



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01..08..2019

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice M.NIRMAL KUMAR

H.C.P.No.1546 of 2019

Fazila

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Petitioner/Wife of the detenue

Vs

The State represented by its

1. The Secretary to Government of Tamilnadu,
Home Department,
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,
Central Prison,
Coimbatore.

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Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India praying for a writ of habeas corpus, to direct the respondents to grant leave for 30 days to the detenue, Mohamed Azam, S/o. John Basha, aged about 41 years Convict No.10709 confined at Central Prison, Coimbatore.

For Petitioner .. Dr.S.Manoharan

For Respondents.. Mr.C.Iyyapparaj, APP

ORDER

(Order of the Court was delivered by M.M.SUNDRESH, J.)

The petitioner is the wife of the convict. Leave has been sought for, for the convict, who is under incarceration for more than 20 years having committed offence under The Arms Act and



The Explosives and Substances Act, besides offence under IPC, on the premise that continued treatment will have to be given from the fertility clinic for the progeny.

2. The learned Additional Public Prosecutor would raise objection stating that the convict has availed ordinary leave on an earlier occasion and thereafter, he was given emergency leave for this year. Since the restriction for being considered for ordinary leave is yet to be completed, in law, the request cannot be considered.

3. We are not considering the case of the convict for ordinary leave, however, even for emergency leave, rule concerned stipulates that it can be considered only on serious health condition or on death occurring. The right to have children can be termed as fundamental right. It is also natural right which inheres in a human being. Therefore, the rule as relied upon by the learned Additional Public Prosecutor has to be seen contextually. Such a rule cannot be termed so as to prevent a prisoner from continuing the treatment for infertility. In other words, such a rule which provides for granting emergency leave on the ground of death or serious illness would not preclude from being considered for other extraordinary circumstances.

4. In the light of the above, we are inclined to direct the respondents to grant emergency leave for 06 (six) days to the convict commencing from 05.08.2019 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 05.08.2019 and he shall return back to the prison at or before 05.00 p.m. on 12.08.2019. The respondents shall provide necessary escort 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. This Habeas Corpus Petition is disposed of accordingly with the above directions.

The Registry is directed to list this matter on 16.08.2019 for reporting compliance.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



To,

1. The Secretary to Government of Tamilnadu,
Home Department,
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,
Central Prison,
Coimbatore.

4. The Public Prosecutor,
High Court of Madras,
Madras.

+1cc to Mr.S.Manoharan, Advocate sr.65872

H.C.P.No.1546 of 2019

mr(co)
nr 02/08/2019