

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice RMT. TEEKAA RAMAN

H.C.P. No. 1522 of 2019

B.Narkis Banu ... Petitioner

-vs-

1.The Home Secretary (Prison),
Home Department,
Secretariat, Fort St. George, Chennai.

2.The Additional Director General of Prison,
Prison Department,
Gandhi Irwin Road, Egmore, Chennai - 8.

3.The Deputy Inspector General of
Head Quarters,
Prison Department,
Gandhi Irwin Road, Egmore,
Chennai - 8.

4.The Superintendent of Police,
Central Prison, Salem. ... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus to direct the respondents to produce the petitioner's husband T.Ahamed Basha @ Neethinathan, S/o.Thiyagarajan, aged about 45 years (C.T.No.7577) - Life Convict Prisoner, Salem, Central Prison before the Court and directing the respondents to consider him under the Rule 632 of Tamil Nadu Prison Manual, 1983, for release and set him at liberty pursuant to the petitioner's representation to the respondents dated 29.06.2019.

For Petitioner .. Mr.M.Mohamed Saifulla

For Respondents .. Mr.R.Prathap Kumar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

Seeking a direction to the respondents to produce the petitioner's husband T.Ahamed Basha @ Neethinathan, S/o.Thiyagarajan, aged about 45 years (C.T.No.7577) - Life Convict Prisoner, Central Prison, Salem before the Court and to consider him under the Rule 632 of Tamil Nadu Prison Manual, 1983, for release and set him at liberty pursuant to the petitioner's representation to the respondents dated 29.06.2019, the present habeas corpus petition has been filed.

2.The petitioner herein is the wife of the convict who is under incarceration pursuant to the conviction rendered by the Sessions Judge, Mahila Court, Cuddalore in S.C.No.18 of 2008 for the offence punishable under Sections 302 and 404 I.P.C. respectively. The appeal filed by the convict in Crl.A.No.331 of 2009 was also dismissed by order dated 02.11.2009. Thereafter, the present habeas corpus petition has been filed seeking to invoke the provisions contained in Rule 632 of the Tamil Nadu Prison Manual, 1983 Vol.2.

3.Taking note of the averments made, we directed the fourth respondent to get a report from the Dean, Government Mohan Kumaramangalam Medical College Hospital, Salem. The relevant portion of the report reads as under:

(1) Has examined Thiru.Ahamed Basha @ Neethinathan, S/o.Thiyagarajan, Convict No.7577, Central Jail, Salem.

(2)And found that He/She has not recovered from his/her illness.

(03)And He/She is suffering from Type 2 Diabetes Mellitus (Triple vessels Disease)/ CAD/ POST CABG Pilonidal Sinus/GERD

(04)And He/she is recommended leave for. As per HOD, Cardiology Opinion dated: 01.10.2019 the case of CAD/POST CABG triple vessel disease. At present cardiac status of the patient requires periodic cardiac evaluation & Management. As per HOD, Surgical Gastroenterology opinion dated 18.09.2019 he require surgical management of pilodial sinus & Medical Management of Gastro esophageal reflux disease (GERD).

4.Rule 632 of the Tamil Nadu Prison Manual speaks of release of sick prisoners. Under this Rule, the a specific role is assigned to the medical officer. Thus his opinion becomes

substantial. After all, he is the competent person to certify that the prisoner is likely to die in the event of continuous confinement. Alternatively, he will have a chance of recovery, if released. After obtaining such certificate, the Superintendent of Prison will have to consult the Collector on the desirability of releasing the prisoner. Thereafter, it should be forwarded to the Inspector General of Prisons for submission to the Government with the nominal roll of the prisoner. The Superintendent of Prison shall also enclose a certificate to the effect that he has satisfied himself that the convict, if released, would be suitably cared for, apart from accompanying other relevant documents.

5. It appears that none of the procedure has been followed. Perhaps, this should be for the reason that no certificate has been obtained from the medical officer. The report obtained by us is only for the purpose of satisfying on the medical condition of the convict. In matters like this, we are not expected to substitute our view over that of the medical expert.

6. In such view of the matter, we direct the fourth respondent to comply with Rule 632 of the Tamil Nadu Prison Manual by getting certificate from the medical officer. If the certificate indicates that continuous presence of the convict in the prison will lead to death due to the ailment he is suffering and alternatively, he would have chance to survive if released, the Superintendent of Prison thereafter will have to comply with the other mandates of the Rule. The aforesaid exercise will have to be done within a period of two months from the date of receipt of a copy of this order.

7. In view of the medical officer's report, which states the need for release of the convict and the certification made accordingly, the Government shall take appropriate decision within a period of eight weeks thereafter. Till the completion of aforesaid process, parole already granted to the convict shall stand extended on the very same terms as ordered earlier.

8. With the above observation and direction, this habeas corpus petition stands disposed of.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

mmi/ssm

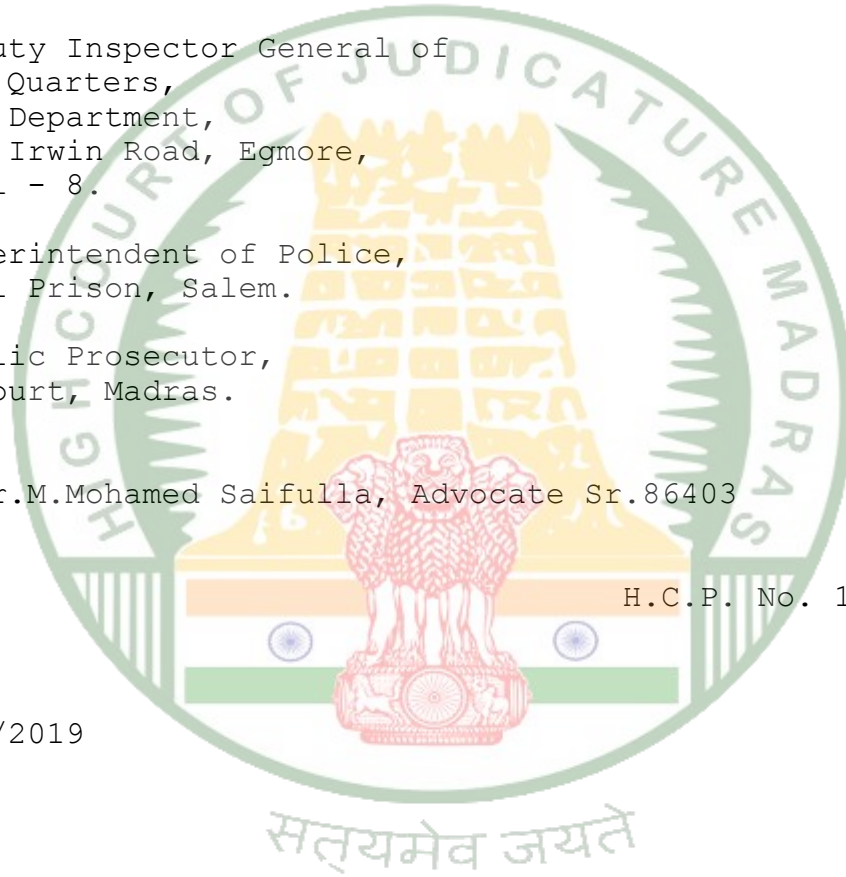
To

- 1.The Home Secretary (Prison),
Home Department,
Secretariat, Fort St. George, Chennai.
- 2.The Additional Director General of Prison,
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Head Quarters,
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- 4.The Superintendent of Police,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.M.Mohamed Saifulla, Advocate Sr.86403

H.C.P. No. 1522 of 2019

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srg 20/11/2019



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