

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

WEDNESDAY, THE 24TH DAY OF JULY 2024 / 2ND SRAVANA, 1946

WP(CRL.) NO. 736 OF 2023

PETITIONER:

ALLEN SKARIAH THOMAS @ ALLEN THOMAS @ CYRIL
S/O. THOMAS M. G.,
CONVICT NO. C 2706, CENTRAL PRISON,
POOJAPPURA, THIRUVANANTHAPURAM-695012.

BY SRI. ALLEN SKARIAH THOMAS (Party-In-Person)

RESPONDENTS:

- 1 THE CHIEF SECRETARY
TO GOVERNMENT OF KERALA
- 2 THE ADDITIONAL CHIEF SECRETARY
TO GOVERNMENT OF KERALA,
DEPARTMENT OF HOME AFFAIRS.
- 3 THE DIRECTOR GENERAL
PRISONS & CORRECTIONAL SERVICES,
PRISONS HEADQUARTERS,
THIRUVANANTHAPURAM.
- 4 THE D.I.G. PRISONS (SOUTH ZONE)
KERALA.
- 5 THE SUPERINTENDENT
CENTRAL PRISON,
THIRUVANANTHAPURAM.
- 6 MARYKUTTY THOMAS,
MUNJANATTU ALLEN VILLA,
ELANTHOOR.P.O.,
PATHANAMTHITTA-689643.
- 7 PRINCE PHILIPS THOMAS,
MUNJANATTU ALLEN VILLA,
ELANTHOOR.P.O.,
PATHANAMTHITTA-689643.
EMPLOYER ADDRESS:

C/O. THE GENERAL MANAGER,
HOTEL LEH MERIDIEN, KOCHI.

BY ADVS.

SHRI.P.NARAYANAN, SR. GOVT. PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 09.07.2024, THE COURT ON 24.07.2024 DELIVERED
THE FOLLOWING:

“C.R.”

BECHU KURIAN THOMAS, J.

W.P.(CrI.) No.736 of 2023

Dated this the 24th day of July, 2024

JUDGMENT

Petitioner seeks directions for the grant of ordinary prison leave apart from other consequential directions. Petitioner has also sought to quash rule 407 of the Kerala Prisons and Correctional Services (Management) Rules, 2014 (for short 'the Rules').

2. Petitioner was convicted for the offence of patricide and sentenced to undergo life imprisonment by judgement dated 08.05.2018 in S.C. No.350 of 2013 on the files of the Additional Sessions Court-IV, Pathanamthitta. He has already undergone more than six years of imprisonment and has not been granted ordinary leave till date. Petitioner claims that though there was no negative conduct on his part during the period he was on pre-trial bail from 12.10.2011 till the date of judgement. He is being denied ordinary leave without any lawful reasons. He alleges that leave has been denied due to certain vested interests and his application for leave is not even being placed before the Advisory Board for consideration.

Petitioner further alleges that the District Probation Officer had even recommended the grant of ordinary leave to him, while the police reports are unfavourable without any reason.

3. A statement has been filed on behalf of the fifth respondent-Superintendent of Central Prison stating that as on 24.06.2024, petitioner has undergone 6 years, 4 months and 6 days of imprisonment including the remand period. The fifth respondent pleads that under section 78 of Kerala Prisons and Correctional Services (Management) Act, 2010 (for short 'the Act') leave can be granted only to well-behaved, eligible convicted prisoners as incentive for good behaviour and responsiveness to correctional treatment. It is alleged that the petitioner, despite having been sentenced to undergo rigorous imprisonment for life, has been abstaining from prison jobs arbitrarily without any reasonable excuse. It is further stated that the petitioner engages in prison jobs intermittently according to his own whims and fancies, that too till September 2022 and thereafter he has been completely abstaining from prison jobs in contravention of law and that such abstention itself is a prison offence as per section 82(15) of the Act. It is further alleged that every petition for leave has to be accompanied by a report from the Station House Officer of the police station concerned regarding the repercussions of the law and order situation if the convict is released on leave, especially about his

own safety and that of the others and the possibility of any prisoner absconding also has to be reckoned.

