

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.04.2018

CORAM:

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

H.C.P.No.735 of 2018

K.MALA

.... Petitioner

vs.

**1.THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON, VELLORE DISTRICT,
VELLORE.**

**2.THE INSPECTOR OF POLICE,
BANAVARAM POLICE STATION,
VELLORE DISTRICT.**

... 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 1 st respondent to produce life convict prisoner No.2724 namely P.KUMAR, son of Poongavanam, aged 36 years, produce him/her before this Hon`ble Court and let him parole for 10 days to take care of his mother namely Tmt.Gnambal W/O.Late Poongavanam set at liberty.

For Petitioner : Mr.P.KRISHNAN

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.According to the Petitioner, she is the wife of Convict Prisoner P.Kumar (No.2724) at Central Prison, Vellore. Her husband was convicted in a Criminal Case in Sessions Case No.5 of 2006, on the file of the Learned Principal District and Sessions Court, Vellore. In fact, a Criminal Appeal No.715 of 2016 was filed by her husband before this Court and this Court, by means of a judgement dated 11.01.2017 had partly allowed the Appeal. As a matter of fact, her husband was convicted by this Court in the Criminal Appeal in respect of an offence under Section 376 read with Section 511 of the Indian Penal Code, 1973 and was sentenced to undergo Rigorous Imprisonment for five years and also directed to pay a sum of Rs.3 lakhs as compensation, in default, to undergo Rigorous Imprisonment for a period of three months.

3.The grievance of the Petitioner/wife is that her husband had undergone imprisonment at Central Prison, Vellore and her husband's father Poongavanam died four years ago. Now his mother, viz., Gnambal, aged about 70 years, is bedridden and she had not taken

any food and that she may die at any moment. Added further, her husband is the elder son of Gnambal and he is only to take care of her.

4.The version of the Petitioner is that the First Respondent/Superintendent of Prison, Central Prison, Vellore, had called for Report from the Second Respondent/Inspector of Police, Banavaram Police Station, Vellore and that the Second Respondent submitted his Report dated 05.11.2017 to the First Respondent. Indeed, the Second Respondent, in his Report had admitted that the Petitioner's mother-in-law fell ill and had not taken food and she may die at any time. Although the First Respondent/Superintendent of Prison, Central Prison, Vellore, had received the Report in question, the Petitioner's husband is not permitted to proceed on Parole.

5.The Learned Counsel for the Petitioner submits that the Petitioner's father-Mani expired on 03.04.2018 and immediately she had applied before the First Respondent, on 09.04.2018, to let her husband on Parole. The Village Administrative Officer, Kalathur Village, Nemili Taluk, had also issued a Certificate to the effect that her husband's father-in-law had expired.

6.Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that the representation of the Petitioner dated 09.04.2018, addressed to the First Respondent is under consideration.

7. In this connection it is not out of place for this Court to make a significant mention that the Petitioner, in her representation, dated 09.04.2018, addressed to the First Respondent/Superintendent of Prison, Central Prison, Vellore, had mentioned about the factum of her father's death and also about the death of father-in-law of her husband, Mani. It appears that the cremation of the Petitioner's father and the father-in-law of her husband took place on the next day and since in their family, all the acts, in connection with the death of the father-in-law of the petitioner's husband, are to be performed by her husband, she prays for the grant of 10 days Parole to and in favour of her husband, viz., P.Kumar.

8. At this stage, this Court aptly points out Rule 13 of the Tamil Nadu Suspension of Sentence Rules 1982 under the Head 'Maximum Period of Emergency on Leave', which runs as under:-

"Rule 13. Maximum period of emergency leave:

The total period of emergency leave to be granted to a prisoner by the Superintendents of Prisons or the Inspector General of Prisons, as the case may be, shall be fifteen 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 and the remaining nine days in three spells each spell not

*exceeding three days at a time and the decision of the Superintendent or the Inspector General of prisons in deciding the duration of the spell shall be final. However, in exceptional cases, the Government may extend the period of emergency leave following the procedure prescribed in **rule 34**. Application for emergency leave for the fifth time in a year shall be submitted to Government for prior orders."*

