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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

WEDNESDAY, THE 6TH DAY OF AUGUST 2025 / 15TH SRAVANA, 1947

WP (CRL.) NO. 978 OF 2025

PETITIONER(S) :

BINDHU K.P
AGED 42 YEARS
THARASHIYIL (H) , POYILOOR P.O, KANNUR,
PIN - 670693

BY ADVS.
SHRI.JERRY MATHEW
SMT.DEVIKA K.R.

RESPONDENT (S) :

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME
DEPARTMENT, THIRUVANANTHAPURAM, PIN - 695001
- 2 THE DIRECTOR GENERAL OF PRISONS
JAIL HEADQUARTERS, POOJAPURA,
THIRUVANANTHAPURAM, PIN - 695012
- 3 THE SUPERINTENDENT
CENTRAL PRISON & CORRECTIONAL HOME, VIYYUR,
THRISSUR, PIN - 680010

BY ADV. SR PP, SMT. SEETHA S

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 06.08.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

**CR****P.V.KUNHIKRISHNAN, J**-----
W.P.(Crl.) No.978 of 2025
-----Dated this the 06th day of August, 2025**JUDGMENT**

The prison walls are not just physical barriers, but also symbol of the suspension of certain fundamental rights that citizens enjoy. A strange request is made by a convict undergoing Life imprisonment in a murder case. He wants emergency leave to give 'pregnancy care' to his wife. Emergency parole, as per the Kerala Prisons & Correctional Services (Management) Rules, 2014 (hereinafter referred to as the "Rules 2014"), is to be granted only on rare occasions, and that too for the reason mentioned in Rule 400(1) of the Rules 2014. Of course, a prisoner is entitled to



ordinary parole as per Rule 397 of the Rules 2014. However, nowadays, convicts are coming before this Court for emergency leave in connection with the 28th day naming ceremony of the child, the first rice feeding ceremony of the child, family functions, and other similar events. If this trend continues, convicts will soon come to this court to participate in local temple festivals, church festivals, family trips, or to visit places like Sabarimala and Guruvayoor. Most of the fundamental rights of the convicts are suspended when they are convicted and sent to jail. The same cannot be diluted by granting emergency leave to convicts regularly unless there are extraordinary situations. Every convict should know that the victim and their relatives are staring at them when they are in prison, and that staring is necessary and should be an eye-opener for their reformation.

2. Petitioner's husband was convicted by the court below in a murder case, and he was sentenced to undergo life imprisonment as per the judgment in S.C. No.435/2000



on the file of the Additional District and Sessions Judge (Adhoc – I), Thalassery. The petitioner married the convict in 2010. There were no children in their wedlock. It is the case of the petitioner that she and her husband were trying to conceive for several years and have undergone treatments across various branches of medicine, but their efforts were unsuccessful. It is submitted that the petitioner started treatment under Allopathy when the petitioner's husband was released on ordinary leave last month. The petitioner and her husband are under treatment at Nahas Centre for Assisted Reproduction & Endoscopy, Kannur and underwent an IVF/ICSI procedure. It is the case of the petitioner that the IVF procedure has turned fruitful, and the petitioner is now two months pregnant. Ext.P1 is the certificate showing the same. According to the petitioner, she is extremely distressed as there is no one else to look after her. Therefore, she needs the presence of her husband. It is the case of the petitioner that she conceived at the age



of 42 years, and considering her age and the fact that the pregnancy is the result of IVF treatment, there exists a high risk of miscarriage if proper support and care are not given. Therefore, the petitioner submitted a representation to the 3rd respondent requesting emergency parole for the petitioner's husband. The same is rejected as per Ext.P2. Aggrieved by the same, this Writ Petition (Crl.) is filed.

3. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

4. This Court perused Ext.P2 order. The 3rd respondent rejected the representation submitted by the victim, showing sufficient reason and observed that emergency leave cannot be granted to the petitioner's husband based on the provisions of Rule 2014. Rule 400(1) of Rule 2014 is extracted hereunder:

“400. അടിയന്തിരാവധി-

(1) ദേശീയ സുരക്ഷയുമായി ബന്ധപ്പെട്ട കുറ്റകൃത്യങ്ങളിൽ ശിക്ഷിക്കപ്പെട്ടവർ ഒഴികെയുള്ള ഏതൊരു സാമ്പ്രദായികമായ



2025:KER:59006

തടവുകാർക്കും താഴെ വ്യക്തമാക്കിയിട്ടുള്ള വളരെ അടിയന്തിര

ഘട്ടങ്ങളിൽ അടിയന്തിരാവധിയ്ക്ക് അർഹതയുണ്ടായിരിക്കും.

