

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

H.C.P.No.2340 of 2017

Banumathi Petitioner

-vs-

- 1.The Chief Secretary to the Government,
Union of Puducherry
Chief Secretariat,
Puducherry.
- 2.The Inspector General of Prison
Government of Puducherry
Jail Department, Puducherry.
- 3.The Chief Superintendent of Jails
Government of Puducherry
Jail Department, Puducherry.
- 4.The Superintendent of Central Prison
Kalapet, Puducherry (Union Territory of Puducherry)
Puducherry. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to grant one month parole to petitioner's husband Karuna @ Manoharan, S/o.Subramani, aged about 48 years, who is confined in Central Prison Puducherry.

For Petitioner : Mr.R.Thamaraiselvan

For Respondents: Mr.D.Bharatha Chakaravarthy
Public Prosecutor (Pondicherry)

O R D E R

[Order of the Court was made by RAJIV SHAKDHER, J.]

1. This is a petition, whereby the wife of the detenu has sought parole for one Mr.Karuna @ Manoharan, The reason based on which, such a direction is sought, is that the daughter of

the petitioner and the detenu is to get married on 22.01.2018. We are informed that the reception of the couple is fixed on 23.01.2018. Upon issuance of notice in the petition, counter affidavit has been filed on behalf of the Union Territory of Puducherry.

2. The learned Public Prosecutor based on the counter affidavit has opposed the release of the detenu on parole, principally, on the ground that a case pends against the detenu. This contention is advanced based on Rule 631 of the Pondichery Prison Rules, 1969 (in short "the 1969 Rules").

3. Faced with this difficulty, the petitioner's counsel filed an additional affidavit, indicating therein that the aforementioned Rule had not been enforced by the concerned authorities, even handedly. The additional affidavit filed on behalf of the petitioner sought to bring to fore instances, where parole had been granted to persons, who were also life convicts like the detenu and had cases pending against them.

4. In response to the additional affidavit, the learned Public Prosecutor has filed an affidavit-in-rejoinder. Based on the rejoinder, the learned Public Prosecutor has submitted that except for Mr.V.M.Shankar, whose name has been reflected three times over, as he has several aliases, all other persons were released on parole, when, cases were not pending against them. The learned Public Prosecutor further submits that since the detenu is a habitual offender and is, allegedly, a leader of a gang his release on parole, could cause difficulties for the police authorities.

5. As was natural, the counsel for the petitioner contradicted the submissions made on behalf of the learned Public Prosecutor.

6. Having heard counsels on both sides and perused the record, we are of the view that Rule 631 does not bar the discretion of the authorities concerned to grant parole to a detenu pending trial of the case against him. In our opinion, Rule 631 has to be read along with Rule 608 of the 1969 Rules. The true scope, ambit and effect of the power of the concerned authority to grant parole can only be appreciated, if both rules are read together. For the sake of convenience the provisions of Rule 631 and 608 are set out hereafter:

"631. Pending cases: No prisoner who has a case pending trial shall be granted parole leave and sentence for the purpose of these rules shall be taken as sentence as finally fixed on appeal revision or otherwise and includes an aggregate of more sentence than one and an imprisonment in default of furnishing security of payment of fine.

608. Grounds for the grant of ordinary

parole leave: Grounds for the grant of ordinary leave shall be_

- (a) marriages of sons and daughters;
- (b) settling family disputes like partition, etc.;
- (c) agricultural operation like sowing, harvesting, etc.;
- (d) any other extraordinary reasons"

7. A quick scan of Rule 608 would show that marriages of sons and daughters of the prisoners is a circumstance, in which, the concerned authority can grant ordinary parole. This provision is made in clause (a) of Rule 608. Besides this, there is a residuary power conferred on the concerned authorities for grant of parole, "for any other extraordinary reasons" under clause (e) of the very same Rule. Thus, while Rule 631 would, ordinarily, prohibit grant of parole to a prisoner pending a trial, it does not inhibit the grant of parole leave to a prisoner if the circumstances, which are adverted to in Rule 608 of the 1969 Rules subsists. The only caveat, to our minds, would be that the power has to be exercised by the concerned authority based on facts and circumstances obtaining in each case.

8. The fact that the learned Public Prosecutor has accepted that at least, in one case, parole was granted when trial was pending would have us come to the conclusion that this power could have only been exercised under Rule 608 of the 1969 Rules. Thus, the concerned authorities, to our minds, cannot take the stand parole leave was granted to, one, Mr.V.M.Shankar, when no power to grant parole vested in them. Therefore, given the fact that the detenu's child is to get married, in our opinion, is a circumstance, which requires exercise of the power to grant parole. Prisoners, who suffer sentence in accordance with law, require social interaction. Social interaction, according to us, is necessary, if the reformatory spirit of penal law is to be taken forward in true sense.

9. Therefore, for the aforesaid reasons, we are inclined to direct the concerned authorities to grant parole leave to the detenu commencing from (forenoon) 20.01.2018. The detenu will surrender before the concerned authority on 24.01.2018 by 5.00 p.m.

10. Since, the learned Public Prosecutor has expressed his concern, relating to the aspect of security, the concerned police authorities will ensure that the detenu is escorted and safely returned to the custody of the concerned Jail Superintendent.

11. The counsel for the petitioner says that the cost incurred for providing necessary police escort will be borne by the petitioner. This statement made on behalf of the

petitioner is taken on record.

12. The petition, is disposed of in terms of the aforesaid directions.

Sd/-
Assistant Registrar (CS-iii)

//True Copy//

Sub Assistant Registrar

vsm

To:

- 1.The Chief Secretary to the Government,
Union of Puducherry
Chief Secretariat,
Puducherry.
- 2.The Inspector General of Prison
Government of Puducherry
Jail Department, Puducherry.
- 3.The Chief Superintendent of Jails
Government of Puducherry
Jail Department, Puducherry.
- 4.The Superintendent of Central Prison
Kalapet, Puducherry (Union Territory of Puducherry)
Puducherry.
- 4.The Public Prosecutor, (Puducherry)
Madras High Court,
Madras.

+2cc to Mr.R.THAMARAISELVAN, Advocate, S.R.No. 2566

H.C.P.No.2340 of 2017

NRJK (CO)
TR(12/01/2018)

WEB COPY