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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE P.V.KUNHIKRISHNAN

TUESDAY, THE 24TH DAY OF JUNE 2025 / 3RD ASHADHA, 1947

WP (CRL.) NO. 770 OF 2025

PETITIONER/S:

JASMIN SHAJI
AGED 45 YEARS
W/O. SHAJI POOVATHIL, THEKKEVELIYIL, MANNANCHERY,
ALAPPUZHA, PIN - 688538

BY ADVS.
SHRI.K.S.MADHUSOODANAN
SRI.M.M.VINOD KUMAR
SRI.P.K.RAKESH KUMAR
SRI.K.S.MIZVER
SHRI.M.J.KIRANKUMAR
SHRI.SHAIQ RASAL M.

RESPONDENT/S:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY, HOME DEPARTMENT,
GOVERNMENT OF KERALA, THIRUVANANTHAPURAM, PIN -
695001
- 2 DIRECTOR GENERAL OF PRISON
CENTRAL PRISON AND CORRECTIONAL HOME, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012



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- 3 INSPECTOR GENERAL OF PRISON
CENTRAL PRISON AND CORRECTIONAL HOME, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012
- 4 DEPUTY INSPECTOR GENERAL OF PRISON
CENTRAL PRISON AND CORRECTIONAL HOME, POOJAPPURA,
THIRUVANANTHAPURAM, PIN - 695012
- 5 SUPERINTENDENT OF CENTRAL PRISON AND CORRECTIONAL
HOME
POOJAPPURA, THIRUVANANTHAPURAM, PIN - 695012

BY ADVS.
PUBLIC PROSECUTOR
ADDL.DIRECTOR GENERAL OF PROSECUTION

OTHER PRESENT:

SRI C K SURESH, SR PP

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 24.06.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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CR**P.V.KUNHIKRISHNAN, J****W.P. (Crl.) No. 770 of 2025****Dated this the 24th day of June, 2025****JUDGMENT**

Justice, without the soft hand touch of humanity, compassion, and empathy is not justice. But humanity, compassion and empathy are matters of judicial discretion which is to be used based on the facts and circumstances of each case.

2. The petitioner's husband is a condemned prisoner, facing capital punishment based on the judgment of the Addl. Sessions Court – I, Mavelikara in SC No. 461/2022. The husband of the petitioner, who is to be hanged to death based on the above judgment, subject to the appeal pending before this Court and other remedies available to him, has approached



this Court with this petition through his wife against the denial of escort visit/emergency parole to him to see his bedridden mother aged 93 years. The authorities dismissed the same, stating that the law is against granting such escort parole/emergency parole to the condemned prisoner, who is sentenced to death by a court of law. Whether this Court can invoke the jurisdiction under Article 226 of the Constitution of India in this particular case is the question.

3. The mother of the petitioner's husband is aged 93 and was hospitalised earlier. At that time, the petitioner submitted an application for escort visit/emergency parole on behalf of the prisoner to the 5th respondent for visiting the ailing mother by the prisoner. But, it was rejected by Ext.P1 order dated 12.12.2024. It is submitted that the prisoner's mother was hospitalised again on 19.05.2025 at TD Medical College Hospital, Alappuzha. Ext.P2 is the treatment certificate. Ext.P3 is the CT Scan Brain from the Department of Radio Diagnosis of TD Medical College Hospital dated 20.05.2025, of the mother of



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the prisoner. She was discharged on 26.05.2025 and now, she is at her home suffering from multi-infarct syndrome, vascular dementia and generalised osteoporosis. It is submitted that the mother of the prisoner is completely bedridden. Ext.P4 is the discharge card of the mother of the prisoner. Therefore, the petitioner again submitted an application to the 5th respondent seeking either emergency parole or an escort visit at her own expense by enclosing the medical records. Ext.P5 is the application. The 5th respondent, by order dated 11.06.2025, rejected Ext.P5 as per Ext.P6. Hence, this writ petition is filed with the following prayers :

- i. "Call for records connecting Exhibit P1 to P6 from the respondents concerned;*
- ii. Call for Exhibit P6 from 5th respondent and Issue Writ of Certiorari to quash the same;*
- iii. Declare that condemned prisoners are entitled for emergency parole/escort parole under Rule 400 of Kerala Prisons and Correctional Services (Management) Rules, 2014;*
- iv. Issue Writ of Mandamus directing the respondents to grant emergency parole or escort parole to petitioner's husband – Shaji (C No. 6192) imprisoned at Central*



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*Prison and Correctional Home, Poojapuram,
Thiruvananthapuram to visit his mother;*

*v. Dispense with filing of the translation of vernacular
documents;*

*vi. Such other reliefs as this Hon`ble Court may deem
fit and proper; A N D*

vii. Award cost to the petitioner."[sic]

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

5. The counsel for the petitioner submitted that, even if the law does not permit emergency parole/escort visit to a condemned prisoner, this Court has ample jurisdiction to permit the same under Article 226 of the Constitution of India. The counsel submitted that, on humanitarian consideration, the petitioner's husband may be given emergency escort parole to see his mother. The Public Prosecutor seriously opposed the same. The Public Prosecutor took me through Sec.42 of the Kerala Prisons and Correction Services (Management) Act, 2010 (for short 'Act 2010') and also Rule 339(2) of the Kerala Prisons and Correction Services (Management) Rules (for short



'Rules'). The Public Prosecutor submitted that there is a prohibition on granting an escort visit/emergency parole to a condemned prisoner who is awaiting a death sentence. The Public Prosecutor also relied on a judgment of this court dated 22.03.2024 in W.P.(Crl) No.300 of 2024 by which this court rejected a prayer for parole to a contempt prisoner.

