

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P.No.8782 of 2015

Reserved on 07.12.2015

K.Chandra

... Petitioner

Vs

The Superintendent,
Central Prison,
Cuddalore-4.

... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for concerned records from the respondent, quash the order of the respondent dated 12.03.2015 bearing No.3560/Tha.Ku2/2015 as illegal, arbitrary and contrary to law and consequently, direct the respondent to grant 45 days ordinary leave to petitioner's husband K.Krishnamurthy, C.T.No.13478, Convict, First Block, Central Prison, Cuddalore-4 in accordance with Rules 20, 22 and 23 of the Tamil Nadu Suspension of Sentence Rules, 1982.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.P.Sanjay Gandhi, AGP

सत्यमेव जयते
O R D E R

Being aggrieved over the order, dated 12.03.2015 passed by the Superintendennt of Central Prison, Cuddalore, the respondent herein, in and by which, the petition preferred by the petitioner for grant of 45 days of ordinary leave to her husband S.Duraiujan, who is a life convict (C.T.No.13811), came to be rejected, has come forward with the present petition.

2. The petitioner's husband has been serving the life sentence imposed by the learned Sessions Judge, Cuddalore District in S.C.No.101 of 2007 while convicting him for the offence under Section 302 IPC. As against the said conviction and sentence, an appeal in C.A.No.734 of 2008 was filed before

this Court, which came to be dismissed, confirming the punishment inflicted against the petitioner's husband. Aggrieved by the same, the petitioner's husband preferred an appeal before the Supreme Court of India in SLP (Crl.) No.734 of 2008 and it is pending for disposal. According to the petitioner, her husband has been serving the sentence for the past six years and his behaviour and conduct is good. The petitioner is having four children including two girls and two boys and due to conviction of her husband, her family is now in distress and she is unable to feed the children and run the family as the debts were accumulated. In order to clear the debts, they decided to sell her husband's immovable property and hence, she made an application to the respondent on 12.10.2010 for grant of 20 days leave, so that her husband can come out and sell the property and also make arrangement for their livelihood. Since the said application was rejected on the ground that an appeal is pending before the Supreme Court, the petitioner preferred a writ petition before this Court. By order, dated 19.12.2012, this Court granted parole to her husband with certain conditions while setting aside the order of rejection passed by the respondent.

3. Again during the year 2013, the petitioner made another application for grant of 45 days of leave to her husband stating that since a marriage alliance for her eldest daughter K.Sangeetha was finalized and in order to meet out the marriage expenses, further certain extent of land had to be sold and for this purpose and to perform the marriage of her daughter, his presence was required. The respondent again rejected the same on the same ground, which again prompted the petitioner to approach this Court by filing W.P.No.11511 of 2013 and by order, dated 9.5.2013, this Court granted 3 days leave. However, again on 25.12.2013 when the petitioner made application for grant of 45 days leave to her husband, the respondent, by order dated 31.12.2013 rejected the application on the same ground. Now, the petitioner has made application on 12.3.2015 to the respondent for grant of 45 days leave on medical grounds of her father-in-law and also to make arrangement to sell the property to run the family. By order, dated 12.3.2015, the respondent once again rejected the application on the ground that under Rule 35 of the Tamil Nadu Prison Manual III, her husband is not entitled to ordinary leave since the appeal preferred by her husband as against the conviction, is pending before the Supreme Court. Challenging the same, the petitioner has come forward with the present petition.

4. A counter affidavit has been filed on behalf of the respondent, stating that the petitioner's husband is a life convict and his appeal against his life conviction is pending

before the Supreme Court in SLP (Crl.) No.7423 of 2010 and as per Rule 35 of the Tamil Nadu Prison Manual III, no prisoner on whom case is pending trial shall not be granted leave. Therefore, relying upon the said Rule as well as the dictum of the Hon'ble Supreme Court reported in AIR 1961 SC 112 (K.M.Nanavathi versus State of Bombay), which cautioned that the act of the Government in releasing the prisoners for short duration without referring to the court while there appeal is pending in the court, is absolutely illegal and undependable, the respondent has rejected the application made by the petitioner. Hence, the respondent prayed for dismissal of the writ petition.

