



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.7516 of 2023

Indira
W/o.Rajini @ Parthiban

... Petitioner

Vs.

1. The Director General of Police
Egmore
Chennai – 600 008
2. The Superintendent of Central Prison
Palayamkottai Prison
Palayamkottai
Tirunelveli District
3. The Superintendent of Central Prison
Puzhal Prison
Chennai – 600 006

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the first respondent to consider the representation of the petitioner dated 01.08.2022 by transferring the Life Convict Rajini@ Parthiban, son of Rathinam, now



confined in Central Prison, Palayamkottai, Tirunelveli District to Central Prison, Puzhal -2, Chennai – 600 066.

For Petitioner : Mr.R.Sankarasubbu
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned writ petition.

2. Captioned writ petition has been filed seeking a writ of mandamus qua a 'representation dated 01.08.2022 sent by the writ petitioner to the first respondent' [hereinafter 'said representation' for the sake of convenience and clarity]. To be noted, the postal acknowledgement card shows that said representation has been duly received by the first respondent on 03.08.2022.

3. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submits that writ petitioner's spouse is a life convict and said representation was given seeking transfer of writ petitioner's spouse Thiru.Rajini @ Parthiban, son of Thiru.Rathinam from Central Prison,



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Palayamkottai to Central Prison, Puzhal I, Chennai *inter alia* on two grounds and they are as follows:

(i) The writ petitioner and the life convict have three children and the eldest child, who is 20 of years of age, has 70% disability (MR - Mental Retardation). It is also to be noted that the Disability Certificate issued by the appropriate Authority has been enclosed and placed before us as part of the typed-set;

(ii) The convict prisoner has heart disease and he needs to take treatment in Stanley Medical College, Chennai.

4. As there was inaction qua said representation, captioned writ petition was filed in this Court on 06.03.2023, it was listed in the Admission Board on 10.03.2023, it was admitted (*Rule Nisi* issued) and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor accepted notice for all the respondents and thereafter, the matter is listed today.

5. Today, learned State Public Prosecutor submits that the request for transfer of convict prisoner from Palayamkottai to Chennai has been



negatived vide 'proceedings of first respondent dated 29.03.2023 bearing reference மு.மு.எண்.12157/சிற.2/2023' [hereinafter 'impugned proceedings' for the sake of convenience and clarity].

6. We deem it appropriate to take up main writ petition and dispose of the same by making an exception in this case. The exception is, the prayer in the writ petition is one for mandamus qua said representation but now we will be testing the impugned order. The reason for making this exception is three-fold and they are as follows:

i) Said representation dated 01.08.2022 has been received by the first respondent on 03.08.2022 itself as already alluded to and captured supra elsewhere in this order;

ii) After the writ petition was filed and after notice was issued i.e., writ admitted, the impugned order appears to have been made hurriedly by the first respondent and this comes across as an attempt to neutralize the captioned writ petition but we hasten to add that we do not express this as a firm opinion in this writ petition;

iii) The impugned proceedings, though was projected as



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one that disposes of said representation, we find from a perusal of the impugned proceedings placed before us by the learned Prosecutor that there is no whisper about said representation much less about the contents of said representation in the impugned proceedings.

7. We now proceed to test the impugned proceedings of the first respondent.

8. A careful perusal of the impugned proceedings brings to light that there is a reference about use of mobile phone by convict prisoner and also ganging up with certain co-convict prisoners. To be noted, such an allegation is made qua Palayamkottai as well as Puzhal Central Prison in which the convict prisoner was originally lodged. What is more important is, our attention was drawn to Crime No.32 of 2019 on the file of M3, Puzhal Police Station for an alleged offence under Section 42 of the Prisons Act, 1894. It was submitted that this is the main reason for the impugned proceedings.

9. Learned counsel for petitioner places before us an order made by a Hon'ble single Judge of this Court being order dated 02.09.2022



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made in CrI.O.P.No.19715 of 2022 and CrI.M.P.No.12964 of 2022 thereat wherein this Crime No.32 of 2019 on the file of M3 Puzhal Police Station has been quashed. Therefore, it is clear that well before the impugned proceedings was made, the alleged offence which is projected as the substratum of the impugned proceedings had been quashed by this Court. We are acutely conscious of the legal position that an impugned order cannot be improved by way of a counter affidavit or by extraneous material but as attention of this Court was drawn to Crime No.32 of 2019 on the file of M3 Puzhal Police Station, we deemed it appropriate to record that this alleged offence also has since been quashed by this Court. Therefore, the substratum of the impugned proceedings has ceased to exist as the same has been affirmed by a judicial order.

10. In the light of the narrative, discussion and dispositive reasoning thus far, we have no hesitation in saying that the impugned proceedings deserves to be set aside. This leaves us with the question of where should the convict prisoner be transferred. We examined the matter in the light of various provisions of 'Tamil Nadu Prison Rules



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1983' [hereinafter 'said Rules' for the sake of convenience and clarity] and more particularly Rule 3 thereat captioned 'Confinement of Prisoners' which deals with prisons to which prisoners sentenced to imprisonment shall be committed. Though there is no specific mention about Tiruvallur District, we find that there is a mention about Chengalpattu District and the appropriate prison is Central Prison, Vellore. We also notice that Palanyamkottai prison is about 600 kms away from the residence of the writ petitioner and convict prisoner whereas Vellore Central Prison is only about 130 kms from the residence of the convict prisoner. Therefore, we make the following order:

- i) Impugned proceedings dated 29.03.2023 bearing reference மு.மு.எண்.12157/சிற.2/2023 is set aside;
- ii) Convict prisoner (Convict Prisoner No.4313) now lodged in Palayamkottai prison shall be transferred to Central Prison, Vellore forthwith;
- iii) Aforementioned transfer shall be effected forthwith but in any event, within a fortnight from today i.e., by 11.05.2023;



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11. We make it clear that this order will not serve as a precedent in all cases and this has been taken up as an exception albeit to drive home the point that hurried disposal of representations after a trigger by way of a writ petition deserves to be avoided though there is no impediment for disposing of representations when a writ petition is pending. We also make it clear that we were impelled to embark upon such a judicial drill as impugned proceeding's does not refer to said representation or its contents which means said representation remains unattended though there is no dispute or contestation of facts set out therein which constitutes the grounds for transfer.

Captioned Writ Petition disposed of in the aforesaid manner with the aforesaid directives and observations. Though the captioned writ petition is now disposed of, we direct the Registry to list the captioned writ petition under the cause list caption 'FOR REPORTING COMPLIANCE' on 01.06.2023.

(M.S.,J.) (M.N.K.,J.)
27.04.2023

Index : Yes/No
Speaking/No speaking order
Neutral Citation : Yes /No
gpa



To
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1. The Secretary to Government
Prohibition and Excise Department
Fort St.George
Chennai – 600 009
2. The Commissioner of Police
Greater Chennai
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai
4. The Inspector of Police
H-3, Tondiarpet Police Station
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
M.NIRMAL KUMAR, J.,

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