

(2014) 08 MAD CK 0131

In the Madras High Court

Case No : Writ Petition No. 22397 of 2012 and M.P. No. 1 of 2012

N. Saroja

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 08-08-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 435
Penal Code, 1860 (IPC) — Section 224, 302, 376, 396, 397

Citation : (2014) 4 MLJ(Cri) 67

Hon'ble Judges : S. Vaidyanathan, J

Bench : Single Bench

Judgement

S. Vaidyanathan, J.—The petitioner has come up with the above writ petition for a Mandamus, directing the respondents to treat the petitioner's husband Kora Nagaraj, son of Krishnappa (Convict No. 20745) as having become eligible for premature release immediately. The case of the petitioner is that her husband Kora Nagaraj is a life convict, undergoing life imprisonment at Central Prison, Vellore. The petitioner's husband was found guilty for an offence punishable under Section 302 IPC in Crime No. 615 of 2000 on the file of the Inspector of Police, Hosur, Dharmapuri District. The Trial Court had convicted the petitioner's husband to undergo rigorous imprisonment and on appeal this Court confirmed the same and hence the petitioner's husband had been in jail for the last 10 years. The petitioner stated that her husband had developed complications in health due to diabetics. Since the health of the petitioner's husband is deteriorating, he was admitted at the Government Hospital, Vellore by the Jail Authorities from 8.10.2011 to 10.10.2011. As there was no improvement in the health condition, the petitioner's husband was brought to Chennai and admitted at Rajeev Gandhi General Hospital, Chennai from 11.10.2011 to 17.10.2011. Subsequently, the left leg below the level of knee of the husband of the petitioner was amputated on 18.10.2011 at the Government Hospital at Royapettah.

2. According to the petitioner, her husband lost vision in his left eye and thus he was taken to Government Eye Hospital at Egmore on 15.12.2011. The petitioner

made a representation to the third respondent herein to provide treatment for her husband in a Private Hospital in order to prevent him from the infection spreading to the right leg of her husband. Since there was an inaction on the part of the third respondent, the petitioner had filed a writ petition in W.P. No. 839 of 2012. This Court, by an order dated 3.2.2012, directed the third respondent to admit her husband Kora Nagaraj in a Private Hospital namely M.V. Diabetic and Specialty Nursing Home, Royapuram, Chennai at the cost of the petitioner. The husband of the petitioner was admitted in the said hospital from 8.2.2012 to 22.2.2012, wherein he was given treatment for Diabetic Retinopathy, for both eyes and teeth in upper jaw were totally removed due to diabetic complication. The petitioner's husband was advised for dental review after 15 days to find out whether artificial teeth can be fixed. Since he was suffering from Type-2 Diabetics Mellitus and Chronic Ulcer in his right leg, the husband of the petitioner was advised for review after 3 months. After getting discharged from the Hospital, the husband of the petitioner was lodged in Central Prison, Puzhal till 18.7.2012 and thereafter he was shifted to Central Prison, Vellore.

3. The case of the petitioner is that her husband was not taken for review as advised by the Doctors and hence he was affected by Chronic Ulcer and it has also affected almost 50% of his right leg and that there was every possibility of amputating his right leg. The petitioner submits that her husband is unable to take care of basic needs such as going to toilet, bathing etc. For each and every step, he is forced to depend on others help. For the aforesaid health problems, according to the petitioner, her husband's kidneys got affected. Since lot of complications are there in the life of the petitioner's husband, the survival of the petitioner's husband is highly critical.

4. The case of the petitioner is that her representation has not been disposed of as per the Government Order in G.O.Ms. No. 1155, Home (prison. 4) Department, dated 11.9.2008, wherein life convicts who have completed seven years of actual imprisonment is entitled for premature release and that her husband was in prison for more than 8 years and that her husband is entitled for the premature release under the purview of the said Government Order. As the husband of the petitioner is immobile and unable to manage himself and he has to depend on others even to go to bath room and being a Diabetic patient, her husband is suffering from frequent urination. Hence, she prayed that her husband Kora Nagaraj (Convict No. 20745) may be directed to be released prematurely by the respondents, by treating the husband of the petitioner as having become eligible for premature release.

