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W.P.No.14536 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE Mrs.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.14536 of 2023

Visalakshi

Wife of Nagendran

..

Petitioner

Vs.

1. State of Tamil Nadu
Represented by its Secretary
Home (Prison) Department
Fort St.George, Chennai – 600 009
2. The Director General of Police and
Inspector General of Police
Tamilnadu Prison Department
Gandhi Irwin Road, Egmore
Chennai – 600 008
3. The Superintendent of Prison
Central Prison, Vellore
4. The Superintendent of Prison
Central Prison, Puzhal-1
Chennai

... Respondents

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Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to call for the records relating to the order passed by the 2nd respondent dated 28.03.2023 made in No.19706/Ci.Na.2/2021, quash the same and consequently direct the 2nd respondent by shifting the petitioner's husband P.Nagendran, a life convict (No.1236) now confined in Central Prison, Vellore, the third respondent prison to the Central Prison-1, Puzhal, Chennai, the fourth respondent by implementing the order of this Court in Writ Petition No.28879 of 2022 dated 29.11.2022.

For Petitioner : Mr.S.Hameed Ismail

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
Assisted by
Mr.Sylvester John
Advocate

ORDER

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

This order will now dispose of the captioned writ petition.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made by this Court in the listing on 07.06.2023, which reads as follows:

Proceedings dated 07.06.2023

'When the matter was taken up, this Bench wanted to see the order dated 20.02.2019 in Crl.MP.No.2710 of 2019 made by this



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Court against which the petitioner had moved Hon'ble Supreme Court in and by Special Leave to Appeal (Crl.)No.1979 of 2019 which came to be disposed of by Hon'ble Supreme Court on 12.03.2019 inter alia making an observation about petitioner's request for transfer of convict prisoner. This Court wanted to see this 20.02.2019 order as learned counsel relying on observation of Hon'ble Supreme Court in SLP arising out of this order. Thereafter, there were three writ proceedings in this Court namely, W.P.No.472 of 2022 (disposed of on 03.08.2022), W.P.No.28879 of 2022 (disposed of on 29.11.2022) and W.P.No.8977 of 2023 (disposed of on 11.04.2023) {to be noted, prayer in captioned writ petition is one assailing an order made by second respondent being order dated 28.03.2023 declining prison transfer request}.

2. To be noted, learned counsel predicates his argument inter alia on the observation made by Hon'ble Supreme Court besides subsequent observations made by Hon'ble Division Bench in 29.11.2022 order in W.P.No.28879 of 2022 as alluded to supra. In this regard, we deem it appropriate to say that instant proceedings have to be read in conjunction with and in continuation of earlier proceedings made in the previous listing on 01.06.2023 which reads as follows:

'Captioned writ petition has been filed assailing an order dated 28.03.2023 bearing reference No.19706/Ci.Na.2/2021 made by the second respondent rejecting the plea to transfer a life convict



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prisoner namely, Nagendran, Convict No.1236 from Central Prison, Vellore to Central Prison No.I, Puzhal.

2. Mr.S.Hameed Ismail, learned counsel on record for petitioner submits that the detenu / lifer has undergone liver transplant and we are informed that the date of transplant surgery is 31.01.2018 and that the transplant surgery was done in Rela Institute & Medical Centre, Chromepet.

3. An earlier plea on behalf of detenu by way of representation dated 09.03.2023 remained unattended warranting an earlier writ petition namely, W.P.No.8977 of 2023. When this W.P.No.8977 of 2023 came up before predecessor Bench, the impugned order (order dated 28.03.2023 made by second respondent) was placed before this Court and therefore the writ petition was disposed of preserving all the rights and contentions to assail the same. Pursuant to this order, captioned writ petition has now been filed.

