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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
AND
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

H.C.P.No.1324 of 2020

Mrs.Mahabooba Jailani
S/o.Mohamed Ali

... Petitioner

Vs

- 1.The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Director General of Prison and
Inspector General of Prison,
Whannels Road,
Egmore, Chennai - 008.
- 3.The Superintendent of Prison,
Puzhal, Central Prison - I,
Puzhal - 600 066.
- 4.The Superintendent of Prison,
Puzhal, Central Prison - II,
Puzhal - 600 066.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Habeas Corpus, directing to set aside the impugned order passed by the 3rd respondent in No.7873-1/R1/2020 dated on 15.06.2020 the respondents to set grant one month leave without escort to the detenu namely Mr.M.Mohamed Ali S/o.Mohamed Yunus now confined in Puzhal, Central Prison-I (Convict).

For Petitioner : Mr.M.Mohamed Saifulla.

For Respondents: Mr.T.Shunmuga Rajeswaran,
Government Advocate (Criminal Side).



O R D E R
(Order of the court was made by N.KIRUBAKARAN.J.,)

The matter was heard through "Video Conference".

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2.The wife of the conivt has filed this petition challenging the rejection order passed by the Superintendent of Prisons, Central Prison - I (Convict), Puzhal dated 15.06.2020 by which the request of the petitioner to grant leave for one month was rejected relying upon Section 32-A of the Narcotic Drugs and Psychotropic Substances Act, 1985.

3.Heard Mr.M.Mohamed Saifulla, learned Counsel appearing for the Petitioner and Mr.T.Shunmuga Rajeswaran, learned Government Advocate (Criminal side) appearing for the Respondents.

4.The learned Counsel for the petitioner submitted that Section 32-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 was partly struck down by the Judgement of the Hon'ble Supreme Court of India in "Dadu Alias Tulsidas -vs- State of Maharashtra" reported in "(2000) 8 Supreme Court Cases 437". Therefore, he submitted that the petitioner is entitled to ask leave for her husband and sought for allowing this petition.

5.However, the learned Government Advocate (Criminal Side) opposed the said contention by filing a counter affidavit reiterating the reason by relying upon Section 32-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 which has been negatived by the Hon'ble Supreme Court of India and sought for dismissal of this petition.

6.A perusal of the records would reveal that Hon'ble Supreme Court of India in "Dadu Alias Tulsidas -vs- State of Maharashtra" reported in "(2000) 8 Supreme Court Cases 437" has partly struck down Section 32-A of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the relevant Paragraph is extracted as follows:

"29.Under the circumstances the writ petitions are disposed of by holding that:

(1)Section 32-A does not in any way affect the powers of the authorities to grant parole.

(2)It is unconstitutional to the extent it takes away the right of the Court to suspend the sentence of a convict under the Act.

(3)Nevertheless, a sentence awarded under the Act can be suspended by the appellate court only and strictly subject to the conditions spelt out in Section 37 of the Act, as dealt with in this Judgment."



7. From the above, it is clear that Section 32-A has been partly struck down which does not take away the right of the Court to suspend the sentence of a convict under the Act. Further, it is also held that Section 32-A does not in any way affect the powers of the authorities to grant parole. In view of the above, the power of the authorities to grant leave or parole is not affected. Hence, this Court is inclined to grant three weeks leave to the convict for making arrangements for the livelihood of his family by setting aside the order dated 15.06.2020.

8. Accordingly, the convict viz., Mr. M. Mohamed Ali S/o. Mohamed Yunus now confined in Puzhal, Central Prison-I (Convict) is directed to be released on 25.09.2020 at 11.00 A.M. without police escort and the Convict is directed to return back to prison on 16.10.2020 at 05.00 P.M. During the said leave period, the convict shall report before the concerned jurisdictional Police Station every Monday and Friday at 11.00 A.M.

9. In the result, this Petition is Allowed. Post the matter for reporting compliance on 28.10.2020.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

To

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Joint Secretary, Public (L&O)
Secretariat, Fort St. George, Chennai.
3. The Director General of Prison and
Inspector General of Prison,
Whannels Road,
Egmore, Chennai - 008.
4. The Superintendent of Prison,
Puzhal, Central Prison - I,
Puzhal - 600 066.



5.The Superintendent of Prison,
Puzhal, Central Prison - II,
Puzhal - 600 066.

6.The Public Prosecutor,
High Court of Madras,
Chennai.

Copy to:
The Section Officer,
Criminal Section,
High Court, Madras.

mr(co)
krd 24/9

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