

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943

WP (C) NO. 20169 OF 2021

PETITIONER:

BINU M.K.

AGED 37 YEARS

SON OF KRISHNANKUTY, CONVICTED PRISONER NO.C-335/19,
CENTRAL PRISON, KANNUR, RESIDENCE AT
MYALIN,VIRIPARA,MANKULAM P.O. IDUKKI-685565
IDUKKI, PIN - 685565

BY ADV. SASTHAMANGALAM S. AJITHKUMAR

RESPONDENTS:

1 STATE OF KERALA
REPRESENTED BY CHIEF SECRETARY, GOVERNMENT OF KERALA,
SECRETARIAT, THIRUVANANTHAPURAM-695001
THIRUVANANTHAPURAM, PIN - 695001

2 THE HOME SECRETARY
HOME DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT,
THIRUVANANTHAPURAM-695001
THIRUVANANTHAPURAM, PIN - 695001

3 THE DIRECTOR GENERAL OF PRISONS & CORRECTIONAL SERVICE,
PRISONS
HEADQUARTERS, POOJAPPURA, THIRUVANANTHAPURAM-695012
THIRUVANANTHAPURAM, PIN - 695012

SRI. P.NARAYANAN, SENIOR PUBLIC PROSECUTOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.09.2021, ALONG WITH WP(C).20171/2021, THE COURT ON 30.09.2021
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K. HARIPAL

THURSDAY, THE 30TH DAY OF SEPTEMBER 2021 / 8TH ASWINA, 1943

WP (C) NO. 20171 OF 2021

PETITIONERS:

- 1 MUHAMMED NAVAS
AGED 40 YEARS
S/O. YOUSAF HAJI, PALLIPPURAM (HOUSE), KUTTIPURAM (P.O), MALAPPURAM-679 571
- 2 ABU SOOFIYAN
AGED 55 YEARS
S/O. ALAVIKUTTY HAJI, AMARIYIL (HOUSE), KOTTAKKAL, KUTTIPURAM (P.O), MALAPPURAM-679 571
- 3 YOUSAF HAJI
AGED 69 YEARS
S/O. KUNJALANKUTTY, PALLIPPURAM (HOUSE), KUTTIPURAM (P.O), MALAPPURAM-679 571
- 4 ABDUL RASHEED
AGED 50 YEARS
S/O. MAMMU HAJI, PALLIPPURAM (HOUSE), KUTTIPURAM (P.O), MALAPPURAM-679 571
- 5 SHAMSUDHEEN
AGED 50 YEARS
KOTTANGODAN (HOUSE), NADUVATH (P.O), MOOCHIKKAL, WANDOOR (VIA) MALAPPURAM-679 328
- 6 JAYARAJAN @ MANI,
AGED 45 YEARS
PALAYIL (HOUSE, NADUVATH (P.O), WANDOOR, MALAPPURAM-679 328
- 7 POKOYATHANGAL,
AGED 59 YEARS
MATTATH (HOUSE), THAYAMODE, NADUVATH (P.O) WANDOOR (VIA) MALAPPURAM-679 328

8 **FAYAS,**
 AGED 35 YEARS
S/O. MUAHMED, KODALI, PULATH PULIKKOTTIL (HOUSE),
PULIKKODANKUNNU, THAYAMKODE, THIRUVALLI AMSAM,
MALAPPURAM- 676 123

BY ADVS.
BIJU P. RAMAN
GAYATHRI MURALEEDHARAN
SWAPNA C. P

RESPONDENTS:

- 1 **STATE OF KERALA**
 REPRESENTED BY THE SECRETARY,
 DEPARTMENT OF HOME GOVERNMENT SECRETARIAT,
 THIRUVANANTHAPURAM,
 KERALA-695 001
- 2 **DIRECTOR GENERAL OF PRISONS AND CORRECTIONAL SERVICE,**
 PRISONS HEADQUARTERS, KERALA, POOJAPPURA,
 THIRUVANANTHAPURAM, KERALA-695 012
- 3 **KERAL STATE POLICE CHIEF (DGP)**
 KERALA POLICE HEAD QUARTERS,
 VAZHUTHACADU,
 THIRUVANANTHAPURAM-695 014

