



2023:KER:79744

WPCRL NO. 1215 OF 2023

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

'CR'

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 12TH DAY OF DECEMBER 2023 / 21ST AGRAHAYANA, 1945

WP(CRL.) NO. 1215 OF 2023

CRIME NO.423/2006 OF Mathilakom Police Station, Thrissur

PETITIONER/S:

RAMA
AGED 36 YEARS

BY ADVS.
ARUN KRISHNA DHAN
T.K.SANDEEP
ARJUN SREEDHAR
ALEX ABRAHAM
SWETHA R.
HARIKRISHNAN P.B.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY PUBLIC PROSECUTOR, ERNAKULAM, PIN -
682031
- 2 SUPERINTENDENT OF JAIL,
VIYYUR CENTRAL JAIL THRISSUR - SHORANUR ROAD,
VIYYUR, THRISSUR, PIN - 680010

OTHER PRESENT:

SMT SREEJA V, PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 12.12.2023, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

**'CR'****P.V.KUNHIKRISHNAN, J****-----
W.P.(CrI.) No. 1215 of 2023
-----****Dated this the 12th day of December, 2023****JUDGMENT**

Inmates in prisons are still citizens and should not be denied their basic human rights as any other citizen. The petitioner in this writ petition is the wife of Mr.Manoj @ Irumban Manoj, C.No.102/2022, who is undergoing imprisonment for life in prison. He was convicted by the 1st Additional Sessions Judge, Thrissur, in Sessions Case No.935 / 2007 and sentenced to undergo the imprisonment.

2. It is the case of the petitioner that her husband is the absolute owner of 0.0121 hectares of land situated in Sy.No.476/5-11 in Edavilangu village of Kodungallur Taluk. The petitioner and her family along with her husband were residing in the house bearing No.XIII/301 constructed in the above property in Ward No.XIII of Edavilangu village. Ext.P1



is the possession certificate issued by the Village Officer, Edavilangu Village, which shows that the petitioner's husband is in possession of the property. According to the petitioner, the house in which the petitioner and her family were residing was completely destroyed beyond repair in a natural calamity. Thereafter, the petitioner and her family are residing in a rental premises and they do not have a home of their own. Ext.P2 is the certificate issued by the Tahsildar, Kodungalloor, in which it is clearly stated that the building bearing No.XIII/301 in Sy.No.476/5/11 in the ownership of Parasserry Manoj is completely destroyed because of natural calamity and also because of the old age of the building.

3. It is the case of the petitioner that, considering the plight of the petitioner and the condition of the residence of the petitioner, the name of the petitioner's husband was included as a beneficiary in the Life Housing Scheme by the Local Self Government. Ext.P3 is the certificate issued by the Edavilangu Grama Panchayat, which shows that the petitioner's husband is included in the Life Housing Scheme as



a beneficiary in the category list of Scheduled Caste Community. It is the case of the petitioner that to obtain the benefits of the scheme and to complete the formalities and to execute the other necessary documents, the presence of the petitioner's husband is necessary at various Government Offices, since the property is in the name of the husband of the petitioner. According to the petitioner, her family will be able to enjoy the benefit of the scheme only if the husband of the petitioner is released from prison on Emergency Leave. Hence, the petitioner preferred a representation to the 2nd respondent explaining the above circumstances and requesting the 2nd respondent to grant Emergency leave/parole to the husband of the petitioner to complete the formalities required to avail the benefit of the Life Housing Scheme. Ext.P4 is the representation. However, the 2nd respondent has not issued any orders in Ext.P4 is the grievance. Hence the writ petition (Crl.) is filed with the following prayers:

- i) *"Issue a writ of mandamus or any other appropriate writ, order or direction, directing 2nd respondent to release the husband of the petitioner, Mr.Manoj @ Irumban Manoj, on*



special leave /parole for a period of 2 months to complete the formalities of the Life housing scheme.

- ii) *Issue a writ of mandamus or any other appropriate writ, order or direction, directing 2nd respondent to consider and pass order on Exhibit-P4 representation within a time frame as may be fixed by this Hon'ble Court.*
- iii) *Grant such other reliefs as are deemed just and necessary in the facts and circumstances of the case." (sic)*

4. Heard counsel for the petitioner and the public prosecutor.

5. The public prosecutor made available an instruction/ statement submitted by the Superintendent, Central Prison and Correctional Home, Viyyur, Thrissur. In the instruction, it is submitted that as per Rule 397(a) of the Kerala Prisons and Correctional Services (Management) Rules, 2014 (for short 'Rules 2014'), well behaved prisoners who have been sentenced to imprisonment for one year and above and who have served out 1/3rd of their sentence or two years whichever is less are eligible for ordinary leave. For sanctioning leave, report of police and probation authorities are mandatory. Sec.



