



2025:KER:2837

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE P. V. BALAKRISHNAN

THURSDAY, THE 3RD DAY OF APRIL 2025 / 13TH CHAITHRA, 1947

WA NO. 553 OF 2025

AGAINST THE JUDGMENT DATED IN WP(Cr1.) NO.839 OF 2024
OF HIGH COURT OF KERALA

APPELLANT/PETITIONER IN WP(CRL) :

AMAL NISHAM
AGED 38 YEARS
W/O MUHAMMED NISHAM, ADAKKAPARAMBIL HOUSE,
FLAT NO 1073, TOPAS SHOBA CITY, THRISSUR,
PIN - 680553

BY ADVS.
BEJOY JOSEPH P.J.
M.RAMESH CHANDER (SR.)
GOVIND G. NAIR
BALU TOM
BONNY BENNY

RESPONDENTS/RESPONDENTS IN WP(CRL) :

- 1 THE STATE OF KERALA
REPRESENTED BY SECRETARY TO GOVERNMENT,
DEPARTMENT OF HOME, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001

- 2 THE DIRECTOR GENERAL OF PRISONS & CORRECTIONAL SERVICES, PRISONS HEAD QUARTERS, POOJAPURA, THIRUVANANTHAPURAM - 695012., PIN - 695012
- 3 THE SUPERINTENDENT CENTRAL PRISON & CORRECTIONAL HOME, VIYYUR, PIN - 680010

BY ADVS. SRI.C.K.SURESH, SPL. GOVERNMENT PLEADER

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 03.04.2025, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Raja Vijayaraghavan V., J.

This appeal is preferred challenging the judgment dated 25.02.2025 passed by the learned Single Judge rejecting the prayer sought by the petitioner for granting parole to the husband of the appellant, a convict prisoner, undergoing his life sentence at the Central Prison and Correctional Home, Viyyur.

2. The learned Single Judge, took note of the adverse police report submitted by the Assistant Commissioner of Police, District Special Branch, Thrissur City, and the Inspector of Police, Viyyur Police Station, and came to the conclusion that the refusal to grant parole was in order.

3. Sri. Ramesh Chander, the learned Senior counsel appearing for the appellant, submitted that the husband of the appellant is presently undergoing life imprisonment pursuant to his conviction in Crime No. 173 of 2015 of the Peramangalam Police Station and has been continuously serving his sentence since 2015. During the last ten years of incarceration, he was granted interim bail by this Hon'ble Court only on a few occasions. He was first granted interim bail for two months, from 21.01.2019 to 21.03.2019. Subsequently, he was granted interim bail for eight days from 11.08.2020, which was extended by order dated Ext.P4 till 15.09.2020.

Thereafter, by order dated Ext.P5, he was granted leave for three days, from 20.03.2021 to 24.03.2021. Other than the aforementioned instances, the convict has not availed parole or leave. It is further submitted that due to his involvement in minor skirmishes at the Central Prison and Correctional Home, Thavanur, the convict was transferred to the Central Prison and Correctional Home, Viyyur, on 15.09.2023. Significantly, no disciplinary action whatsoever has been initiated against him post-transfer. It is further submitted that the Probation Officer has furnished a favourable report and recommended the grant of leave in accordance with the relevant Rules. However, parole was denied owing to an adverse police report. The only reason stated in the report is the existence of ongoing business and property disputes between the convict and his siblings and an apprehension that his release may lead to a law and order situation. The learned counsel points out that for the settlement of business and property disputes between himself and his siblings, arbitration proceedings have already been initiated by the prisoner and the matter is currently pending before the Arbitral Tribunal. The personal presence of the convict is essential to give necessary instructions to his counsel and to adduce both oral and documentary evidence. Finally, it is submitted that, on all previous occasions when the convict was released on interim bail pursuant to directions issued by this Hon'ble Court, there was no incident whatsoever that could be termed as objectionable, and

the convict has not engaged in any criminal activity during such periods of release.

