



2023:KER:81242

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

MONDAY, THE 18TH DAY OF DECEMBER 2023 / 27TH AGRAHAYANA, 1945

WP (CRL.) NO. 1307 OF 2023

PETITIONER(S) :

INDIRA
AGED 51 YEARS

BY ADV KEERTHI JAYANANDHAN

RESPONDENT (S) :

1 STATE OF KERALA
REPRESENTED BY THE HOME SECRETARY, GOVT. SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

2 THE SUPERINTENDENT
HIGHSECURITY PRISON, VIYYUR , THRISSUR -680010,
PIN - 680010

3 DIRECTOR GENERAL OF PRISONS
PRISONS HEADQUARTERS, POOJAPPURA, THIRUVANANTHAPURAM,
PIN - 695012

BY ADVS.
ADVOCATE GENERAL OFFICE KERALA
DIRECTOR GENERAL OF PROSECUTION (AG-10)
P.NARAYANAN, SENIOR G.P. AND ADDL.PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON
18.12.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



P.V.KUNHIKRISHNAN, J.

W.P.(CrI.)No.1307 of 2023

Dated this the 18th day of December, 2023

JUDGMENT

This writ petition is filed by Adv.Keerthi Jayanandhan and the petitioner is her own mother. The prayer in this writ petition is to grant parole to her own father, who is the husband of the petitioner and who is undergoing imprisonment in High Security Prison, Viyyur, Thrissur.

2. It is an admitted fact that the petitioner's husband was an accused in about 23 criminal cases in which 5 of them are murder cases. In 3 of the murder cases, the petitioner's husband was acquitted. It seems that the petitioner's husband was convicted in 2 murder cases. Ext.P1 is an affidavit filed before this Court in which the cases against the petitioner's husband are



mentioned. Ext.P2 is the reply received by Adv.Keerthi Jayanandhan from the Superintendent, High Security Prison Viyyur, about the cases pending against the petitioner's husband.

3. It is submitted that the petitioner's husband is in jail for the last 17 years. It is the further case of the petitioner that her husband reformed after 17 years of imprisonment and he wrote novels, stories, etc and the same itself shows his reformation. It is also the case of the petitioner that, one of the books of the petitioner's husband named "Pulari Viriyum Munpe" is ready for publication. Ext.P3 is original copy of the book. It is submitted that the Director General of Prisons, Thiruvananthapuram granted permission for publication. Ext.P4 is the permission granted by the Director General of Prisons. It is the further case of the petitioner that the book is going to be published by Logos Publications, Vilayur, Palakkad. The programme is arranged for the



book release on 24/12/2023 at 10.30 am at Press Club Ernakulam. It is also submitted that Dr.Sunil P. Elayidam will inaugurate the Programme. Ext.P5 is the notice regarding the book release function. Now it is submitted by the petitioner that the book release date is preponed to 23/12/2023.

4. It is submitted by the petitioner that her husband was released on two days escort parole for attending his elder daughter's marriage after 17 years of imprisonment, based on Ext.P6 Judgment of this Court. It is the case of the petitioner that her husband wants to attend the programme in connection with the release of his book. According to the petitioner, her husband studied only up to 9th standard and a book release is a dream to him. It is also submitted that he wants to donate the funds raised by this book for the welfare of the children with special needs. In such circumstances, the petitioner's husband preferred



applications before the 2nd respondent requesting to grant a parole for 30 days for making arrangements for the book release. But no steps are taken by the 2nd respondent. Hence this writ petition is filed with following prayers:

- i. To issue a writ of mandamus or any other appropriate writ, order or direction commanding the respondents to grant parole for 15 days to the petitioner who is undergoing imprisonment for the last 17 years.
- ii. And to pass such other appropriate writs, orders or directions which this Hon'ble Court deems fit and proper in the facts and circumstances of the case so as to secure the ends of justice.
- iii. to dispense with the translation of the documents in the vernacular language.
(SIC)

5. This is a strange case where a daughter is fighting for the release of her own father through her mother. This Court, as per Ext.P6 Judgment, earlier granted escort parole to the petitioner's husband for



two days. It will be better to extract the relevant portion of Ext.P6 Judgment:

"10. On a careful consideration of the aforesaid circumstances, this Court is of the view that the petitioner's husband ought to be permitted to attend the wedding of his daughter. Hence petitioner's husband - Sri. Jayanandan, convict No. 167 at the High Security Prison at Viyyur. Thrissur is permitted to attend his daughter's wedding scheduled to be held on 22.03.2023 but under police escort. For the purposes of the wedding functions, he is also permitted to visit his house on 21.03.2023 from 09.00. am till 5.00 pm and be returned back to the prison on the same day. He is also permitted to attend the wedding on 22.03.2023 again from 09.00 am to 05.00 pm.

