

Nusrath vs the Director General of Prisons (Kerala)

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Court : Kerala

Decided On : Jul-06-2022

Judge : Honourable Mr.Justice Ziyad Rahman a.a.

Appeal No. : WP(Crl.)/86/2022

Appellant : Nusrath

Respondent : The Director General of Prisons (Kerala)

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.
WEDNESDAY, THE 6TH DAY OF JULY 2022/15TH ASHADHA, 1944
WP(CRL.) NO. 86 OF 2022 PETITIONER: NUSRATH,
W/O.MOHAMMED ASHARAF, AGED 33 YEARS, 'VETTIYATTIL
HOUSE', KODAPPALLY, CHETTIPPADI, PARAPPANANGADI,
MALAPPURAM DISTRICT - 673 639. BY ADV P.K.MOHAMED JAMEEL
RESPONDENTS: 1 THE DIRECTOR GENERAL OF PRISONS
(KERALA) PRISONS HEAD QUARTERS, POOJAPPURA,
THIRUVANANTHAPURAM - 695 012. 2 THE SUPERINTENDANT OF
JAIL, CENTRAL PRISON & CORRECTIONAL HOME, KANNUR
PALLIKUNNU P.O., KANNUR - 670 004. ADV.M.P PRASATH-SR PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION ON 06.07.2022, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: :2 :

JUDGMENT

Dated this the 6th day of July, 2022 The petitioner is the wife of Convict No.827 in Central

Prison and Correctional Home, Kannur. The husband of the petitioner is a life convict for the offence punishable under Section 302 of the Indian Penal Code. The grievance highlighted by the petitioner is that the husband of the petitioner is denied parole without any valid reasons. It is pointed out that the aforesaid convict has been undergoing imprisonment since 31.10.2018. According to the petitioner, as per the stipulation contained in Rule 397(a) of the Kerala Prisons and Correctional Services (Management) Rules, 2014, he is eligible for parole. Even though the applications were submitted by the petitioner several times, the same were rejected. This writ petition was submitted in such circumstances.

2. Heard Sri. Mohamed Jameel P.K., the learned counsel appearing for the petitioner and Sri. M.P. Prasanth, the learned Senior Public Prosecutor for the State. :3 :

3. The contention of the learned counsel for the

petitioner is that the denial of parole, which is the legal entitlement of the convict, amounts to infringement of his rights. On the other hand, the learned Public Prosecutor, upon instructions, submitted that the request for parole made by the convict was not granted by the authorities concerned on account of the adverse reports from the Police as well as the Probationary Officer. It is pointed out that, as he is found guilty of committing the murder of his own father, the members of his family except his wife and children oppose the release of the convict. This was highlighted as the reason for rejecting the application submitted by the convict in this case.

4. On the other hand, the learned counsel appearing for

the petitioner points out that the Review Committee constituted under Section 399 of Kerala Prisons and Correctional Services Management Rules, 2014 is competent to consider the case of the petitioner in such circumstances. My attention was brought to Rule 399(2) of Kerala Prisons and Correctional Services Management Rules, 2014, which provides that if three reports of the convict are against him, the question of whether parole is to

:4 : be granted to the convict can be considered by the Review Committee. In this case, it is admitted by the learned Public Prosecutor that more than three reports are already against the convict.

5. In such circumstances, I am of the view that this is a

fit case in which the application submitted by the petitioner is to be considered by the Review Committee under Rule 399. At this juncture, the learned Public Prosecutor points out that, even though Rule 399 refers only to Police reports, to decide the question, the report of the Probationary Officer is also necessary. I find that the aforesaid submission is reasonable because, to understand the circumstances and situation prevailing in the place of his residence, a report of the Probationary Officer may be relevant, and they can certainly consider the same to decide on the question of parole. However, the adverse remarks in the aforesaid reports alone cannot be the criteria for making a decision in this regard by the Review Committee.

In such circumstances, the writ petition is disposed of directing the petitioner or convict to submit an application before the Review Committee constituted under Rule 399 of Kerala :5 :

Prisons and Correctional Services Management Rules, 2014, as expeditiously as possible. Upon receipt of such application, the Review Committee shall consider the same and take an appropriate decision after examining all the relevant reports from the appropriate authorities. A final decision in this regard shall be taken and orders communicated within a period of one month from the date of receipt of a copy of such application.

Sd/- ZIYAD RAHMAN A.A. JUDGE ncd/08.07.2022 :6 : APPENDIX OF WP(CRL.)
86/2022 PETITIONER'S EXHIBITS Exhibit P1 THE TRUE COPY OF THE
APPLICATION DATED UNDER RIGHT TO INFORMATION ACT, 2005. Exhibit P2
THE TRUE COPY OF THE REPLY DATED

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