SRI. P. NARAYANAN, SENIOR PUBLIC PROSECUTOR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
27.09.2021, ALONG WITH WP(C).20169/2021, THE COURT ON 30.09.2021
DELIVERED THE FOLLOWING:

JUDGMENT

Since common questions arise for consideration, both these writ petitions were heard together and are disposed of by this common judgment.

2. W.P.(C.) No. 20171/2021 can be taken as the lead case. There are eight petitioners in this petition who are all convicts undergoing imprisonment in Central Prison, Kannur. They were granted ordinary leave and were released as per Exts. P1 to P7 orders in respect of petitioners 1 to 7 respectively. Petitioners 1 to 3 and 5 to 7 are life convicts whereas period of sentence of the fourth petitioner is not inferable from the Ext.P4. No document has been produced in respect of the eighth petitioner. It is seen that the first petitioner was released on leave on 05.05.2021 for 20 days; petitioners 2 and 3 were released for 15 days each from 05.05.2021; fourth petitioner was granted leave on 25.05.2021 for 90 days; petitioners 5 and 6 were released on leave on 06.05.2021 for 14 days each and the 7th petitioner was granted leave for 14 days on

07.05.2021. Their contention is that the Hon'ble Apex Court with the intention of de-congesting overcrowded prisons had initiated action under Suo Motu Writ Petition (C.) No. 1/2020 and issued directions with regard to the establishment of High Powered Committee in all States and Union Territories. Under Ext.P8 order dated 07.05.2021, the Apex Court directed that the inmates released, taking into account Covid – 19 pandemic should again be granted parole for a period of 90 days in order to tide over the pandemic. Later under Ext. P9 order dated 16.07.2021, the Apex Court directed that the prisoners who have already been released on bail from the prison by virtue of orders passed by the Court from time to time and on the basis of recommendations of the High Powered Committee constituted for the purpose shall not be asked to surrender before the prison authorities until further orders. The grievance of the petitioners is that they having been released on parole, at the instance of surging waves of Covid – 19 pandemic, are being threatened/pressurised by the State Police and jail officials, that they will be taken back to custody at any moment after 26.09.2021. According to them, Ext.P11 order of the

Government was passed without compliance of Ext.P9 order passed by the Apex Court in the Suo Motu Writ Petition. When a similar question was considered by a Division Bench of this Court, even though the writ appeal was rejected, it was made clear that, that would not stand on the way of the Government extending the leave further in the pandemic situation. So the petitioners want to extend the parole period in the light of the observations made by the Hon'ble Apex Court and also to restrain respondents 2 and 3 from directing the petitioners from reporting back to the prison.

3. When this case had come up for admission on 24.09.2021, Adv. Sri. Deepak Prakash appearing for the petitioners submitted that he has already preferred Special Leave to Appeal No. 15065/2021 before the Hon'ble Supreme Court against Ext. P12 judgment of the Division Bench of this Court and obtained stay of operation of the order. As the learned Public Prosecutor was not aware of such an order, the matter was adjourned to 27.09.2021 and till then, it was made clear that the petitioners need not report back to prisons. On 27.09.2021, the learned Additional Public Prosecutor brought to my notice the order of the Hon'ble Supreme Court in

Special Leave to Appeal (C.) No. 15065/2021 dated 24.09.2021 and pointed out that no stay was granted, that the Apex Court had only admitted and issued notice to the respondents. Simultaneously, petitioners moved I.A. No. 1/2021 contending that in fact the Apex Court, at the time of admitting the Special Leave Petition was pleased to pass an order staying the operation of Ext.P12 judgment, but when the order was uploaded such a stay order is not seen recorded. Whatever it may be, now it is very clear that Ext.P12 judgment of this Court has not been stayed by the Apex Court in the SLP.