5. When this writ petition is taken up for consideration, the learned counsel appearing for the petitioner would contend that the application made by the petitioner for grant of leave to her husband was rejected solely on the ground that the appeal preferred by the petitioner as against his conviction, was pending before the Supreme Court, which cannot be sustained. He would contend that the respondent has not considered the genuine reasons for which, the petitioner sought for grant of leave to her husband. He pointed out that already co-accused were acquitted and on earlier two occasions, the petitioner's husband was granted leave and and at present in order to make arrangement to sell the land to meet out the financial crisis, his presence is essential and therefore, the respondent ought not to have rejected the application. In support of his submissions, the learned counsel relied upon a decision of this Court vide order, dated 28.2.2012 in W.P.(MD) No.1965 of 2012.

6. On the other hand, the learned Special Government pleader would submit that on earlier occasions, the petitioner's husband was granted leave by this Court considering the fact that his presence was necessary to perform marriage of his daughter and also to sell the immovable property and now for the very similar reason, i.e. to sell the property, the petitioner cannot seek leave for her husband. Hence, the learned Special Government Pleader submitted that there is no valid reason to entertain the application made by the petitioner and further relying upon the Rule 35, the respondent has rightly rejected the application, which requires no interference. Hence, he prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader for the respondent and perused the entire records.

8. On earlier two occasions, when the petitioner made applications for grant of leave to her husband, the respondent

rejected the same on the sole ground that there is an appeal preferred by the petitioner's husband as against his conviction, pending before the Hon'ble Supreme Court and as per Rule 35, the petitioner's husband is not entitled to leave, which prompted the petitioner to approach this Court and considering circumstances under which, the presence of the petitioner's husband was necessary, this Court granted the leave to the petitioner's husband. It is to be noted that time and again, for rejection of the applications made by the petitioner, the respondent has cited the same ground, i.e. pendency of appeal before the Supreme Court. In this regard, it is worthwhile to refer the order of this Court, dated 28.2.2012 made in W.P.No.28.02.2012, wherein, in para 7 it has been held as under:

"7. The Jail authorities would rely on the definition clause as contained in Rule 2 (4), which defines 'sentence' to deny parole. It is true that sentence was defined as a sentence as finally fixed on appeal or revision or otherwise and include an aggregate of more sentence than one. The Rules nowhere provide that pendency of an appeal would take away jurisdiction of jail authorities to consider the application for emergency leave. The criminal appeal pending before the Supreme Court pertains to the legality and correctness of the judgment passed by the trial Court and confirmed by this Court. Therefore, mere pendency of an appeal before the Apex Court would not take away the authority of jail officials to consider the application submitted by the convict for parole. In case, such a contention is accepted, it would make the provision regarding grant of parole meaningless. In the event of the life convict satisfying the ingredients of the Rules, regarding grant of emergency leave, such an application cannot be rejected solely on the ground that the appeal is pending before the Supreme Court. Therefore, I am not in a position to agree with the submission made on behalf of the respondents 1 and 2."

9. Therefore, in view of the above categorical pronouncement, I am of the opinion that the rejection of the application of the petitioner on the sole ground that the appeal is pending before the Supreme Court, cannot be sustained and therefore, the

impugned order, dated 12.3.2015 passed by the respondent is liable to be set aside. However, considering the fact that the respondent has not considered the application on merits, i.e. whether the reasons assigned by the petitioner seeking leave to her husband, are satisfying the ingredients of the Rules regarding grant of emergency leave, I feel it appropriate to remand the matter to the respondent for fresh consideration on this aspect.

10. Accordingly, the impugned order, dated 12.3.2015 passed by the respondent is hereby set aside and the respondent is directed to consider the application of the petitioner, dated 02.03.2015 afresh and pass orders on merits, i.e. whether the reasons assigned by the petitioner seeking leave to her husband, are satisfying the ingredients of the Rules regarding grant of emergency leave to the petitioner's husband, within a period of four weeks from the date of a receipt of a copy of this order.

The Writ Petition is disposed of. No costs.

Sd/
ASSISTANT REGISTRAR (CS-II)

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

Suk

To,

The Superintendent
Central Prison, Cuddalore - 4.

+1 CC to MR.Balan Haridas Advocate. SR.NO. 66334
+1 CC to Govt.Pleader. SR.NO. 66939

Pre delivery order in
W.P.No.8782 of 2015

CO-SK
JD 28/12/2015

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