5. The respondents have filed a detailed counter, wherein that the punishment imposed by the First Additional Sessions Court, Krishnagiri in S.C. No. 178 of 2003 dated 24.9.2004 is mentioned as below:

6. It is also stated that the sentences awarded above should be run concurrently with the total fine of Rs. 40,500/- and the said fine amount was not paid by the husband of the petitioner. The respondents have further stated that on appeal,

the conviction and the sentence awarded under Section 302 IPC against the above life convict Kora Nagaraj, were confirmed by this Court in Criminal Appeal Nos. 1246 and 1282 of 2004 on 26.10.2004 and in all other respects, the judgment of the lower Court was set aside and that as on date, the life convict is undergoing life imprisonment at Central Prison, Vellore.

7. Even though the illness of the petitioner's husband has been admitted by the respondents, they have taken care of the life convict and in terms of the earlier orders of this Court, medical treatment has been provided to the petitioner's husband Kora Nagaraj in M.V. Diabetic Specialty Center, Royapuram, Chennai at the cost of the petitioner. The petitioner's husband was examined by the Medical Board consisting of medical Specialists to Government Medical College Hospital, Vellore, on 29.8.2012 and the Medical Board reported that the "patient has Type-2 Diabetics Mellitus Right Ankle infected wound. Old above knee amputation of left lower limb stump healed well and the petitioner's husband needs insulin and antibiotics for control of blood sugar and periodical monitoring". The Medical Board has not detected any abnormality in physical condition of the abovesaid life convict prisoner Kora Nagaraj and opined that as there is no serious health hazard, release of the petitioner's husband on medical grounds, on premature release is not required.

8. The respondents further stated that the prisoner is being assisted by the other co-prisoners in attending to his daily needs. In paragraph 7 of counter, the respondents have stated that the Government has ordered that all the life convicts who have completed 7 years of actual imprisonment as on 15.9.2008 may be released prematurely subject to the satisfaction of the conditions and the relevant portion is extracted below:

"1. Only those prisoners who have been sentenced to life imprisonment and have completed 7 years of actual imprisonment.

2. Those prisoners who have completed the age of 60 and above and who have also undergone 5 years of actual imprisonment.

The following criteria and conditions were also imposed while selecting the prisoners for premature release.

i. That their behavior should be satisfactory;

ii. That the prisoners comes under the purview of sub rule (3) to rule 341 of the Tamil Nadu Prison Rules, 1983 is not eligible i.e., the prisoners convicted of rape, forgery, dacoity, terrorist crimes, offences against the State and prisoners sentenced under Sections 224, 376, 396 to 400, 402, 467, 471, 472, 474, 489-A, 489-B and 489-D of the Indian Penal Code;

iii. The prisoners convicted of economic offences, black marketing, smuggling and misuse of power and authority;

iv. The prisoners sentenced under Prevention of Corruption Act, Suppression of

Immoral Traffic in Women and Girls Act, Drugs and Prevention of Food Adulteration Act;

v. The prisoners who were awarded death penalty and whose sentence was later commuted to life imprisonment by the Appellate Court and prisoners who committed offences on religious prejudices;

vi. That there is safety for their life, if released;

vii. That their cases should not come under Section 435 of the Code of Criminal Procedure;

viii. That they will be accepted by the members of their family; and

ix. That they will execute the Bonds in Form No. 130, as per usual terms and conditions in Rule 341(8) of the Tamil Nadu Pension Rules, 1983."

However, the said prisoner had not completed 7 years of actual imprisonment as on 15.9.2008. The prisoner had actually completed only 6 years 2 months and 23 days of imprisonment inclusive of set-off period as on 15.9.2008 as submitted below:

Hence it is submitted that the said prisoner was not considered for premature release as on 15.9.2008 as per the G.O.Ms. No. 1155, Home (prison. 4) Department, dated 11.9.2008. Hence, it is submitted that the averment of the petitioner that is her husband completed 8 years of actual imprisonment and 10 years of imprisonment including the period of set-off is not correct. With these averments, the respondents sought for dismissal of the writ petition.