4. Sri. C.K. Suresh Kumar, the learned Government Pleader, has opposed the submissions. He would point out that the convict was transferred to the Central Prison owing to his misbehaviour towards the jail officers and for having in his possession prohibited substances. Minor punishments were also imposed which included forfeiture of remission for up to 15 days. It is further submitted that a favourable police report is a condition precedent for the grant of parole. He would point out that the convict has anger issues, and his release may lead to a conflict with his siblings and, in all likelihood, a law and order situation.

5. We have considered the submissions advanced and have perused the records.

6. There is no dispute that the convict has been undergoing life imprisonment from 2015 onwards. He has been granted parole only for a few days on three occasions.

7. The appellant is the wife of the convict and her prayer in the Writ Appeal was for releasing her husband on parole for a period of 30 days.

8. Section 36 of the Kerala Prisons and Correctional Services (Management) Act, 2010 speaks about the Rights of prisoners. It says that subject to the provisions of any law for the time being in force and

conditions as may be prescribed, all prisoners shall have the right, (a) to live with human dignity; (b) to be entitled for adequate diet, health and medical care, hygienic living conditions and proper clothing; (c) of communication which includes contacts with his family members and other persons in such manner and subject to such condition, as may be prescribed; (d) of access to due process of law, including legal service and legal aid; (e) to protection against unlawful aggression on his person or against imposition of ignominy in any manner not authorised by law; (f) to protection against unreasonable discrimination; (g) to protection against punishment or hardship amounting to punishment, except through procedure established by law and with due opportunity of defence; (h) of being informed of the amenities and privileges of prisoners admissible under the law.

9. Section 73 of the Act deals with the release on Parole. The said provision reads as follows:

Section 73: Release on Parole:

The State Government may, subject to such conditions as may be prescribed, release on parole for such period as it may deem necessary, any convicted prisoner in case of any serious illness or death of any member of the prisoner's family or of any of his nearest relatives or for any other sufficient cause.

10. Chapter XXX Rule 397 of the Kerala Prison and Correctional

Services (Management) Rule, 2014 provides for two types of parole. One is ordinary parole, and the other one is extraordinary parole. The ordinary paroles are provided for various reasons and in the manner as provided under Rule 397. Rule 397(B) provides that in a calendar year, the convict is entitled to 60 days of normal parole. It shall not be less than 15 days and not more than 30 days at a time. Rule 400 deals with extraordinary leave which may be granted in the three specific emergent situations mentioned therein. Hence, extraordinary leave can be granted only for the reason mentioned therein. A prisoner will be entitled to ordinary leave for a period of 60 days in a calendar year. If the parole application is rejected, an appeal is permissible under Rule 404 to the specified authorities.

11. In the case on hand, the Probationary Officer has given a favourable report, but his request has been denied on the basis of an adverse police report. The police report only speaks about some dispute between the convict and his siblings. There is no reason to disbelieve the submission of the learned Senior Counsel, who based on documents, which were handed over, submits that the convict has got the matter referred to an Arbitration Tribunal and the said proceedings are pending. An individual who has ventured to settle his disputes with his siblings by recourse to legal remedies need not take law into his own hands to gain an advantage.

12. We also note that the Probationary Officer, after getting

inputs from all concerned has given a favourable report. The report of the Probationary Officer has to be given due weight as it is an independent and professional assessment of the facts and circumstances.

13. In the case on hand, the request for parole for 30 days was rejected solely on the ground of an adverse report submitted by the police. The said report, which has been placed before us, merely states that if the convict is released on parole, there is a likelihood of a law and order situation arising due to an ongoing dispute between the convict and his siblings. On one hand, we have a convict who has already undergone ten years of incarceration and who, by virtue of the provisions of the Kerala Prisons and Correctional Services (Management) Act, is entitled to be considered for parole. On the other hand, his siblings—who are at liberty and enjoying all the freedoms guaranteed to citizens—are shown as the persons who may be at the receiving end if parole is granted, even if it is for a short duration. In our considered view, it is incumbent upon the law enforcement authorities to take proactive steps to ensure that no such law and order situation arises. The possibility of untoward incidents can be effectively curtailed by strictly monitoring the situation and keeping both parties under observation during the parole period. Stringent and carefully framed conditions can also be imposed to ensure that the convict does not overstep legal or geographical boundaries or engage in any altercation with his siblings. It is for the police to ensure that the convict's release is

