmore, Chennai-600 008.
3. The Inspector General of Prisons,
Coimbatore Range,
Central Prison Campus,
Coimbatore.
4. The Superintendent,
Central Prison, Coimbatore.

... Respondents

* * *

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the first respondent to grant one month parole to the detainee J.Asalam @ Tada Aslam, S/o.Jailaputheen (C.T.No.18819), aged about 38 years, life convict confined at Central Prison, Coimbatore, to see his wife and his ailing mother on the basis of the representation dated 21.11.2017, to secure the ends of justice.

* * *

For Petitioner : Mr.Sankarasubbu
for M/s.D.Mariojohnson

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. Notice, in this petition, was issued on 05.12.2017. Despite which, no counter affidavit has been filed on behalf of respondents.

2. The only direction that the petitioner seeks, is that, the detinue, who is her husband, be granted one month parole. It is the assertion of the petitioner that she has been married to the detinue for the past six (6) years and during this period, the detinue has been permitted to meet her as well as his mother only five (5) times, that too, between 8.00 a.m. and 5.00 p.m.

2.1. It is further asserted by the petitioner that no parole has been granted to the detinue for the past (4) years. However, a perusal of the affidavit accompanying the petition would show that while, the detinue is undergoing life imprisonment, pursuant to conviction in S.C.No.456 of 2000, there are two (2) other cases, which are pending trial qua the detinue. These being : C.C.No.7 of 2014 and Crime No.1056 of 2010.

2.2. According to the petitioner, these are cases, falsely, foisted on the detinue.

3. Mr.V.M.R.Rajentran, learned Additional Public Prosecutor, says that because trial is pending in the aforementioned cases, under Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 (in short, "the 1982 Rules"), the detinue cannot be granted leave.

4. On the other hand, Mr.Sankarasubbu, who appears for the petitioner, says that the Government had adequate powers under Rule 40 of the 1982 Rules to grant parole. It is also submitted by the learned counsel for the petitioner that a representation was made, in that behalf, on 21.11.2017, which has not been actioned by the respondents, as yet.

4.1. In support of his contentions, learned counsel for the petitioner relies upon the petitioner's marriage certificate dated 20.05.2010, and the medical certificate dated 22.09.2017, pertaining to the detinue's mother.

5. A perusal of the medical certificate would show that, apparently, the detinue's mother has been detected with "Unstable Angina".

6. Given the aforesaid circumstances, we are of the view that, for the moment, a direction to the first respondent to dispose of the petitioner's representation can be issued. It is ordered accordingly.

7. The first respondent will dispose of the petitioner's representation dated 21.11.2017, expeditiously, though, not later than four (4) weeks from the date of receipt of a certified copy of the order passed today.

7.1. While, dealing with the petitioner's representation, the first respondent will also examine the possibility of exercising power under Rule 40 of the 1982 Rules.

7.2. The first respondent will, thus, examine as to whether discretion needs to be employed, given the facts and circumstances obtaining in this particular case.

7.3. Past precedents will also be borne in mind, while, examining the case of the detainee, in that behalf.

7.4. It is made clear that the first respondent will pass a reasoned order; a copy of which will be despatched to the petitioner.

8. The captioned petition is disposed of, in the aforesaid terms.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Secretary,
Home Department,
Government of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Additional Director General of Police,
(Head of Prisons),
C.M.D.A. Towers,
Egmore, Chennai-600 008.

3. The Inspector General of Prisons,
Coimbatore Range,
Central Prison Campus,
Coimbatore.

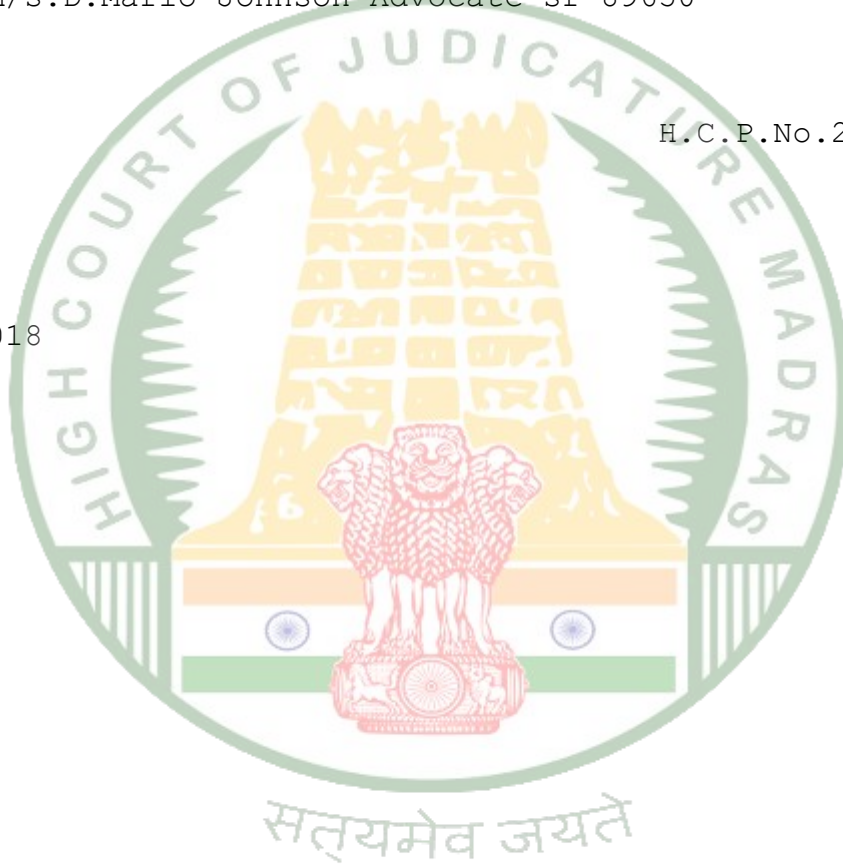
4. The Superintendent,
Central Prison, Coimbatore.

5. The Additional Public Prosecutor,
Madras High Court, Madras.

+1 cc to M/s.D.Mario Johnson Advocate sr 89650

H.C.P.No.2314 of 2017

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