

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2018

CORAM:

THE HON'BLE MR.JUSTICE M.VENUGOPAL
AND
THE HON'BLE MR.JUSTICE T.RAVINDRAN

H.C.P.No.835 of 2018

Chellammal

.... Petitioner

vs.

State rep.by:

1.The Additional Director General
of Police(Prison),
Prison Department,
No.1, Gandhi Irwin Salai,
Egmore, Chennai-600 008

2.The Superintendent of Prison,
Central Prison, Vellore.

3.The Honourable Secretary,
George Fort,
Chennai-600 009

... 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 respondent's herein to grant three months on parole to the Petitioner's son Perumal @ Pethaperumal Life Convict (Lift Convict No.O.T.D.C.No.2899) now confined under the Superintendent of Prison, Central Prison, Vellore, 2nd Respondent herein, for the purpose of solemnize his marriage on 02.05.2018, pursuant to the Petitioner's representation to the respondents dated 11.04.2018, and respondents received on 13.04.2018.

For Petitioner : Mr.G.M.Syed Fasi Mohammed

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 the Respondents.

2. According to the Petitioner/mother of the Detenu, her son Perumal @ Pethaperumal was arrested by the Inspector of Police, Manoor Police Station, Tirunelveli District, in respect of an offence under Section 302 of the Indian Penal Code and later, the Learned First Additional District Judge, Thirunelveli, had convicted and sentenced him to undergo life imprisonment and he was also directed to pay a fine of Rs.5000/-, in default of payment of the said fine amount, he was directed to undergo one year Rigorous Imprisonment and lodged in the Central Prison, Palayamkottai, Thirunelveli District. Subsequently, he was transferred and now he is lodged at Central Prison, Vellore District.

3. The Learned Counsel for the Petitioner submits that as against the judgment in S.C.No.296 of 2016, the Petitioner's son, viz., Perumal @ Pethaperumal, filed Criminal Appeal No (MD).301 of 2011 on the file of the Madurai Bench of Madras High Court and the said Appeal was dismissed by this Court. Latter, the matter is further taken to the Hon'ble Supreme Court of India, where the Appeal preferred by the Petitioner's son is pending.

4. The stand of the Petitioner is that her son's marriage is to be performed at Arulmigu Sri Murugan Temple, Tirunelveli on 02.05.2018 and further, the Petitioner requires her son's presence for mobilizing money for his marriage expenses. It appears that the Petitioner sent a representation to the Respondents 1 and 2 on 11.4.2018, however, her representation has not met with any response. Hence, the Petitioner has filed the present Writ of Habeas Corpus Petition praying for passing of an order by this Court for granting 15 days parole to her son Perumal @ Pethaperumal for the purpose of solemnization of his marriage, which is scheduled to take place on 02.05.2018.

5. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that the Petitioner's son Perumal @ Pethaperumal (Life Convict) cannot be granted leave as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, in a pending case. Further, it is projected on the side of the Respondents that as per Rule 13 of the Tamil Nadu Suspension of Sentence Rule 1982, the maximum period of emergency leave to be granted to a prisoner is 15 days in a year to be spread over four spells, subject to the maximum of six days in any one spell according to the need of the prisoner on the occasion etc. Apart from that Rule 22(2) says that the period of leave shall not exceed one month at a time unless it is extended by the Government.

6. Lastly, it is the submission of the Learned Government Advocate (Crl.Side) that 'leave' cannot be claimed

as a matter of right. It is only a concession granted to the convict/prisoner. Moreover, as per Rule 19 of the Tamil Nadu Suspension of Sentence Rules, the Deputy Inspector General of Prisons has the power to grant only 30 days of ordinary leave to the prisoners.

7. At this stage, this Court aptly points out Rule 20 of the Tamil Nadu Suspension of Sentence Rules 1982, which reads as under:-

"20. Grounds for the grant of ordinary leave-
The grounds for the grant of ordinary leave to a prisoner shall be-

(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 or 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."

8. As per Rule 20(iv) of the Tamil Nadu Suspension of Sentence Rules 1982, 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, an ordinary leave shall be granted.

9. At this stage, this Court aptly points out that 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, at Paragraph Nos.4 and 5, this Court 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."

10. Apart from that the Learned Single Judge of this Court, in CrI.O.P.NO.6034 of 2017, dated 24.03.2017 (Nazir Jalaludeen vs. 1. The State, represented by The Assistant Commissioner of Police, Ambattur Range, Chennai), at Paragraph No.6, has 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."

11. 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:

"29 I 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."