6. This Court considered the contentions of the petitioner and the Public Prosecutor. Section 42 of the Act, 2010 says that every prisoner sentenced to death shall be treated as a normal convicted person until his final executable sentence is passed, but such a prisoner is not entitled to any leave or escort visit. Similarly, Rule 339(2) also says that the convicts, who are sentenced to death, are not entitled to ordinary leave or escort visit. Relying on these provisions, the impugned order is passed. Therefore, this Court cannot say that the impugned order is illegal.

7. The main argument of the counsel for the petitioner is based on humanitarian consideration. It is true that, the



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petitioner's husband is not deserving any humanitarian consideration because the prosecution case against him and the other accused is that they brutally murdered the victim in front of his mother, wife and child. The trial court found that the prisoner is guilty, of course, the appeal is pending. The victim's mother, wife and child are anxiously looking towards the court for the confirmation of the conviction and sentence, and to see that the sentence is executed at the earliest. Therefore, this is a case where the petitioner's husband, along with other accused, orphaned the mother, wife and child of the victim. Now the prisoner wants to see his 93-year-old ailing mother. If anybody said that the prisoner's request is like the words of "A wolf in sheep's clothing", they cannot be blamed.

8. But, a court of law cannot take an inhuman stand like the prisoner who orphaned the kith and kins of the victim. India is not a country where retributive punishment like "an eye for an eye, a tooth for a tooth" is adopted. Our country known for its humanity, compassion, and empathy while delivering justice.



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It is the duty of the constitutional court to see that the fundamental needs and basic rights of a prisoner is protected till the sentence is finally executed. The petitioner's husband is hoping a relief in the appeal pending before this Court which is filed against the death sentence. On the other hand, the mother of the petitioner's husband is also bedridden and is in a sinking stage. When the prisoner, who is a condemned prisoner waiting for death sentence submit before this Court that he want to see his mother, who is in a sinking stage, this Court cannot shut its eye, even though he was inhuman to the deceased and his relatives, when he committed the murder, which is found as true by the trial court. Therefore, I am inclined to grant the prayer in this writ petition. It is true that there is a bar for releasing the condemned prisoner as per Sec.42 of the Act, 2010 and Rule 339 (2) of the Rules. But to protect the basic rights of an individual, whether he is a convict or condemned prisoner, this Court can invoke the extra ordinary jurisdiction under Article 226 of the Constitution of India. Here is a case



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where the condemned prisoner want to see his sinking mother, who is aged 93. The medical evidence fully justified that the mother of the convict is in a sinking stage. I think an escort parole can be allowed. The public Prosecutor relied on a judgment of this court dated 22.03.2024 in W.P.(Crl) No.300 of 2024 by which this court rejected a prayer for parole to a condemned prisoner. But that was a case in which the parole was requested for participating in a marriage, which this court rightly rejected. That is not the situation here.

Therefore, this writ petition is allowed in the following manner :

- 1) Exhibit P6 is set aside.
- 2) The respondents Nos. 2 to 5 are directed to take the petitioner's husband on escort parole to see his mother, within 3 days from the date of receipt of a certified copy of this judgment. The convict should be allowed to spend a minimum of 6 hours with his mother, of course, under the strict surveillance of the escorting police.



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- 3) Necessary arrangement shall be made by the District Police Chief (Thiruvananthapuram City) for granting escort parole to the petitioner's husband forthwith.

Sd/-
P.V.KUNHIKRISHNAN
JUDGE

SKS



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APPENDIX OF WP (CRL.) 770/2025

PETITIONER EXHIBITS

Exhibit P1	PHOTOCOPY OF THE ORDER BEARING NO. CP-5(3)- 4742/2024/C.P.TVM BY THE 5TH RESPONDENT
Exhibit P2	PHOTOCOPY OF THE TREATMENT CERTIFICATE DATED 19-05-2025 OF GOVT. T.D. MEDICAL COLLEGE HOSPITAL, ALAPPUZHA
Exhibit P3	PHOTOCOPY OF THE REPORT OF C.T.SCAN BRAIN FROM DEPARTMENT OF RADIO DIAGNOSIS OF T.D. MEDICAL COLLEGE HOSPITAL
Exhibit P4	PHOTOCOPY OF THE DISCHARGE CARD DATED 26-05-2025
Exhibit P5	PHOTOCOPY OF THE APPLICATION SUBMITTED TO 5TH RESPONDENT DATED 10-06-2025
Exhibit P6	PHOTOCOPY OF THE ORDER OF 5TH RESPONDENT DATED 11-06- 2025 BEARING NO. CP5-6192/EL/2025/CPTVM.