

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 1937 of 2020

Zubaida Begum ... Petitioner

-vs-

The State represented by

1.The Secretary to the Government,
Home Department,
Fort St.George, Chennai - 9.

2.The Deputy Inspector General of Prison,
Kovai Zone (Central Prison),
Kovai.

3.The Superintendent,
Central Prison, Kovai.

4.The Superintendent,
Central Prison, Vellore.

.... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus directing the respondents to grant ordinary leave for one month without escort to the detenu L.K.Surfudeen, S/o.P.K.Abdul Salam, aged about 44, Convict No.6583 at Central Prison, Coimbatore.

For Petitioner : Mr.R.Narayanan

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

ORDER

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

The petitioner, who is the wife of the convict seeks a direction to the respondents to grant ordinary leave to the

convict for a period of one month so as to perform surgery by removing the tumour in her uterus.

2. Heard the learned counsel appearing for the parties.

3. Learned counsel appearing for the petitioner submitted that the surgery has to be performed on her for which the convict's presence is required. On an earlier occasion, the convict was granted leave for a total period of 39 days. Therefore, the ordinary leave will have to be granted especially when the period of sentence undergone is 20 years 06 months and 22 days as on 02.11.2020.

4. Learned Additional Public Prosecutor appearing for the State submitted that the Probation Officer has stated that though the reason assigned is true, the Commissioner of Police, Coimbatore has not recommended for ordinary leave in view of the likelihood of the law and order problem.

5. We are inclined to consider the request made by the petitioner on two grounds. The first ground is that the need for conducting the surgery is not in dispute. On the second ground, we find that the convict has been granted leave for a total period of 39 days on the earlier occasions. During such time, there was no law and order problem. There is nothing to suggest that there will be a law and order problem now by the change in circumstances. The convict has been under incarceration for more than two decades as of now. He can either be released so as to be with the petitioner who is ailing and in need of surgery, with police escort. The question of contracting the pandemic disease has subsidised substantially as of now.

6. In such view of the matter, we direct the respondents to grant 15 days ordinary leave to the convict with sufficient escort commencing from 24.11.2020 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 24.11.2020 and he shall return back to the prison at 05.00 p.m. on 10.12.2020. 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.

7. We also make it clear that the convict will have to undergo COVID 19 test after his return.

8.With the above directions, this Habeas Corpus Petition is disposed of.

Post the matter 'for reporting compliance' on 11.12.2020.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

- 1.The Secretary to the Government,
Home Department,
Fort St.George, Chennai - 9.
- 2.The Deputy Inspector General of Prison,
Kovai Zone (Central Prison),
Kovai.
- 3.The Superintendent,
Central Prison, Kovai.
- 4.The Superintendent,
Central Prison, Vellore.
- 5.The Section Officer,
Criminal Section,
High Court, Madras-104.
- 6.The Public Prosecutor,
High Court, Madras.

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