11. Since It is reported that there are serious security threats in taking the convict from prison, respondents 1 and 3 shall ensure strong and sufficient Police surveillance including escort are provided and that the convict does not escape. However, the accompanying Police or escort personnel shall be in plain clothes and shall not interfere with the functions related to the wedding, unless circumstances warrant.

12. The petitioner and one of her daughters shall file an affidavit before the Sessions



Court, Thrissur, undertaking that they shall ensure the return of the petitioner's husband to jail as directed in this order."

6. From Ext.P6 itself it is noted that the petitioner's husband is undergoing sentence of imprisonment for life in two murder cases and has even escaped from prison twice. This Court observed that since the wedding of a daughter is an auspicious occasion and the presence of the father of the bride at that solemn function is most appropriate, this Court gave parole for partaking in the wedding of his daughter. This Court also observed the glorious right to liberty enshrined in Article 21 of the Constitution of India in Ext.P6 judgment.

7. Based on Ext.P6 Judgment, the petitioner's husband was given escort parole for two days after imposing stringent conditions. This Court also directed one of the daughters of the petitioner and the petitioner to file an affidavit before the Sessions Court, Thrissur,



undertaking that they shall ensure the return of the petitioner's husband to jail as directed in that Judgment. Ext.P6 Judgment was obeyed in its letter and spirit by the petitioner and her husband. The petitioner's husband was given escort parole for two days.

8. Now the petitioner's husband wants to participate in a book release function. Ext.P3 is the copy of the book written by the petitioner's husband. This Court glanced through Ext.P3. It is submitted that the petitioner's husband studied only up to 9th standard. A man who studied only up to 9th standard, and was in jail for 17 years, wrote Ext.P3. I do not want to extract the contents of Ext.P3 in this judgment because it is yet to be released. But I am of the considered opinion that the convict is entitled to an encomium because of the way in which he wrote Ext.P3, especially when he has studied only up to 9th standard.



9. The point to be decided is whether the petitioner's husband can be released for attending the book release function. As per order No.R1-948/2022/HSP dated 15.12.2023 of the Superintendent, High Security Prison, Viyyur, the prayer is rejected. The reason for rejecting the prayer is that, as per the Kerala Prisons and Correctional Services (Management) Rules, 2014, especially as per Rule 397 (L)(ii) and Rule 400 (7)(ii), the persons who are convicted under Sections 392 to 402 of IPC are not entitled for ordinary leave and emergency leave. It is submitted that the petitioner's husband was convicted by the Additional District and Sessions Court No.III, Thrissur in S.C.No.490/2007 for the offence under Section 394 IPC. Hence the petitioner's husband is not entitled for ordinary leave or emergency leave.

10. It is true that the Rules do not permit any emergency leave or ordinary leave to the petitioner's



husband. In such circumstances, whether the constitutional court can step in, if there is an extraordinary situation is the question to be decided. This Court in the judgment dated 12.12.2023 in W.P. (CrI.) No.1215/2023 observed like this:

"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 പുനോട്ടത്തിന്റെ അടുത്തുള്ള പ്ലാവിൽ വലിഞ്ഞുളങ്ങി 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. സുഹൃത്തുക്കളെ, ഒന്നിങ്ങോട്ടു തിരിഞ്ഞുനോക്ക് ...! 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 ഏകാന്തചിന്തകൾ ...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....."

11. Here is a case where the petitioner's husband who is a convict undergoing imprisonment for about 17 years. He wrote a book as evident by Ext.P3. He studied only up to 9th standard. The book release is



scheduled on 23.12.2023. A convict in detention for 17 years wrote a book and he wants to participate in his book release function is the situation. In such a situation, I am of the considered opinion that the constitutional court should step in, even if the Rules do not permit such release. The petitioner's husband should be given an opportunity to participate in the book release function and also on the previous day for making arrangements for the function. Therefore, the petitioner's husband should be allowed two days escort parole on 22.12.2023 and 23.12.2023. He should be taken to his house on 22.12.2023 and should be allowed to stay there from 9 A.M to 5 P.M. Thereafter, he should either be taken to the High Security Prison at Viyyur, Thrissur or to any other jail near Ernakulam. Petitioner's husband should be allowed to participate in the book release function on 23.12.2023 also and after the book release function he should be taken back to



the jail concerned. The Petitioner and one of the daughters of the petitioner shall file an affidavit before the Superintendent, Viyyur jail to the effect that they will produce the convict before the jail after the book release function with the escort police. The petitioner's husband should see the legal fight of his daughter before this court for his release on parole and hence should see that the directions are complied by him on the two days, when he is released on escort parole. The legal fight of his wife and daughter should be there in the mind of the convict. The result of this Judgment is because of the efforts of his daughter and his wife. The daughter loves her father and is anxious to see that her father attends the book release function. Therefore, he should reciprocate by obeying the directions of the court to allow them to continue the legal fight in accordance to law. The legal fight of a daughter to get a release order for her father to attend the function is also to be



appreciated, even if, her father is an accused in several cases including five murder cases. Just like a mother, a father is also a hero to every child. It is apt to quote the following lines of Sri.Kaithapram Damodaran Namboodhiri in a Malayalam movie:

