

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 05..08..2019

CORAM

The Honourable Mr Justice M.M.SUNDRESH
and
The Honourable Mr Justice M.NIRMAL KUMAR

Habeas Corpus Petition No.1542 of 2019

Kurshid

... Petitioner

-Versus-

The State Rep. by its

1.The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai 600009.

2.The Additional Director General of Prison,
C.M.D.A.Towers,
Egmore,
Chennai 600008.

3.The Superintendent,
Central Prison,
Puzhal,
Chennai.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Habeas Corpus, directing the respondents to grant leave for 30 days to the convict - Abdul Hakkim (Convict No.4662), aged about 41 years, Son of Syed Mohammad, now, detained at Central Prison, Puzhal, Chennai.

For Petitioner : Dr.S.Manoharan

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

ORDER

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

The petitioner, who is the sister of the convict, seeks ordinary leave for 30 days to the convict to make arrangements for her livelihood.

2. When the matter is taken up for hearing, Mr.M.Satheesh, Jailor, Central Prison, Puzhal-I, Chennai, is present, as directed by this court on 01.08.2019.

3. Heard both sides.

4. The learned counsel for the petitioner submitted that the reasons for leave are not in dispute. Even on the legal objection, this court was pleased to reject the contention raised by the learned Additional Public Prosecutor when a reliance was placed on Rule 21 of the Tamil Nadu Suspension of Rules, 1982. The petitioner has been under incarceration for more than two decades. There is no material to substantiate that his release would lead to endanger to the public peace.

5. Per contra, the learned Additional Public Prosecutor submitted that though similarly placed persons have been granted leave, in view of Rule 21 of the Tamil Nadu Suspension Rules, the case as projected by the petitioner will have to be dismissed.

6. This court has considered the ambit and scope of Rule 21 of the Tamil Nadu Suspension of Rules on the earlier occasions and directed the authorities to grant leave to those similarly placed convicts. The provision in rule, cited supra, cannot be interpreted to displace the unfettered powers of the respondent or this court to consider the request on case to case basis. Further, there is no material to substantiate that the presence of the convict would be prejudicial and dangerous to the public peace or danger to the public tranquility. The conduct of the convict in the prison is also not stated to be dangerous. The offence committed by the convict resulting in the conviction and sentence by itself cannot be factored to deny the consideration for granting ordinary leave, when fact demands so. Thus, considering the above and in the light of the earlier orders passed in respect of similarly placed persons, we are inclined to grant leave to the convict.

7. In the result, the respondents are directed to grant ordinary leave to the convict for 30 days commencing from 20.08.2019 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 20.08.2019 and he shall return back to the prison at 05.00 p.m. on 20.09.2019. The respondents shall provide necessary escorts to the convict from the Central Prison

from the time he leaves the prison and till such time he is taken back to the Central Prison, on the said date and time as ordered by this court. We make it clear that the day on which the convict is released from the prison and the day on which he is readmitted will have to be excluded. The presence of the Jailor is dispensed with. This Habeas Corpus Petition is disposed of accordingly with the above directions.

The Registry is directed to list this matter on 24.09.2019 for reporting compliance.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

To

- 1.The Secretary to Government of Tamil Nadu, Department of Home, Fort St. George, Chennai 600009.
- 2.The Additional Director General of Prison, C.M.D.A.Towers, Egmore, Chennai 600008.
- 3.The Superintendent, Central Prison, Puzhal, Chennai.
- 4.The Joint Secretary to Government, Public (Law and Order), Secretariat, Fort St. George, Chennai 600009.
- 5.The Public Prosecutor, High Court, Chennai.

Copy to

The Section officer
Criminal Section
High Court, Madras 104.

(Post on 24.09.2019)

+1 CC to Mr.S. Manoharan, Advocate sr 66602.

H.C.P.No.1542 of 2019

VGI (CO)
SP(16/08/2019)