

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Cr1.O.P.No.22149 of 2019

Kamala

...Petitioner

Vs.

1. The State of Tamilnadu,
represented by its Secretary,
Home Department,
Secretariat,
Chennai- 600 009.

2. The Additional Director,
General of Police,
Prison Department,
Egmore, Chennai- 600 008.

3. The Superintendent,
Central Prison,
Coimbatore.

4. The Superintendent,
Central Prison,
Salem.

...Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the Prison Authorities, to transfer the petitioner's son Raja @ Fire Service Raja, son of late Shanker, Convict No.18706, from Central Prison, Coimbatore to the Central Prison, Salem.

For Petitioner : Mr.Philip Ravindran Jesudoss

For Respondents : Mr.C.Iyyapparaj
Additional Public Prosecutor

O R D E R

The limited prayer sought for in the present writ petition is for transfer of the convict from the Central Prison, Coimbatore to the Central Prison, Salem.

2.The learned counsel for the petitioner submitted that the petitioner intends to workout her remedy for pre-mature release,

for which purpose, he requires to meet his lawyer at Chennai and to enable his aged mother to visit him.

3.The learned Additional Public Prosecutor submitted that originally, the petitioner herein was transferred on administrative grounds and therefore he cannot seek for further transfer as a matter of right.

4.I have given a careful consideration on the submission made by the respective counsel. The Hon'ble Division Bench of this Court in an order passed in H.C.P.No.1707 of 2017 dated 05.10.2017 in the case of A.Aruna Vs The Additional Director General of Police and Inspector General of Prison, Gandhi Irvin Salai, Egmore, Chennai-600 008 and others, had an occasion to deal with the provisions of Rule 568 and 570 of the Tamilnadu Prison Rules, 1983 and had passed an order for transfer of the convict. The relevant portion of the order reads as follows:

"7.Having regard to the submissions advanced before us and the state of the record, it would be relevant to extract the provisions of Rule 568 and 570 of the 1983 Rules:

"1.... 568. Grounds, reasons and circumstances of transfer:-

Prisoners may be transferred from one prison to another for the following reasons, namely:-

- (i) For custody and treatment in a suitable institution in accordance with the classification, procedure;
- (ii) For attendance in Court for the purpose of standing trial, or giving evidence;
- (iii) On medical grounds;
- (iv) On humanitarian grounds, in the interest of their rehabilitation;
- (v) For post-release vigilance by the police;
- (vi) For providing essential services;
- (vii) On grounds of security, expediency or any other grounds; and
- (viii) For other special reasons, if any...."

"....570.Powers of Inspector-General--

(1) The Inspector-General subject to the order and under the control of the Government, is authorised to sanction the transfer from one prison to another within the State of such prisoners as are

referred to in Section 29 of the Prisons Act, 1900 (Central Act III of 1900) except those under sentence of death. ..."

7.1.A perusal of the aforementioned Rules would show that the reason cited by the respondents does not strictly speaking, fall in any of the grounds mentioned in Rule 568. The argument that the ground given, that is, "administrative reasons" would fall in clause (vii) of the Rule 568, could, possibly, have been, accepted disregarding the nomenclature given, if, it was supported by the material available on record.

7.2. A perusal of clause (vii) of Rule 568, indicates that the prisoner can be transferred on the grounds of security, expediency or any other ground. Even, if, we were to accept that the "administrative reasons" would come within the ambit of "any other ground", it would be incumbent on the respondents to furnish the relevant material to the Court to justify the transfer of the prisoner.

7.3. As noted above, except for vague reason that the prisoner, ie., Somu, has been transferred for "administrative reasons", no material has been placed on record as to how such a conclusion was reached by the authority concerned. There is nothing to show that his conduct or any other expediency faced by the respondents propelled his transfer to Central Prison, Vellore.

8. In so far as the stand taken by the respondents that the prisoner can be transferred by the Inspector-General of Police in exercise of powers conferred upon him under Rule 570, in our view, Rule 570 has to be read along with Rule 568. Otherwise, the Inspector-General would be conferred with untrammelled and unbridled powers making it susceptible to the struck down under Article 14 of the Constitution.

9. Furthermore, as has been contended by the learned counsel for the petitioner, the impact of Rule 572 has also to be taken into account. If, the said Rule is taken into account, the petitioner's husband could not have been transferred till such time the period for lodging an appeal had expired or until the result of the appeal is known.

10. It is not disputed before us by Mr. V.M.R. Rajentran, Additional Public Prosecutor, that an appeal has been lodged by the petitioner with the Supreme Court, which is pending adjudication.

11. Therefore, bereft of the relevant material as to what occasioned the transfer of the petitioner's husband from Central Prison, Chennai, to Central Prison, Vellore, and in the teeth of Rule 572, the impugned action cannot be sustained.

12.Given the foregoing reasons, the respondents are directed to repatriate the petitioner's husband Somu @ Somasundaram, son of Subramani, to the Central Prison, Chennai."

5.The aforesaid observation of the Hon'ble Division Bench is self explanatory. In the light of the said decision, this Court is of the view that the petitioner is entitled for a transfer. Accordingly, the respondents herein are directed to transfer the petitioner from Central Prison, Coimbatore to the Central Prison, Salem, within a period of four weeks from the date of receipt of a copy of this order.

6.Accordingly, this Criminal Original Petition is disposed of.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

1.The State of Tamilnadu,
represented by its Secretary,
Home Department,
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2.The Additional Director,
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Prison Department,
Egmore, Chennai- 600 008.

3.The Superintendent,
Central Prison,
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+1 CC to Mr.Philip Ravindran Jesudoss , Advocate sr 85233

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SVI (CO)
SP(19/11/2019)