peaceful and uneventful. It must be remembered that a convict, literally speaking, is to remain in prison for the entire period of his sentence or, in the case of a life convict, for the rest of his natural life. It is in this solemn context that parole must be seen as a temporary reprieve—an opportunity not only to address personal or familial obligations but also to maintain essential social ties. Even those undergoing imprisonment must be allowed to breathe the air of freedom, albeit briefly, provided they have exhibited consistently good conduct during incarceration and demonstrated a genuine inclination towards reformation and reintegration. We find that after the convict was transferred to the Viyyur prison on 15.09.2023, no disciplinary action was initiated against him. The broader objectives of rehabilitation and redemption must be afforded due significance, for the ultimate goal of punishment is not mere retribution but the transformation of individuals into law-abiding members of society.

14. In **Babulal Das v. State of West Bengal**¹, the Apex Court had held that the Courts in India have generally favoured the view that prisoners who have been incarcerated or kept in prison without trial for a long time, should be released on parole to maintain unity of family. The Apex Court went on to observe that calculated risks by release for short periods may, perhaps, be a social gain, the beneficial jurisdiction being wisely exercised.

¹ [(1975) 1 SCC 311]

15. In **Asfaq v. State Of Rajasthan And Others**², the Apex Court while highlighting the distinction between parole and furlough observed as under:

15. A convict, literally speaking, must remain in jail for the period of sentence or for rest of his life in case he is a life convict. It is in this context that his release from jail for a short period has to be considered as an opportunity afforded to him not only to solve his personal and family problems but also to maintain his links with society. Convicts too must breathe fresh air for at least some time provided they maintain good conduct consistently during incarceration and show a tendency to reform themselves and become good citizens. Thus, redemption and rehabilitation of such prisoners for good of societies must receive due weightage while they are undergoing sentence of imprisonment.

16. In the aforesaid circumstances, we are unable to uphold the findings of the learned Single Judge in declining to exercise jurisdiction in the matter. When the relevant enactments confer upon the authority to grant parole on the ground of "sufficient cause," the adequacy and sufficiency of the reasons cited for either granting or refusing parole become amenable to judicial review in a writ proceeding. The Court is well within its jurisdiction to examine whether the order of rejection is founded on valid, relevant, and legally sustainable grounds, or whether it is vitiated

²

[AIR 2017 SC 4986],

by consideration of extraneous, irrelevant, or mala fide reasons. Accordingly, in an appropriate case where an application for parole made under the provisions of the Act or the Rules framed thereunder is rejected on grounds that are manifestly extraneous or irrelevant, the High Court, in the exercise of its extraordinary writ jurisdiction under Article 226 of the Constitution, is empowered to interfere and issue appropriate directions. Such intervention, however, is warranted only in cases where the impugned decision is demonstrably arbitrary, unreasonable, or unsupported by material evidence.

In view of the discussion above, the judgment passed by the learned Single Judge in W.P.(C) No. 707 of 2019 is set aside. This Writ Appeal will stand allowed. There will be a direction to the competent among respondents to pass orders granting parole to Sri. Mohammed Nisham, the husband of the appellant, for a period of 15 days on such conditions that the authority may deem fit and proper.

sd/-

**RAJA VIJAYARAGHAVAN V.
JUDGE**

sd/-

**P.V.BALAKRISHNAN
JUDGE**

APPENDIX OF WA 553/2025

PETITIONER ANNEXURES

Annexure A1	A TRUE COPY OF THE CLAIM STATEMENT FILED BEFORE THE ARBITRAL TRIBUNAL IN AR 175/2020 DATED 09.12.2024
Annexure A2	A TRUE COPY OF THE PROCEEDINGS OF THE SOLE ARBITRATOR IN AR 175/2023 DATED 11.06.2024