

IN THE HIGH COURT JUDICATURE AT MADRAS

DATED: 18.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.12682 of 2015

and

M.P.No.1 of 2015

K.Prema Devi

... Petitioner

Vs.

1. The State Rep.

The Additional Director General of Prison,
CMDA Towers,
Egmore, Chennai - 8.

2. The Superintendent,

Central Prison, Coimbatore.

3. The Superintendent,

Central Prison, Trichy.

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings No.8057/CN2/2015 dated 10.04.2015 and quash the same and to direct the respondents to retain the life convict S.Kannan S/o. Subramani convict No.20124 at Central Prison, Coimbatore.

For Petitioner : Mr.G.Jeremiah

For Respondents : Mr.M.Mohamed Riyaz

Additional Public Prosecutor

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent rejecting the representation made by the petitioner seeking to retain the petitioner's husband at Central Prison, Coimbatore.

2. The learned counsel for the petitioner would submit that the petitioner's husband was convicted for an offence under Section 302 of IPC and was sentenced to undergo life imprisonment. The petitioner's husband was initially confined at Central Jail, Tiruchy, and thereafter, he was temporarily shifted to Central Prison, Coimbatore for a period of three

months from 27.01.2015. The petitioner made a representation to the first respondent to retain her husband at Central Prison, Coimbatore since the entire family is living in Coimbatore. The first respondent by impugned order dated 10.04.2015, rejected the representation made by the petitioner.

3.The learned counsel for the petitioner would submit that certain incidents which are said to have taken place in the year 2010, 2011 and 2013, regarding the availability of mobile phone in the Prison cell, was put against the petitioner's husband and the representation was rejected. The learned counsel submitted that the first respondent did not take into consideration the situation between 2014 and 2015 and went by certain old incidents that took place in the Prison.

4.The learned counsel for the petitioner would further submit that the petitioner's husband has undergone imprisonment for more than 14 years and therefore he is also entitled to be considered for premature release by virtue of G.O.Ms.No.64 dated 01.02.2018.

5. The learned Additional Public Prosecutor on instructions would submit that the first respondent has perfectly applied his mind and rejected the representation made by the petitioner. The learned counsel would further submit that the first respondent has specifically recorded the reasons for the rejection of the representation made by the petitioner by taking note of certain incidents that took place inside the Prison during the year 2010, 2011 and 2013, and therefore the first respondent cannot be faulted for rejecting the representation made by the petitioner. The learned counsel would further submit that if the premature release has to be considered, the petitioner has to make an independent representation to the second respondent, and the same will be considered strictly in accordance with the G.O.Ms.No.64 dated 01.02.2018.

6. This Court carefully considered the submission made on either side. This Court is not inclined to interfere with the order passed by the first respondent. However, it is seen that the first respondent has relied upon certain incidents which is said to have taken place between 2010 to 2013 inside the Prison. It is more than four years since the impugned order was passed and necessarily the situation would have challenged by now. Therefore, the petitioner must be given an opportunity to make a fresh representation to the second respondent seeking for transferring the petitioner's husband to the Central Prison, Coimbatore. The petitioner must also be given an opportunity to seek for premature release of her husband in accordance with the G.O.Ms.No.64 dated 01.02.2018.

6. In view of the above, liberty is given to the petitioner to make a fresh representation to the second respondent seeking for transferring her husband who is now presently confined at Central Prison, Tiruchy to Central Prison Coimbatore. The second respondent on receipt of the representation shall consider the same independently by taking into consideration the period from 2014 till date, without being influenced by the earlier impugned order passed on 10.01.2015. This exercise shall be done by the first respondent strictly in accordance with law, and the first respondent shall take a decision within a period of six weeks from the date of receipt of the fresh representation to be made by the petitioner in this regard. Liberty is also granted to the petitioner to seek for premature release of her husband in accordance with the G.O.Ms.No.64 dated 01.02.2018 and the petitioner shall make a representation in this regard to the third respondent, and the third respondent shall process the same in accordance with the guidelines given in G.O.Ms.No.64 dated 01.02.2018.

This Writ Petition is disposed of with the above directions. No Costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

dh/kp

To

1. The Additional Director General of Prison,
CMDA Towers,
Egmore, Chennai - 8.
2. The Superintendent,
Central Prison, Coimbatore.
3. The Superintendent,
Central Prison, Trichy.
4. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.G.Jeremiah, Advocate sr 3848.

W.P.No.12682 of 2015

SPD(CO)

SP(15/02/2019)