

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2018

CORAM

THE HONOURABLE Dr.JUSTICE S.VIMALA
AND
THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAM

H.C.P.No.1133 of 2018

Faritha

... Petitioner

versus

The State Rep. By its

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

2. The Additional Director General
of Prison,
C.M.D.A. Towers,
Egmore, Chennai - 600 008.

3. The Superintendent,
Special Sub-Jail,
Poonamallee.

... Respondents

Hebeas Corpus Petition filed under Article 226 of the Constitution of India, seeking for the issuance of writ of Hebeas Corpus, to direct the respondents to grant leave for 30 days to the detenu, S.A.Athullah, S/o.Abdhul Rehman, aged about 51 years, under judicial custody and detained at Special Sub-Jail, Poonamallee, Chennai.

For Petitioner : Dr.S.Manohar
For R1 to R3 : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

DR.S.VIMALA, J.,

The petitioner has sought for leave for her husband, who has been detained in prison in respect of offence under Section 302, 153(A), 120(b), 212 IPC and also under Sections 18, 19 and 20 of Unlawful Activities Prevention Act, in Crime No.746 of 2014, to perform their son's marriage on 24.06.2018.

2. It is submitted by the learned counsel appearing for the petitioner that the petitioner's husband/accused was remanded in custody on 09.08.2014 and he continues to be in custody without even bail being granted. However, the bail application filed has also been rejected on the ground of maintainability by order dated 11.06.2018. The said order is extracted hereunder:

S.R.No.452/2018

in C.C.No.1/2016

Date : 11.06.2018

Perused. This petition has been filed today by the learned Counsel for A14-Athaulah u/s.439 of Cr.P.C. for bail.

By orders dated 28.04.2018 passed in Crl.R.C.No.223 of 2017 and Crl.M.P.No.2166 of 2017 and Crl.R.C.No.36 of 2018 and Crl.M.P.No.219 of 201, the Hon'ble High Court, Madras has held that the issuance of Executive Notification for transferring this case to this Court vide G.O.(Ms) No.722 dated 13.10.2016 is non est in the eye of law and held that all the proceedings carried out by this Court in this case are without jurisdiction and directed this Court to send all the records of this case to the file of learned Principal District and Sessions Judge, Thiruvallur, within a period of two weeks from the date of receipt of that order. A copy of the said order has been received in this Court today (11.06.2018) and the records of this case will be sent to the Principal District and Sessions Court, Thiruvallur within a few days.

Hence, this petition cannot be entertained by this Court and accordingly, it is rejected."

Under such circumstances, the learned counsel for the petitioner submitted that as the presence of petitioner's husband is needed for performing the marriage of his son, the petitioner has filed this petition before this Court.

3. The learned Additional Public Prosecutor submitted that the detenu is not a convicted prisoner and he is only a remand prisoner. Therefore, a communication has been issued by the Superintendent of Prison addressed to the Prosecutor stating that no leave can be granted.

4. The fact remains that the detenu is in continuous custody for a period of four years and by this time, trial should have been over. But, there is no symptom for commencement of trial in near future. Without concluding the trial and keeping the detenu in remand, there is no justification in refusing to grant leave.

5. The learned Additional Public Prosecutor further submitted that some security issue may arise, if the accused is released on leave.

6. It is always open to the respondents to take care of the security issue and that cannot be the reason to refuse leave. Therefore, the petitioner's husband can be permitted to be released on leave subject to security given by the respondent Police.

7. Under such circumstances, the petitioner's husband is permitted to be released on leave for a period of seven days starting from 22.06.2018. The detenu shall surrender on 28th June 2018 by evening 6.00 p.m.

8. This Habeas Corpus Petition is ordered accordingly.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government
of Tamilnadu,
Department of Home,
Fort St. George,
Chennai - 600 009.
2. The Additional Director General
of Prison,
C.M.D.A. Towers,
Egmore, Chennai - 600 008.
3. The Superintendent,
Special Sub-Jail,
Poonamallee.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Dr.S.Manoharan, Advocate in sr.no.38612

H.C.P.No.1133 of 2018

nr 21/06/2018