73 of the Kerala Prisons and Correctional Services (Management) Act, 2010 (for short, 'Act 2010') reads as follows :

"73. Release on parole.- The State Government may, subject to such conditions as may be prescribed, release on parole for such period as it may deem necessary, any convicted prisoner in case of any serious illness or death of any member of the prisoner's family or of any of his nearest relatives or for any other sufficient cause."

6. As per Rule 400(1) of the Rules, 2014, well behaved prisoners who have been convicted for the offences other than the offences relating to national security are eligible for emergency leave on the following emergency situations:

"(i) Death or terminal stage of illness of father, mother, son, daughter, wife, husband, brother, sister, step-brother, step-sister, nephew, niece, etc of the petitioner.

(ii) Marriage ceremony of son, daughter, brother, sister etc.

(iii) Partially or fully collapse of the dwelling house."

7. Similarly, as per Rule 400(2), every application for emergency leave shall be evaluated based on the report of the Station House Officer of the concerned Police Station and as per recommendation of the Superintendent of Jail concerned.



8. It is submitted by the 2nd respondent that the petitioner's application as evident by Ext.P4 was received by Superintendent of Central Prison and Correctional Home, Viyyur stating that the dwelling house they reside in has fully collapsed and seeking grant of special leave/parole to the husband of the petitioner to complete the formalities required to avail the benefit of the Life Housing Scheme. But according to the 2nd respondent, the representation put in by the petitioner dated 01.06.2023 was incomplete as the representation was not followed by the report of the Tahsildar from the Revenue Department as prescribed in the Prison Rules. It is submitted that as per the direction from the jail authorities, the petitioner resubmitted a fresh representation on 03.07.2023 after rectifying the anomalies and including the certificate of the Tahsildar concerned. It is submitted that as per Rule 400(1)(2) & (3) of the Rules 2014, a letter was sent, seeking report from the Police Station concerned regarding the feasibility of any law and order issue arises or whether the life of the prisoner will be in danger if he is granted emergency leave. It has been sent to the District Police Chief, Thrissur.



The District Police Chief, Thrissur (Rural) vide letter dated 08.07.2023 informed that there is a chance of political and other law and order problems, which will cause threat to the life of the prisoner, if the prisoner is released on emergency leave and hence not recommended for his emergency leave.

The above letter is extracted hereunder:

"Kind attention is invited to the subject and reference cited above.

Enquiries were made about the emergency parole request for the renovation of the house of C.No. 102 Manoj @ Irumban Manoj S/O Ayyappan, Parassery house, Kara-Vaa kadappuram, Edavilangu, Kodungallur PS Thrissur District C.No 102 Central Prison & Correctional Home, Viyyur, through SHO Kodungallur. SHO Kodungallur reported that the house of the prisoner at Edavilangu was locked without any occupants and that his family had moved out two years ago and were staying at a rented place in Tiruvallur. No preparations have been made for the construction of the house and there is no need to grant leave for the purpose of renovating the house. It is also reported that the prisoner was convicted in a political murder case, there is a chance of political and other law and order problems which will cause threat to the life of the prisoner if released on parole. The DYSP Kodungallur also agrees with the report of SHO Kodungallur.

*In the above said circumstances, the emergency parole request of the prisoner is **not recommended.**"*



9. Based on the above letter, it is submitted that the emergency leave cannot be granted to the prisoner. I am in total disagreement with the above finding of the District Police Chief. A prisoner serving his term in prison is always concerned about his family and his residence. It is an admitted fact that the house of the prisoner has completely collapsed due to natural calamities. This is evident from Ext.P2 certificate issued by the Tahsildar, Kodungallur. It is also an admitted fact that the petitioner's husband is included in the beneficiary list of Life Housing Scheme in the category of Scheduled Caste community. This is clear from the certificate issued by the Secretary, Edavilangu Grama Panchayat. Then, it is surprising to see the report of the District Police Chief, Thrissur, in which it has been stated that, no preparations have been made for the construction of the house and therefore there is no need to grant leave for the purpose of renovating the house. What are the inputs given to him by the Station House Officer, Kodungallor Police is to be enquired into. Prima facie, I am of the opinion that the letter of the District Police Chief is without conducting any enquiry especially in the light



