

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

W.P.No.22661 of 2018
and W.M.P.No.26515 of 2018

P.Veera Bhaarithi

... Petitioner

Vs

The State of Tamil Nadu rep. by
1.The Secretary to Government,
Home [Prison] Department,
T.N.Govt. Chief Secretariat,
St. George Fort, Chennai-9.

2.The Superintendent,
Central Prison-I,
Puzhal, Chennai-66.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying for issuance of Writ of Mandamus to direct the respondents to provide the petitioner Veera Bhaarithi, S/o.V.Ponniah, aged about 48/2018 years, being confined at Central Prison-I, Puzhal, Chennai and bearing O.J.Ct.No.1384, six months parole to effectively prepare, appear and argue in person before the Hon'ble Supreme Court of India in the already filed and pending W.P.[Crl.] No.208 of 2018 and the yet to be filed curative petition, in order to prove his innocence and as well as to ensure proper justice to the deceased victim girl by sending to gallows the actual assailants who done her away but could have escaped the appropriate extreme punishment due to such defective investigation.

For Petitioner : Mr.P.Veera Bhaarithi,
Party-in-person

For Respondents : Ms.M.Prabhavathi, APP

O R D E R

This petition has been filed to direct the respondents to provide the petitioner, six months parole to effectively prepare, appear and argue in-person before the Supreme Court of India in the already filed and pending W.P.[Crl.] No.208 of 2018.

2.Heard Mr.Veera Bhaarathi, Party-in-person and perused the materials placed on record.

3.Mr.Veera Bhaarathi was prosecuted in S.C.No.30 of 1999 along with two others for the offences under Section 302, 376 r/w 34 IPC and was awarded capital punishment by the Sessions Judge, Srivilluputhur. A Division Bench of this Court commuted the death sentence to life imprisonment and his further appeal to the Apex Court was dismissed. Thus, he is a life convict undergoing life sentence.

4.While so, Mr.Veera Bhaarathi filed HCP [MD].No.540 of 2016 before the Madurai Bench of Madras High Court, seeking premature release in terms of Rule 341 of the Tamil Nadu Prison Rules, 1983. For the hearing of the case, on the directions of the Division Bench, he was produced from prison, presumably under P.T.Warrant. By virtue of that, he himself argued the case before the Division Bench. The Division Bench of this Court passed final orders in HCP.[MD].No.540 of 2016 on 26.10.2016, in which, the Division Bench issued directions to the Government to consider the case of Veera Bhaarathi, in the light of the interpretation placed to Rule 341 of the Tamil Nadu Prison Rules, 1983. While passing such an order qua Veera Bhaarathi, the Division Bench appears to have issued certain general directions to the Government of Tamil Nadu, with regard to premature release of other prisoners. Aggrieved by that portion of the order, the State of Tamil Nadu has filed S.L.P. [CRL.] No.5333 of 2018 and the same is pending on the file of the Supreme Court.

5.As regards the directions issued qua Veera Bhaarathi, the State of Tamil Nadu considered his representation, in terms of Rule 341 of the Tamil Nadu Prison Rules, 1983 and rejected the same, vide G.O.[D].No.227/Home [Prison IV] Department/2017 dated 23.02.2017. Challenging the same, Mr.Veera Bhaarathi has filed HCP.[MD].No.1038 of 2017 and the same is pending on the file of the Madurai Bench of Madras High Court.

6.For arguing the case in HCP.[MD].No.1038 of 2017, Mr.Veera Bhaarathi applied for leave under the Tamil Nadu Suspension of Sentence Rules, 1980 and he was granted leave for sometime.

Pursuant to his release on leave, he argued HCP.[MD].No.1038 of 2017 before a Division Bench of Madurai Bench of Madras High Court on 18.07.2018. However, no final orders were passed by the Division Bench. But, the Division Bench issued the following direction :

"There shall be a direction to the Superintendent of Central Prison, Puzhal not to insist upon the petitioner to return to his custody till 5.00 P.M., on 03.08.2018."

7. In effect, the Division Bench had extended the leave upto 03.08.2018. This leave was further extended by the Division Bench, by order dated 01.08.2018 upto 27.08.2018, which reads as under :

"Post the matter on 24.08.2018.

The Superintendent of Central Prison, Puzhal, Chennai is directed not to insist upon the petitioner to return to his custody till 5.00 P.M., on 27.08.2018."

