IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 27TH DAY OF FEBRUARY 2024 / 8TH PHALGUNA, 1945

WP(CRL.) NO. 131 OF 2024

PETITIONER/S:

SAHEL BALEKHAN MUJAWAR
AGED 25 YEARS
S/O. BALEKHAN MUJAWAR,
VYANKATESHWAR NAGAR, YADAVWADI,
SHIROLI, KOLHAPUR, HATIKANANGLE,
MAHARASHTRA, PIN – 416 122.

BY ADVS.
P.MOHAMED SABAH
LIBIN STANLEY
SAIPOOJA
SADIK ISMAYIL
R.GAYATHRI
M.MAHIN HAMZA
ALWIN JOSEPH

RESPONDENTS:

1. **THE SECRETARY**
   HOME DEPARTMENT, STATE OF KERALA,
   SECRETARIAT,
   THIRUVANANTHAPURAM DISTRICT, PIN – 695 001.
2. **DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES,**
   PRISONS HEADQUARTERS, POOJAPURA,
   THIRUVANANTHAPURAM,, PIN – 695 012.
3. **THE SUPERINTENDENT**
   CENTRAL PRISON, TAVANUR,
   MALAPPURAM DISTRICT, PIN – 679 573.
4. **THE STATION HOUSE OFFICER**
   SHIROLI MIDC POLICE STATION, SHIROLI (PULACHI),
   KOLHAPUR, MAHARASHTRA, PIN – 416 122.

SRI. M.C. ASHI (PP)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 27.02.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J

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W.P.(Crl).No.131 of 2024

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Dated this the 27th day of February, 2024

JUDGMENT

Petitioner seeks for a direction to grant leave, either ordinary or emergency, to his brother Sri.Sajid Balekhan Mujawar, who is a convict undergoing life imprisonment for the offences punishable under Section 302 of the Indian Penal Code, 1860 and a period of 10 years for the offence under Section 394 of IPC.

2. It is alleged that the petitioner's brother has been in custody since 07.11.2013. While so, the uncle (father's brother) of the convict died, and petitioner applied for the grant of emergency leave. However, after getting an endorsement that the funeral is over, the jail authorities have refused to release the petitioner on emergency leave. It is in such circumstances that the petitioner has approached this Court seeking a direction for the grant of emergency leave for his brother, for a period of 15 days to participate in the religious rites of his uncle.

3. A statement has been filed by the respondent, pointing out that though Rule 400(1)(i) of the Kerala Prisons Correctional Management Services Rule, 2014; permit emergency leave to be granted on the death of a convict's father's brother, the same is to be considered on the basis of the report of the SHO of the Police Station concerned and also on the basis of the recommendations of the Superintendent of Prison. It is further submitted that though petitioner has undergone 10 years of imprisonment for the offence under Section 394 of IPC, he has not paid the fine till date, and therefore, the sentence under Section 394 of IPC has not been completed and thus petitioner's brother is not even eligible for ordinary or even emergency leave. It is further submitted that the convict's character is not good, and therefore, he cannot be released on emergency leave.

4. I have considered the rival contentions of Smt.Saipooja, the learned counsel for the petitioner as well as Sri.Ashi M.C., the learned Public Prosecutor.

5. Petitioner hails from Maharashtra and has been in jail since 2013. When the convict undergoes imprisonment for the offence

under Section 394 of IPC, he is eligible to be considered for release on emergency leave; only if the said period has been completed. Admittedly petitioner has completed the said period. Therefore, convict has become eligible for the grant of emergency leave on that ground. Whether the convict has paid the entire fine amount imposed upon him is a matter, which will have to be verified.

6. However, since petitioner's application for emergency leave was already closed, it will be open to him to file a fresh application, if the circumstances warrant. If any such application is filed before the 3rd respondent, necessarily, a decision shall be taken without undue delay.

With the above observations, this writ petition is disposed of.

sd/-
BECHU KURIAN THOMAS
JUDGE

AMV/27/02/2024

APPENDIX OF WP(CRL.) 131/2024

PETITIONER EXHIBITS

EXHIBIT P1	**TRUE COPY OF THE CERTIFICATE DATED 21.01.2024 ISSUED BY THE DOCTOR CONFORMING THE DEATH OF THE CONVICT'S FATHER'S BROTHER NAMELY SHOUKAT CHANDRASA MUJAWAR.**
EXHIBIT P2	**TRUE COPY OF THE ORDER DATED 05.01.2023 IN CRL.M.C. NO. 9111/2022 PASSED BY THIS HONOURABLE COURT.**

TRUE COPY