

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ZIYAD RAHMAN A.A.

THURSDAY, THE 1ST DAY OF SEPTEMBER 2022 / 10 TH BHADRA,

1944

WP(CRL.) NO. 803 OF 2022

PETITIONER/S:

BEENA TONY@THOMAS
AGED 49 YEARS
W/O. TONY @THOMAS,
VADAKKUMCHERY HOUSE, MAVINCHUVADU DESOM,
KALLUR VILLAGE, THRISSUR, PIN - 680317

BY ADVS.
AJEESH K.SASI
P.M.RAFIQ

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY THE SECRETARY TO HOME DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM, PIN
- 695001
- 2 THE DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL
SERVICES
JAIL HEADQUARTERS,
PALLIKUNNU, KANNUR, PIN - 670002
- 3 SUPERINTENDENT
CENTRAL PRISON AND CORRECTIONAL HOME,
PALLIKUNNU, KANNUR, PIN - 670002

ADV. C. S. HRITHWIK - PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR
ADMISSION ON 01.09.2022, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

JUDGMENT

The petitioner is the wife of Sri.Tony@Thomas (Convict No.1054/2016), who is undergoing imprisonment in Central Prison and Correctional Home, Kannur. The petitioner's husband was sentenced to undergo imprisonment for life for the offences punishable under Sections 450, 394 and 302 of the Indian Penal Code. Even though the Sessions Court sentenced him for life with a rider that 'the accused shall not be released from prison for a period of 20 years, the said rider has been set aside by this Court in CrI.A.No.1222/2016. This writ petition is filed by the petitioner on the ground that the convict is not so far granted the benefit of parole even though he has already completed a period of ten years and seven months in prison. This writ petition is submitted in such circumstances seeking the following relief:

“For the reasons stated in the Writ Petition (Criminal) and the affidavit filed in support thereof, it is most humbly prayed that this Hon'ble Court may be pleased to direct the 3rd Respondent to grant parole to the husband of the petitioner ([Tony@Thomas-Convict](#) No.1054/2016), who is undergoing

incarceration at Central Prison and Correctional Home, Kannur, pending disposal of this Writ Petition.”

2. Heard Sri.Ajeesh K Sasi, the learned counsel appearing for the petitioner and Sri.Vipin Narayan, the learned Public Prosecutor appearing for the State.

3. The learned Public Prosecutor, upon instructions, submitted that the convict was not granted parole on the reason that, in the records, there is an endorsement to the effect that the convict is a habitual offender and, therefore, on account of the statutory stipulation contained in Rule 397 (I)(1), he was not granted the bail. However, it is submitted by the learned Government Pleader that the conduct of the convict inside the prison so far is satisfactory.

4. I have gone through the records. It is an undisputed fact that the convict is undergoing imprisonment for a period of more than ten years. Even though he is a life convict, the materials indicate that he had already undergone a substantial period of imprisonment and was not granted parole at any point. Considering the fact that he was denied parole all along for such a

long period, some humanitarian consideration has to be taken in this case. There is indeed an endorsement in the records of the convict that he was a habitual offender. However, now the convict has been inside the prison for more than ten years, and therefore the track record of the convict being a habitual offender in the distant past has lost its significance due to the passage of time. This is mainly because it is an admitted fact that the conduct of the petitioner inside the prison is satisfactory so far and possibly, this could be taken as a sign of reformation. Therefore, one opportunity can be granted to the petitioner.

5. In such circumstances, considering the long term of imprisonment the convict had already undergone, without parole, I am inclined to grant some relief to him by invoking the powers of this Court under Article 226 of the Constitution of India.

In the facts and circumstances of the case, I deem it appropriate to fix the period of parole that can be granted to the petitioner's husband (Convict No 1054/2016) as '15 days'. Accordingly, this writ petition is disposed of directing the 3rd respondent to release the convict for a period of 15 days, i.e.

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release him on 05/09/2022, and he shall report back to the Central Prison on the 21st day of September 2022. The 3rd respondent shall be empowered to impose usual conditions that are being imposed in similar cases.

Sd/-

ZIYAD RAHMAN A.A.

JUDGE

rpk

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APPENDIX OF WP (CRL.) 803/2022

PETITIONER EXHIBITS

Exhibit P1

TRUE COPY OF THE ORDER DATED 18-05-2022
OF THE COURT OF THE FIRST ADDITIONAL
SESSIONS JUDGE, THRISSUR IN CRL. M.P. NO.
1363/2022