



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2018

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P(MD)No.11561 of 2018

Nirmala Mary

... Petitioner

Vs.

1.The Secretary to the Government,
Home Department,
St. George Fort, Secretariat
Chennai - 9.

2.The District Collector,
Kanyakumari District,
Nagercoil

3.The Superintendent Of Central Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

... Respondents

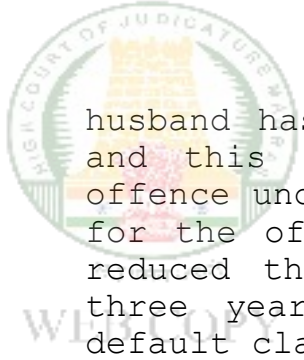
Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus to direct the second respondent to release the petitioner's husband namely Johnson @ John (CT.No.3768) on parole till the completion of the proceedings pending before the first respondent based on the writ petition in WP (MD) No.2516 of 2018.

For Petitioner : Mr.M.Ramu
For Respondents : Mr.Chellapandian
Additional Advocate General
assisted by Mr.M.Karuppasamy
Government Advocate

ORDER

This writ petition has been filed seeking direction to the second respondent to release the petitioner's husband namely Johnson @ John (CT.No.3768) on parole till the completion of the proceedings pending before the first respondent, based on the writ petition in WP (MD) No.2516 of 2018.

2.According to the petitioner, the petitioner's husband has been shown as one of the accused in Crime No.92 of 1992, registered by the Inspector of Police, District Crime Branch, Nagercoil, Kanyakumari District and he was convicted and sentenced to undergo seven years rigorous imprisonment for the offences punishable under Sections 120(b), 489(c), 489(d) and 259 IPC, vide the judgement dated 27.10.1997 passed in S.C.No.41 of 1996 by the Additional District and Sessions Judge, Nagercoil, Kanyakumari District. Challenging the aforesaid conviction and sentence, the petitioner's



husband has preferred C.A.No.25 of 1998 on the file of this Court and this Court has confirmed the conviction in respect of the offence under Section 259 IPC and acquitted the petitioner's husband for the offence under Sections 120(b) r/w 489 IPC. This Court has reduced the sentence for the offence under Section 259 IPC into three years and also imposed a fine of Rs.10,000/- with usual default clause.

3. According to the petitioner, the petitioner's husband is a cardiac patient from the year 2003 and he has already suffered with cardiac arrest for two times, for which, he was taken to the Government hospital, High Ground, Palayamkottai, Tirunelveli for taking emergency treatment on 14.10.2016 to 20.10.2016, 29.10.2016 to 02.11.2016, 26.11.2016 to 28.11.2016, 04.03.2017 to 23.03.2017 and 03.06.2017 to 12.06.2017 respectively. He has also suffered from diabetic and malfunction of kidney. Due to the said ailments, the doctors of private hospital advised to undergo angiogram operation, kidney operation and diabetic treatment. Therefore, the petitioner's husband was permitted to release on parole from 05.09.2017 to 12.09.2017.

4. Due to the serious ill-health of the petitioner's husband, the petitioner has already filed a writ petition in WP(MD) No.17200 of 2017 praying to extend the parole period for taking treatment. In the said petition, doctor's report has been filed, wherein it is stated that the health condition of the petitioner's husband is very poor and his heart beat is functioning only at 25%. Therefore, the second respondent has recommended the premature release of the petitioner's husband/convict prisoner and the same is pending before the Board for consideration. Hence, the petitioner has made representations dated 03.01.2018, 11.01.2018 and 30.12.2016 to the respondents praying to release the convict prisoner by considering his poor health condition.

5. Thereafter, the petitioner has filed a writ petition in WP(MD) No.2516 of 2018, wherein this Court has directed the petitioner to submit a representation before the Medical Board to examine her husband as early and give a report about his health condition and after receiving the said report, the petitioner's representations should be disposed of by the second respondent within a period of twelve weeks on merits and in accordance with law.

6. The grievance of the petitioner is that even though the petitioner's husband/convict prisoner is under critical condition, the respondents are not taking any steps to consider the petitioner's representation to release the convict prisoner on parole. Hence, this petition has been filed before this Court, seeking the aforementioned relief.

7. According to the learned Additional Advocate General appearing for the respondents, the convict prisoner viz., Johnson @ John S/o. David has produced ecocardiogram report of Sree Mookambika



Institute of Medical Sciences, Kulasekaram and also the details of medicines prescribed by the Medical College Hospital, Thiruvananthapuram. Further it is submitted that the petitioner's husband was given treatment in the Prison Medical Hospital on the advice of the Tirunelveli Medical College hospital. Subsequently, as per order dated 08.01.2018, passed by this Court in WP(MD)No.17200 of 2018, the petitioner's husband/convict prisoner was referred to Madurai Rajaji Government Hospital for better treatment. Now, he has been undergoing treatment as an inpatient at Tirunelveli Medical College Hospital, Tirunelveli from 07.05.2018.

