

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.08.2018

CORAM

THE HONOURABLE Mr. JUSTICE C.T.SELVAM  
AND  
THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

HCP No.1673 of 2018

Mohammed Ghouse

.. Petitioner

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,  
C.M.D.A. Towers,  
Egmore, Chennai-600 008.

3.The Superintendent,  
Central Prison, Coimbatore.

... Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of Habeas Corpus, directing the respondents to grant leave from 25.08.2018 for three months to the detenu, Mohammed Azam, Convict No.10709, S/O.John Basha, Aged About 40 years detained at Kovai for his marriage.

For Petitioner : Mr.DR.S.Manoharan

For Respondents: Mr.M.Mohamed Riyaz,  
Additional Public Prosecutor.

ORDER

(Order of the Court was made by C.T.SELVAM, J.)

The brother of the Petitioner is a life convict undergoing life imprisonment (Convict No.10709) at Central Prison, Coimbatore, he having been convicted under judgment dated 25.10.2007 in S.C.No.2 of 2000 on the file of Special Court for Bomb Blast Cases, Coimbatore, such conviction and sentence having been confirmed upto the Apex Court.

2. Petitioner informs that his brother, who has been in custody over 20 years and now is aged 40 years, is to get married on 01.09.2018 and accordingly, petitioner made a representation on 17.07.2018 to the respondent seeking leave for three months for his brother, which has not received favourable consideration. Hence, petitioner has moved present petition seeking LEAVE for three months before and after the date of marriage on 01.09.2018.

3. We have heard learned counsel for petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor for respondents as also perused the counter filed by third respondent and Probation Officer's report.

4. Probation Officer's report informs that the representation regards marriage arrangements for convict prisoner are correct.

5. In decision of this Court in Ramakrishnan Vs. The State of Tamil Nadu, Rep. by the Secretary to Government (Home Department) Govt. of Tamil Nadu, Fort St. George, Madras - 9 and another 1993 [Law Weekly Criminal Page 181], at paragraph No.4, this Court has observed as follows :

"On a careful consideration of the matter, I think this is a case where this Court can well exercise its powers under S.482 CrI.P.C. and grant parole and suspension of sentence to the petitioner for a period of 15 days. The earlier applications of the petitioner to the Government were for the grant of ordinary leave. With reference to those applications, the Government called for reports from the Probation Officer and since his reports proved to be adverse, the Government was not inclined to grant ordinary leave. The present situation is entirely different. The petitioner's sister is getting married on the 17<sup>th</sup> of July 1982. The petitioner's counsel has produced a printed invitation to show that the marriage of the petitioner's sister is to be celebrated on the 17<sup>th</sup> of July, 1983. It can, therefore, be taken that the leave asked for is of an emergent nature. In such circumstances, routine factors which normally to be taken note of before granting leave cannot have any part to play. In extra-ordinary situations, the Courts should relegate technical and procedural matters to the background and take human factors into consideration and give relief to the parties within the bounds of law. Otherwise, the functioning of Courts would be only

as Courts of law and not as Courts of justice. The words "to secure the ends of justice", occurring in S.482 CrI.P.C., have real meaning and content in them and hence the High Court is bound to exercise its inherent powers on all such occasions when it deems it its duty to do so."

Such view expressed by the learned Single Judge of this Court has found acceptance of a Division Bench of this Court in M.Kandasamy Vs. State of Tamilnadu [1988 (1) MWN (Cr.) 11].

6. Following the rationale of the above orders and considering the particular facts of the case, this Court deems it appropriate to grant leave for a period of 30 days.

7. Accordingly, we pass the following order:

(a) Respondents are directed to grant leave for 30 days to the detenu Mohamed Azam, convict prisoner No.10709, commencing from 30.08.2018 and concluding on 29.09.2018. The detenu shall surrender before the respondent on 30.09.2018 at 10.00 a.m.

[b] The Superintendent of Central Prison, Coimbatore is hereby directed to pass appropriate orders for releasing the detenu, granting him thirty days leave.

[c] The Jail Authorities are directed to release the detenu, namely, Mohamed Azam, convict prisoner No.10709 on production of this order on 30.08.2018.

[d] It is made clear that the detenu should be brought back to the Central Prison, Coimbatore, by 10.00.a.m. on 30.09.2018 without fail.

[e] The Jail Authorities during the period of LEAVE, shall provide proper escort to the detenu in order to ensure the safety and security of the detenu at the cost of the State. They shall also impose suitable conditions to that effect.

[f] The detenu should also abide by the conditions to be imposed by the authorities concerned.

8. With the above direction, this Habeas Corpus Petition shall stand closed. Post the Habeas Corpus Petition on 01.10.2018 for Reporting Compliance.

Sd/-  
Assistant Registrar(CS VI)

//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,  
C.M.D.A. Towers,  
Egmore, Chennai-600 008.
- 3.The Superintendent,  
Central Prison,Coimbatore.
- 4.The Public Prosecutor,  
High Court, Madras.
- 5.The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.DR.S.Manoharan, Advocate sr.no.58227

HCP.No.1673 of 2018

nr 28/08/2018

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