For the third time, the Division Bench extended the leave, by order dated 24.08.2018 upto 06.09.2018. After 06.09.2018, Mr. Veera Bhaarathi surrendered before the Superintendent of Prison and is now in custody.

8. On the specific directions of this Court, he was brought today by the jail authorities for arguing this case. Accordingly, Mr. Veera Bhaarathi was produced and he presented his arguments. Mr. Veera Bhaarathi submitted that he is the respondent in SLP.[CrL.] No.5333 of 2018 and that, he himself argued before the Supreme Court on 20.08.2018. At this juncture, it may be relevant to extract the order passed by the Supreme Court on 20.08.2018:

"We have heard the respondent appearing in person.

The matter will require an in-depth consideration in view of the general nature of order of remand/reconsideration passed by the High Court.

List the matter for final disposal on 16th January 2019.

The respondent appearing in prison desires to argue in person. He is currently on parole. He may apply afresh for parole at the relevant point of time i.e. in the month of January, 2019 to enable him to argue the matter before this Court, failing which, the respondent will be offered legal aid by the Supreme Court Legal Services Authority."

Thus, from a reading of the above order, the Supreme Court has observed that if Veera Bhaarathi gets parole in January 2019, they would hear him or otherwise, the case will proceed by

appointing a counsel from the panel of the Supreme Court Legal Services Authority.

9.Mr.Veera Bhaarathi contended that he is not seeking leave to argue before the Supreme Court in SLP.[Crl.] No.5333 of 2018, because the same has now been posted to January 2019. However, he submitted that he has filed WP.[Crl.] No.208 of 2018 before the Supreme Court, wherein, he has contended that he was not involved in the alleged offence that took place in the year 1998, for which, he has been convicted and sentenced by the Courts and that, he is ready and willing to submit himself to Narco Analysis, in order to prove his innocence. He has also prayed for re-investigation of the case by the CBI. Since the matter is seized of by the Supreme Court, this Court cannot give any opinion on the maintainability of his plea. Mr.Veera Bhaarathi submitted that he is intending to file an application in WP.[Crl.] No.208 of 2018 before the Supreme Court, seeking permission to argue the case as party-in-person and for that purpose, he is seeking parole from this Court. The State has filed a counter contesting the claim of Veera Bhaarathi.

10.Admittedly, Mr.Veera Bhaarathi was granted leave by the authorities on 23.06.2018 and on account of the orders passed by the Division Bench of this Court, his leave was getting extended from time to time till 06.09.2018. Leave for a prisoner can be granted only within the ambit of the Tamil Nadu Suspension of Sentence Rules, 1980. The said Rule do not contemplate grant of leave for the purpose sought by Mr.Veera Bhaarathi.

11.Mr.Veera Bhaarathi placed strong reliance on an unreported judgment of the Delhi High Court in Jai Kishore Vs State (WP.[CRL.] 1603 of 2015).

12.On a reading of the said order, it is seen that leave in Delhi is governed by Parole/Furlough Guidelines, 2010, whereas, in the State of Tamil Nadu, rules relating to leave are governed by the Tamil Nadu Suspension of Sentence Rules, 1980 passed by the Government, in exercise of the powers under Section 432[5] Cr.P.C. Though the conduct of Mr.Veera Bhaarathi, both in prison and outside has been exemplary, yet a special provision cannot be carved out by this Court to accommodate him, as that would offend Article 14 of the Constitution of India vis-a-vis similarly placed prisoners. Under such circumstances, no direction as prayed for by Mr.Veera Bhaarathi can be granted. However, it is for the authorities to decide about his eligibility for further leave, in accordance with the Tamil Nadu Suspension of Sentence Rules, 1980. Legal aid can be provided to Mr.Veera Bhaarathi in terms of the Legal Services Authority Act.

With the above observation, this petition is closed. Liberty is given to Mr.Veera Bhaarithi to submit a fresh application for leave to the Prison authorities and on such application being given, the same shall be considered within four weeks on receipt of such application in terms of the Tamil Nadu Suspension of Sentence Rules, 1980. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Home [Prison] Department,
T.N.Govt. Chief Secretariat,
St. George Fort, Chennai-9.

2.The Superintendent,
Central Prison-I,
Puzhal, Chennai-66.

3.The Public Prosecutor,
High Court, Madras.

W.P.No.22661 of 2018

GMV (CO)
GSP (17/10/2018)

सत्यमेव जयते

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