4. Learned counsel for petitioner draws our attention to earlier rounds of litigation and particularly to order dated 12.03.2019 made by Hon'ble Supreme Court in S.L.P. (Crl.) No.1979 of 2019 and an order dated 29.11.2022 made by Hon'ble predecessor Division Bench. Attention is also drawn to paragraph No.11 of this Division Bench Order which says that



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detenu shall be shifted to Puzhal prison if medical treatment in Chennai becomes necessary. Learned counsel also draws our attention to paragraph No.4 of the impugned order and submits that even according to the impugned order, the detenu has been brought from Vellore to Chennai for treatment.

5. Captioned writ petition came up before vacation Court on 10.05.2023, Hon'ble Division Bench issued notice, learned Prosecutor accepted notice for the respondents and sought time to file counter affidavit. Learned Prosecutor requests for a short accommodation today i.e., further short time to file counter. Request acceded to.

6. List on Monday. List on 05.06.2023.'

3. In the aforementioned proceedings in Paragraph No.2, a typographical error has crept it. To be noted, in paragraph No.2, it has been recorded that petitioner's spouse has undergone 'Kidney transplant' but we are informed that petitioner's husband has undergone 'Liver transplant'. Therefore 01.06.2023 proceedings / order shall be read treating this as errata / corrigendum. In all other aspects, 01.06.2023 proceedings / order will remain the same and shall be read as an integral part and parcel of this order.

4. As Mr.S.Hameed Ismail, learned counsel on record for



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petitioner predicates his submission inter alia on the order of Hon'ble Supreme Court, this Bench wanted to see order of this Court which was carried to Hon'ble Supreme Court i.e., aforementioned order dated 20.02.2019 in Crl.M.P.No.2710 of 2019 as already alluded to supra. Learned counsel sought time to produce this order. Considering the nature of the matter i.e., prison transfer on medical grounds (Liver transplant) though this Bench is inclined to list and take up the matter tomorrow, learned counsel expresses difficulty at his end saying he would be before Madurai Bench of Madras High Court and requested for listing on Monday. Request acceded to.

List on Monday. List on 12.06.2023.'

3. The aforementioned earlier proceedings shall be read as an integral part and parcel of the instant order.

4. The aforementioned earlier proceedings made in the previous listing is telltale qua factual matrix as well as the trajectory the matter has taken thus far before us. Therefore, we do not intend to set out the same again.

5. In the hearing today, learned Prosecutor adverted to counter



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affidavit of the third respondent dated 02.06.2023 submitted that there are three reasons for negating the request for transfer of convict prisoner from

Vellore Central Prison to Puzhal Central Prison and they are as follows:

- i) The prisoner is now normal post Liver Transplant surgery and regular visits to hospital in Chennai is not required;
- ii) There is life threat and possibility of some communal clashes in Puzhal prison;
- iii) A case has been registered for a prison offence against the convict prisoner as allegedly a cellphone along with battery and SIM card was confiscated from the prisoner.

6. We now proceed to set out our discussion and dispositive reasoning qua aforementioned three points one after the other in the order in which they have been captured supra;

i) As regards the first point, portions of paragraph 9 of the counter affidavit are relevant and the same read as follows:

'....convict prisoner was periodically taken for medical checkup / review by the prison authorities to M/s.Rela Hospital, Chennai.'



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'.....It is seen that the medical records of Rela institute and medical care and the reports of the prison medical officers as stated in the letter of the Director General of Police in memo No.19706/PW2/2021, dated 12.07.2023 reveal that the life convict prisoner does not need regular hospital visits and his condition is stable.'

The above point in our considered view is a non-starter and it is clearly unacceptable in the light of the medical report from the private hospital in Chennai dated 29.03.2023 which the Prosecution itself has placed before this Court as part of the typed-set. A careful perusal of this medical report reveals that the hospital where the transplant surgery was performed has opined thus:

'.....hence is on regular follow up with us in post-transplant clinic at Dr.Rela Insitute and Medical Centre, Chromepet, Chennai. Clinically he requires to regular blood tests to monitor graft liver function and any other sepsis. Currently he is on Immunosuppression Tacrolimus (Advagraf), Prednisolone (Wysolone) with other supportive medications (All documents of EMR /Clinical summary/Discharge summaries were enclosed). He requires regular follow up with advised investigation at our medical facility.'