4. According to the fifth respondent, though the District Probation Officer had recommended the grant of ordinary leave to the petitioner as per Ext.R5(a), the District Police Chief had by letter dated 28.05.2021 informed that there is a possibility of conflict with the family members and relatives of the victim and also that there is a possibility of him being involved in other criminal cases and also that he may abscond, if released on leave. It is further stated that as per rule 469 of the Rules, the Jail Advisory Board constituted under the chairmanship of the Director General of Prisons is empowered to consider the cases of prisoners who are ineligible for leave due to unfavourable police reports for more than one instance but are otherwise eligible as per the provisions of rule 397 of the Rules and that the Jail Advisory Board will consider the cases and make relevant or necessary recommendations to the Government regarding the grant of ordinary leave. The fifth respondent further averred that the case of the petitioner was placed before the Prison Advisory Board on 16.12.2022 and on 29.06.2023 which refused to recommend grant of leave to him. Later, petitioner's application was placed for consideration before the Leave Review Committee on 18.10.2023 and they too did not recommend his case. On 02.02.2024, petitioner's

case was again placed before the Prison Advisory Board and they unanimously decided to defer his case to the next meeting. The fifth respondent states that the Prison Advisory Board will be considering the petitioner's case in the next meeting.

5. Petitioner himself argued the case online from the Central Prison, with admirable skill and flair. I also heard Sri. P.Narayanan, the learned Public Prosecutor on behalf of the respondents. Since petitioner did not address any arguments on the validity of Rule 407 of the Rules, the said question is left open.

6. The main contentions urged by the petitioner related to the denial of ordinary leave to him for the last more than six years apparently on the basis of adverse police reports. A perusal of Annexure R5(b) police report however reveals that the reasons stated therein are vague and do not reflect any specific adverse instances. Petitioner is alleged to have murdered his father, which aspect has not even been referred to in the police report. The hollowness of the police report is glaring from the circumstance that, despite the family of the deceased and that of the petitioner being the same, the report observes that the family of the deceased would create problems if leave is granted.

7. These reasons are repeatedly and mechanically seen mentioned in many police reports whenever an adverse report is given. Such

obscure statements are not based on any objective consideration and are not specific to the particular individual. Vague reports that are adverse to a convict while seeking ordinary leave, cannot be the basis for denying him his statutory claim for an ordinary leave.

8. In this context, it is necessary to refer to Annexure R5(a) - the Probation Officer's report, which specifies in detail, the family background, the nature of the crime committed and even his antecedents. It is stated that the petitioner had obtained a lateral entry for a B.Tech Course after undergoing a Diploma in Computer Science and was searching for employment after participating in several competitive examinations at the time of the murder. The report also mentions that petitioner had allegedly committed the murder due to his father's aberrant behaviour, who was apparently an alcoholic, indulging in domestic violence apart from having an extra-marital relationship. It is also alleged that petitioner questioned his father's conduct resulting in the death of his father. No other criminal antecedents have been pointed out against the petitioner and there is no criminal background for his family as well. The Probation Officer has further reported that the neighbours have no adverse opinion about him and are also in favour of grant of ordinary leave. It is also stated that there is nothing that would harm the convict, if he is granted leave and further that his family yearns for his presence at

home. On the above basis, the Probation Officer has recommended the grant of ordinary leave of the petitioner by report dated 14.07.2021.

9. Curiously, the report of the probation officer has not been considered by the authority and instead vague police reports have been relied on for denying ordinary leave to the petitioner. The purpose of granting ordinary leave to a prisoner, is to pave the way for their better rehabilitation and re-socialisation as an incentive for good behaviour and correction.

10. Rule 397 of the Rules deals with the different types of leave and the manner and mode in which such leave should be granted. The salient features of the said rule are required to be delineated in this context. A prisoner is eligible for two types of leaves - ordinary and emergency. The first ordinary leave for a prisoner has to be granted by the Director General of Prisons and thereafter it can be granted by the Superintendent of Prisons except when the conditions of leave have been violated. A well-behaved prisoner who has been sentenced to one year or more of imprisonment shall be eligible for ordinary leave if he has undergone one-third of the total period of imprisonment or two years, whichever is less. A prisoner will be eligible for a total of sixty days of leave in a calendar year of which the leave at one stretch shall not be less than 15 days and not more than

30 days. The ordinary leave shall not exceed 15 days in a trimester or 30 days in half a year. Each application for leave must be accompanied by a report of the police sub-inspector specifying whether there is any possibility of a law and order situation, or any prejudice will be caused to the safety of the prisoner himself and others, whether there are any chances for the prisoner absconding and also about any previous bad conduct while on leave with the details thereof, if the prisoner is granted leave. The Jail Superintendent is bound to give a recommendation on the application referring to the character of the prisoner in jail and his history including whether he had availed any previous leave. Along with the above, the District Probation Officer has to submit a detailed report about the family and social background of the prisoner along with his social acceptance.

