

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE ZIYAD RAHMAN A.A.

TUESDAY, THE 5<sup>TH</sup> DAY OF JULY 2022 / 14TH ASHADHA, 1944

WP(CRL.) NO. 582 OF 2022

PETITIONER:

AKHIL P.S.,  
AGED 27 YEARS,  
S/O.SOBHANAN, PUTHENVEETIL HOUSE, KUNDANNOOR,  
MARADU P.O., ERNAKULAM DISTRICT, PIN - 682 304.

BY ADV SHERRY J. THOMAS

RESPONDENTS:

- 1 THE DIRECTOR GENERAL OF POLICE,  
STATE POLICE HEAD QUARTERS, VELLAYAMBALAM,  
THIRUVANANTHAPURAM - 695 010.
- 2 THE SUPERINTENDENT,  
CENTRAL PRISON AND CORRECTION HOME,  
THRISSUR, THRISSUR - SHORNUR ROAD, VIYYUR-680  
010.

SRI.C.S.HRITHIK-SR.GOVERNMENT PLEADER

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR  
ADMISSION ON 05.07.2022, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:

**J U D G M E N T**

The petitioner's father is undergoing imprisonment in the Central Prison and Correctional Home, Viyyoor, as C-3901. He was convicted for the offences punishable under Section 376 IPC and sentenced to imprisonment for seven years. He has already undergone imprisonment for 4½ years. This writ petition is filed by the petitioner being aggrieved by the denial of emergency leave to the aforesaid convict for attending the religious rites to be performed in connection with the death of the brother of the convict. Even though an application was submitted in this regard, as evidenced by Ext.P2, the same was dismissed as per Ext.P3. This writ petition is submitted in such circumstances.

2. Heard Sri.Sherry J Thomas, learned counsel for the petitioner and Sri.C.S.Hrithwik, learned Senior Government Pleader for the State. The learned counsel for the petitioner contends that the brother of the convict passed away on 27.05.2022. It was pointed out that even though he was

eligible for emergency leave as contemplated under Rule 400(1) (i) of Kerala Prisons and Correctional Services (Management) Rules, 2014 to attend the funeral of a near relative, including the brother of the convict, he could not avail the said benefit. Now, the religious rites in connection with the death of his brother are scheduled to be conducted on 07.07.2022. The convict wants to attend the aforesaid function, and Ext.P2 application was submitted in such circumstances, which was declined as per Ext.P3. The reason stated in Ext.P3 is that the benefit contemplated under Rule 400 (1) (i) is only to attend the funeral ceremony, and it does not extend to the religious rites concerning the death of close relatives.

3. The learned Senior Government Pleader stoutly opposes the prayer sought by the petitioner. It was pointed out that, the benefit granted under the above provision is confined to enabling the convict to attend the funeral ceremony. Under no circumstances would the same allow him to attend the religious rites concerning the death. On perusal of the records,

I find some force in the contention of the learned Sr.Government Pleader in this regard.

4. However, the fact remains that, even though the convict was entitled to emergency leave to attend the funeral of the deceased, he could not avail of the said benefit. Now he wants to attend the religious rites in connection with the death of the brother. Since he was not granted the eligible benefit for attending the funeral function, I am of the view that some indulgence can be shown. While taking this view, I have considered that the convict was sentenced to undergo imprisonment for a period of seven years and has already completed 4½ years. He was not granted any parole in the interregnum period as he was a convict for the offence under Section 376 IPC. Even though learned Senior Government Pleader opposed the said prayer, upon instructions, he submits that the conduct of the convict in prison so far is satisfactory.

Thus, taking into account all the relevant aspects, I am inclined to invoke the jurisdiction of this Court under Article 226 of the Constitution of India and grant solace to the convict

by permitting him to undergo emergency leave for a period of three days. Consequently, he shall be released on 06.07.2022 and shall return to the prison on 09.07.2022 at 11.00 am. It is ordered accordingly. The release of the petitioner's father/convict shall be subjected to all other restrictions and conditions usually imposed upon the persons who are granted emergency leave.

Sd/-

**ZIYAD RAHMAN A.A.**  
**JUDGE**

DG/5.7.22

APPENDIX OF WP(CRL.) 582/2022

*PETITIONER EXHIBITS*

- Exhibit P1*                    *THE TRUE COPY OF THE DEATH CERTIFICATE  
OF THE BROTHER OF THE CONVICT DATED 27-  
5-2022.*
- Exhibit P2*                    *THE TRUE COPY OF THE PETITION SUBMITTED  
TO THE PETITIONER DATED 9-6-2022.*
- Exhibit P3*                    *THE TRUE COPY OF THE REJECTION LETTER  
FROM THE 2ND RESPONDENT SUPERINTENDENT,  
CENTRAL PRISON DATED 15-6-2022.*