



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.14531 of 2021

M.Aysha Parveen

... Petitioner

Vs.

1. The State rep. by its,
Home Secretary (Prison),
Home Department,
Secretariat,
Fort St. George,
Chennai.
2. The Director General of Prison,
No.2, Gandhi Irwin Road,
CMDA Building,
Egmore,
Chennai - 600 008.
3. The Deputy Inspector General of Prison (Vellore Range),
Office of the Range DIG,
Ramset Nagar, Thorapadi,
Vellore.
4. The Superintendent of Prison,
Central Prison at Vellore.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records in No.7314/t.k.3/2021 dated 30.06.2021 passed by the fourth respondent and quash the same and direct the respondents to provide the "A" Class Facility in view of the Rule 226 of the Tamil Nadu Prison Rules, 1983 to the husband of the petitioner/convict namely M.Mohamed Zahir @ Zahir Hussain S/o. Muthu Mohammed (CT.No.3395) confined at Central prison - Vellore.

For Petitioner : Mr.M.Mohamed Saifulla



WEB COPY

For Respondents : Mr.A.Damodaran,
Government Advocate[Cr1. Side]

* * * * *

O R D E R

This Writ Petition is filed to call for the records in No.7314/t.k.3/2021 dated 30.06.2021 passed by the fourth respondent and quash the same and direct the respondents to provide the "A" Class Facility in view of the Rule 226 of the Tamil Nadu Prison Rules, 1983 to the husband of the petitioner/convict namely M.Mohamed Zahir @ Zahir Hussain S/o. Muthu Mohammed (CT.No.3395) confined at Central prison - Vellore.

2.The petitioner is the wife of the convict M.Mohamed Jakir had sent a representation seeking "A" Class facility as per the Rule 226 of the Tamil Nadu Prison Rules, 1983. The Superintendent of the Prison, Vellore by communication No.7314/t.k.3/2021 dated 30.06.2021 had rejected the request and further observed that such power is only with the Courts and the Government, challenging the same the above writ petition is filed.

3.The contention of the petitioner is that the petitioner's husband was arrested by the Narcotic Control Bureau at Chennai on 22.12.2015 and a case in R.R.No.19 of 2015 came to be registered for the offence under Sections 8(c) r/w 27A and 22(c), Section 8 (c) r/w 29(1) and 28 of NDPS Act. On conclusion of the trial, the trial court in C.C.No.28 of 2016 by Judgment dated 12.12.2018 had convicted the petitioner and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees one lakh only). The petitioner's husband confined in the prison right from the date of his arrest and he has almost completed five years and more. The petitioner's husband was in the Hotel business and he was a income tax assessee. On the date of the seizure of the consignment the petitioner's husband was in abroad and he has been roped in only on the confession of the co-accused. The petitioner's husband was not in possession of the drugs and no seizure was made from the petitioner's husband. The petitioner had filed the petition along with the income tax returns for the proof that the petitioner's husband was living a superior mode of life and entitled for "A" Class facility. The fourth respondent without considering all the aspect had rejected the representation which is not proper. Hence, the above writ petition is filed.

4.The learned Government Advocate [Cr1. Side] submitted that the petitioner's husband is a convict who has convicted by the



Sessions Judge, I Additional Special Court, Under NDPS Act, Chennai by Judgment dated 12.12.2018 and sentenced him to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees one lakh only), in default to undergo one year under Section 28 of NDPS Act, the sentence ordered to be run concurrently. From the date of the arrest the petitioner's husband is in prison and he has almost completed five years and more.

5.He further submitted that the petitioner's husband involved in the NDPS offence. The petitioner's representation has been considered by the authorities by following the Tamil Nadu Prison Manual, 1983 Rule 225 to 227 and the Superintendent is not the appropriate authority to grant "A" class facility to the prisoner and rejected the representation of the petitioner.

6.In the counter, it is clearly mentioned that prior to the rejection, report was called for from the Chennai District Collector, thereafter the proposal was sent to the Director General of Police/Director General of Prisons and Correctional Services, Chennai and thereafter the fourth respondent had rejected the petitioner's representation.

7.Considering the submissions of both side and on perusal of the typed set of papers filed by the petitioner and counter filed by the respondents, it is not in dispute that the petitioner's husband is a convict prisoner No.3395, who had been convicted by the trial Court by Judgment dated 12.12.2018. The petitioner's husband is in prison from the date of his arrest and as on date, he has served five years and more inside the prison. The petitioner's husband was an income tax assessee. When the petitioner made a representation on 19.06.2021 to the fourth respondent along with the copies of the income tax assessment and other documents. Thereafter it is strange to see in the counter it has been mentioned that the petitioner's plea seeking "A" Class Facility for her husband has been considered after getting the report from the Chennai District Collector and a proposal was also sent to the Director General of Police/Director General of Prison.

8.From the rejection order it is seen that the representation of the petitioner dated 19.06.2021 had been received by them on 24.06.2021 and within ten days the rejection order has been passed, after getting the above said report. Further as per the Tamil Nadu Prison Manual, it is for the Government to decide about the eligibility or otherwise for providing "A" Class Facility. In this case, without authority the Superintendent of Police, Vellore had rejected the representation of the petitioner for providing "A" Class Facility to her husband and the same cannot be considered as rejection.



9. Further in this case, the petitioner's husband is an income tax assessee and requirement as per Section 225 of the Tamil Nadu Prison Manual is that if they by social status, education or habit of life have been accustomed to a superior mode of living. In this case, the petitioner's being an income tax assessee and a business man and lead a habit of life have been accustomed to a superior mode of living. There is no other adverse reason found against the petitioner's husband to continue him with the "A" Class Facility. In view of the same, this Court is of the view that the petitioner's husband is qualified and eligible for "A" Class Facility.

10. Accordingly, this Writ Petition is allowed. The Superintendent of Prison, Vellore is directed to provide "A" Class Facility to the petitioner's husband. No costs.

Sd/-
Assistant Registrar (CS-IV)

// True Copy//

Sub Assistant Registrar

ah

To

1. The State rep. by its,
Home Secretary (Prison),
Home Department,
Secretariat,
Fort St. George,
Chennai.
2. The Director General of Prison,
No.2, Gandhi Irwin Road,
CMDA Building,
Egmore,
Chennai - 600 008.
3. The Deputy Inspector General of Prison (Vellore Range),
Office of the Range DIG,
Ramset Nagar, Thorapadi,
Vellore.



4. The Superintendent of Prison,
Central Prison at Vellore.

5. The Public Prosecutor,
High Court,
Madras.

W.P.No.14531 of 2021

GP(CO)
SU(06/09/2021)