4. Petitioner in W.P.C. No. 20169/2021 is also a convict undergoing sentence in Central Prison, Kannur who stands sentenced for ten years; he was released granting ordinary leave under Rule 397 of the Kerala Prisons and Correctional Services (Management) Rules, 2014, hereinafter referred to as the Rules, by virtue of Ext.P1 order dated 07.05.2021 in that writ petition. He was granted 14 days ordinary leave and was directed to report back on 24.05.2021. The petitioner contends that the Ext. P4 order dated 21.09.2021 asking them to report back on 26.09.2021 is against the

directions of the Hon'ble Supreme Court and therefore, that is sought to be quashed. According to him, a writ of mandamus should be issued commanding the respondents to pass parole/extension of parole for a minimum period of 90 days, following the judgment of the Apex Court.

5. I heard the learned counsel on both sides. On behalf of the petitioner in W.P.(C.) No.20169/2021, Adv. Sri. Sasthamangalam S. Ajithkumar was heard and on behalf of the petitioners in W.P.(C) No. 20171/2021, I heard Adv. Sri Deepak Prakash. The respective contentions were reiterated by them.

6. According to Adv. Sri. Sasthamangalam S. Ajithkumar, the respondents are not entitled to discriminate convicts who were granted benefit by the Hon'ble Supreme Court or High Powered Committee or the Government, it is violative of Article 14 of the Constitution. According to Adv. Sri. Deepak Prakash, the Government order dated 21.09.2021 is against the spirit of the directions issued by the Hon'ble Supreme Court, insisting them to surrender at a time when the third wave is in the air is affecting the health and right to life of the prison inmates and the police and

police officials are violative of Article 21 of the Constitution. On the other hand, the learned Additional Public Prosecutor Sri. P. Narayanan representing the respondents strongly opposed both the petitions. According to him, the petitioners are not entitled to get any relief. Highlighting the copy of order of the Hon'ble Supreme Court in S.L.P. No. 15065/2021 dated 24.09.2021, he said that no such interim order was passed and that even if an interim stay of Ext.P12 judgment of the Division Bench was passed by the Hon'ble Supreme Court, that will not benefit the petitioners. In this connection, he relied on the judgment of a Division Bench of this Court in **Abdu Rahiman v. District Collector, Malappuram and Another [2009(4) KHC 283]**.

7. Referring to paragraph 4 of the judgment, he said that even if the Apex Court grants a stay, the verdict of the Division Bench will hold the field and will continue to be a binding precedent for the Single Judge, that order of stay only relieves the concerned parties from obeying the judgment under appeal.

8. It is the common case that during the pandemic, Apex Court had passed certain orders on 23.03.2021 directing to

constitute High Powered Committees by all the States and Union Territories. The court also observed that certain category of convicts can be released on parole or on interim bail for the purpose of decongesting overcrowding jails in the peculiar background of the pandemic situation. Accordingly, a High Powered Committee was constituted in Kerala and the Committee resolved that certain category of convicts who suffer imprisonment upto ten years can be granted parole, in the special circumstances. The High Powered Committee also said that while granting parole to such category of convicts upto 10 years, certain convicts especially those who were convicted under certain provisions of the NDPS Act, POCSO Act, rape cases etc., are not entitled to get benefit of such order. Whatever it may be, neither the Apex Court nor the High Powered Committee had directed the release of life convicts for decongesting the jails. But it is a fact that life convicts were also released by the Government extending the benefit. But we are not concerned about such aspects. The question to be considered by this Court is whether the petitioners are entitled to get the benefit of the orders of the Hon'ble Apex Court.

