

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 29<sup>TH</sup> DAY OF SEPTEMBER 2022 / 7TH ASWINA, 1944

WP(CRL.) NO. 698 OF 2022

**PETITIONER**

SUHASINI  
AGED 55 YEARS  
W/O.VENUGOPAL T.V. (C.NO.9484)  
KOLLAMPARAMBIL HOUSE, KUMILY P.O.,  
IDUKKI - 685 509.

BY ADVS.  
RENJITH B.MARAR  
LAKSHMI.N.KAIMAL

**RESPONDENTS:**

- 1 STATE OF KERALA  
REPRESENTED BY THE PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA - 682 031.
- 2 DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICES  
PRISONS DEPARTMENT, POOJAPPURA,  
THIRUVANANTHAPURAM - 12.
- 3 SUPERINTENDENT OF PRISON  
CENTRAL PRISON AND CORRECTIONAL HOME,  
VIYYUR, THRISSUR - 680 010.

ADV SREEJ V. - SR.PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON  
29.09.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**JUDGMENT**

The petitioner is the wife of Sri Venugopal T.V. (convict No.9484), who is an inmate of Central Prison and Correctional Home, Viyyur. The said convict was found guilty by the Sessions Court for the offence punishable under Section 302 of the Indian Penal Code and was sentenced to undergo imprisonment for life. While undergoing imprisonment, he was granted emergency parole on 05.07.1997 for a period of seven days. However, it is contended that the petitioner's husband overstayed on parole for a period of 13 years. Later he was arrested on 09.02.2011 and lodged back in prison. Thereafter the convict was not granted parole ever since. The reason on which the convict was not granted parole was that, the period of overstay was not regularized by the Government and by virtue of the operation of Rule 400(6) of Kerala Prisons and Correctional Services (Management) Rules (hereinafter referred as Rules), which contemplates a prohibition in granting parole in respect of a person whose overstay has not been regularized by the Government.

2. Earlier, the petitioner approached this Court by filing W.P.(C) No.34699/2015, praying for a direction to grant parole to her husband. The said writ petition was disposed of by this Court as per Ext.P1 judgment directing the representation submitted by her to be considered by the authorities concerned. Consequent to the same, Ext.P2 order was passed by the Government rejecting the said application, which was again challenged before this Court by filing W.P.(C) No.40580/2017. The aforesaid writ petition culminated in Ext.P3 judgment wherein it was found that the case of the convict was not an overstay, but it is a case of absconding. However, in Ext.P3, it was directed that the application submitted by the petitioner's husband for regularization of the overstay be considered afresh. Subsequently, Ext.P4 was challenged again in W.P.(C) No.16755/2020, resulting in Ext.P6. In the said writ petition, even though the challenge against the order impugned therein was rejected, the petitioner was granted an opportunity to submit a fresh application, and upon receipt of such application, the Government was directed to consider the same. In compliance with the same, a

representation was submitted and Ext.P7 order was happened to be passed by the Government. In Ext.P7 order, the Government referred the question of regularization of overstay of the convict to the Jail Advisory Board for consideration and to give an opinion on the regularization of overstay. The petitioner submitted this writ petition at that stage of the proceedings seeking to release the convict on parole.

3. In response to the averments contained in the writ petition, a statement was filed on behalf of the 3<sup>rd</sup> respondent, wherein, it was mentioned, that on account of the operation of Rule 452 BB, a person who has absconded while on leave earlier, shall not be eligible for sanction of leave under any circumstances. Along with the aforesaid statement, Annexure R3(a) minutes of the Jail Advisory Board was also produced. The aforesaid document would indicate that, in pursuance to the directions of the Government as per Ext.P7, the question as to whether the overstay of the petitioner is to be regularized or not was considered at its meeting held on 11.04.2022. The decision taken was that the regularization of

overstay of 13 years would send a wrong message to the inmates of the prison and among the public and for that sole reason, the Advisory Board expressed their opinion that, the overstay of the convict need not be regularised.

4. Heard Sri.Ranjith B. Marar, learned counsel appearing for the petitioner and Smt.Sreeja V., learned Senior Government Pleader appearing for the State.

5. The specific contention put forward by the learned counsel for the petitioner is that the reliance placed by the 3<sup>rd</sup> respondent on Rule 452 BB is not sustainable. It is pointed out that the Rule referred to in the statement was in the earlier Rules, which now stands repealed by virtue of the enactment of the Kerala Prisons and Correctional Service (Management) Rules 2010. It is pointed out that, as per the stipulations contained in the present Rules, there is no absolute prohibition in granting parole to a person who has absconded. It is pointed out that Rule 400(6) enables the Government to regularize the period during which he absconded. Therefore, it is contended that in the absence of any absolute

prohibition as contemplated in the earlier Rules, nothing precludes the Government from considering the request placed by the convict for regularizing the period of overstay.

6. The learned counsel further pointed out that, as far as the issue of regularization of overstay of the convict is concerned, as of now, no final decision has been taken. Ext.P7 indicates that the matter of regularization was referred to the Jail Advisory Board, for its opinion, and as per Annexure R3(a), the Jail Advisory Board has submitted its statement recommending to reject the prayer only on the ground that the regularization would send a wrong message. However, the fact remains that the government has not taken the final decision, which ought to be taken based on all the materials placed on record, including the opinion expressed by the Jail Advisory Board.

