



2024/KER/15565

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

THURSDAY, THE 29<sup>TH</sup> DAY OF FEBRUARY 2024 / 10TH PHALGUNA,  
1945

WP(CRL.) NO. 125 OF 2024

PETITIONER:

SHAMEERA S  
AGED 47 YEARS, W/O HUSSAIN ABBAS,  
1C 36/123, PALLOM HOUSE,  
VALLAKADAVU P.O.,  
THIRUVANANTHAPURAM DISTRICT, PIN - 695008

BY ADVS.  
M.P.MADHAVANKUTTY  
MATHEW DEVASSI  
ANANTHAKRISHNAN A. KARTHA

RESPONDENTS:

- 1 SECRETARY TO GOVERNMENT  
HOME DEPARTMENT,  
GOVERNMENT SECRETARIAT,  
THIRUVANANTHAPURAM, PIN - 695001
  - 2 DIRECTOR GENERAL OF PRISONS AND  
CORRECTIONAL SERVICES  
PRISON HEAD QUARTERS, POOJAPURA,  
THIRUVANANTHAPURAM, PIN - 695012
  - 3 STATE POLICE CHIEF  
STATE POLICE HEAD QUARTERS,  
VELLAYAMBALAM,  
THIRUVANANTHAPURAM, PIN - 695010
  - 4 SUPERINTENDENT  
CENTRAL PRISON AND CORRECTIONAL HOME,  
POOJAPURA,  
THIRUVANANTHAPURAM, PIN - 695012
- BY ADVS.



2024/KER/15565

W.P.(CrI.) No.125/24

-:2:-

**SRI . P . NARAYANAN , PUBLIC PROSECUTOR**

**THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 21.02.2024 , THE COURT ON 29.02.2024 DELIVERED  
THE FOLLOWING :**

**BECHU KURIAN THOMAS, J.****W.P.(Crl.) No.125 of 2024**

Dated this the 29<sup>th</sup> day of February, 2024

**JUDGMENT**

Petitioner is the wife of Sri.Hussain Abbas, who is convict No.2930 presently lodged at the Central Prison and Correctional Home, Thiruvananthapuram. Petitioner's husband was convicted for life imprisonment in S.C. No.1530/2012 on the files of the Additional Sessions Court-VI Thiruvananthapuram for the offences, including section 302 of the Indian Penal Code, 1860. An appeal has been filed as Crl.Appeal No.1376/2018 which is pending consideration. Through this writ petition under Article 226 of the Constitution of India, petitioner seeks a direction to release her husband on leave, as directed in Ext.P1 order of the Government.

2. According to the petitioner, the Advisory Committee of the Central Prison recommended ordinary leave to 14 prisoners on 29.06.2023. Pursuant to the above recommendation, the Government, by order dated 12.12.2023, granted 15 days of



ordinary leave to 14 prisoners, including the petitioner's husband. Despite the direction of the Government, petitioner's husband has not been given leave. When information was sought under the Right to Information Act, 2005, it was informed on 09.01.2024 that petitioner's husband had never been given any leave, and also that his canteen and telephone facilities have not been kept on hold. While so, petitioner's husband himself filed an application on 01.01.2024 seeking to grant ordinary leave to him. It was also mentioned that some false cases have been foisted against him for allegedly using a mobile phone, and on that basis the benefit of leave granted to him was being withheld or denied.

3. A counter affidavit has been filed by the Superintendent of Prisons wherein it is stated that the petitioner's husband was admitted into the prison on 13.08.2018 and he was released on interim bail as directed by the court on five occasions and that he has undergone 4 years, 11 months and 22 days of imprisonment as on 17.02.2024. The counter affidavit also mentioned that leave can be granted only to well-behaved and eligible prisoners for better rehabilitation and to those who have completed 1/3<sup>rd</sup> of their total sentence or two years of actual



sentence, whichever is less. It is further stated that, though the probation officer had recommended granting ordinary leave to the convict, the police reports were never in favour of granting ordinary leave. It was further stated that on earlier occasions, the Prison Advisory Board had not recommended the grant of leave to the petitioner's husband, but on 29.06.2023, the said Board recommended his case along with 13 others. While the recommendation was pending consideration before the Government, on 27.08.2023, a mobile phone was siezed from Block No.1 of the prison, and a case was registered, in which investigation revealed that a group of prisoners, including petitioner's husband, were involved in connection with the said crime. The Deputy Prison Officer was also placed under suspension and disciplinary proceedings have been initiated against him and he was even arrested and remanded to judicial custody for his involvement in the crime. It is also stated that disciplinary proceedings were initiated against petitioner's husband earlier, and a prison punishment was imposed on him on 11.11.2021 as he had beaten a co-prisoner and smuggled contraband articles to the prison. It was also stated that due to the commission of an offence, the petitioner's husband cannot be



granted the leave, as ordered in Ext.P1.

