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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 11.12.2017

PRONOUNCED ON : 21.12.2017

CORAM :
THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

H.C.P.[MD].No.1475 of 2017
and
Crl.M.P.(MD).No.9174 of 2017

Aajara Begum .. Petitioner

Vs.

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

2. The State of Tamil Nadu,
   rep. by its Secretary,
   Government of Tamil Nadu,
   Health and Family Welfare Department,
   Fort St. George,
   Chennai.

3 The Inspector General of Prisons,
   Office of the Inspector General of Prisons,
   CMDA Towers,
   Egmore, Chennai -8.

4. The Deputy Inspector General of Police,
   Office of the Deputy Inspector General of Prisons,
   Madurai Division, Madurai.

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

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

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

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8. The Inspector of Police,
Dindigul Town North Police Station,
Dindigul District. .. Respondents

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PRAYER: Habeas Corpus Petition has been filed under Article 226 of the Constitution of India, praying to direct the respondents 1, 3, 4, 5, 6 and 7 to produce the body and person of the detenu namely Meeran Mideen, aged 47 years, son of Khadar Mideen, now confined at Central Prison and set him at liberty under Rule 632, 633 and 635 of the Tamil Nadu Prison Rules 1983.

For Petitioner : Mr.R.Alagumani

For respondents : Mr.C.Ramesh,
Addl. Public Prosecutor

ORDER

R.SUBBIAH, J.

This Habeas Corpus Petition has been filed by the wife of the convict prisoner/detenu viz., Meeran Mideen S/o.Khadar Mideen, aged about 47 years, now confined at Madurai Central Prison, seeking a direction to the respondents 1, 3 to 7 to produce the body or person of the detenu before this Court and set him at liberty under Rules 632, 633 and 635 of Tamil Nadu Prison Rules, 1983.

2. It is stated in the petition that the detenu was implicated as an accused in a case registered in Crime No.19 of 1997 under Sections 120(b), 147, 148, 341 and 302 r/w 149 IPC and after trial, the trial Court, by its judgment dated 19.07.2005, has convicted the detenu under Section 302 IPC and sentenced him to undergo imprisonment for life and the same was also confirmed by this Court in Crl.A.No.443 of 2005 and the Hon'ble Supreme Court in Criminal Appeal No.1168 of 2009. From the year 2012, the detenu is suffering from renal failure and undergoing dialysis for failure of his both kidneys and he has been advised to go for kidney transplantation. Seeking to release the detenu from the prison on health ground under Rule 632, 633, 635 and 636 of Tamil Nadu Prison Rules, 1963, the petitioner had filed H.C.P.(MD) No.1317 of 2013 before this Court. But, the same was disposed of by this Court on 25.08.2014 directing the Dean, Government Rajaji Hospital, Chennai to constitute a committee and provide periodical treatment, depending upon the actual physical condition of the convict.

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3. It is also stated in the petition that in the year 2015, the detenu again suffered kidney failure and he was admitted in

ICU at Government Rajaji Hospital, Madurai. Seeking to release the detenu on medical ground, the petitioner had again filed H.C.P. (MD)No.1616 of 2016. As the criminal appeal was pending before the Hon'ble Supreme Court, this Court had disposed of the said petition, directing the 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. As such, after examination of the detenu, a medical board has given a report that "strict adherence to renal failure diet, compliance to medications and regular nephrolgy follow up may help in retarding the progression of the disease." But, the respondents failed to take action on the basis of the above said report. As there was no specific improvement in the health of the detenu, the petitioner has again filed H.C.P.(MD)No.1115 of 2016. This Court, by order dated 15.03.2017, disposed of the same with a direction to the petitioner to identify the donor for renal transplantation and report the same before the Superintendent of Central Prison, Madurai and if the donor is identified and found fit for donation, then the State Government is directed to bear the expenses for the renal transplantation for the detenu, including post-operative expenses. Though the petitioner found a donor for renal transplantation and made arrangement for transplantation, the caretaker of the donor did not give permission for the same. From 10.09.2017, the detenu has been admitted in Government Rajaji Hospital as inpatient. As the health condition of the detenu is becoming worst day by day, the petitioner has again filed this Habeas Corpus Petition.

4. We have heard the learned counsel for both sides and perused the records carefully.

5. When the matter came up for hearing on 31.10.2017, it is represented by the learned Additional Public Prosecutor that the report of the Medical Board with regard to the health condition of the detenu would be produced as early as possible. Thereafter, the learned Additional Public Prosecutor produced the medical report. It is stated by the petitioner that due to renal failure, the health of her husband / detenu is becoming worse day by day. In the report submitted by the Medical Board, dated 28.11.2017, it is stated that "the detenu has to continue weekly twice hemodialysis life long or upto renal TX either live/ cadaver".

6. According to the provision of Section 632 of the Tamil Nadu Prison Rules, 1983, "if the medical officer considers (i) that any prisoners is dangerously ill and that his illness has not been purposely caused or aggravated by the prisoner himself (ii) that his illness, whether caused by imprisonment or not, will be so aggravated by further imprisonment as to render his early death likely, and (iii) that the prisoner will have a reasonable chance of recovery if released, he shall record a certificate as provided in the Rules. According to the provision of Section 633

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of the Rules of the Tamil Nadu Prison Rules, if a Medical officer considers that any prisoner is in danger of death from sickness not due to infectious disease and that there is no hope of recovery within or without the prison, he shall give a certificate as provided in the Rules.

7. Here, in this case, it is seen that the detenu has been taking treatment for renal failure from the year 2012. According to the medical report, his renal function has gradually deteriorated. From the opinion of the Medical Board that the detenu has to continue hemodialysis weekly twice life long or upto renal TX either live / cadver, it is clear that the life of the detenu is in danger. However, it is not known as to whether the renal transplantation would rejuvenate his health.

8.In view of the above, this Habeas Corpus Petition is disposed of with the following directions:

The 5th respondent viz. the Superintendent of Prison, Central Prison, Madurai is directed to get an appropriate medical certificate from the medical officer and consult with the District Collector about the desirability of releasing the detenu and forward a report to the first respondent, in accordance with law, within a period of ten days from the date of receipt of a copy of this order. The first respondent shall consider the report to be submitted by the 5th respondent and decide the same on merits and in accordance with law, within a period of one week from the date of receipt of the report from the 5th respondent.

9.Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To
1. The Secretary,
   Government of Tamil Nadu,
   Home Department,
   Fort St. George,
   Chennai - 600 009.

2. The Secretary,
   Government of Tamil Nadu,
   Health and Family Welfare Department,
   Fort St. George,
   Chennai.

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

8. The Inspector of Police,
   Dindigul Town North Police Station,
   Dindigul District.

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

+1cc to Mr.R.Alagumani, Advocate Sr.No.94685

GCG

VB/JC/SAR4/29/12/2017/5P/11C

Order made in
H.C.P.[MD].No.1475 of 2017
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