

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2018

CORAM:

THE HON'BLE MR.JUSTICE **M.VENUGOPAL**
AND
THE HON'BLE MR.JUSTICE **R.HEMALATHA**

H.C.P.No.751 of 2018

J.Najideen Petitioner

vs.

1.The Superintendent of
Special Sub Jail,
Poonamallee,
Chennai-600 056

2.The Assistant Commissioner of Police,
Ambattur,
Chennai-600 053

.... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of habeas corpus to issue a WRIT OF HABEAS CORPUS, directing the 1st respondent to grant seven days (7) leave to the detenu Nazeer Jalaludeen, son of Jalaludeen, now confined at Special Sub Jail, Poonamallee, Chennai-600 056, to attend the First Death Anniversary of detenu's mother Saheela Begum, takes place at No.8-A, Anna Street, TMP Nagar, Padi, Chennai-600 050, to secure the ends of justice.

For Petitioner : Mr.P.Sankarasubbu

For Respondents : Mr.R.Ravichandran
Government Advocate (Crl.Side)

ORDER

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

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate (Crl.Side) for R1 and R2.

2.The Petitioner/brother of the Detenu, has filed the instant Habeas Corpus Petition, seeking passing of an order by this Court in directing the First Respondent/Superintendent of Special Sub Jail, Poonamallee, Chennai, to grant seven days leave to the detenu/under trial Prisoner-Nazeer Jalaludeen, son of Jalaludeen, now confined at Special Sub Jail, Poonamallee, Chennai, to join the first death anniversary of his mother Saheela Begum, to take place on 21.04.2018, at Door No.8-A, Anna Street, TMP Nagar, Padi, Chennai-50.

3.The Learned Counsel for the Petitioner submits that the Detenu/under trial Prisoner is languishing in jail for nearly four years, after being implicated in respect of an offence under Section 302 of the Indian Penal Code and under the provisions of the Unlawful Activities Act, 1967. The detenu's father, viz., Jalaludeen, expired on 29.02.2016 and his mother Saheela Begum also expired on 23.03.2017. On both the occasions, this Court had granted leave to the detenu to attend the funeral.

4.The Learned counsel for the Petitioner brings it to the notice of this Court that the first death anniversary of the detenu's mother was fixed on 21.04.2018. Hence, the detenu seeks leave for a period of one week on humane considerations to attend the first death anniversary of his mother Saheela Begum. In fact, the Petitioner (brother of the Detenu) had addressed a representation to the Respondents on 14.04.2008, but of no avail. Hence, the Petitioner had preferred the present Habeas Corpus Petition.

5.The Learned counsel for the Petitioner refers to the Order of this Court in Habeas Corpus Petition in H.C.P.No.372 of 2016 (Najideen vs. 1.The Superintendent of Prison, Central Prison-2, Puzhal, Chennai-66 and another), dated 01.03.2016, wherein at Paragraph Nos.4 and 5, it is observed as under:-

"4.For the reasons stated in the affidavit filed in support of the petition, we find it appropriate to grant three days leave to the remand prisoner Nazeer Jalaudeen, who is now confined in Central Prison II, Puzhal, Chennai, to attend the funeral ceremonies of his father, namely, Jalaludeen at No.147, Periyar Street, TMP Nagar, Padi, Chennai-50.

5.Accordingly, we pass the following order:-

(a)The Remand Prisoner, namely, Nazeer Jalaludeen, who is now confined in the Central Prison-II, Puzhal, Chennai, is granted leave for a

period of three days, i.e. from 7.00 p.m. on 01.03.2016 till 6.00 p.m. on 04.03.2016;

(b)The Superintendent of Central Prison-II, Puzhal, Chennai, is hereby directed to pass appropriate orders releasing the remand prisoner, granting him three days leave for the aforesaid purpose;

(c)The Jail Authorities are directed to release the Remand Prisoner, namely, Nazeer Jalaludeen, on production of this order;

(d)It is made clear that the Remand Prisoner should be brought back to the Central Prison-II, Puzhal, Chennai, by 6.00 p.m. on 04.03.2016, without fail;

(e)The Jail Authorities during the period of leave, shall provide proper escort to the remand prisoner in order to ensure the safety and security of the remand prisoner. They shall also impose suitable conditions to that effect; and

(f)The remand prisoner should also abide by the conditions to be imposed by the authorities concerned."

