

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.04.2018

Coram

THE HON'BLE MR.JUSTICE M.VENUGOPAL
&
THE HON'BLE MRS.JUSTICE R.HEMALATHA
H.C.P.No.536 of 2018

M.Shakila Banu

... Petitioner

Vs.

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,
Puzhal-I
Chennai.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to grant leave for three months, from 20.04.2018 to the detenu, M.M.Abdul Hakkim, S/o.Mohammed Malangu, aged about 42 years, Convict No.4660 detained at Central Prison, Puzhal-I, Chennai for his marriage and pass such further or

others orders.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.R.Ravichandran,
Addl. Public Prosecutor.

ORDER

(Order of the Court was made by **M.VENUGOPAL, J.**)

The Petitioner has filed the instant Habeas Corpus Petition praying for passing of an order by this Court in directing the Respondents to grant leave for three months from 10.04.2018 to the detenu, M.M.Abdul Hakkim, S/o.Mohammed Malangu, (aged about 42 years, Convict No.4660) detained in Central Prison, Puzhal-I, Chennai for his marriage on 15.04.2018 at Coimbatore.

2. Heard the Learned Counsel for the petitioner and the Learned Additional Public Prosecutor for the Respondents 1 to 3.

3. According to the Petitioner, her brother viz., the detenu, M.M.Abdul Hakkim (Convict No.4660) detained in Central Prison, Puzhal-I, Chennai is in jail for 20 years and that he is aged about 40 years old.

4. The plea of the petitioner is that she had arranged the marriage for her brother viz., the detenu M.M.Abdul Hakkim, S/o.Mohammed Malangu, (Convict No.4660) detained in Central Prison, Puzhal-I, Chennai and the date of marriage is slated on 15.04.2018 at T.N.T.J.Marcus, Bhilal Nagar, South Ukkadam, at Kovai-1. As a matter of fact, as per their customs, traditions and faith, various formalities and ceremonies are to be performed prior to the marriage and thereafter.

5. The stand of the petitioner is that their parents expired and she being the sister is taking care of her brother viz., M.M.Abdul Hakkim (the detenu) and furthermore, he is in need of making sort of arrangements for his marriage. Hence, the present Habeas Corpus Petition is filed by the petitioner seeking grant of leave for three months to his brother.

6. At this stage, the Learned Counsel for the Petitioner submits that as per Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982, the grounds for granting ordinary leave are set out as under:

- (i) to make arrangements for the livelihood of his family and for the settlement of life after release;
- (ii) to make arrangements for the admission of the children in the school or college;

(iii) construction of repairing the homestead;

(iv) to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sisters, as the case may be, of the prisoner

(v) settling family disputes like partition, etc,;

(vi) agricultural operations like sowing, harvesting etc;

(vii) any other extraordinary reasons; and

(viii) in case of female pregnant prisoners, for having delivery outside the prison.

7. The forceful plea taken on behalf of the Petitioner is that for an ordinary leave, the detenu is ready to produce the surety bond with two witnesses in Form-II, to comply with the conditions mentioned in Rule 23 of the Tamil Nadu Suspension of Sentence Rules, 1982. The detenu's sister viz., the Petitioner had addressed a representation on 07.03.2018 to the Respondents, by means of registered post seeking grant of leave for three months on the basis of detenu's marriage (her brother's marriage). The detenu also sent a representation to Respondent Nos.1 and 2 through the third Respondent and the same was submitted on 12.03.2018. However, there is no positive reply from the Respondents.

8. By means of reply, the Learned Additional Public Prosecutor for the Respondents brings to the notice of this Court that the petitioner's brother, life Convict No.4660 (the detenu) was concerned in Crime No.464/1996 of Magore Police Station, he was convicted by Learned Sessions Judge, Nagapattinum on 07.04.2005 in S.C.No.240/2003 and was sentenced to undergo life imprisonment under Section 302 IPC r/w 109 IPC, RI for 5 years under Section 449 IPC, RI for 3 years under Section 307 r/w 149 IPC and RI for 6 months under Section 324 IPC. The judgment of the Trial Court was upheld by this Court in C.A.No.359/2005 on 16.08.2008. Finally, the Honourable Supreme Court was pleased to dismiss the detenu's appeal in C.A.No.567/2012 on 06.08.2014.

9. The Learned Additional Public Prosecutor for the Respondents proceeds to point out that the detenu insofar as Crime No.151/98 of B-1, Police Station, Coimbatore was concerned, he was convicted by the Sessions Court for Bomb Blast Cases, Coimbatore on 25.10.2007 in S.C.No.2/2000 and was sentenced to undergo RI for 10 years under Sections 120-B(1) r/w. 109, 111, 114, 148, 149, 212, 302, 307, 353, 449, 465, 468 and 471 of IPC, Sections 3, 4(b), 5 and 6 of the Explosives Substances Act 1908 and Sections 3(i) and 4 of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, RI for 7 years under Section 4(b) of the Explosive Substances Act, 1908 and RI for 3 years under Section 153 (a)(1) IPC and all the sentences were ordered to run

concurrently. The petitioner's brother/Life convict prisoner had undergone about 18 years of imprisonment as on 28.03.2018.

10. It is represented on behalf of the Respondents that as per Rule 22(iv) of the Tamil Nadu Suspension of Sentence Rules, 1982, the maximum period of ordinary leave shall not exceed one month at a time unless it is extended by the Government. Also that the third respondent does not have power to grant one month ordinary leave and it is for the Government or the competent authority/Deputy Inspector General of Prisons, who can grant ordinary leave as per Rule 19 of the Tamil Nadu Suspension of Sentence Rules, 1982.

