



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.M.SUNDRESH

W.P(MD)No.13022 of 2015

Kavitha

... Petitioner

Vs.

1.The Additional Director General of Police (Prison),
Thalaimuthu Natarajan Maligai,
Egmore,
Chennai-8.

2.The Superintendent,
Central Prison,
Tiruchirapalli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for the issuance of Writ of Mandamus, directing the 1st and 2nd respondents to grant emergency leave to the brother of the petitioner namely Kannan S/o. Manickam (Life Convict Prisoner No. 16914) who is presently confined at Central Prison Tiruchirapalli for a period of two weeks to look after his Mother who is seriously ill and also to arrange the funds for the treatment of his mother on the basis of the Petitioner's presentation dated 21.07.2015.

For Petitioner

: Mr.K.M.Karunakaran

For Respondents

: Mr.M.Murugan

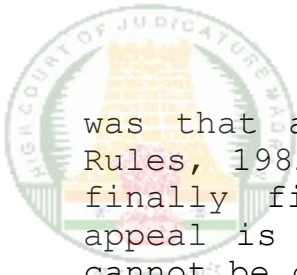
Government Advocate

O R D E R

The petitioner, who is the sister of the life convict namely Kannan S/o.Manickam (Life Conflict Prisoner No.16914), Central Prison, Trichirapalli made a representation on 21.07.2015, seeking parole for a period of two weeks to attend to his mother who is seriously ill has come forward with this petition.

2. The petitioner's brother is a life convict, convicted in S.C.No.139 of 2007 for the offences punishable under Section 302, 364, 201 of IPC. The appeal filed by the petitioner's brother was dismissed in CrI.A.(MD).281 of 2008 dated 30.07.2008. Challenging the same, a further appeal has been filed before the Apex Court which is still pending disposal.

4. A perusal of the instructions given to the learned Government Advocate (CrI. Side) by the second respondent, Superintendent of Prison, would show that the only objection raised



was that as per Rule 2(4) of the Tamilnadu Suspension of Sentence Rules, 1982, the definition of sentence would imposed a sentence is finally fixed on appeal or revision. Therefore, since, further appeal is pending at the instance of the petitioner's brother, he cannot be considered.

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5. Admittedly, the appeal has been preferred by the petitioner's brother being a convict. The definition of sentence as mentioned in Rule 2(4) of Tamilnadu Suspension of Sentence Rules, 1982 cannot be given a narrow interpretation, if the same is applicable to a life convict, whose appeal was dismissed. The benefit of the same cannot be denied merely because of a convict has filed a further appeal. He has got every right to file an appeal.

6. The question as to whether the appeal is entitled to be allowed or not is a matter to be decided by the Apex Court. However, merely because an appeal has been filed, it cannot be said that a person concerned would be in a disadvantageous position as against the others who have not filed the appeal.

7. Therefore, the interpretation as given by the second respondent cannot be accepted.

8. Accordingly, a direction is issued to the second respondent to consider the emergency leave to the petitioner's brother, if other parameters are satisfied. When rejecting it on the ground of pendency of an appeal, the said decision will have to be taken within a period of one week from the date of receipt of a copy of this order.

9. This Criminal Original Petition is disposed of with the above direction.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

PJL

To

1.The Additional Director General of Police (Prison),
Thalaimuthu Natarajan Maligai, Egmore, Chennai-8.

2.The Superintendent, Central Prison, Tiruchirapalli.(in duplicate)

+1cc to Mr.K.M.KARUNAKARAN,ADVOCATE IN SR NO.42116

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR NO.42241

W.P(MD)No. 13022 of 2015
28.07.2015

RG.29.07.2015

2P.6C.