

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2018

CORAM:

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

Habeas Corpus Petition No.1481 of 2018

K.Fathima ... Petitioner
versus

The State, Represented by its:

1. The Deputy Inspector General of Prison (DIG),

CMDA Towers, Egmore, Chennai 600 008

2. The Superintendent, Poonamalli Sub Jail,

Poonamallee Karayanchavadi,

Chennai 600 056

... Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying for a direction to direct the respondents to grant leave for 30 days to the detenu, Kuthbudeen, S/o. Kamaulddin, aged about 28 years, under judicial custody and detained at Special Sub-Jail, Poonamallee, Chennai.

For Petitioner : Dr. S.Manoharan

For Respondents : Mr. R.Prathap Kumar, APP.,

O R D E R

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

The petitioner has sought for leave for her son, who has been detained in prison in respect of the offence under Sections 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 her daughter's marriage on 12.08.2018. The detenu is the son of the petitioner.

2. Heard the learned counsel appearing for both sides.

3. It is stated by the learned counsel appearing for the petitioner that as per the Muslim customs and rituals, the presence of the detenu, i.e., brother is preferred and it has become the duty of the brother to do some ceremonies

before and after the marriage; hence, the petitioner prays to grant leave at least seven days to the detainee.

3.1. In support of the said contention, the marriage invitation of the petitioner's daughter has been filed.

4. The learned Additional Public Prosecutor submitted that the detainee is not a convicted prisoner and he is only a remand prisoner. The learned Additional Public Prosecutor further submitted that in the event of releasing the accused on leave, some security issue may arise.

5. The fact remains that the detainee is in continuous custody for a period of four years and by this time, trial should have been over. But, there is no signal for commencement of trial in near future. Without concluding the trial and keeping the detainee in remand, there is no justification in refusing to grant 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 son can be permitted to be granted leave subject to security given by the respondents / Police.

7. Under such circumstances, the petitioner's son is permitted to go on leave for a period of three days, starting from 11.08.2018, 10.00 am. The detainee shall surrender back on 14.08.2018, 10.00 am.

8. Accordingly, this petition is disposed of, and the detainee, Kuthbudeen, S/o. Kamaulddin, aged about 28 years, under judicial custody and detained at Special Sub-Jail, Poonamallee, Chennai, is permitted to go on temporary leave for a period of three days, as stated supra. Till such time, the sentence remains suspended and the respondents are directed to release the son of the petitioner on the said date and time, subject to the condition that the respondents shall follow all the usual procedures and safeguarding measures in accordance with the Prison Manual. No costs.

Srk

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Inspector General of Prison (DIG),
CMDA Towers, Egmore, Chennai 600 008

2. The Superintendent, Poonamalli Sub Jail,
Poonamallee Karayanchavadi,
Chennai 600 056
3. The Public Prosecutor, High Court, Madras.
4. The Superintendent of Prisons, Special Sub-Jail,
Poonamallee, Chennai.
5. The section officer
criminal section,
high court
madras.

+1 cc to Mr.S.MAHADEVAN Advocate SR.NO.51739

H.C.P.No.1481 of 2018

AR(CS-II)
ASK(06/08/2018)



31.07.2018

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