12. In the instant case, the Petitioner/mother of the

Life Convict-Perumal @ Pethaperumal has filed the present Petition seeking parole for 15 days to perform the marriage of her son on 02.05.2018. Since, Rule 20(iv) of the Tamil Nadu Suspension of Sentence Rules, 1982 provides for the grant of ordinary leave to a prisoner, i.e, in the instant case, the Life Convict-Perumal @ Pethaperumal (Petitioner's son), and also taking note of the fact that the Petitioner is only seeking leave/parole for 15 days to perform her son's marriage (Life Convict), this Court, in the interest of justice and fair play and also based on equity and good conscience, is inclined to grant leave to the Life Convict-Perumal @ Pethaperumal for a period of one week i.e. from 10.00 a.m. of 29.04.2018 to 10.00 a.m. of 06.05.2018, subject to the following conditions:-

(i)The Life Convict, viz., Perumal @ Pethaperumal (son of the Petitioner), now confined at Central Prison, Vellore, is granted one week leave from 10.00 a.m. of 29.04.2018 to 10.00 a.m. of 06.05.2018, in connection with his marriage, which is scheduled to be held on 02.05.2018.

(ii)The Second Respondent/Superintendent of Prison, Central Prison, Vellore, is directed to pass appropriate orders in releasing/permitting the detenu/Life Convict, viz., Perumal @ Pethaperumal, granting him one week leave for the aforesaid purpose.

(iii)The Jail Authorities are directed to release the Life Convict, viz., Perumal @ Pethaperumal (son of the Petitioner), on production of a copy of this order;

(iv)It is patently made clear that the Life Convict-Perumal @ Pethaperumal should be granted leave for a period of one week from 29.04.2018 i.e from 10.00 a.m. of 29.04.2018 to 10.00 a.m. of 06.05.2018 and he should be brought back to the Second Respondent Prison by 1.00 p.m. on 06.05.2018, without fail.

(v)The Jail Authorities, during the one week period of leave, as mentioned above, shall provide adequate and proper escort to the Life Convict, viz., Perumal @ Pethaperumal, in order to ensure his safety and security. They shall also impose suitable conditions to that effect.

(vi)The Life Convict 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.

Sd/-

Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

msk

To

1.The Additional Director General
of Police(Prison),
Prison Department,
No.1, Gandhi Irwin Salai,
Egmore, Chennai-600 008

2.The Superintendent of Prison,
Central Prison, Vellore.

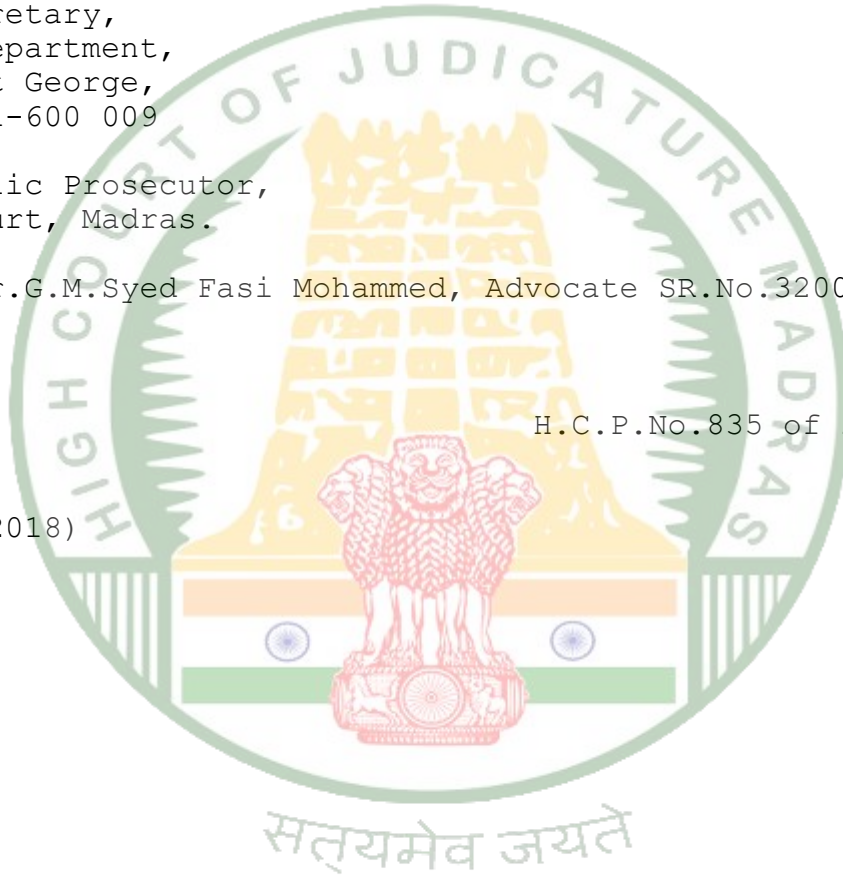
3.The Secretary,
Home Department,
Fort St George,
Chennai-600 009

4.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.G.M.Syed Fasi Mohammed, Advocate SR.No.32000

H.C.P.No.835 of 2018

NP(CO)
GN(28/04/2018)



WEB COPY