of Exhibit P2 and P3 certificates issued by the Tahsildar and the local Panchayath. The State Police Chief should look into it and issue a general guideline about the manner in which the enquiry is to be conducted in such situations. When the wife of the convict submits before the jail authorities that, for completing the procedure for getting the Life Housing Scheme facility, the presence of the petitioner's husband's is necessary, the police authorities cannot deny the same on flimsy reasons without any basis. As I said earlier, prisoners are also human beings and they are concerned about their family and their residence. Section 36 of the Act 2010 deals with the rights of prisoners. It states that prisoners have the right to live with dignity, communication and contacts with his family and other persons (of course, in accordance with procedure), Protection against unreasonable discrimination (subject to the explanation in the section), of enjoyment of Fundamental rights under Part III of the Constitution of India (so far as they do not become incapable of enjoyment as an incident of conviction and confinement) etc.

10. It is also to be noted in this case that, one of the



reasons for rejecting the application of the petitioner is that, there is an adverse police report that there is a chance of political and other law and order problems, which will cause threat to the life of the prisoner, if the prisoner is released on emergency leave.

11. I fail to understand the above report of the police authorities. The petitioner's husband is seeking emergency leave as per Rules 2014 because his dwelling house is fully collapsed. He is the family head and his presence is necessary for getting some benefits which are sanctioned by the local panchayat in his name. At this stage the police says that if the prisoner is released, there is a chance for political and other law and order problems. That shows that the police authorities cannot give protection to a prisoner who is entitled to emergency leave as per Rule 400(1)(iii) of the Rules 2014. This shows nothing but the incapacity of the police authorities and not the ineligibility of the prisoner. If the police authorities are not able to maintain law and order, when a prisoner comes to his house on an emergency leave to complete the preliminary steps to construct a shelter for his family and



children, that is a sad state of affair. I am of the considered opinion that the petitioner's husband, C No.102/22 is entitled to emergency leave under Rule 400(1)(iii) of Rules 2014 and if any law and order problem arises, when the prisoner is on emergency leave, the District Police Chief, Thrissur Rural will ensure protection to the prisoner. It is his responsibility, because, he has submitted that, if the prisoner is coming out, there is a chance for law and order problem. If the District Police Chief, Thrissur Rural is not even able to protect the life of a prisoner who is released on emergency leave to take steps to complete a collapsed dwelling house, he is not entitled to continue in that post.

12. Therefore the 2nd respondent shall pass orders granting emergency leave to the petitioner's husband forthwith under Rule 400 (1) (iii) of the Rules 2014 ignoring the report of the District Police Chief, Thrissur Rural.

13. Moreover, it is to be noted that, several petitions are filed before this Court by the convicts and their close relatives for getting emergency leave, ordinary parole etc. If an application is submitted, the authority concerned is not even



informing the prisoner or the relatives of the prisoner about the result of the application. If an application is filed and the same is rejected, there is a remedy to the prisoner or his relatives to approach the appellate authority. Therefore, it is the duty of the jail authorities to duly process the application for emergency leave, ordinary parole etc immediately. The same should be processed within a time frame. If any report is called for from the local police, the local police also should submit the report within a time frame. Therefore, if an application for emergency leave, ordinary parole etc., are submitted by the convicts or their relatives, the same should be considered and appropriate orders must be passed within three weeks from the date of receipt of the application. If any query is given to any local police, the local police should submit the report within one week from the date of receipt of the request. The order passed by the authority shall be communicated to the convict and the relatives, if any, within one week from the date of passing of the order.

14. As I stated in the beginning, the inmates in prisons are still citizens and should not be denied their basic human



rights as any other citizen. Vaikom Muhammad Basheer, the great writer, and the pride of every Malayalee, picturized the mindset of a prisoner beautifully in his story "Mathilukal". It seems, it is the experience of the writer himself, who was in jail. It will be better to quote a portion of it. A prisoner climbing atop of a tree inside the jail to see the world outside is the situation in that story.