7. The learned counsel for the petitioner further brought my attention to the averments in the statement submitted on behalf of the 3<sup>rd</sup> respondent contained in paragraph 13 thereof. It is mentioned that the convict has been a well behaved prisoner and a

law-abiding citizen since his admission to the Central Prison and Correctional Home Viyyur on 01.10.2011. There are no adverse remarks against the prisoner, and no disciplinary actions have been initiated against him till date for the last 11 years.

8. Apart from the above, it was also pointed out that, during the Covid 19 period, based on general instructions issued by the Government in this regard, the prisoners were released considering the special circumstances that existed at that time, and the said benefit was granted to the convict also. It is stated by the learned counsel for the petitioner that no adverse remarks were made or untoward incidents have occurred during the said period and he reported back to the prison within the stipulated time. It is contended that, while forming the opinion as evidenced by Annexure R3(a), the Advisory Board is not seen to have taken into consideration the aforesaid aspect. Therefore, the learned counsel contends that the matter requires reconsideration by taking into account those aspects as well.

9. After considering all the relevant inputs and hearing

both sides, I am of the view that there is some force in the contentions put forward by the learned counsel for the petitioner. As rightly pointed out by him, there is no absolute bar in granting parole to the convict even if he absconded, as per the provisions of the present Rules. The provisions contained in the Rules also indicate the power of the Government to regularize the period of overstay on account of the act of absconding of the convict. Therefore, regularization is a matter which comes within the powers of the Government, and upon submission of an application, the same has to be considered. Even though, as per Ext.P7, the opinion of the Advisory Board was sought by the Government for exercising such powers, it is seen that the only consideration that was applied by the Advisory Board was that, a wrong message is likely to be sent, if the period of overstay is regularised. The fact that the conduct of the convict inside the prison was excellent, for the past 11 years in prison is not seen taken into consideration. Moreover, the fact that he was released on leave during the Covid 19 period and lack of any adverse remarks, as claimed by the learned counsel



for the petitioner, was also not seen taken into consideration by the Advisory Board while expressing its opinion as evidenced by Annexure R3(a). In my view, the fact that the conduct of the convict in prison for the past 11 years was good is a relevant aspect to be considered while deciding this aspect. Moreover, the claim of the learned counsel for the petitioner that the convict, even after granting a leave during the Covid 19 period, had returned to the prison in time is also to be considered if the said claim is true. This is mainly because, the purpose of imprisonment is not confined to creating a deterrent effect alone, but it is intended to reform the prisoner as well. If the petitioner's husband has been keeping a good track record inside the prison for the past 11 years from the date he was brought back after he absconded, it is certainly an indication of reformation. Moreover, the likelihood of getting parole would be an incentive for such a prisoner to maintain his good behaviour in prison and on the other hand, an absolute denial of the same may result in adverse consequences. In such circumstances, I am of the view that, since these relevant aspects are not seen taken

into consideration by the Advisory Board, it requires reconsideration.

In such circumstances, this writ petition is disposed of directing the Jail Advisory Board to reconsider the case of convict No.9484 and take a decision afresh by considering the abovementioned aspects. It is ordered that the Jail Advisory Board shall take a decision in this regard at the next meeting itself, and the matter shall be communicated to the Government. Upon receipt of such opinion, the Government shall take a decision on the application of the convict, to regularize the overstay of the convict within a period of three months from the date of receipt of such opinion.

**Sd/ -**

**ZIYAD RAHMAN A.A.  
JUDGE**

APPENDIX OF WP(CRL.) 698/2022

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE JUDGMENT OF THIS COURT IN WP(C) NO.34699/2015 DATED 14/12/2015.
- Exhibit P2 TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 03/03/2016.
- Exhibit P3 TRUE COPY OF THE JUDGMENT OF THIS COURT IN WP(C) NO.40580/2017 DATED 14/06/2018.
- Exhibit P4 TRUE COPY OF THE ORDER OF THE 1ST RESPONDENT DATED 14/06/2019.
- Exhibit P5 TRUE COPY OF THE ORDER OF THIS COURT IN CON.CASE (C) NO.1106/2019 IN WP(C) NO.40580/2017 DATED 19/06/2019.
- Exhibit P6 TRUE COPY OF THE JUDGMENT OF THIS COURT IN WP(C) NO.16755/2020 DATED 08/09/2020.
- Exhibit P7 TRUE COPY OF THE RTI REPLY ALONGWITH G.O.(RT) NO.671/2021/HOME DATED 01/03/2021 OF THE 1ST RESPONDENT.
- Exhibit P8 TRUE COPY OF THE RTI APPLICATION DATED 20/05/2022.
- Exhibit P9 TRUE COPY OF THE RTI REPLY OF THE 3RD RESPONDENT DATED 21/05/2022.

RESPONDENT ANNEXURES

- ANNEXURE R3(a) True copy of the minutes of the Jail advisory board