8. Pursuant to the order passed by this Court in WP(MD) No.2516 of 2018 on 19.02.2018, the petitioner's husband/convict prisoner was produced before the Medical Board at Tirunelveli Medical College Hospital on 06.03.2018, 09.04.2018 and 16.04.2018 for obtaining medical report with regard to his premature release under medical grounds as per the Tamil Nadu Prison Volume II Rule No.633. The Medical Board consisting of team of doctors examined the petitioner's husband and issued medical report. On receipt of the medical report, further reports have been called for from the District Collector, Kanyakumari and Probation Officer, Nagercoil to consider the premature release of the petitioner's husband/convict prisoner on medical grounds as per the Tamil Nadu Prison Manual Volume II Rule No.633. The District Collector, Kanyakumari and Probation Officer, Nagercoil have also recommended premature release of the the petitioner's husband/convict prisoner under medical grounds. Hence, proposal has been submitted to the Additional Director General of Police and Inspector General of Prisons vide Lr.No.3768/R.2/2018 dated 04.05.2018 to consider the convict prisoner's case as per the Tamil Nadu Prison Manual Volume II Rule No.633, pursuant to which, the Additional Director General of Police and Inspector General of Prisons have forwarded the proposal for premature release to the Government, vide letter dated 18.05.2018 and orders from the Government is awaiting.

9. At this juncture, the Additional Advocate General has relied upon Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982, which reads as follows:

"6. Grounds for the grant of emergency leave.-

Emergency leave may be granted for attending death or serious illness of father, mother, wife husband, son, daughter, full brother or full sister or the wedding of son, daughter, full brother or full sister of the prisoner."

10. It is submitted that emergency leave will be granted to the prisoners for the reasons as stated above. Therefore, the petitioner's husband is not entitled for emergency leave.

<https://hcservices.ecourts.gov.in/hcservices/>

11. At this stage, the learned Additional Advocate General



has placed a report of the Tirunelveli Medical College Hospital, Tirunelveli, dated 16.04.2018, which indicates the health condition of the petitioner's husband/convict prisoner, wherein it is observed as follows:

"...Pt has very poor cardiac left ventricular function and advising premature discharge considering his present cardiac status."

12.Further, the learned Additional Advocate General, on instructions, submitted that as on today, the health condition of the petitioner's husband/convict prisoner is still worse.

13.Considering the worst and deteriorating health condition of the petitioner's husband/convict prisoner and also taking into consideration of the orders passed by this Court in WP(MD)No.17200 of 2017 dated 15.09.2017 granting parole, the petitioner's request to release her husband/convict prisoner on parole to take treatment in a private hospital viz., Asaripallam Government Medical College, Nagercoil, Kanyakumari District can be directed to be considered by the respondents.

14.In fine, this writ petition is disposed of with the following directions:

(i)The third respondent/the Superintendent of Central Prison, Central Prison, Palayamkottai, Tirunelveli is directed to consider the petitioner's representation dated 17.05.2018 and pass appropriate orders with regard to grant of parole for a period of four weeks to the petitioner's husband namely, viz., Johnson @ John S/o.David (C.T.No.3768) forthwith, by taking note of the earlier orders passed by this Court in WP(MD)Nos.17200 of 20176 and 2516 of 2018.

(ii)The third respondent is also directed to impose necessary conditions as per Rules for releasing the convict prisoner viz., Johnson @ John S/o.David on parole.

(iii)After expiry of the parole period of four weeks, if any extension is required, it is open to the petitioner to file appropriate application, seeking extension of parole.

(iv) It is also made clear that the petitioner's husband/convict prisoner under the guise of this temporary release/leave/parole shall not misuse the liberty.

No costs. Post this matter on 22.06.2018 for "reporting compliance."

Sd/-

Assistant Registrar (Cr1.Side)

/True Copy/



To

1.The Secretary to the Government,
Home Department,
St. George Fort,
Secretariat,
Chennai - 9.

2.The District Collector,
Kanyakumari District,
Nagercoil

3.The Superintendent Of Central Prison,
Central Prison,
Palayamkottai,
Tirunelveli.

+1CC to Mr.M.Ramu, Advocate in SR.No.68117.

MJ

DS/SKN-RSK/SAR-4 :13.06.2018: 5P/5C

W.P (MD) No.11561 of 2018
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