11. The Learned Additional Public Prosecutor for the Respondents submits that the petitioner's brother (the detenu) M.M.Abdul Hakkim, S/o.Mohammed Malangu had not given any representation addressed to the Government of Tamil Nadu to be forwarded through the third respondent. Furthermore, as per Rules, there is no provision to grant three months of ordinary leave as prayed for by the petitioner, which was conveyed to the petitioner through third respondent's letter/communication dated 26.03.2018.

12. In view of the fact that the petitioner (sister of the detenu) has prayed for the grant of three months ordinary leave for her brother's marriage, which is fixed on 15.04.2008, this Court taking note of the respective

contentions and also bearing in mind the relevant ingredients of Tamil Nadu Suspension of Sentence Rules, 1982, grants one month ordinary leave as requested by the petitioner from 12.04.2018, subject to the following conditions:

(i) the Detenu Mr.M.M.Abdul Hakkim, S/o.Mohammed Malangu (Convict No.4660) should execute a bond to the extent of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the third respondent/the Superintendent, Central Prison, Puzhal-I, Chennai;

(ii) the Detenu shall report at the Ukkadam Police Station, Coimbatore daily at 11.00 a.m., without fail;

(iii) the Detenu shall stay/reside at No.830, LMR Street, Vincent Road, Kovai-1 (the petitioner's/sister's address) and the same shall be intimated to the Superintendent of Prisons, Coimbatore or the Deputy Inspector General of Prisons or the Government as the case may be.

(iv) the detenu during his ordinary Leave period of one month, shall not commit any offence and he shall maintain good behavior/conduct. Further he shall not indulge in or commit any offence during his one month Leave period.

(v) the Detenu shall not associate with bad antecedents characters or lead a dissolute Life.

(vi) the Third respondent is directed to give adequate protection at the expense of the Detenu.

(vii) the Detenu is liable to be recalled immediately to prison, in case, he violates any of the conditions determined by this Court.

(viii) the Detenu shall surrender himself to the third respondent/Superintendent, Central Prison, Puzhal-I, Chennai on expiry of leave granted or on recall.

(ix) Soon after expiry of ordinary Leave period of one month from 12.04.2018, the detenu is directed to be produced on 11.05.2018 at 11.00 a.m., in Central Prison, Puzhal-I, Chennai without fail.

13. With the aforesaid observations and directions, this Habeas Corpus Petition stands disposed of.

(M.V., J.)

(R.H., J.)

02.04.2018

Index : Yes

Internet: Yes

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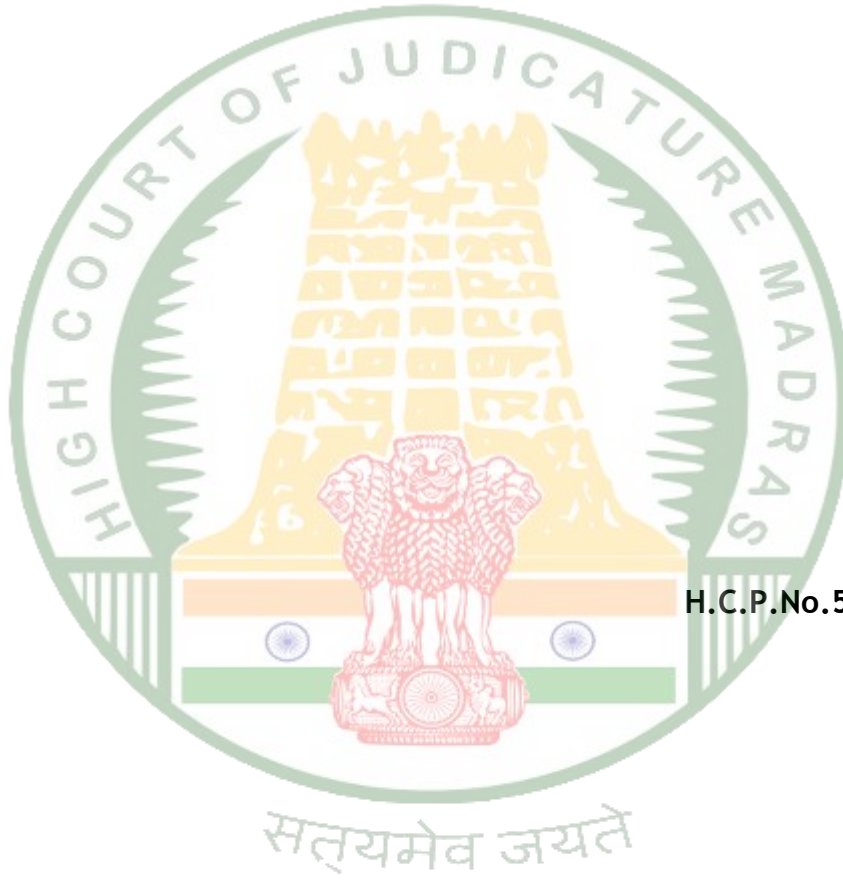
Note: Issue order copy on 03.04.2018

To

- 1.The Secretary,
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,
Puzhal-I
Chennai.
- 4.The Inspector of Police,
Ukkadum Police Station,
Coimbatore.
- 5.The Superintendent of Prisons,
Coimbatore.
- 6.The Deputy Inspector General of Prisons,
Coimbatore.
- 7.The Public Prosecutor,
Madras High Court,
Chennai.

M.VENUGOPAL, J.
and
R.HEMALATHA, J.

vsm



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