WEB COPY

6. Apart from that the Learned Counsel for the Petitioner cites the order of the Learned Single Judge of this Court, dated 24.03.2017 in CrI.O.P.NO.6034 of 2017 (Nazir Jalaludeen vs. 1.The State, represented by The Assistant Commissioner of Police, Ambattur Range, Chennai), wherein at Paragraph No.6, it is observed as under:-

"6. For the reasons stated in the affidavit, this Court finds it appropriate to grant three days leave to the trial prisoner Nazir Jalaludeen to attend the funeral ceremony of his mother J. Sakeela Begum at No. 147, Periyar Street, TMP Nagar, Padi, Chennai-600 050. Accordingly, the following order is passed:

(a) The trial prisoner, namely, Nazir Jalaludeen, who is now confined in the Special Sub-Jail, Poonamallee, Chennai, is granted leave for a period of three days, i.e. from 12.00 noon on 24.03.2017 till 6.00 p.m. on 26.3.2017;

(b) The Superintendent of Prison, Sub-Jail (Special Cell), Poonamallee, Chennai, the second respondent herein is hereby directed to pass appropriate orders releasing the trial prisoner, granting him three days leave for the aforesaid purpose, as stated above;

(c) The jail authorities are directed to release the trial prisoner, namely, Nazir Jalaludeen, on production of this order;

(d) It is made clear that the trial prisoner should be brought back to the Special Sub-Jail, Poonamallee, Chennai, by 6.00 p.m., on 26.3.2017, without fail;

(e) The jail authorities during the period of leave, shall provide proper escort to the trial prisoner in order to ensure the safety and

security of the trial prisoner. They shall also impose suitable conditions to that effect; and

(f)The trial prisoner should also abide by the conditions to be imposed by the authorities concerned."

7.Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that the detenu, as per Rule 7 of the Tamil Nadu Suspension of Sentence Rules, 1982, is not entitled to be granted the emergency leave and in fact, Rule 7 of the said Rules reads as under:-

"7.Eligibility for emergency leave - No emergency leave shall be granted to a prisoner unless,-

(i)he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends;

(ii)his conduct in prison has been satisfactory;

(iii)female pregnant prisoner for having delivery outside the prison provided who are not constituting high security risks or of cases of equivalent grade descriptions."

8.The learned Government Advocate (Crl.Side) adverts to the Definition to Section 2(4) of the Tamil Nadu Suspension of Sentence Rules, 1982, which enjoins as under:

"2.Definitions-In these rules, unless the context otherwise requires-

(4)"sentence" means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Sentences in default of fine shall not be taken into consideration while fixing eligibility for being released on leave."

9.In pith and substance, the Learned Government Advocate (Crl.Side) for the Respondents forcibly contends that the detenu/under trial prisoner, viz., Nazeer Jalaludeen, cannot be granted the leave sought for by his brother in the present Habeas Corpus Petition.

10.It is to be noted that the Hon'ble Supreme Court in the decision in **Sunil Fulchand Shah vs. Union of India and Others reported in (2000 Supreme Court Cases (Cri) 659)**, at Paragraph No.29, *inter alia* observed as under:

"29I must, however, add that the bar of judicial intervention to direct temporary release of a detenu would not affect the jurisdiction of the High Courts under Article

226 of the Constitution or of this Court under Article 32, 136 or 142 of the Constitution to direct the temporary release of the detenu, where request of the detenu to be released on parole for a specified reason and/or for a specified period, has been, in the opinion of the Court, unjustifiably refused or where in the interest of justice such an order of temporary release is required to be made. That jurisdiction, however, has to be sparingly exercised by the Court and even when it is exercised, it is appropriate that the Court leave it to the administrative or jail authorities to prescribe the conditions and terms on which parole is to be availed of by the detenu."

11. On a careful consideration of respective contentions and also taking note of the surrounding facts and circumstances of the present case, this Court is inclined to grant one day leave to the detenu/under trial prisoner, viz., Nazeer Jalaludeen, son of Jalaludeen, to attend his mother Saheela Begum's first death anniversary, which is scheduled on 21.04.2018, at Door No.8-A, Anna Street, TMP Nagar, Padi, Chennai-50, subject to the following conditions:-

(i) The Detenu/Under Trial Prisoner, viz., Nazeer Jalaludeen, son of Jalaludeen, now confined at Special Sub Jail, Poonamallee, Chennai, is granted one day leave on 21.04.2018 from 8.00 a.m to 6.00 p.m. to attend his mother Saheela Begum's first death anniversary ceremony.

