



W.P.No.25090 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR

AND

THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.25090 of 2023

A.Asina Banu

...Petitioner

VS.

1. State by
The Deputy Inspector General of Prisons,
(Head Quarters),
Prison Head Quarter Office,
Gandhi Irvin Salai,
Egmore,
Chennai – 600 008.

2.The Superintendent of Prison,
Central Prison,
Cuddalore – 4.

3. The Superintendent of Prisons,
Central Prison,
Puzhal, Chennai – 66.

...Respondents



W.P.No.25090 of 2023

WEB COPY Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in the order bearing muu.mu.No.1397/Ci.na.2/2023 dated 10.08.2023 passed by respondent No.1 and quashing the same, and directing the respondent no.1 to transfer the petitioner's husband namely Javeed Basha, S/o.Saleem Basha, aged about 32 years, convict prisoner, from Central Prison, Cuddalore to Central Prison, Puzhal-I, Chennai.

For Petitioner :: Mrs.S.Nadhiya

For Respondents :: Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

(Order of the Court was made by SUNDER MOHAN,J.)

The writ petition seeks quashing of the order dated 10.08.2023 refusing to transfer the petitioner's husband, who is now confined in Central Prison, Cuddalore to Central Prison, Puzhal-1, Chennai.

2. The petitioner is the wife of the convict prisoner viz., Javeed Basha,



W.P.No.25090 of 2023

WEB COPY

S/o.Saleem Basha, aged about 32 years. The convict prisoner was

convicted for the offence under Section 8(c) r/w 29, 8(c) r/w 22 © and 8(c) r/w 28 of NDPS Act and sentenced to undergo 10 years imprisonment by the Principal Sessions Court under EC & NDPS Act. He was arrested in the said case on 22.01.2015 and is in custody since then, initially, as an under-trial prisoner and after conviction, as a convict prisoner.

3. The convict prisoner was originally detained in Central Prison, Puzhal, Chennai and during January 2019, he was shifted to Central Prison, Cuddalore. Thereafter, during February 2023, the convict prisoner was transferred to Central Prison, Puzhal temporarily for a period of 3 months and thereafter, shifted to Central Prison, Cuddalore once again.

4. The learned counsel for the petitioner submits that the impugned order refusing the transfer of convict prisoner from Central Prison Cuddalore to Central Prison, Puzhal is unsustainable. The learned counsel submitted



W.P.No.25090 of 2023

that the said order violates the prisoner's fundamental

WEB COPY



W.P.No.25090 of 2023

right under Article 21 of the Constitution of India, which includes the right to meet his family members who are residents of Chennai.

5. The 2nd respondent has filed the counter stating that the Director General of Prisons had rejected the representation of the petitioner since the convict prisoner was involved in certain prison offences.

6. The learned Additional Public Prosecutor submitted that since the convict prisoner was not eligible for transfer, in view of the prison offences committed by him, the respondent had rightly rejected the petitioner's request for transfer.

7. After the petitioner's request for transfer on 04.07.2023, the respondents had called for the report of the Probation Officer and the Superintendent of Prisons, Central Prison, Puzhal on the representation made by the petitioner.



WEB COPY



W.P.No.25090 of 2023



W.P.No.25090 of 2023

WEB COPY

8. The Probation Officer had recommended prison transfer for a period of six months. Similarly, the Superintendent of Central Prisons, Puzhal, also has no objection for transfer of the convict prisoner to Central Prison, Puzhal, on the condition that the prisoner shall not indulge in prison offences.

9. However, we find that by the impugned order, the Director General of Prisons has rejected the representation stating that the convict prisoner was involved in prison offences when he was earlier confined in Central Prison, Puzhal.

10. The learned Additional Public Prosecutor fairly admitted that no case were registered for the said prison offences. The impugned order also does not state as to when the said prison offence of holding a cell phone and certain smuggled articles, was committed.

11. Admittedly, the petitioner is a resident of Chennai. The prisoner



W.P.No.25090 of 2023

also was confined in Central Prison, Puzhal till 2019. It is well settled that the prisoner and the family members have a right to meet each other periodically and the denial to do so would infringe their fundamental right. Since the reason for refusing transfer of prison, is not supported by any material and is vague and also considering the report of the Probation Officer and the Communication sent by the Superintendent of Central Prison, Puzhal, we are of the view that the convict prisoner is entitled to be transferred to Central Prison, Puzhal. It is needless to say that the convict prisoner shall not indulge in any prison offences. Accordingly, the impugned order passed by the 1st respondent dated 10.08.2023 is set aside and the respondents are directed to transfer the convict prisoner from Central Prison, Cuddalore to Central Prison, Puzhal-1, Chennai, forthwith.

12. With the above direction, the writ petition stands allowed.

(S.S.S.R.,J.) (S.M.,J.)
22.12.2023

Index: Yes/No
Speaking/Non-speaking order



W.P.No.25090 of 2023

Neutral Citation : Yes/No.

Issue order copy today

ars

To

1. The Deputy Inspector General of Prisons,
(Head Quarters),
Prison Head Quarter Office,
Gandhi Irvin Salai,
Egmore, Chennai – 600 008.

2. The Superintendent of Prison,
Central Prison,
Cuddalore – 4.

3. The Superintendent of Prisons,
Central Prison,
Puzhal, Chennai – 66.

4. The Public Prosecutor,
High Court, Madras.



WEB COPY



W.P.No.25090 of 2023

S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

ars

W.P.No.25090 of 2023

22.12.2023