

W.P.No.14244 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2025

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CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE K.RAJASEKAR

W.P.No.14244 of 2025

Mrs.Sarikathu Nisha

... Petitioner

Vs.

- 1.The Superintendent of Prison,
Central Prison-1,
Puzhal, Chennai.
- 2.Union of India,
Represented by its
Inspector of Police,
National Investigation Agency,
Chennai.
- 3.The Principal Secretary to Government
Government of Tamil Nadu,
Home Department (Prison),
Fort St. George,
Chennai – 600 009.
- 4.The Director General of Prisons and Correctional Service,
Whannels Road, Egmore, Chennai 600 008.
- 5.The Inspector General of Prisons and Correctional Service,



W.P.No.14244 of 2025

Whannels Road, Egmore,
Chennai 600 008.

... Respondents

[R3 to R5 are suo-motu impleaded as respondents vide order dated 18.04.2025 in W.P.No.14244 of 2025]

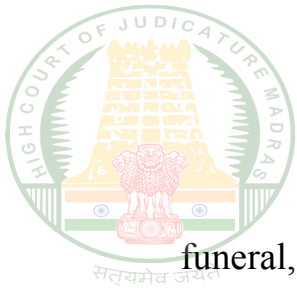
Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the 1st respondent to grant ten days leave to the detenu Mr.Barakathullah, S/o. Syed Ibrahim, now confined at Central Prison-1, Puzhal, Chennai to attend the detenu's mother funeral taken place on 19.04.2025 at Valinokkoam, Ramnad District.

For Petitioner	: Mr.A.Rajamohamed
For R1, R3 to R5	: Mr.R.Muniyappa Raj Additional Public Prosecutor
For R2	: Mr.R.Karthikeyan Special Public Prosecutor [For NIA]

ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The writ petition has been instituted to direct the 1st respondent to grant ten (10) days leave to the detenu, Mr.Barakathullah, S/o. Syed Ibrahim, now confined at Central Prison-1, Puzhal, Chennai to attend his mother's



W.P.No.14244 of 2025

funeral, which took place on 19.04.2025 at Valinokkoam, Ramnathapuram District.

2. The petitioner is the sister of the detenu, Mr.Barakathullah. An F.I.R. in R.C.No.42/2022/NIA/DLI was registered by the National Investigation Agency (NIA) under the Unlawful Activities (Prevention) Act, 1967. The detenu was remanded to judicial custody on 22.09.2022. Subsequently, a charge sheet was filed on 17.03.2023 and the trial is yet to commence.

3. Suddenly, the mother of the detenu passed away on 18.04.2025, at 02:00 A.M. Information was provided to the Jail Authorities. Since the Prison Authorities are not vested with the power to grant leave under the Tamil Nadu Suspension of Sentence Rules, 1982, which would be applicable only to the convict prisoners, and the detenu is an under trial prisoner, the relatives have to approach the Trial Court for bail or approach the High Court seeking permission to attend the funeral ceremony.

4. Since the High Court of Madras and the Special Court have declared a three-day holiday, an urgent motion was moved by the learned

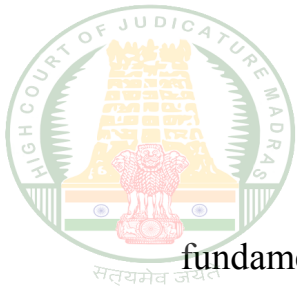


counsel for the petitioner with the permission of the Hon'ble Chief Justice, and this Bench was constituted to deal with the present case.

5. A short question to be considered is whether the prisoners, who are detained have the right to be permitted to attend the burial/funeral of their close family members or not. Additionally, it needs to be examined whether granting temporary permission to the prisoners to attend such burial/funeral would interfere with legitimate interests of correctional institutions.

6. A deceased person is entitled to a dignified cremation or burial. It is pious obligation on the part of the close relatives to perform certain rituals according to their religious practices or customs. Article 25(1) enumerates “Subject to public order, morality and the health and to the other provisions of this part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion”.