11. While considering the question regarding the grant of leave to a convict a Division Bench of this Court had in **Sandhya v. Secretary, Secretariat, Tvm.** (2023 (5) KHC 174), observed as below:

"We are of the view that, R.397 does not envisage an absolute entitlement for leave to the convict. True that, it speaks of the eligibility of 60 days leave in a calendar year. However, R.397 has to be read, not in isolation, but in conjunction with and subservient to S.78 of the Prisons Act, which stipulates that leave may be granted to well behaved, eligible, convicted prisoners. A conjoint reading of both the provisions would only indicate that what has been stipulated in R.397 is only the eligibility criteria for grant of leave to a convicted

prisoner; and not an absolute entitlement, in itself, for such leave. In other words, even in a case where a convicted prisoner satisfies the eligibility conditions, the authority is well-nigh entitled to refuse leave, of course for weighty and lofty reasons. For example, if there exists a real threat of a potential breach of peace and tranquillity in the locality, or to the safety and security of the prisoner himself as envisaged in sub-rule (h) to R.397, the authority can refuse leave. The same is the case for a convicted prisoner with a high proclivity or propensity to commit crimes. An interpretation otherwise, construing R.397 as an absolute entitlement for leave, would amount to the Rules assuming paramountcy over the Act, which is incomprehensible. Here, we repeat to take note that the Prison Rules, including R.397, has been made only in accord with the powers granted under S.99 of the Act to make rules, especially under sub-sections (xxxiii) and (xxxiv) to S.99(2) of the Act. Therefore, simultaneous with holding that there is no absolute right vested with a convicted prisoner to avail leave, we also make it clear that an application for leave of a prisoner, who is eligible in terms of R.397, shall not be dismissed in an arbitrary or capricious manner. Such dismissal, if any, should necessarily be for cogent reasons.”

12. Concededly, petitioner has not been granted leave even once in the last six years of his imprisonment. The convict in **Sandhya’s Case** (supra), was granted ordinary leave nine times despite having been sentenced only in 2020. In the instant case, the petitioner was imprisoned in 2018. He had enjoyed the benefit of pre-trial bail for six years and had not involved himself in any crime. No law and order situation had arisen during that period as well. It is incongruous for the respondents to allege that there could be a law and order situation if petitioner is released on ordinary leave when such incidents were

not reported, while he was on bail. The vagueness of the police report and the significance of the probation officer's report assumes relevance in this context. It needs no further discussion to come to the conclusion that petitioner has been subjected to discriminatory treatment by denying him ordinary leave for long periods on assumptions and surmises. Though the respondents have alleged that petitioner has not been carrying out prison jobs, it is noticed that till September 2022, he was admittedly doing prison jobs and his refusal was only after that. By that date, he had already undergone more than the minimum period of imprisonment to become eligible for a grant of leave. Still he was not granted leave which other prisoners were being granted.

13. 'Good behaviour' or well-behaved' are terms that have not been defined in the statute despite the term being used to decide eligibility for leave for a convict. The term well-behaved can denote different things to different persons. Generally, it can be said to be a term which indicates the outward manner of conduct, or being blameless in the discharge of duties or even an orderly conduct. (See P.Ramanatha Aiyer's Law Lexicon fourth Edition). The terms 'good' or 'well' when coupled with 'behaviour' can make it an abstract expression as it may vary depending on cultural, social and personal norms or values. The expression is an evaluative term that can

include a range of behaviours, attitudes and actions. The standard of evaluation of good behaviour will even vary depending on the context and the circumstances. In the case of a convict, the expression 'well-behaved' ought not to be viewed rigidly or narrowly, or from the perspective of a free man.

14. Connecting with family and society can reduce the chances of recidivism and rekindle a sense of purpose in a convict. Hope and confidence can be byproducts, which may pave the way for the convict's easy infusion into society, thereby creating a chance for the prisoner's reformation, which remains one of the avowed objectives of imprisonment. Denying ordinary leave for long years can have detrimental effect on the above purpose and can even affect the behaviour of an individual. Good behaviour has to be therefore approached objectively and in the instant case, it is glaringly evident that the authorities have approached petitioner's request for ordinary leave with subjectivity.

15. Considering all the above aspects, this Court is of the view that there has been a purposeful denial of leave to the petitioner, all along. In such circumstances, directing the statutory authority to consider petitioner's application for leave will not provide any relief as there has been repeated arbitrary treatment meted out to him. Such a direction will only be an exercise in futility. Hence, this Court is of the

firm belief that this case falls within the category of rare and exceptional circumstances, where recourse to the statutory remedy is not feasible and the power under Article 226 of the Constitution of India must be exercised to direct the grant of ordinary leave to the petitioner. It is therefore declared that the petitioner is entitled to the grant of ordinary leave as contemplated by law.

16. Accordingly, the third respondent is directed to issue orders within two weeks from the date of receipt of this judgment, granting ordinary leave to the petitioner in the manner stipulated under Rule 397(b) of the Rules.

The writ petition is allowed to the above extent.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**

vps

/True Copy/

PS to Judge