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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

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THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.14251 of 2021

K.Pushpa
W/o.A.Janardhanan

.. Petitioner

Vs.

1. State of Tamil Nadu
represented by the
Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.

2. The Director General of Police & I.G. of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3. The Superintendent of Prison,
Central Prison - I,
Puzhal, Chennai - 600 066.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the respondents to consider the representation of the petitioner dated 18.08.2019 and 25.06.2021 and release the petitioner's husband, namely, Janardhanan s/o.Ananda Pothy, aged 61 years, convict prisoner (CT No.7598), Central Prison - I, Puzhal, Chennai - 600 066, (now on leave) on medical grounds.

For Petitioner : Ms.S.Nadhiya

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



O R D E R

[Order of the Court was made by P.N.PRAKASH, J]

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This writ petition has been filed seeking issuance of a writ of mandamus directing the respondents to consider the representations of the petitioner dated 18.08.2019 and 25.06.2021 and release the petitioner's husband, namely, Janardhanan s/o.Ananda Pothy, aged 61 years, convict prisoner (CT No.7598), Central Prison - I, Puzhal, Chennai - 600 066, (now on leave) on medical grounds.

2. The convict prisoner has been convicted for the offences u/s.109 r/w 201 IPC in S.C.No.3 of 2003 by the Additional Sessions Court, Poonamallee and has been sentenced to two years rigorous imprisonment. The appeals preferred by the convict prisoner to this Court as well to the Supreme Court have been dismissed, thereby the conviction and sentence imposed upon him by the trial Court have been confirmed. The convict prisoner was admitted in the Central Prison, Puzhal, on 09.07.2019 and considering his health condition, on the same day (09.07.2019), he was admitted as an inpatient in the Government Stanley Medical College and Hospital, Chennai. Thereafter, he was discharged on 26.07.2019 and was brought back to the Central Prison, Puzhal. However, the convict prisoner was re-admitted in the Government Stanley Medical College and Hospital, Chennai, on 30.07.2019 and also subsequently. While that being so, the convict prisoner filed H.C.P.No.1802 of 2019 and a Division Bench of this Court, by order dated 05.09.2019, directed transfer of the convict prisoner from Central Prison, Puzhal to K.M.Hospital, K.K.Nagar, Chennai - 600 079, for medical treatment. Pursuant thereto, the convict prisoner was admitted as an inpatient in K.M.Hospital, K.K.Nagar, Chennai - 600 079 and on account of Covid-19 pandemic, the hospital authorities have discharged him with an advice to continue his medical treatment from home. Under such circumstances, a representation dated 25.06.2021 was given by the petitioner to the respondents for premature release of the convict prisoner on medical grounds under Rule 632 and 633 of the Tamil Nadu Prison Rules, 1983 and thereafter, has filed the present writ petition with the above prayer.

3. The first respondent has filed a counter affidavit dated 30.12.2021, wherein in paragraph Nos.7 and 8, it is stated as follows:



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'7. ... It is submitted that the Medical Board after careful examination in its report, vide letter No: Na.Ka.No.3282/E2(4)/2021 dated 29.03.2021, has informed that based on the opinion, obtained from Diabetologist, Neurologist, general medicine and physical medicine rehabilitation opinion. He is a Type II diabetes Mellitus and Hyper Tensive, cerebrovascular Accident with Rt Residual Hemiparesis and Rt UMN facial palsy with motor Aphasia since 2006. His physical Disability is 70% fronto Temporo parietal Craniectomy status (surgery done in 2006). The medical condition (Neurological) not likely to improve.

8. In this connection, it is further submitted that, the above medical report of the Regional Medical Board, Government Stanley Medical College Hospital, Chennai shows that, the convict prisoner is not suffering from any life-threatening illness. It is submitted that as per rule 632 of the Tamil Nadu Prison Rules, 1983, for releasing a prisoner the Medical Officer should certify that, in his opinion, the prisoner is likely to die, if he remains in confinement and that he will have reasonable chance of recovery if he is released. Unless this condition is satisfied, the prisoner cannot be released under rule 632 and 633 of the Tamil Nadu Prison Rules, 1983. It is pertinent to state that, such a certificate in respect of any prisoner considered under this rule should be in the above prescribed format at so as to be accepted by the Government and in this case, the Regional Medical Board comprising three experts, have gone into all the medical parameters of the convict prisoner as stated in para 7 supra. Since the petitioner's husband/life convict prisoner No.7598, Janardhanan, son of Anandan has not satisfied the conditions prescribed in the rule 632 and 633 of the Tamil Nadu Prison Rules, 1983.'

4. We are aware of the fact that the leave of the convict prisoner has been extended by this Court in W.M.P.No.28524 of 2021 in W.P.No.19291 of 2021 upto 21.03.2022. We do not want to proceed further based on the averments in the counter affidavit. Instead, we direct the respondents to once again subject the convict prisoner to medical examination and dispose of the petitioner's representation dated 25.06.2021, before 21.03.2022, on merits and in accordance with law.



With the above direction, this Writ Petition is disposed of.
No costs.

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Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai - 600 009.
2. The Director General of Police & I.G. of Prisons,
Gandhi Irwin Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
Central Prison - I,
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4. The Public Prosecutor,
High Court, Madras.

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