7. Right to practice religion is a guarantee ensured under the Constitution. As the detenu is a Muslim, and as a son, he is required to perform certain rituals for his deceased mother under the customs and practice amongst Muslims. Attending the burial of loved ones is a

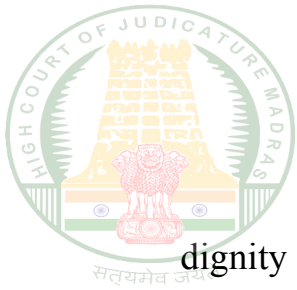


fundamental right, as it connects with religious rights to perform pious obligations under specific religious customs and practices.

8. The death of a close relative is one of the most difficult emotional experiences that any human being has to deal with. Prisoners are no exception, they too experience those intense, shocking moments when they lose their loved ones. A blanket denial that precludes under trial prisoners alone from being granted an opportunity to mourn their loved ones would be construed as dehumanizing. It does not demonstrate a compassionate approach to their physiological well-being.

9. Compassion has a significant impact on their mental well-being and extends beyond the confines of the institution in which they are held. It involves offering understanding and support during such difficult times. Human experience has shown the paying last respect facilitates healing and closure, and hence should not be taken away lightly.

10. The right of a prisoner, whether convicted or under trial makes no difference to temporary leave of absence to attend burial/funeral of a close relative is rooted in the principle of humane treatment and the inherent



dignity as a human being. This right does not differentiate between the two categories of prisoners.

11. Comparative jurisprudence confirms that this right is recognised beyond our borders and is enforceable in many jurisdictions across the world. Everyone has a right to respect for their private and family life. Granting temporary permission to prisoners to attend burials, funerals or even deathbed visits is not contrary to the aims of incarceration. Rather, it is an affirmation that prisoners or the detained persons remain members of that community to which they anticipate to return at the end of their sentences.

12. In any case, the temporary leave is for a short duration for a specific reason, and it does not erase the fact that they are in judicial custody and must remain under the strict control of the Prison Authorities.

13. Despite the fact that the High Court on several occasions reiterated that humane approach is essential for the purpose of granting temporary permission to the under trial prisoners to attend the burial/funeral of their close relatives and the efforts taken by the High Court, the Government has yet to take efforts to address this issue. As a result, the under trial prisoners



W.P.No.14244 of 2025

are still forced to approach either the Trial Court for grant of interim bail or the High Court to grant permission by filing writ petitions under Article 226 of the Constitution of India.

14. The practical difficulty one has to consider is that in the instant case, both the High Court and all the Trial Courts are on holiday for three days. The mother of the detenu died on 18.04.2025 at 02:00 A.M. Keeping the dead body in the house, the detenu and his relatives have to run from pillar to post in search of an advocate through the Prison Authorities or through their friends or relatives, file an application either before the Trial Court or before the High Court. During holidays, High Court has to constitute a special bench to grant such permission to the under trial prisoners. However, on many occasions, the under trial prisoners are unable to secure such permissions on account of various of reasons. They are deprived of attending the burial/funeral of their close relatives and loved ones. It amounts to an infringement of their basic rights ensured under the Constitution of India. The emotional wound caused due to such deprivation remains as a lifetime grievance.

15. When the Suspension of Sentence Rules provides granting leave to



the convicted prisoners, under trial prisoners are standing in a higher footing.

They are not yet convicted and presumed to be innocent. While so, their basic rights need not be taken away and this Court is of the considered opinion that the depriving the under trial prisoners to secure permission from the hands of the competent authorities amounts to discrimination, since the Prison Authorities themselves granting leave to attend the burial/funeral for the convicted prisoners.

16. The judicial procedures are causing great hardship to the under trial prisoners, particularly those from economically disadvantaged class, who finds it difficult to arrange for an interim bail or secure permission from the High Court through writ proceedings in a short span of time.

