

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2015

CORAM

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

W.P.NO.980 OF 2015

A.Fathima

...Petitioner

Vs

The State represented by its

1. The Secretary to Government of Tamil Nadu,  
Department of Home,  
Fort St. George,  
Chennai - 600 009.
2. The Additional Director General of Prison,  
C.M.D.A. Towers,  
Egmore, Chennai - 600 008.
3. The Superintendent,  
Central Prison,  
Coimbatore - 18.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus directing the respondents to grant leave for 30 days to petitioner's son the detinue, S.Santhuhammed, S/o.A.M.Sharab, aged about 38 years, Convict No.10708, detained at Central Prison, Coimbatore.

For Petitioner : Mr.S.Manoharan

For Respondents : Mr.S.Shanmughavelayutham  
Public Prosecutor assisted by  
Mr.R.Vijayakumar,  
Addl. Govt. Pleader

O R D E R

Heard Mr.S.Manoharan, learned counsel for the petitioner and Mr.S.Shanmughavelayutham, learned Public Prosecutor assisted by Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents.

2. The petitioner is the mother of the convict prisoner Mr.S.Santhuhammed, S/o.A.M.Sharab, who has been convicted pursuant to the judgment dated 24.10.2007 in S.C.No.2 of 2000 on the file of the Special Court for Bomb Blast Cases, Coimbatore. The petitioner has filed this writ petition seeking for grant of 30 days leave for her son, so that he will be able to get married and the marriage has been fixed on 07.02.2015 and it is stated that the marriage will be held at Noor Seid Mahal, Palli Veethi, Karumpukadai, Coimbatore-8. In this regard, a representation was made enclosing the copy of the marriage invitation. Since the same has not been considered, the petitioner is before this Court.

3. The learned Public Prosecutor narrated the entire facts of the case and referred to the averments made by the third respondent in the counter-affidavit, in which, reference has been made to Rule 21 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as 'the Rules') stating as to which of the category of prisoners are entitled for grant of leave. In the counter-affidavit, insofar as the conduct of the convict prisoner, the incidents which have occurred in 2003 and 2009 have been mentioned, for which, the convict prisoner has been warned in three cases and imposed 20 days remission cut in one case. This Court is of the view that all these incidents appear to have occurred prior to December 2009.

4. The issue now falls for consideration is as to whether the petitioner is entitled for grant of ordinary leave in terms of Rule 21 of the Rules.

5. Considering the fact that the petitioner's son is to be married and the marriage has already been fixed and the invitation is also produced and the correctness of the stand taken by the petitioner has been verified to be correct by third respondent, namely, Superintendent of Central Prison, Coimbatore, and merely because there is a pendency of the appeal filed by the petitioner, it cannot be an absolute bar for considering the petitioner's request for grant of leave for petitioner's son, this Court is of the view that the petitioner's son is entitled for grant of leave.

6. At this juncture, it is relevant to note that a Division Bench of this Court in Pooranam Vs. The Superintendent, Central Prison, Madurai, in W.P.(MD)No.8809/2013, in the judgment dated 20.08.2013 also considered an identical question as to whether the pendency of Special Leave Petition before the Hon'ble Apex Court would be a bar to entertain the application for emergency or ordinary leave. The Hon'ble Division Bench held as follows :

"10. It is pertinent to note that Rule 6 of the said Rules specifically mentions that serious illness of the father of a person in jail is a ground for grant of emergency leave.

11. That apart, long back in the celebrated SUNIL BATRA'S case reported in 1980 (3) SCC 488, dealing with Prison Jurisprudence, the Hon'ble Apex Court emphasised that a person in prison does not cease to be a human being and lose all his human rights and it is the duty of the State to take care of his justifiable needs and requests. The longing of a lifer to see his ailing father, whose general condition has worsened has to be approached with a humane touch. It must be considered liberally on humanitarian ground.

12. Visualising penury stricken persons seeking such a relief, Rule 16 of Tamil Nadu Suspension of Sentence Rules, 1982 direct that to such persons Escorts shall be at Government cost. It is also the duty of the State to ensure the safety of prisoners. For that matter, State cannot charge (collect money) them.

13. In the light of Rule 6 and 16 of the said Rules, the Hon'ble Apex Court Rulings and on humanitarian ground, petitioner's son shall be accorded 4 days of emergency leave.

14. In view of the foregoing, the Superintendent, Central Prison, Madurai, shall grant 4 days of emergency leave to petitioner's son Muthu from 22.08.2013 with necessary police protection and on the expiry of the leave he shall be brought back and lodged in the Central Prison, Madurai. Petitioner shall not be asked to pay for providing security for her son's safety. It is made clear that petitioner's son shall not indulge in any unlawful activity during his emergency leave."