9. It is not out of place for this Court to make a pertinent mention about the decision in **A.Thahira vs. Secretary, Home Department, Government of Tamil Nadu, Chennai-9 and others reported in (2014) 1 MLJ(CrI.) 595**, wherein, it is observed as under:-

"Held: The claim of the petitioner is that a representation has been made. But, it is reported that since the convict was confined to the prison only one month before filing representation, his character and conduct could not be verified within a short span of time. Whatever be the position, the request of the petitioner for release of her husband cannot be acceded in toto. The Superintendent of Prison and the Inspector General of Prison can grant six days leave in one spell according to the need of the prisoner. In the instant case, the petitioner has requested for seven days' leave. This request should have been considered at

least for a minimum period of 5 to 6 days, as the request for leave is to solemnize the marriage of the convict's daughter. On the contrary, Special Government Pleader, while producing a copy of the communication received via email from the Sub-Inspector of Police, would submit that since the convict is in jail for less than two months, his character and conduct has not been verified within the shortest period. This could not be the acceptable position even as per the Prison rules. This Court is of the considered opinion that the convict can be granted a minimum of four days leave to enable him to solemnize his daughter's marriage."

10. Considering the fact that the Petitioner's representation dated 09.04.2018 addressed to the First Respondent/Superintendent of Prison, Central Prison, Vellore, should have been considered with all seriousness and earnestness by the Respondent/Prison Authority and also the fact that the said Rule enjoins that the total period of emergency leave to be granted to a prisoner by the Superintendents of Prisons or the Inspector General of Prisons, as the case may be, shall be fifteen 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., this Court is of the considered view that the ingredients of Rule 13 of the Tamil Nadu Suspension of Sentence Rules, 1982 have not been looked into and acted upon by the First

Respondent/Superintendent of Prison, in a proper and real perspective. Viewed in that perspective, this Court is of the earnest view that the Petitioner's husband, viz., P.Kumar, is entitled to be released on Parole for a period of six days in one spell, from 17.04.2018 to 22.04.2018, after adhering to the usual procedure and other measures to be followed in accordance with the Prison Manual and that the Convict, viz., P.Kumar, shall be taken back to the Central Prison, Vellore, before 5.00 p.m., on the expiry of six days, viz., on 22.04.2018. The First Respondent is directed to provide necessary escort to the convict, viz., P.Kumar, from the Central Prison, Vellore, from the time he leaves the Central Prison, Vellore and till such time, he is brought back to the Central Prison, Vellore, on the said date and time as ordered by this Court. The expenses for the escort shall be borne by the Petitioner.

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

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(M.V.J.) (R.H.J.)
16.04.2018

