

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.01.2021
PRONOUNCED ON : 12.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

H.C.P. No.2521 of 2020 & Crl.M.P. No.8732 of 2020

Lawrance

Petitioner

vs.

1 The Deputy Director of Central Prisons
Prison Department
No.1, Gandhi Irwin Road
CMDA Tower
Egmore
Chennai 600 008

2 The Superintendent of Central Prison
Vellore
Vellore District

Respondents

Petition filed under Article 226 of the Constitution of India seeking a writ of habeas corpus directing the first respondent to grant one month ordinary leave to the detenu Kaberiyal (Convict No.3830), S/o Devasagayam, confined at Central Prison, Vellore, by considering the petitioner's representation dated 17.12.2020.

For petitioner : Mr. R. Sankarasubbu

For respondents : Mr.R. Prathap Kumar
Additional Public Prosecutor

ORDER

This petition has been preferred seeking a writ of habeas corpus directing the first respondent to grant one month ordinary leave to the detenu Kaberiyal (Convict No.3830), S/o Devasagayam, confined at Central Prison, Vellore, by considering the petitioner's representation dated 17.12.2020.

2 It is the case of the petitioner that her husband Kaberiyal, S/o Devasagayam (Life Convict No.3830) has been in prison for about 21 years and that he requires to be released on one month ordinary leave for his medical treatment.

3 Along with the habeas corpus petition, the petitioner has filed a miscellaneous petition as well, alleging that her husband has been in solitary confinement in the Central Prison, Vellore and that he should be transferred from there.

4 Heard Mr. R. Sankarasubbu, learned counsel for the petitioner and Mr. R. Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

5 Mr. Sankarasubbu placed reliance on the following judgments:

S.No.	Cause Title
1	D.Bhuvan Mohan Patnaik and Others vs. State of A.P. & Others ¹
2	Maneka Gandhi vs. Union of India and another ²
3	Sunil Batra (I) vs. Delhi Administration ³
4	Sunil Batra (II) vs. Delhi Administration ⁴
5	Kishore Singh Ravinder Dev and others vs. State of Rajasthan ⁵
6	K. Valambal and others vs. Government of Tamil Nadu ⁶

6 Besides, Mr. Sankarasubbu placed further reliance on Section 491 of the Code of Criminal Procedure, 1898 and Order I Rule 4 of the Appellate Side Rules.

7 The sum and substance of the submissions made by Mr. Sankarasubbu is as under:

- A post card is sufficient to be treated as a habeas corpus petition.
- A prisoner, on conviction, is kept in a prison on the orders of the trial Court in Form No.41 and he cannot be shifted from the prison where has been lodged without the permission of the convicting Court.

1 AIR 1974 SC SC 2092

2 (1978) 1 SCC 248

3 (1978) 4 SCC 494

4 (1980) 3 SCC 488

5 1981 SCC (Cri.) 191

<https://hcservices.ecourts.gov.in/hcservices/>

6 1981 LW (Crl.) 58)

- Transfer of a prisoner on administrative grounds from one prison to another is illegal.
- There cannot be solitary confinement of a prisoner for no fault of his.
- Arbitrary and fanciful orders of transfer cannot be passed by the Prison authorities.
- The detenu took treatment for his tooth ailment from Dr. Rajan in Chennai and therefore, he should be kept in Chennai for his treatment, especially in the light of the medical report that has been filed by the Prison authorities as per which he has some dental problem.
- Plural number of prisoners should be kept along with Kaberiyal and failure to give adequate medical treatment is violative of his right under Article 21 of the Constitution of India.

8 Per contra, Mr. Prathap Kumar, learned Additional Public Prosecutor, refuted the aforesaid contentions and submitted that Kaberiyal has not been in solitary confinement and that he has been kept along with other prisoners as stated in the counter affidavit dated 08.01.2021 filed by the second respondent.

9 This Court gave its anxious consideration to the rival submissions.

10 The prayer in the instant habeas corpus petition is for grant of ordinary leave to the petitioner's husband for a period of thirty days. Very recently, this Division Bench, In Saleema vs. State⁷, considered the scope of grant of leave / parole and held that this Court does not have the power for grant of such relief. Therefore, on the said short ground alone, this habeas corpus petition is liable to be dismissed.

11 As regards the criminal miscellaneous petition, the petitioner's contention is that Kaberiyal has been kept in solitary confinement. In the opinion of this Court, though the prayer in the miscellaneous petition is beyond the scope of the prayer in the main petition, yet, this Court directed the Prison authorities to file their counter affidavit and accordingly, the Superintendent of Police, Central Prison, Vellore, has filed a counter affidavit dated 08.01.2021. In the said counter affidavit, at paragraph 12, it has been stated as under:

"12. With reference to the averments contained in para no.3 of the affidavit, it is totally a false and baseless allegation. The above said prisoner was lodged in High Security Block-2 (Cell No.8) where

LCT 12840 Sriharan @ Murugan (involved in Rajiv Gandhi Assassination case) was also lodged in the another cell of the same block. In the meantime, LCT 12840 Sriharan @ Murugan S/o Vettrivel started hunger strike, the petitioner's husband directly supported during that period (i.e.) on 09.11.2020 another prisoner's hunger strike by throwing a parcel inside the cell of the LCT 12840 Sriharan @ Murugan S/o Vettrivel. It is totally in violation of prison rules which is a punishable offence and therefore, a report was made in jailor's report book. Based on the report his prison privileges (except advocate interview) and reduced of "A" class to "B" is cut for a period of 3 months, the above said prisoner was shifted to HS-4 Block where and also six other prisoners are lodged in the same block. During the period, the above prisoner was interviewed by his advocate on 01.12.2020."

