

VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 17TH DAY OF MARCH 2023 / 26TH PHALGUNA, 1944

WP(CRL.) NO. 253 OF 2023

PETITIONER:

INDIRA

AGED 51 YEARS, W/O JAYANANDHAN,
KURUPPAMPARAMBIL HOUSE,
MALAPALLIPURAM P. O., MALA,
THRISSUR, PIN - 680732

BY ADV KEERTHI JAYANANDHAN

RESPONDENTS:

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

2 THE SUPERINTENDENT
HIGH SECURITY PRISON, VIYYUR
THRISSUR, PIN - 680010

*3 THE COMMISSIONER OF POLICE,
THRISSUR

*(ADDL.R3 IS SUO MOTU IMPLEADED AS PER ORDER
DATED 17.03.2023)

BY SMT.SREEJA V, PUBLIC PROSECUTOR

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 17.03.2023, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

BECHU KURIAN THOMAS, J.

W.P.(Crl.) No.253 of 2023

Dated this the 17th day of March, 2023

ORDER

Petitioner's husband Sri. Jayanandan is convict No. 167 and is a prisoner at the High Security Prison at Viyyur. Thrissur. The marriage of petitioner's daughter is to be held on 22-03-2023 at the Vadakkumnathan Temple, Thrissur. Petitioner seeks a direction for grant of parole for a period of 15 days to her husband for partaking in the wedding.

2. Petitioner alleges that her husband was convicted of life imprisonment and has been undergoing incarceration for the last 16 years and that he hails from a very poor family and has two young daughters apart from his elderly parents. Petitioner further alleges that despite her repeated requests for parole for her husband to participate in the wedding, no favourable response has been received and that in such circumstances as the wedding day is fast approaching, she is compelled to approach this Court.

3. A statement has been filed by the second respondent alleging that petitioner's husband was sentenced to death in S.C. No.27/2008, which was modified in appeal to imprisonment for life without remission for 20 years. He was also convicted in S.C No.172 of 2011 and sentenced to

life imprisonment in that case also. In yet another case, petitioner's husband was convicted and sentenced to life imprisonment in S.C. No. 490 of 2007. Thus, petitioner's husband is serving three sentences of life imprisonment. Apart from the above, petitioner's husband had escaped from the Central Prison, Thiruvananthapuram, while he was detained there and was convicted and sentenced to undergo six months simple imprisonment in C.C. No. 3119/2013 on the files of the Additional Chief Judicial Magistrate Court, Thiruvananthapuram. He again escaped from the Central Prison, Kannur and was convicted and sentenced to undergo rigorous imprisonment for two years in C.C. No. 336 of 2010 on the files of the Judicial First Class Magistrate's Court, Kannur. According to the second respondent, without a favourable police report, emergency leave cannot be granted as per rule 400(ii) of Kerala Prisons and Correctional Services (Management) Rules, 2014.

4. I have heard Adv. Keerthi Jayanandan, the learned counsel for the petitioner as well as Smt. Sreeja V, the learned Public Prosecutor. The learned Prosecutor vehemently objected to the grant of any parole to the petitioner's husband.

5. The statement of the second respondent reveals that petitioner's husband is undergoing a sentence of imprisonment for life in two murder cases and has even escaped from prison twice. It is however noticed that petitioner's daughter is tying her nuptial knot on 22.03.2023, which fact is

found to be true on enquiry by the SHO of Mala Police Station. 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 is of the view that petitioner's husband ought to be given parole for partaking in the wedding of his daughter.

6. In this context, this Court cannot be oblivious to the glorious right to liberty enshrined in Article 21 of the Constitution of India. The liberty of every individual and the right to life guaranteed under the aforesaid constitutional provision has been interpreted to include the right to live with human dignity. Though a convict, petitioner's husband also enjoys the facets of right to life and liberty within the limits of law. Normally the opportunity to participate in the wedding of a daughter has to be treated as part of that liberty. When the statute permits the grant of emergency parole, there is no reason why such a facet of his liberty ought to be denied to him despite him being a convict.

7. Conviction for a crime does not reduce that person into a non-human. Convicts are not denuded of their fundamental rights as held in **Sunil Batra v. Delhi Administration** (1978) 4 SCC 494. Though some rights of convicts are denied and are capable of being denied to them, basic human rights cannot be crippled.

8. In this context, the conduct of petitioner's husband in prison has not been above board. Twice he had escaped from prison and was even

found guilty and convicted for those offences. He is regarded as a person attempting to escape at every given chance. He has allegedly not yet reformed. Therefore the right to partake in his daughter's wedding cannot be an absolute right as the rules require good behaviour as an essential requirement for the grant of parole. Petitioner's husband falters on that count.

9. Notwithstanding the above restraints on the grant of parole to the petitioners husband even for his daughters wedding, taking into reckoning the basic human rights available to a convict this court must balance the competing interests. The human right to participate in the daughter's wedding as part of the liberty of an individual and the interest of society to prevent a convict from fleeing the restraints of law.

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.

The writ petition is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

VERDICTUM.IN

W.P.(CrI.) No.253/23

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APPENDIX OF WP (CRL.) 253/2023

PETITIONER'S/S' EXHIBITS

EXHIBIT-P1 A TRUE COPY OF THE MARRIAGE INVITATION LETTER.

EXHIBIT-P2 A TRUE COPY OF THE ORDER NO.G2-6115/2020/PrHQ DATED 04/07/2022 IS GRANTED BY THE DIRECTOR GENERAL OF POLICE, PRISON, THIRUVANANTHAPURAM FOR THE PUBLICATION.