msk

Index:Yes/No
Internet:Yes/No

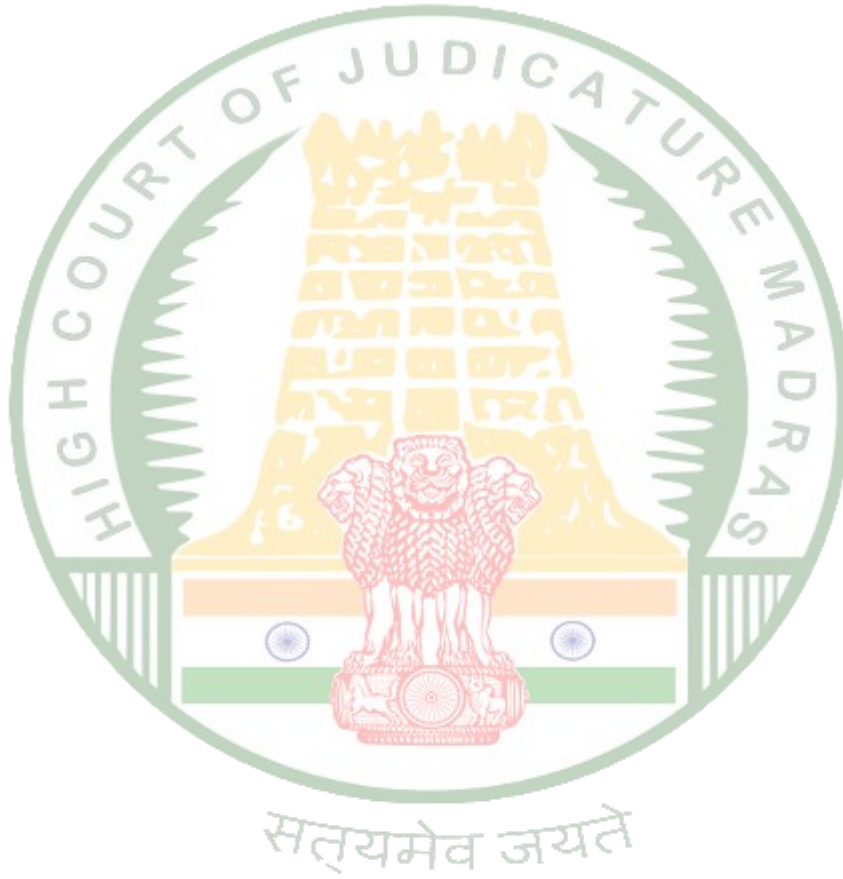
Note to Office:

Issue copy of the order today.

To

1.The Superintendent of Prison,
Central Prison,
Vellore District, Vellore.

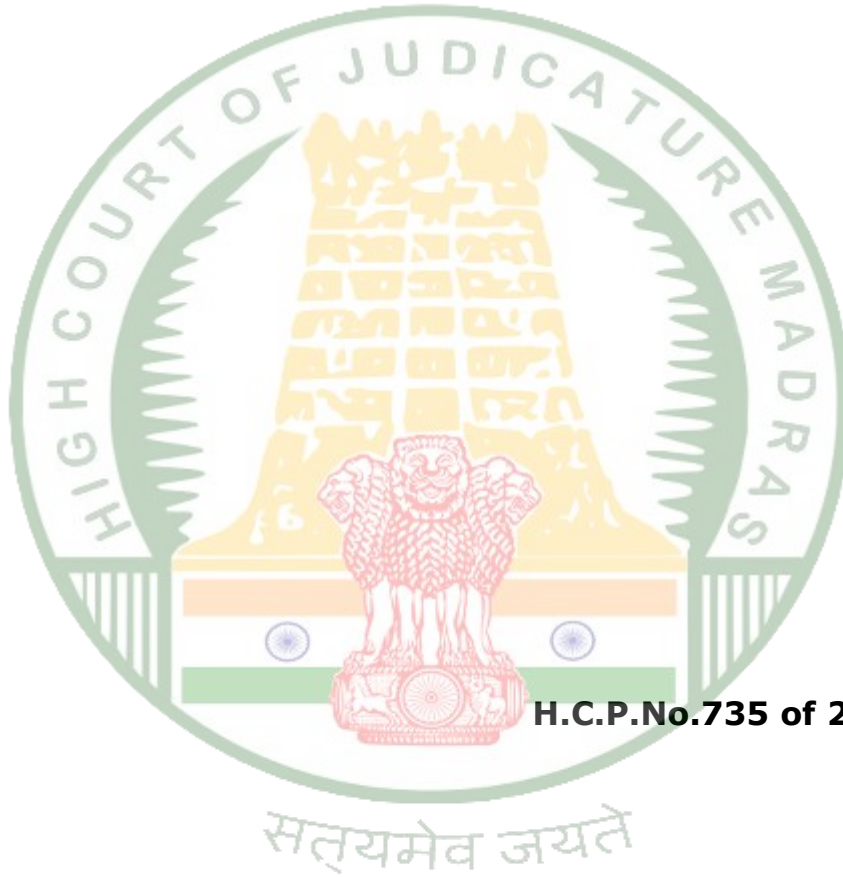
2.The Inspector of Police,
Banavaram Police Station,
Vellore District.



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