

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.07.2019
CORAM

THE HONOURABLE MR JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

Habeas Corpus Petition No.1359 of 2019

B.Salma Mahajabeen

... Petitioner

-Versus-

State Rep. by its

- 1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai 600 009.
- 2.The Additional Director General of Prison,
C.M.D.A.Towers,
Egmore, Chennai 600 008.
- 3.The Superintendent of Police,
Central Prison,
Coimbatore.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to grant the respondents to grant 30 days leave to the detenu - Mohammed Ali (Convict No.10727), aged about 48 years, Son of Khaja Mohideen, now, detained at Central Prison, Coimbatore.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.C.Iyyapparaj, APP for
RR1 to 3

ORDER

[Order of the court was made by Justice M.M.SUNDRESH]

The petitioner is the wife of the convict. This petition has been filed seeking leave to the convict for 30 days to make arrangements for his daughter's marriage.

2. Heard both sides.

3. The learned counsel for the petitioner submitted that on a conjoint reading of Rules 20 and 22 of The Suspension of Sentence Rules, 1982, there is no bar for considering the request made. The convict is under incarceration for more than two decades. The foundation facts are not in dispute on the need for leave. The sentence imposed under The Explosives and Substances Act had already been served and completed by the convict. Interpreting the above said position, the Apex Court has held that in such a case, convict will have to be treated for the major offence for which he had served the sentence, and, therefore, he cannot be disqualified for the offence under The Explosives and Substances Act.

4. The learned Additional Public Prosecutor submitted that in view of the Rule 24, the request of the detenu cannot be considered.

5. We find force in the submission made by the learned counsel for the petitioner. A combined reading of Rules 20 and 22 of the said Rules coupled with the judgement of the Apex Court in State of Tamil Nadu v. P.Veera Bhaarithi, 2019 SCC Online 324 : 2019 (2) Scale 225 will certainly entitle the detenu to be considered for Ordinary Leave. In any case, the Executive Power of the Union of India stands delegated in favour of the State Government. Admittedly, the detenu has undergone the sentence imposed under The Explosives and Substances Act. Therefore, in law, he has to be treated as a life convict for offence committed under section 302 of IPC. In such view of the matter, we are inclined to direct the respondents to grant ordinary leave to the convict, who has been under incarceration for more than two decades for 30 days commencing from 10.08.2019 subject to the usual conditions that can be imposed by the respondents. The convict shall be released from the prison at 10.00 a.m. on 10.08.2019 and that the convict shall return back to the prison at 05.00 p.m. on 08.09.2019. The convict shall be accompanied by adequate escorts.

6. In the result, this Habeas Corpus Petition stands disposed of with the above directions.

The Registry is directed to list this matter on 10.09.2019 for reporting compliance.

kmk

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai 600 009.

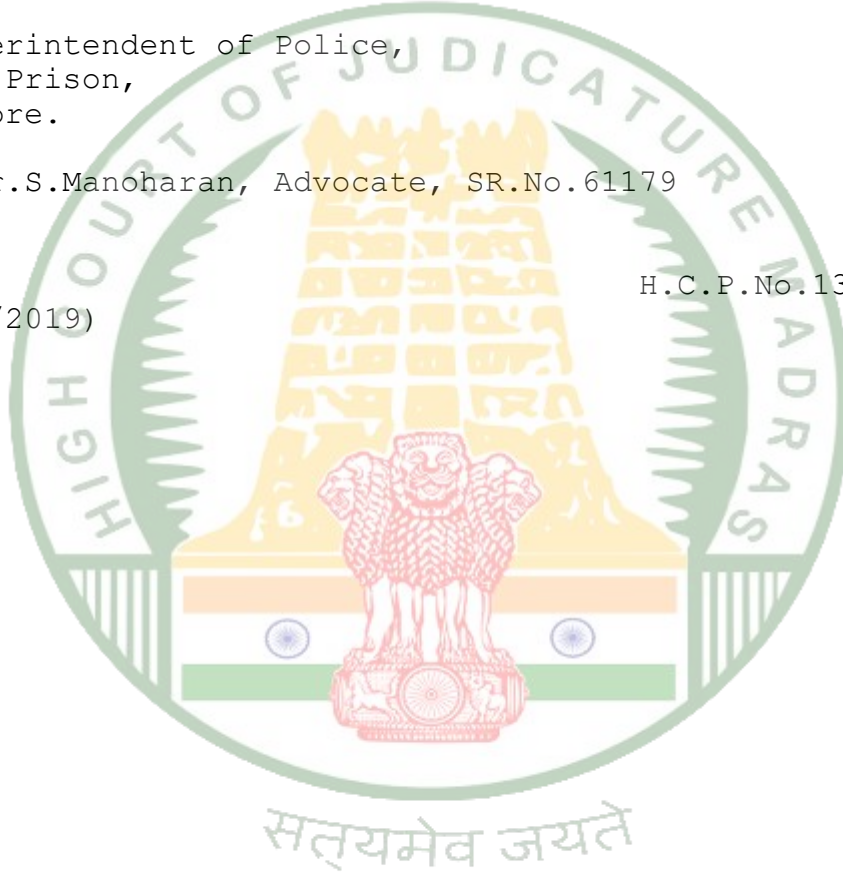
2.The Additional Director General
of Prison,
C.M.D.A.Towers,
Egmore, Chennai 600 008.

3.The Superintendent of Police,
Central Prison,
Coimbatore.

+lcc to Mr.S.Manoharan, Advocate, SR.No.61179

Kak(24/07/2019)

H.C.P.No.1359 of 2019



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