“സൂര്യനായ് തഴുകിയുറക്കുമുണർത്തുമെൻ
അച്ഛനെയാണെന്നിരിക്കീഷ്ടം
ഞാനൊന്നു കരയുമ്പോളറിയാതെ
ഉരുകുമെൻ അച്ഛനെയാണെന്നിരിക്കീഷ്ടം
കല്ലെടുക്കും കണിത്തുമ്പിയെ പോലെ
ഒരുപാടു നോവുകൾക്കിടയിലും
പുഞ്ചിരിചിറകു വിടർത്തുമെൻ അച്ഛൻ
എന്നുമെൻ പുസ്തകത്താളിൽ മയങ്ങുന്ന
നന്മ തൻ പീലിയാണച്ഛൻ
കടലാസു തോണിയെ പോലെന്റെ
ബാല്യത്തിലൊഴുകുന്നൊരോർമ്മയാണച്ഛൻ
ഉടലാർന്ന കാരുണ്യമച്ഛൻ
കൈ വന്ന ഭാഗ്യമാണച്ഛൻ.....
അറിയില്ലെന്നിങ്ങേതു വാക്കിനാ-
ലച്ഛനെ വാഴ്ത്തുമെന്നറിയില്ല ഇന്നും...
എഴുതുമീ സ്നേഹാക്ഷരങ്ങൾക്കുമപ്പുറം
അനുപമ സങ്കൽപമച്ഛൻ



അണയാത്ത ദീപമാണപ്പൻ
കാണുന്ന ദൈവമാണപ്പൻ ”

The conduct of the petitioner's husband during these two days will also show his *bona fides* about the claim of reformation. Therefore, the convict should obey all the directions of the escort. Therefore, this Writ Petition (Crl.) is disposed of in the following manner:

i. The petitioner's husband Sri.Jayanandhan, Convict No.167/19 shall be given two days escort parole on 22.12.2023 and 23.12.2023.

ii. On 22.12.2023, the petitioner's husband shall be taken to his house and he should be allowed to stay with his family from 9 A.M. to 5 P.M. Thereafter the police can take him to the nearest sub jail or to any other jail as they deem fit.

iii. On 23.12.2023, petitioner's husband



shall be taken to the book release venue and after the function, the petitioner's husband shall be taken back to the jail concerned.

iv. Petitioner and one of the daughters of the petitioner shall file an affidavit before the Superintendent, High Security Prison, Viyyur, Thrissur to the effect that the convict will return back to the jail after obeying the directions of the escort police as directed by this Court.

v. Since it is reported that there are serious security threats in taking the convict from prison, respondents 2 and 3 shall ensure that strong and sufficient police surveillance including the escort are provided and ensure that the convict does not escape.



APPENDIX OF WP (CRL.) 1307/2023

PETITIONER EXHIBITS

- EXHIBIT-P1 THE TRUFCOPY OF THE AFFIDAVIT FILED BY THE STATION HOUSE OFFICER, MALA BEFORE THE HONOURABLE HIGH COURT OF KERALA IN CONNECTION WITH CRIMINAL APPEAL NO.453/2012.
- EXHIBIT-P2 THE TRUFCOPY OF THE REPLY STATEMENT NO.WO-124/2023/HSP DATED 22/07/2023.
- EXHIBIT-P3 THE ORIGINAL COPY OF THE BOOK WRITTEN BY SRI. JAYANANDHAN.
- EXHIBIT-P4 THE TRUE COPY OF THE PERMISSION LETTER FOR THE PUBLICATION.
- EXHIBIT-P5 THE TRUFCOPY OF THE NOTICE OF THE PROGRAMME FOR THE BOOK RELEASE ON 24.12.2023.
- EXHIBIT-P6 THE TRUFCOPY OF THE JUDGMENT IN WP(CRL.)NO.253/2023 DATED 17/03/2023 BEFORE THE HON'BLE HIGHCOURT OF KERALA.

RESPONDENTS EXHIBITS :NIL

//TRUE COPY// PA TO JUDGE