

Kemi vs State of Kerala,

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Court : Kerala

Decided On : Jul-29-2021

Judge : Honourable Mr. Justice Ashok Menon

Appeal No. : WP(C)/12080/2021

Appellant : KEMI

Respondent : State of Kerala,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE ASHOK MENON
THURSDAY, THE 29TH DAY OF JULY 2021 / 7TH SRAVANA, 1943
WP(C) NO. 12080 OF 2021 PETITIONER/S: KEMI AGED 39 YEARS
D/O. BALACHANDRAN, DARUL AMAN, IKYA JUNCTION,
KAYAMKULAM, ALAPPUZHA DISTRICT - 690 502. BY ADV V.VIJITHA
RESPONDENT/S:

1 STATE OF KERALA, REPRESENTED BY SECRETARY, MINISTARY
OF HOME AFFAIRS, SECRETARIAT, THIRUVANANTHAPURAM. 2
HIGH POWER COMMITTEE, REPRESENTED BY SECRETARY,
MINISTRY OF HOME AFFAIRS, SECRETARIAT,

THIRUVANANTHAPURAM. 3 KERALA PRISON AND CORRECTIONAL SERVICES, REPRESENTED BY THE DIRECTOR GENERAL OF PRISON AND CORRECTIONAL SERVICES, DEPARTMENT OF PRISON, POOJAPURA, THIRUVANANTHAPURAM - 695 012. 4 THE SUPERINTENDENT, CENTRAL PRISON AND CORRECTIONAL HOME, POOJAPPURA, THIRUVANANTHAPURAM - 695 012.

5 JAIL ADVISORY BOARD, CENTRAL PRISON, POOJAPPURA, THIRUVANANTHAPURAM - 695 012 REPRESENTED BY ITS CHAIRMAN. BY SRI.T.R.RENJITH- P. P OTHER PRESENT: THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19.07.2021, THE COURT ON 29.07.2021 DELIVERED THE FOLLOWING:

JUDGMENT

Dated this the 29th day of July 2021 The petitioner is the sister of convict No.2745, named Kenny B., presently lodged in the Central Prison and Correctional Home, Thiruvananthapuram, after having convicted by the Additional Sessions Court-I, Mavelikkara in S.C.No.612/2011 for offences punishable under Sections 449, 341, 324, 302 and 506(ii) read with Section 34 of the I.P.C. The conviction was confirmed by this Court.

2. It is stated that the convict was released on parole earlier. In the wake of COVID-19 pandemic, as per the

Order of the Hon'ble Supreme Court in Suo motu W.P.(C)

No.1/2020, directions were issued by the State Government to avoid overcrowding in prisons and this Court had also

given similar directions in W.P.

parole or on interim bail. On the basis of the recommendations of the High Power Committee, the 1st respondent had issued an order to release prisoners on parole as a part of the measure to control the COVID-19 spread. Accordingly, the

petitioner's brother was also released on 26.03.2020 and he had reported back to the

prison on 18.08.2020.

While on parole,

offence punishable under Section 324 read with Section 34

of the I.P.C.

It is alleged

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petitioner's brother and the de facto complainant in Crime No.954/2020 and accordingly the case against the petitioner's brother was quashed by this Court in CrI.M.C. No.3734/2020 at Ext.P1. Because of the unprecedented surge in COVID-19 spread during the last few weeks in April 2021 and several persons were affected by the COVID-19, the

Hon'ble Supreme Court expressed serious concern about the spread of COVID-19, in Re-Contagion of COVID-19 Virus in Prison Case (Suo Motu W.P.(C) No.1/2020) and issued several directions and a copy of the said direction is at Ext.P2. One of the directions issued by the Apex Court was that those who were granted parole pursuant to earlier orders of the Apex Court should be again granted parole for a period

of 90 days in order to tide over the pandemic. The High Power Committee constituted by the State Government acted in accordance with Ext.P2 order, issued a specific order on 09.05.2021 at Ext.P3. The first clause therein provides for the release of all those prison inmates, who were granted parole pursuant to the earlier order in 2020, for a

period of 90 days. But to the utter dismay of the petitioner, her brother, who was released on parole during 2020, was not released in pursuance of the Ext.P3 order. Even though specific applications were preferred by the petitioner's brother to the 4th respondent for grant of ordinary parole as well, it was never considered or placed

before the 5th respondent-Jail Advisory Board. The said action of the 4th respondent is illegal and improper. It is understood that the petitioner's brother had

preferred more than five applications for grant of ordinary parole after reporting back on 18.08.2020. All those applications were rejected without placing them before the Jail Advisory

Board. It is stated that the rules

convicts illegally, and therefore, the stand taken by the respondents is arbitrary. Under the circumstances, the petitioner has approached this Court for a direction to the respondents to release her brother on parole as provided in Ext.P3 order.

