

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

CORAM:

THE HON'BLE Dr. JUSTICE S.VIMALA
AND
THE HON'BLE MRS. JUSTICE S.RAMATHILAGAM

Habeas Corpus Petition No.1142 of 2018

S.Parijan ... Petitioner /
Wife of the detainee
versus

The State, Represented by its

1. The Secretary to Government of Tamil Nadu,
Department of Home, Fort St. George, Chennai 600 009
2. The Additional Director General of Prison,
CMDA Towers, Egmore, Chennai 600 008
3. The Superintendent,
Central Prison, Kovai

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to call for the records pertaining to the impugned order issued by the third respondent, dated 15.05.2018 and to quash the same and to direct the first respondent to grant leave at least for 30 days to the petitioner's husband, the detainee, Shahul Hameed @ Afthar, aged about 46 years, Convict No.18818 detained at Central Prison, Kovai.

For Petitioner : Dr. S.Manohar, for, M/s. Narayanan
For Respondents : Mr. R.Prathap Kumar, APP.,

O R D E R
सत्यमेव जयते

(Order of the Court was made by S.Vimala, J.,)

This Habeas Corpus Petition has been filed by the petitioner (wife of the detainee) seeking to quash the impugned order passed by the third respondent, dated 15.05.2018 and to direct the first respondent to grant leave at least for 30 days to the petitioner's husband, the detainee, Shahul Hameed @ Afthar, aged about 46 years, Convict No.18818 detained at Central Prison, Kovai, on the ground of the detainee's daughter's marriage.

2. It is stated by the petitioner / wife of the detainee that their daughter's marriage has been fixed for 01.07.2018 at Sangamam Thirumana Mandapam, Potthanur Main Road, Coimbatore.

It is further stated that her husband has to come and arrange the money and preparations for the marriage and as per Muslim customs and rituals, as a father he has to do all the daughter's marriage ceremonies before and after marriage; hence, the petitioner prays to grant leave at least 30 days to her husband, the detainee.

3. The learned counsel appearing for the petitioner / wife of the detainee submitted that earlier the petitioner has filed HCP No.945 of 2018 seeking to grant leave for the detainee, but the same was rejected by the third respondent, on 15.05.2018, stating that the case is pending for trial and hence, the detainee is not eligible for ordinary leave; once again, the petitioner has filed another petition in HCP No.1087 of 2018 seeking to grant leave to the detainee, but the same was closed on 08.06.2018 by this Court due to incorrect prayer made by the petitioner.

4. The learned counsel appearing for the petitioner / wife of the detainee submitted that, as per Rule 22 of the Tamil Nadu (Suspension of Sentence) Rules, 1982, (in short "the Rules") the detainee is eligible for ordinary leave and Rule 40 of the said Rules provides for the exemption from all the earlier rules and the Government is entitled to consider the case of the petitioner on the ground of marriage in the detainee's family.

5. Under Section 20 (iv) of the Rules, the grounds for granting ordinary leave embrace "to make arrangement or to participate in the marriage of the prisoner's sons, daughter, full brother or full sisters, as the case may be, of the prisoner".

6. The above provision makes it clear that the prisoner is eligible for ordinary leave to participate in the marriage of their sons or daughters. Further, the detainee has served the sentence nearly 20 years, hence, he is eligible for ordinary leave under Rule 22 of the said Rules. Just because, yet another case is pending trial, it cannot be said that the Rules applicable to convict prisoners will not be applicable to the petitioner's husband.

7. In view of the above, we are of the view that the petitioner's husband / detainee shall be given parole (ordinary leave) for a period of five days, starting from 28.06.2018, 10.00 am to 02.07.2018, 06.00 pm.

8. Accordingly, this petition is disposed of and the convict prisoner / the detainee, Shahul Hameed @ Afthar, aged about 46 years, Convict No.18818 is permitted to go on temporary leave

for a period of five days, i.e. from 28.06.2018, 10.00 am to 02.07.2018, 06.00 pm. Till such time, the sentence remains suspended and the respondents are directed to release the husband of the petitioner on 28.06.2018, 10.00 am, upto 02.07.2018, 06.00 pm, subject to the following conditions:-

- (i) The respondents shall follow all the usual procedures and safeguarding measures in accordance with the Prison Manual; and
- (ii) The respondents shall provide escorts to the detainee, who shall be in civil dress.
- (iii) The cost for the services of the escorts shall be borne by the State Government.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government of Tamil Nadu,
Department of Home, Fort St. George, Chennai 600 009
2. The Additional Director General of Prison,
CMDA Towers, Egmore, Chennai 600 008
3. The Superintendent,
Central Prison, Coimbatore
4. The Public Prosecutor, High Court, Madras.

+1cc to Dr. S.Manohar, Advocate sr.no.37854

सत्यमेव जयते

H.C.P.No.1142 of 2018

nr 20/06/2018

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