9. It is true that in the order dated 07.05.2021, among other things, the Apex Court had directed that those inmates who were granted parole pursuant to earlier orders should again be granted parole for a period of 90 days in order to tide over the pandemic. Similarly, in the order dated 16.07.2021, it was directed that, so far as the prisoners who have already been released on bail from the prison by virtue of the orders passed by the Court from time to time and on the basis of the recommendations of the High Powered Committees constituted for the purpose are concerned, they shall not be asked to surrender to prison until further orders.

10. The petitioners contend that the Government Order dated 21.09.2021 directing the convicts to report back on 26.09.2021 is contrary to the above directions issued by the Supreme Court. But as a matter of fact, there is absolutely no basis in this argument of the learned counsel for the petitioners. It is a fact that petitioners were released on parole on the basis of the orders produced by them. Petitioner in W.P.(C). No. 20169/2021 was released on leave by virtue of Ext. P1 order dated 07.05.2021, as already adverted to, invoking provisions under Rule 397 of the

Rules. There is absolutely no reference to the orders of the Hon'ble Supreme Court or the directions issued by the High Powered Committee. Similarly, petitioners in 1 to 7 in W.P.(C.) No. 20171/2021 were released on leave by virtue of Exts. P1 to P7 orders respectively. The first petitioner was released on leave under Rule 400 of the Rules, i.e, granting emergency leave, whereas, the petitioners 2 to 7 were released on parole under Rule 397 of the Rules. Here release granting special leave or ordinary leave are not referable to the orders passed by the Apex Court or the High Powered Committee. In the circumstances, they cannot get the benefit of the orders of the Hon'ble Supreme Court.

11. Still, the respondents had not insisted their reporting back on the expiry of the respective leave period, imbibing the spirit of the directions of the Hon'ble Supreme Court dated 07.05.2021. As pointed out by the Additional Public Prosecutor, the Government Order dated 21.09.2021 is intended for prisoners who are not covered by the orders of the Hon'ble Supreme Court. It is certain from the order that such leaves were granted when the second wave was looming large. Reference has also been made

about the direction of the Hon'ble Supreme Court dated 07.05.2021 for granting them parole for 90 days. On the expiry of such leaves, they cannot remain at large, indefinitely. In fact, on the expiry of the leave, petitioner in W.P.(C.) No. 20169/2021 ought to have reported back in prison on 24.05.2021 itself. From the Government Order, he is entitled to get the benefit of 90 days as observed by the Supreme Court in the order dated 07.05.2021; that additional 90 days is over on 22.08.2021. In that case, he ought to have reported back on 23.08.2021. That date stood extended by the Government and now taking the benefit of the Government Order dated 21.09.2021, he is liable to report back on 26.09.2021 and not entitled to get the benefit of the orders of the Hon'ble Supreme Court dated 16.07.2021. Similarly, as noticed earlier, other petitioners also should have reported back long before; they are not entitled to get the benefit of the directions of the Hon'ble Supreme Court or the High Powered Committee. They are not entitled to get extension of time from this Court.

12. It seems that the learned counsel for the petitioners in W.P.(C.) No. 20171/2021 had made representation on 24.09.2021

that they had obtained an interim stay from the Hon'ble Supreme Court on a misconception. It is also trite that an appeal shall not operate as a stay of proceedings unless the appellate court grants a stay. Even if such a stay is granted by the Apex Court, as rightly pointed by the learned Additional Public Prosecutor, that will not salvage the situation.

13. It seems that convicts released on parole/leave can be broadly classified into three; they are, those who were released on the strength of the orders of the Apex Court, those who were released basing on the guidelines issued by the High Powered Committee and those who were released by the Government or the jail authorities. There cannot be any dispute that the petitioners fall in the third category of prisoners. They are not entitled to get the benefit of the orders of the Apex Court dated 07.05.2021 or 16.07.2021. They are guided by the stipulations made in the release orders and subsequent orders of the Government.