(ii) The First Respondent/Superintendent of Special Sub Jail,

Poonamallee, Chennai-56, is directed to pass appropriate orders in releasing/permitting the detenu/Under Trial Prisoner, viz., Nazeer Jalaludeen, granting him one day leave for the aforesaid purpose.

(iii)The Jail Authorities are directed to release the detenu/under trial Prisoner, viz., Nazeer Jalaludeen, son of Jalaludeen, on production of a copy of this order;

(iv)It is patently made clear that the under trial Prisoner Nazeer Jalaludeen should be granted leave for a period of one day on 21.04.2018 from 8.00 a.m. to 6.00 p.m. and he should be brought back to the First Respondent Prison by 7.00 p.m. on 21.04.2018, without fail.

(v)The Jail Authorities, during the one day period of leave, as mentioned above, shall provide adequate and proper escort to the under trial Prisoner, viz., Nazeer Jalaludeen, in order to ensure his safety and security. They shall also impose suitable conditions to that effect.

(vi)The under trial Prisoner should abide by the conditions to be imposed by the Jail Authorities.

With the above said Observations/Directions, the present Habeas Corpus Petition stands disposed of.

(M.V.J.) (R.H.J.)
18.04.2018

msk

Note to Office:

Issue copy of the order today.

To

1.The Superintendent of
Special Sub Jail,
Poonamallee,
Chennai-600 056

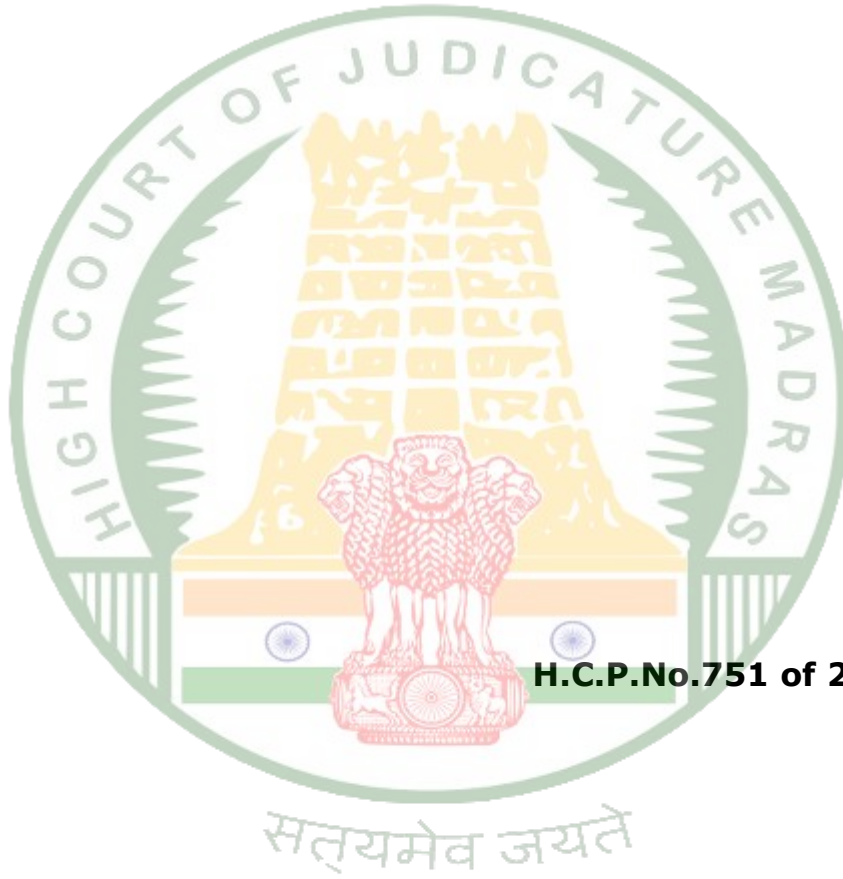
2.The Assistant Commissioner of Police,
Ambattur,
Chennai-600 053



WEB COPY

M.VENUGOPAL,J.
AND
R.HEMALATHA,J.

msk



H.C.P.No.751 of 2018

WEB COPY

18.04.2018