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Though an impugned order cannot be improved by way of a counter affidavit, learned Prosecutor did place before us a further medical report from the same hospital, Chennai being medical report dated 03.05.2023. Though this was referred to as medical report, we find that this contains values of various tests conducted qua the convict prisoner / patient and most important is one of the remarks pertaining to long distance travel and the same reads as follows:

'To avoid long distance travel-because patient developing with clinical complications such as vomiting, constipation, joint pain and tiredness due to long travelling'

Therefore, we are of the considered view that even according to the medical reports placed before us by the prosecution, the convict prisoner cannot be put to arduous travel from Vellore to Chennai (about 200 kms) by surface frequently on a regular basis. Therefore first point falls flat on its face.

ii) This takes us to the second and third points and we propose to deal with the two together. The second and third points



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pertain to matters touching upon prison administration. It is open to the prison authorities to ensure that adequate safeguards are put in place to ensure the safety and security of the convict prisoner in Puzhal. As regards cellphone, battery and SIM card seizure is concerned, that is the lone prison offence post transplant surgery which we are informed was done in Rela Hospital on 31.01.2018.

(iii) As regards the second and third points, Mr.S.Hameed Ismail, learned counsel for petitioner, on instructions, submits that the convict prisoner will ensure a blemishless conduct and will also avoid mingling with the other inmates. This submission is recorded. It is open to the respondents to lodge the convict prisoner in what is described as 'high security' part of the prison or any other part of the prison, which is deemed appropriate by the prison authorities.

7. We make it clear that while we will be interfering with the impugned order, the transfer now which would be effected pursuant to this order, will be for a period of three months from 19.06.2023 and depending on the trajectory the matter takes, further course of action can be taken by



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the prison authorities but that will depend on what happens in this three months qua a) medical condition of the convict prisoner and b) conduct of the convict prisoner while in incarceration.

8. In the light of the narrative, discussion and dispositive reasoning thus far we make the following order:

i) Impugned order being order dated 28.03.2023 bearing reference No.19706/Ci.Na.2/2021 made by the second respondent is set aside;

ii) The convict prisoner (Convict No.1236) now lodged in Central Prison, Vellore shall be transferred to the Central Prison, Puzhal I as expeditiously as possible and in any event on or before 19.06.2023 (Monday);

iii) On transfer, it is open to the respondents to put in place any / all safeguards required to ensure safety / security of the convict prisoner and also any other requirement in the interest of the prison administration;

iv) The convict prisoner will continue to remain in Central Prison, Puzhal I for a period of three months from 19.06.2023



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i.e., upto 19.09.2023;

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v) Further course of action can be taken by the respondents but that will depend on a) medical condition of the convict prisoner/prognosis and b) conduct of the convict prison Central Prison, Puzhal;

vi) Though obvious, for the purpose of specificity we clarify that adequate medical attention shall be given to the convict prisoner and it shall be ensured that the convict prisoner is able to go over to Dr.Rela Institute & Medcial Centre, Chrompet, Chennai whenever required for review or for any other medical purpose owing to the liver transplant surgery he has undergone on 31.01.2018.

Captioned Writ Petition disposed of with the aforementioned directives. Though the captioned Writ Petition is disposed of by this order, let the writ petition appear in the cause list under the cause list caption 'FOR REPORTING COMPLIANCE' on 20.09.2023.

(M.S.,J.)

(K.G.T.,J.)

12.06.2023



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Index: Yes/No

Neutral Citation: Yes/No

Speaking order / Non-speaking order

gpa

To

1. The Secretary
Home (Prison) Department
Fort St.George, Chennai – 600 009
2. The Director General of Police and
Inspector General of Police
Tamilnadu Prison Department
Gandhi Irwin Road, Egmore
Chennai – 600 008
3. The Superintendent of Prison
Central Prison, Vellore
4. The Superintendent of Prison
Central Prison, Puzhal-1
Chennai
5. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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