3. The 4th respondent has filed a statement stating that

the petitioner's brother was housed in the Open Prison and Correctional Home at Nettukaltheri and he was also granted parole in consequence of the earlier order of the Honble Supreme Court. However, while he was on parole, he got involved in another crime, Crime No.646/2018 of Kurathikkad Police Station, for an offence punishable under Section 393 of the I.P.C. and he was remanded to judicial custody by the Judicial First Class Magistrate Court-I, Mavelikkara. It is true that the dispute between the de facto complainant and the accused was settled and the crime was quashed by this Court. But while disposing of that CrI.M.C., this Court has specifically mentioned that if the accused has incurred any disqualification from getting parole in future because of the registration of this crime, the disqualification will not be removed by the quashing of the proceedings. Under the circumstances, the petitioner is not entitled to state that her brother had settled the matter and because the entire proceedings in that crime were quashed by this Court, he is entitled to be released on parole again. It is further submitted that leave is not a matter of right to a prisoner, it is a correctional tool that is granted to well behaved and eligible convicted

prisoners for their rehabilitation, ref

No.397(f) of the Kerala Prisons & Correctional Services (Management) Rules, 2014 (for short the Prison Rules), the Director-General of Prisons and Correctional Services is the authority to decide upon the matter of leave of a prisoner, who has violated the conditions of leave on any

previous occasion. This was the second instance that the petitioner's brother had committed a crime during his leave period and the Director-General of Prisons and Correctional Services, based on the powers conferred upon him as per the aforesaid Prison Rules, ordered to suspend the provisions of ordinary leave to the petitioner's brother for a period

of one year vide Annexure R4-1 order. The earlier order of release of the petitioner's brother on parole in the year 2020 was recalled and he was readmitted to the prison on disciplinary grounds on 18.08.2020, cancelling his leave before its expiry as per Rule 412 of the Prison Rules. Once a prisoner violates the conditions of leave, further granting of leave to him comes under the authority of the Director-General of Prisons and exercising jurisdiction under the said provisions, the granting of further parole to the petitioner's brother was prohibited for a period of one year. Under the circumstances, it is submitted that the Writ Petition is not maintainable and the same may therefore be dismissed.

4. Heard the learned Counsel for the petitioner and the learned Public Prosecutor.

5. It is true that the petitioner's brother was

released on parole in the year 2

had to be cancelled in consequence of the petitioner's

brother getting involved in another crime.

the earlier parole was cancelled, it cannot be said that the petitioner's brother is a person who was released on parole in the year 2020, and therefore, he is entitled to be released again in consequence of the subsequent order of the Apex Court. Parole, definitely, is not a matter of right. In case the petitioners brother is getting involved in criminal cases after his release on parole, it is an indication that he is not behaving himself and the correctional methods have not been effective as regards him and that his proclivity to commit crimes has not abated.

The Petition, therefore, is not sustainable. The direction of the Apex Court to release all those prisoners, who were earlier released on parole, cannot be applied

as far as the petitioner's brother is concerned; because his parole was cancelled and it has to be taken that only those persons who were released on parole and had completed the term

would be entitled to be released on parole again. There is a bar imposed from granting parole to the convict for a period of one year, and therefore, further parole shall be

granted to him only after completion of that period. The Writ Petition is therefore dismissed. Sd/- ASHOK MENON JUDGE dkr APPENDIX OF WP(C) 12080/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE JUDGMENT DATED 30.04.2021 IN CRL. M.C. NO. 3734 OF 2020. Exhibit P2 TRUE COPY OF THE ORDER DATED 07.05.2021 IN RE. CONTAGION OF COVID-19 VIRUS IN PRISON CASE (SUO MOTU WRIT PETITION (C) NO. 1 OF 2020. Exhibit P3 TRUE COPY OF THE ORDER NO. WP1-7325/2020 PRHQ ISSUED ON 09.05.2021 (DATE NOT SHOWN).

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