7. In fact somewhat identical objection was raised in the case of M. Uma Manickam V. The State represented by its Secretary to Government of Tamil Nadu, Department of Home, Fort St. George, Chennai - 600 009 and others, in W.P.No.25184 of 2014 and this Court considered the same in its order dated 15.10.2014 and observed as follows :

"4. The only reason stated by the respondents for rejecting the application of the petitioner now is that an appeal is pending before the Apex Court. Therefore, Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 is a bar.

5. But I do not think that the decision of the Supreme Court in Nanawati V. State of Maharashtra, AIR 1961 SC 112 would apply. The appeal is pending as against the conviction, at the instance of the accused. The appeal is not against acquittal. It was not by the State.

6. If an appeal is pending against acquittal or if an appeal is pending for enhancement of penalty, then the convict cannot be granted leave. In any appeal filed by the accused arising out of conviction, there are only three things that could happen, namely, (i) the dismissal of the appeal outright, (ii) allowing of the appeal in total or (iii) allowing of the appeal in part and the reduction of the sentence. Therefore, the grant of leave would have no nexus to any of the three alternatives."

8. In the light of the above decisions declaring that the pendency of the S.L.P. before the Hon'ble Apex Court at the instance of the petitioner as against his conviction is not an absolute bar to considering the prayer for grant of leave, and taking note of the entire facts, this Court is of the view that the petitioner's son and the life convict prisoner Mr.S.Santhuhammed, S/o.A.M.Sharab, is entitled for grant of leave for a period of 20 days. Accordingly, the third respondent is directed to grant leave to the petitioner's son for a period of 20 days from 05.02.2015 to 25.02.2015 before 6.00 p.m. with two escort police personnel and subject to other usual terms and conditions and on the expiry of the leave on 25.02.2015 before 6.00 p.m., the petitioner shall be brought back and lodged in the Central Prison, Coimbatore. The petitioner is directed to bear all the expenses for leave in accordance with the Rules.

9. With the above directions, this writ petition is disposed of. No costs.

Sd/-  
Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gg

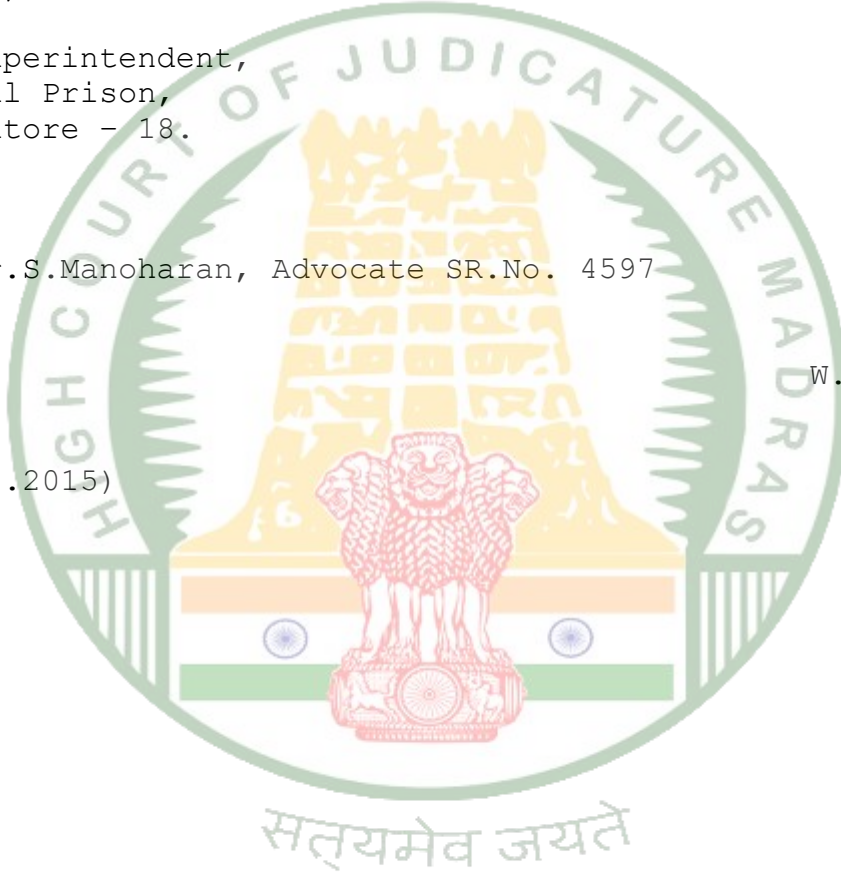
To

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2. The Additional Director General of Prison,  
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1 CC to Mr.S.Manoharan, Advocate SR.No. 4597

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KSJ (CO)  
PSI (30.01.2015)



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