12 Placing reliance on the aforesaid paragraph of the counter affidavit, Mr. Sankarasubbu submitted that the Prison authorities have admitted that the prisoner is in solitary confinement. But, in our opinion, paragraph 12 of the counter affidavit does not say so. It says that the petitioner's husband was kept along with one Sriharan @ Murugan involved in Rajiv Gandhi assassination case in High Security Block-II and that he assisted the activities of Sriharan @ Murugan by throwing a parcel inside his cell in violation of the Prison rules and that has been recorded in the Prison's Report Book. At present, Kabariyal is in High Security Block-IV along with 6 other prisoners and he has been permitted to interview his advocate on 01.12.2020. Therefore, we do not find any merit in the contention of Mr. Sankarasubbu that Kabariyal is in solitary confinement as alleged by the petitioner.

13 Further, we are unable to concur with the submission of Mr. Sankarasubbu that a convict prisoner cannot be shifted from one prison to another without the permission of the trial Court, because, the shifting of a prisoner from one prison to another prison is governed by Rule 568 of the Tamil Nadu Prison Rules, 1983, which does not contemplate getting permission from the trial Court. The Tamil Nadu Prison Rules was formulated in accordance with the guidelines issued by the various judgments of the Supreme Court relied upon by Mr. Sankarasubbu above as well and several amendments have been brought to it based on Mulla Committee report on prison reforms.

14 Assuming for a moment, as it happened recently during COVID-19, there is an outbreak of pandemic in a prison, the Prison authorities can very well transfer the inmates to other prisons without brooking delay. To say that they can

undertake the exercise of transferring the prisoners only with the permission of the trial Court is tantamount to extinguishing the power of the Prison authorities under Rule 568, *ibid.*, and conferring it on the judiciary which is impermissible. Unlike a remand prisoner who is in judicial custody of a Court, a convict prisoner cannot be said to be in judicial custody of the Court, because, he undergoes a sentence that has been passed by a Court and it is the function of the executive branch of the State to ensure that the sentence passed by the Court is undergone by the convict prisoner. Therefore, a prisoner cannot ask, as a matter of right, that he should be lodged in a particular prison of his choice.

15 As regards the dental problem of Kaberiyal, the medical report dated 08.01.2021 issued by the Assistant Surgeon, Central Prison Dispensary, Vellore, shows that he had undergone a tooth implant in a private hospital earlier which had broken, for which, he is being given treatment in the Prison Hospital.

16 Further, in paragraphs 14 and 15 of the counter affidavit filed by the second respondent, it has been stated as under:

"14. It is submitted that the petitioner's husband was granted 30 days of ordinary leave and he was released on 10.06.2019 as per order of the Deputy Inspector General of Prisons, Chennai Range, Chennai in No.305/CA/2019 in obedience to the direction of Hon'ble High Court, Madras in HCP No.785/2019 dt. 20.06.2019. During that ordinary leave, "the convict prisoner had committed another offence and therefore he was re-admitted in the prison on 21.06.2019 because of violation of leave rules and regulations. As per Tamil Nadu Suspension of Sentence Rules, 1982, Volume III Rule No.22(3), if a prisoner avails an ordinary leave of 30 days, his eligibility of availing the second spell of ordinary leave only after the completion of two years from the first spell of ordinary leave and hence, the above said prisoner is ineligible to avail ordinary leave which is granted by Deputy Inspector General of Prisons.

(emphasis supplied)

15 Further, it is submitted that the petitioner's husband is having pending case in Kumbakonam Taluk Station Crime No.77/2012 under Section 147,148,120(B), 109,506(II), 452,302 r/w 34 IPC, Additional Sessions, Kumbakonam Court."

17 A reading of the above shows that Kaberiyal was granted leave by this Court in H.C.P. No.785 of 2019 on

02.06.2019 and while he was on leave, he had committed another offence and he was re-admitted into the prison on 21.06.2019.

18 In view of the above discussion, we are of the view that the relief sought by the petitioner, both in the habeas corpus petition and the criminal miscellaneous petition, cannot be granted.

In the upshot, the habeas corpus petition as well the criminal miscellaneous petition fail and they are accordingly dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

To:

- 1 The Deputy Director of Central Prisons
Prison Department
No.1, Gandhi Irwin Road
CMDA Tower
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Chennai 600 008
- 2 The Superintendent of Central Prison
Vellore
Vellore District
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104

RSV (CO)

SM/02/03/2021

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