17. When a deceased person has the right to a dignified burial and their close relatives have the right to perform their religious obligations, which is recognised and protected under the Constitution, this Court is of the considered opinion that the Director General of Prisons and Correctional Services must take action in such circumstances.

18. The learned Additional Public Prosecutor appearing on behalf of



the respondents 1, 3 to 5 made a submission that in the absence of specific rules, neither the Government nor the Prison Authorities are in a position to grant permission to the under trial prisoners in judicial custody.

19. Considering the immanency and in order to protect the rights of under trial prisoners, this Court deems it necessary to implead the Government. Accordingly, the Principal Secretary to Government, Home Department (Prison), Government of Tamil Nadu, the Director General of Prisons and Correctional Services, and the Inspector General of Prisons and Correctional Services have been suo-motu impleaded as respondents. Mr.R.Muniyappa Raj, the learned Additional Public Prosecutor, takes notice for the suo-motu impleaded respondents.

20. Considering the basic rights of the under trial prisoner and the deceased person's right to dignified burial, this Court is inclined to pass the following orders:

- (1) The Director General of Prisons and Correctional Services or Inspector General of Prisons and Correctional Services or Superintendent of Prison is directed to permit the detenu to attend the burial of his mother, scheduled to be held on 19.04.2025, by



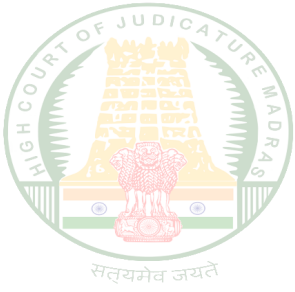
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granting temporary permission with security.

(2) The Principal Secretary to Government, Home Department (Prison), Government of Tamil Nadu, Fort St. George, Chennai and the Director General of Prisons and Correctional Services, Chennai are directed to grant temporary permissions to the under trial prisoners lodged in the prisons across the State of Tamil Nadu to attend the burial/funeral of their close relatives (as defined under the Tamil Nadu Suspension of Sentence Rules, 1982) without forcing them to get an interim bail from the Trial Court or High Court.

(3) The Principal Secretary to Government, Home Department (Prison), Government of Tamil Nadu, Fort St. George, Chennai is directed to issue necessary circulars/instructions to all the Prison Authorities communicating this order, enabling them to act accordingly. The temporary permission shall be granted by the Director General of Prisons and Correctional Services or Inspector General of Prisons and Correctional Services or Superintendent of Prison, as the case may be.

(4) The petitioner is at liberty to file an appropriate petition seeking any other relief if any grievance exist.



WEB COPY 21. With the above directions, the Writ Petition stands disposed of. No costs.

[S.M.S., J.] [K.R.S., J.]
18.04.2025

Index : Yes

Neutral Citation : Yes

Speaking order / Non-speaking order

Jeni

To

1.The Superintendent of Prison,
Central Prison-1,
Puzhal, Chennai.

2.Union of India,
Represented by its
Inspector of Police,
National Investigation Agency,
Chennai.

3.The Principal Secretary to Government
Government of Tamil Nadu,
Home Department (Prison),
Fort St. George,
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4.The Director General of Prisons and Correctional Service,
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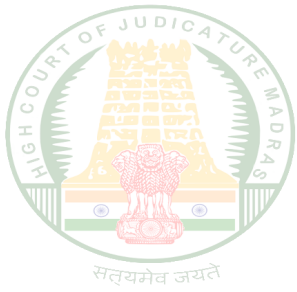


W.P.No.14244 of 2025

5.The Inspector General of Prisons and Correctional Service,
Whannels Road, Egmore,
Chennai 600 008.

6.The Public Prosecutor,
Madras High Court.

7.The Special Public Prosecutor (NIA),
Madras High Court.



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W.P.No.14244 of 2025

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K.RAJASEKAR, J.

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