4. I have heard Sri.M.P.Madhavankutty, the learned counsel for the petitioner, as well as Sri. P. Narayanan, the learned Public Prosecutor.

5. Petitioner's husband has undergone imprisonment for a period of more than four years and has never been granted leave. It was only by Ext.P1 that he was directed to be given ordinary leave for a period of 15 days. The said order of the Government has not yet been interfered with by any authority. The order granting leave to the petitioner's husband was based on a recommendation dated 29.06.2023. Therefore, the circumstances till the date of the said recommendation alone are noticed for the grant of leave. The said leave, once granted, by the Government, cannot be interfered with by the Superintendent of Prisons, that too based on a subsequent event. If such orders of the Government are permitted to be interfered with by subordinate officers, chances of misuse and abuse will occur. Of course, as per, Rule 412 of the Kerala Prisons and Correctional Services Management Rules, 2014 the Superintendent of Prisons can recall a convict enjoying a leave if he commits any immoral activities. The said power is to be



exercised while the convict is on leave and is distinct.

6. Since the Government Order granting leave to the petitioner's husband has not been varied or revoked, the Superintendent of Prisons is also, as an officer under the Government, bound to abide by the same, and he cannot vary or revoke the said order. The circumstances that occurred after the recommendation cannot be considered at this stage, as the same could be considered only for the periods of leave eligibility. If such an interpretation is not adopted, each time when a convict becomes eligible for leave, and the Government issues an order granting leave, the same could be misused or exploited by the prison authorities.

7. Therefore, this Court is of the view that Ext.P1 order of the Government is liable to be implemented. The crime allegedly committed by the petitioner's husband in using a mobile phone subsequent to the recommendation cannot be regarded as a factor to deprive him of the leave granted as per Ext.P1 in the peculiar circumstances of this case.

8. In view of the above, there will be a direction to the second and third respondents to release the petitioner's husband on ordinary leave for a period of 15 days, as directed in Ext.P1.



2024/KER/15565

W.P.(CrI.) No.125/24

-:8:-

However, as and when the petitioner's eligibility for the next ordinary leave arises, the incidents that occurred subsequent to the recommendation of the Advisory Board can be taken into reckoning.

With the above observation, this writ petition is allowed.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps





APPENDIX

PETITIONER EXHIBITS

- EXHIBIT P1                   A TRUE COPY OF THE G.O.(RT) NO.  
3646/2023/HOME DATED 12-12-2023
- EXHIBIT P2                   A TRUE COPY OF THE APPLICATION SUBMITTED  
BY THE PETITIONER UNDER THE RIGHT TO  
INFORMATION ACT DATED 12-12-2023 BEFORE  
THE INFORMATION OFFICER, CENTRAL JAIL  
AND CORRECTIONAL HOME, POOJAPURA
- EXHIBIT P3                   A TRUE COPY OF THE REPLY ISSUED BY THE  
INFORMATION OFFICER, CENTRAL JAIL AND  
CORRECTIONAL HOME, POOJAPURA DATED  
09-01-2024
- EXHIBIT P4                   A TRUE COPY OF THE APPLICATION SUBMITTED  
BY THE PETITIONER BEFORE THE 2ND  
RESPONDENT DATED 01-01-2024

RESPONDENT EXHIBITS

- EXIHIBIT R4 (A)           TRUE COPY OF THE ORDER NO E2-29886-2023-  
PrHQ DATED 26-9-2023
- EXIHIBIT R4 (B)           TRUE COPY OF THE FIR(POOJAPPURA PS CRIME  
NO1276/2023)
- EXIHIBIT R4 (C)           TRUE COPY OF THE ORDER NO CP-1(DS-D)-  
3343/2021/CPTVM DATED 11-11-2021
- EXIHIBIT R4 (D)           TRUE COPY OF THE LETTER NO  
B1/44/2024/HOME DATED 5-2-2024