14. That means, petitioners were granted parole independent of the directions of the Hon'ble Supreme Court or the High Powered Committee and therefore, they are bound to report

back on the expiry of the period of leave. They have been given the benefit of 90 days stipulated by the Apex Court in the order dated 07.05.2021. Now the Government have fixed the time upto 26.09.2021 for getting back which cannot be termed as arbitrary or perverse. They have approached this Court on experimental basis, only for getting a protective cover for overstaying. They are not entitled to get any indulgence from this Court.

Both the writ petitions are lacking in merit and are dismissed.

SD/-

K. HARIPAL

JUDGE

DCS/29.09.2021

APPENDIX OF W.P. (C.) NO. 20169/2021

PETITIONER'S EXHIBITS:

EXHIBIT P1	THE TRUE COPY OF THE ORDER NO.CPK/R155/19 DT.7/5/21 GRANTING PAROLE TO THE PETITIONER
EXHIBIT P2	THE TRUE COPY OF THE APEX COURT JUDGMENT IN SUO MOTU WRIT PETITION(C) NO.1/2020 DATED 7/5/2021
EXHIBIT P3	THE TRUE COPY OF THE APEX COURT JUDGMENT IN SUO MOTU WRIT PETITION(C) NO.1/2020 DATED 16/7/2021
EXHIBIT P4	THE TRUE COPY OF THE ORDER NO.G.O. (RT)2552/2021 DT.21/9/21

APPENDIX OF W.P. (C.) NO. 20171/2021

PETITIONER'S EXHIBITS:-

EXHIBIT P1	TRUE COPY OF ORDER NO.C.P.K/R-109/18 DATED 05.05.2021 ISSUED TO PETITIONER NO.1
EXHIBIT P2	TRUE COPY OF ORDER NO.C.P.K/R-75/18 DATED 05.05.2021 ISSUED TO PETITIONER NO.2
EXHIBIT P3	TRUE COPY OF ORDER NO.C.P.K/R-76/18 DATED 05.05.2021 ISSUED TO PETITIONER NO.3
EXHIBIT P4	TRUE COPY OF ORDER NO.C.P.K/R-71/18 DATED 25.05.2021 ISSUED TO PETITIONER NO.4
EXHIBIT P5	TRUE COPY OF ORDER NO.C.P.K/R-230/17 DATED 06.05.2021 ISSUED TO PETITIONER NO.5
EXHIBIT P6	TRUE COPY OF ORDER NO.C.P.K/R-239/17 DATED 06.05.2021 ISSUED TO PETITIONER NO.6
EXHIBIT P7	TRUE COPY OF ORDER NO.C.P.K/R-70/18 DATED 07.05.2021 ISSUED TO PETITIONER NO.7
EXHIBIT P8	TRUE COPY OF THE ORDER PASSED BY HONOURABLE APEX COURT IN SUO MOTO WRIT PETITION (CIVIL) NO.1/2020 DATED 07.05.2021
EXHIBIT P9	TRUE COPY OF THE ORDER PASSED BY HONOURABLE APEX COURT IN SUO MOTO WRIT PETITION (CIVIL) NO.1/2020 DATED 16.07.2021
EXHIBIT P10	TRUE COPY OF CIRCULAR NO.53 ISSUED BY THE KERALA PRISONERS & CORRECTIONAL SERVICES DATED NIL
EXHIBIT P11	TRUE COPY OF THE GOVERNMENT ORDER DATED 21.09.2021 EXTENDING THE LEAVE PERIOD OF THE PRISONERS UNTIL 26.9.2021

EXHIBIT P12

TRUE COPY OF THE JUDGMENT OF HONOURABLE HIGH COURT OF KERALA DATED 12.08.21 IN WPC NO.15868 OF 2021 TITLED AS 'RENJU @ RANJITH V STATE OF KERALA

EXHIBIT P13

A TRUE COPY OF THE INTERIM APPLICATION IN SLP(C) NO.15065/2021 ALONG WITH AFFIDAVITS AND EXHIBITS DATED 25/9/2021