



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

and

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P(MD)No.4007 of 2022

Mrs.Meharaj

... Petitioner

.Vs.

1.The State represented by its  
Secretary to Government of Tamil Nadu,  
Home Department,  
For St.George,  
Chennai-600 009.

2.The Additional Director General of Prison,  
C.M.D.A Towers,  
Egmore,  
Chennai-600 008.

3.The Deputy Inspector General of Prisons,  
Madurai Zone,  
Madurai-625 016

4.The Superintendent  
Central Prison,  
Palayamkottai.

... Respondents 1 to 4

5.The Union of India,  
Through the Secretary to the Government of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.

...Respondents No.5

**PRAYER:** Petition filed under Article 226 of the Constitution of India, to issue a Writ of Habeas Corpus, directing the respondents to grant leave for 6 weeks to the petitioner's husband and consequently, allow the petitioner's husband to take treatment, the detinue, Siddhiqe Ali @ Sulthan, S/o.Dheen, convict No.7368, aged about 40 years detained at Palayamkottai Central Prison.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.A.Thiruvadikumar

Addl. Public Prosecutor.



O R D E R

R.SUBRAMANIAN, J.  
AND  
N.SATHISH KUMAR, J.

The petitioner seeks ordinary leave for the purpose of taking treatment for infertility. The petitioner was granted ordinary leave earlier, the treatment was not successful.

2.The learned counsel for the petitioner would rely upon the Doctor's opinion which states that if both the husband and wife are treated for 30 days, there is a chance of wife conceiving.

3.The very question whether the conjugal rights is a fundamental or not, was answered by the Full Bench of this Court in H.C.P(MD)No.365 of 2018, which has been now converted into a writ petition in W.P(MD)No.4007 of 2022, on our direction. The Hon'ble Full Bench has observed as follows:

*"(i)The denial of conjugal relationship of the convict for specific purpose may amount to denial of the fundamental right guaranteed under Article 21 of the Constitution of India. The specific purpose may be infertility treatment or some similar reason, but it should not be construed to be a fundamental right for having conjugal relationship as a course. This would make a difference between the law abider and violator in regard to rights guaranteed under Article 21 of the Constitution of India.*

*(ii)The State can be directed to consider the request of convict for emergency leave or ordinary leave for the purpose given while answering the question No. (i). The emergency leave or ordinary leave would be for the purpose given under the 1982 Rules and if any extraordinary reason exist, then the State need to consider the aforesaid as and when a request is made by the convict or his relative for grant of ordinary leave for extraordinary reasons. The emergency leave or ordinary leave cannot be claimed as a right for having conjugal relationship without an exceptional reason. This demarcation is necessary as the curtailment of some rights of a prisoner on account of his conviction to the extent indicated above does not offend Article 21 of the Constitution of India."*

4.In view of the above categorical findings of the Full Bench, this Writ Petition is disposed of with a direction to the authorities to consider the request of the petitioner for grant of ordinary leave for the purpose of infertility treatment, in the light of the directions issued in the judgment extracted above. While disposing of the petitioner's request, the State shall have



regard to the observations of this Court made in H.C.P(MD)No.1837 of 2017. No costs.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

- 1.The Secretary to Government of Tamil Nadu,  
Home Department,  
For St.George,  
Chennai-600 009.
- 2.The Additional Director General of Prison,  
C.M.D.A Towers,  
Egmore,  
Chennai-600 008.
- 3.The Deputy Inspector General of Prisons,  
Madurai Zone,  
Madurai-625 016
- 4.The Superintendent  
Central Prison,  
Palayamkottai.
- 5.The Union of India,  
Through the Secretary to the Government of India,  
Ministry of Home Affairs,  
North Block,  
New Delhi-110 001.
- 6.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to M/s.R.NARAYANAN, Advocate ( SR-10466[F] dated 07/03/2022 )

W.P.(MD) No.4007 of 2022  
07.03.2022

KG(CO)

KB(30.03.2022) 3P 8C