താഴെ പറയുന്ന വ്യവസ്ഥകൾക്ക് വിധേയമായി അടിയന്തിരാവധി അനുവദിക്കേണ്ടതാണ്. അതായത്:

(i) പിതാവ്, മാതാവ്, മകൻ, മകൾ, ഭാര്യ, ഭർത്താവ്, സഹോദരൻ, സഹോദരി, അർദ്ധ സഹോദരൻ, അർദ്ധ സഹോദരി, പൗത്രൻ, പൗത്രി, പിതാ/മാതാ മഹൻ, പിതാ/മാതാ മഹി, ഭാര്യ പിതാവ്/മാതാവ്, ഭർത്തൃ പിതാവ്/മാതാവ്, മരുമകൻ, മരുമകൾ, മാതൃ സഹോദരൻ /സഹോദരി, പിതൃ സഹോദരൻ/സഹോദരി, ഭാര്യ-ഭർത്തൃ സഹോദരൻ, ഭാര്യ-ഭർത്തൃ സഹോദരി, അനന്തിരവൻ, അനന്തിരവൾ, എന്നിവരുടെ മരണമോ അതുസന്ന രോഗാവസ്ഥയോ;

(ii) മകൻ, മകൾ, സഹോദരൻ, സഹോദരി, പൗത്രൻ, പൗത്രി, ഭാര്യ-ഭർത്തൃ സഹോദരൻ, ഭാര്യ-ഭർത്തൃ സഹോദരി, നേർ അനന്തിരവൻ, നേർ അനന്തിരവൾ, എന്നിവരുടെ വിവാഹം;

(iii) താമസിക്കുന്ന വീട് ഭാഗികമായോ പൂർണ്ണമായോ തകരുക."

5. As per sub-clauses (i) to (iii) of Rule 400(1) of Rule 2014, three circumstances are mentioned in which the emergency leave can be granted. Rule 400(1)(i) says about



the death or serious illness of very close relatives mentioned in it. Rule 400(1)(ii) says about the marriage of very close relatives. Another situation is when the house is partially or completely collapsed. Except for these reasons, the emergency leave cannot be granted.

6. The Division Bench of this Court in **Sandhya v. Secretary, Secretariat, Tvm.** [2023 (5) KHC 174] considered this matter in detail. It is observed that in certain circumstances, this Court can invoke the extraordinary jurisdiction under Article 226 of the Constitution of India. It will be better to extract paragraph No.32 of the above judgment:

"32. In the light of the above deliberation, and especially in view of the dictum laid down in Nilofer Nisha (supra), we are of the firm view that for release of a convicted prisoner for short - term requirements, recourse should necessarily be made to the remedy of leave, emergent or ordinary as the case may be, under the Prisons Act and Rules. The convict will be at liberty to approach this Court under Art.226 of the Constitution either upon an order being passed in the



request of the convict for leave, or in the event of inaction to pass such order within a reasonable time by the statutory authority. We may also reserve the right of the convict to approach this Court under Art.226 in rare and exceptional circumstances, where recourse to the statutory remedy is not feasible; or in case, the fact situation is one for which the Prisons Act and Rules does not offer a remedy.”

7. Therefore, an emergency leave can be granted only if the situation mentioned in Sub Clause (i) to (iii) of Rule 400(1) exists, or there is any extraordinary situation in which this Court can exercise the discretionary power. In all other cases, the emergency leave is to be dismissed *in limine*.

8. The petitioner's husband was sent to jail because he murdered a person. Most of his constitutional rights are suspended during the period of his sentence. He cannot enjoy life like other citizens of this country. If this Court starts to grant emergency leave to convicts on birthdays, 28th day naming ceremonies, first rice feeding ceremonies,



etc., the people will lose faith in the judiciary. Those are not grounds to grant emergency leave. Here is a case where the convict seeks emergency leave to give 'pregnancy care' to his wife. I am of the considered opinion that a convict is not entitled to emergency leave for giving care to his wife during the pregnancy. If that be the case, there is no difference between a convict and an ordinary citizen. The convict should know that the families of the victims are in this society, and if this Court starts to grant emergency leave in a situation like this, the victims of the deceased will lose their faith in the judiciary. The intention of sentencing is, of course, reformatory, but the convict should be inside the jail, denying almost all the liberties of other citizens. Then only the purpose of sentencing to jail will be achieved. Therefore, unless an extraordinary situation exists, emergency leave need not be entertained by this Court. I am of the considered opinion that, for giving pregnancy care to the wife of the convict, this Court need not exercise the



extraordinary jurisdiction under Article 226 of the Constitution of India. While granting emergency leave by invoking its extraordinary jurisdiction, this Court will always keep in mind the interests of the victims and their relatives as well. Their kith and kin might have been murdered after inflicting fatal injuries. Forgetting the victims, no court can grant parole to convicts sentenced in serious cases, invoking the extraordinary powers of this court. The court will always try to balance the interests of the victims and the basic needs of the convicts. Therefore, there is no merit in this Writ Petition (Crl.).

Accordingly, this Writ Petition (Crl.) is dismissed.

Sd/-

P.V.KUNHIKRISHNAN, JUDGE



APPENDIX OF WP(CRL.) 978/2025

PETITIONER EXHIBITS

EXHIBIT P1	A TRUE COPY OF THE PETITIONER'S MEDICAL CERTIFICATE DATED 01.07.2025
EXHIBIT P2	A TRUE COPY OF THE ORDER NO.P1-6560/2022/CPV DATED 11.07.2025 ISSUED BY THE 3RD RESPONDENT REJECTING THE APPLICATION FOR EMERGENCY LEAVE
EXHIBIT P3	A TRUE COPY OF THE JUDGMENT IN WP(CRL) . 723/2023 DATED 29.09.2023
EXHIBIT P4	A TRUE COPY OF THE DEATH SUMMARY ISSUED BY THE THALASSERY MISSION HOSPITAL DATED 29/07/2025
EXHIBIT P5	A COPY OF THE OBITUARY NOTICE