9. The learned counsel appearing for the petitioner, on the other hand, would contend that on the date of filing of the counter dated May 2013 by the respondents, the petitioner's husband had not completed 7 years of actual imprisonment, but now her husband has completed his actual imprisonment for more than 7 years and hence her husband may be ordered to be released. The learned counsel for the petitioner also relied upon Rule 631 of the Tamil Nadu Prison Manual Volume II regarding release of blind or decrepit prisoners, which reads as follows:

"631. Release of blind or decrepit prisoners.--

(1) In all cases of complete and incurable blindness not caused by any act of the prisoner in order to procure release, or of decrepitude or other incurable infirmities, such as advanced pulmonary tuberculosis, which incapacitate a prisoner from all commission of further crime of the nature of that for which he is confined, a report recommending the release of such prisoner may be submitted by the Superintendent to the Inspector-General. This report shall state the amount of remission earned by the prisoner, the date on which he would be released in the ordinary course, details of his conduct in prison, and of periods spent in hospital or on the convalescent gang, together with information as to the prisoner's home, and relatives likely to receive him, and with such other

remarks as may appear necessary. It shall be accompanied by a nominal roll in Form No. 46 and by a report by the Medical Officer on the state of the prisoner's health.

(2) If the case appears to be suitable one for submission to Government, the Inspector-General shall forward the report and its enclosures to the Collector of the District in which the prisoner's home is situated or in which the prisoner's relatives reside or in the case of the City of Madras to the Commissioner of Police and shall inquire whether he sees any objection to the conditional release of the prisoner. At the discretion of the Inspector-General, the case may be submitted for the orders of Government."

10. Mr. S.V. Durai Solaimalai, learned Additional Government Pleader reiterated the averments in paragraph 7 of the counter and submitted that since the petitioner does not fall under any of the conditions extracted supra, the husband of the petitioner is not entitled to the relief. If the petitioner's husband is ordered to be released, it will be a precedent for every life convict to approach this Court and get the order of premature release.

11. Heard Mr. A.M. Venkatakrishnan, learned counsel appearing for the petitioner and Mr. S.V. Durai Solaimalai, learned Additional Government Pleader for respondents.

12. It is an admitted fact that the husband of the petitioner is suffering from "Type-2 Diabetes Mellitus Right Ankle infected wound. Old above knee amputation of left lower limb stump healed well and the petitioner's husband needs insulin and antibiotics for control of blood sugar and periodical monitoring" and the petitioner is unable to substantiate her claim that the case of her husband is falling under one of the categories which is mentioned in paragraph 7 of the counter extracted supra. Admittedly, as on date, the husband of the petitioner had completed more than 7 years of life imprisonment.

13. It is also not in dispute that the husband of the petitioner was given treatment by the Medical Board and on his request, he was also given treatment in a Private Hospital at Chennai at his own cost. As on date since the husband of the petitioner has completed more than 7 years of life imprisonment, it is open to the respondents to consider the case of the petitioner for release of her husband prematurely, if his case is falling under any of the conditions for premature release. But before doing so, the husband of the petitioner may be taken to a Private Hospital, as requested by her.

14. Therefore, this Court is of the view that the husband of the petitioner shall be taken for treatment at a Private Hospital nearby Velacherry. The petitioner also prayed before this Court that her husband may be given treatment at the Hospital nearby Velacherry area. Hence, this Court permitted the husband of the petitioner to take treatment at Dr. B. Mukhesh, Diabetic Centre at Velacherry.

15. After getting the proper opinion from the abovesaid Doctor and if the

petitioner's husband case fulfills the conditions extracted supra, the request of the petitioner may be considered and appropriate orders may be passed by the authorities concerned, within two months from the date of receipt of the opinion of the said Doctor. The necessary charges for taking treatment by the husband of the petitioner at the Private Hospital, will have to be borne by the petitioner. The fact that since the life convict is in Central Prison. Vellore, the Police Authorities are directed to shift him from Central Prison. Vellore to Central Prison, Chennai, to enable the husband of the petitioner to get treatment at the above mentioned Private Hospital, within a period of 10 days from the date of receipt of a copy of this order. Within one week thereafter, the husband of the petitioner shall be taken to Dr. B. Mukesh, Velacherry (Cell No. 9840852420) for getting proper treatment and the opinion of the Doctor maybe placed before the Medical Board and thereafter, the authorities concerned shall proceed with the issue of premature release as directed above. The writ petition is disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.