“ഞാൻ ആ പൂന്തോട്ടത്തിന്റെ അടുത്തുള്ള പ്ലാവിൽ വലിഞ്ഞുതുങ്ങി കയറും. നേതാക്കന്മാരും മറ്റും ഊണുകഴിഞ്ഞു ഉച്ചയ്ക്കൊന്നു മയങ്ങുന്ന സമയത്താണ്. പ്ലാവിന്റെ ഉച്ചിയിൽ ഞാൻ കയറി നിൽക്കും... സ്വതന്ത്രലോകത്ത് അല്ലെങ്കിൽ, എന്ത് സ്വതന്ത്രലോകം? ഭൂഗോളം തന്നെ ഒരു വലിയ ജയിലാണല്ലോ. ഏതായാലും വന്മതിലിനു വെളിയിൽ ... ദൂരെ ദൂരെയുള്ള റോഡേ സ്ത്രീപുരുഷന്മാർ ഈ ചെറിയ ജയിലിലെ വിവരമൊന്നുമറിയാതെ നടന്നുപോകുന്നു. സൂപ്പർമാർക്കുള്ള, ഒന്നിങ്ങോട്ടു തിരിഞ്ഞുനോക്കൂ...! ഞാൻ പറയുന്നത് സ്ത്രീജനങ്ങളോടാണ്. ഒന്നു തിരിഞ്ഞുനോക്കൂ! നിങ്ങളെ ഒന്ന് കണ്ട് കൺകളിർപ്പിക്കട്ടെ! അങ്ങനെ കുറേകഴിഞ്ഞു താഴെയിറങ്ങിപ്പോരും. ഞാൻ ഈ പറയുന്നത് ജയിലിലുള്ള ഓരോ പുരുഷനും പറയാൻ കഴിയും. എന്റെ വിചാരവികാരങ്ങൾതന്നെ ഓരോ ജയിൽപ്പള്ളിയുടേതുമെന്ന് വിചാരിക്കുക. ഞങ്ങളുടെ ഏകാന്തരാത്രികൾ... ഞങ്ങളുടെ ഏകാന്ത ചിന്തകൾ...ഞങ്ങളുടെ ലൈംഗികസ്വപ്നങ്ങൾ. ഏതായാലും ഞങ്ങളുടെ ഹൃദയങ്ങളിലേക്കു ചുഴിഞ്ഞിറങ്ങാതിരിക്കുന്നതാണ് നല്ലത്.”

15. Even if a prisoner is getting good accommodation, security and food inside the prison, a prisoner is always prisoner. Only a prisoner knows his difficulties. In such



situations, it is the duty of the constitutional court to ensure that there is no violation of the basic rights of the prisoner. Therefore, I am of the considered opinion that the petitioner's husband in this case is entitled to emergency leave. Moreover, the jail authority should consider the application of the convicts and the relative of the convicts for emergency leave, ordinary leave etc., within a fixed time frame. Therefore, this Writ petition (Crl.) is allowed in the following manner:

- i) The petitioner's husband Mr. Manoj @ Irumban Manoj (C No.102/2022) shall be given emergency leave as per Rule 400(1)(iii) of the Kerala Prisons and Correctional Services (Management) Rules, 2014 forthwith.
- ii) If any application is received by the jail authorities for emergency leave, ordinary parole etc., the jail authorities shall consider those applications and pass appropriate orders, as expeditiously as possible, at any rate, within three weeks from the date of receipt of the application. The decision taken shall be communicated to the prisoner and the relative of the prisoner, if necessary, if the request



is from the relative of the prisoner, within one week from the date of passing the order.

iii) If any report is called for from the local police before taking a decision in emergency leave, ordinary parole etc., the local police shall submit the report immediately, at any rate, within one week from the date of receipt of the request from the jail authorities.

iv) The Director General of Prisons and Correctional Services, Poojappura, Thiruvananthapuram will issue necessary directions to all jail authorities in the State of Kerala about the same.

v) The Registry will forward a copy of this judgment to the State Police Chief and Director General of Prisons and Correctional Services, Poojappura, Thiruvananthapuram for passing appropriate directions to all the authorities concerned.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE



2023:KER:79744

APPENDIX OF WP (CRL.) 1215/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE POSSESSION CERTIFICATE
ISSUED BY THE VILLAGE OFFICER, EDAVILANGU
VILLAGE DATED 29.05.2023
- Exhibit P2 TRUE COPY OF THE CERTIFICATE ISSUED BY
THE TAHASILDAR, KODUNGALLUR DATED
01.07.2023
- Exhibit P3 TRUE COPY OF THE CERTIFICATE ISSUED BY
THE SECRETARY, EDAVILANGU GRAMA PANCHAYAT
- Exhibit P4 TRUE COPY OF THE REPRESENTATION PREFERRED
BY THE PETITIONER BEFORE THE 2ND
RESPONDENT DATED 01.06.2023