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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

Writ Petition No.16726 of 2015

Kaleeswaran

... Petitioner

Vs.

1.The Additional Director General of Police (Prisons),
Gandhi Irwin Road, Egmore,
Chennai.

2.The Superintendent of Central Prison,
Central Prison, Trichy.

3.State of Tamil Nadu
Rep.by its Secretary to Home Department,
Fort St.George, Secretariat,
Chennai - 600 009.

... Respondents

*(R3 impleaded vide order
dated 16.09.2015 in MP(MD)No.2 of 2015)

Prayer:-Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in Letter No.10605/R.4/2015, dated 04.08.2015 issued by the 2nd respondent and quash the same and consequently, direct the respondents to grant 20 days leave (Parole) to the petitioner's son namely Mangalanathadurai, who is undergoing sentence as life convict in Central Prison, Trichy to make arrangements for providing necessary medical treatment to his mother namely Poomayil.

For Petitioner	: Mr.P.T.Ramesh Raja
For Respondents	: Mr.D.Muruganandam Addl.Govt. Pleader

O R D E R

The Petitioner, who is the father of the life convict viz., Mangalanathadurai, has come forward with this Writ Petition, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order in Letter No.10605/R.4/2015, dated 04.08.2015, passed by the 2nd respondent and quash the same and consequently, direct the respondents to grant 20 days leave (Parole) to the petitioner's son viz., Mangalanathadurai, who is undergoing sentence, as life convict, in Central Prison, Trichy, to make



arrangements for providing necessary medical treatment to his mother viz., Poomayil.

2. Mr. P. T. Ramesh Raja, learned counsel appearing for the petitioner would submit that the petitioner's son was arrayed as an accused in Crime No. 635 of 1998, on the file of Inspector of Police, Sivagangai and he has been convicted for life sentence in S.C.No.97 of 1999, which was confirmed in C.A.No.823 of 2002. Against which, he preferred an appeal in Crl.A.No.627 of 2012, before the Hon'ble Apex Court and the same is pending. Adding further, the learned counsel would submit that, since the petitioner's wife is under ailment, the presence of the petitioner's son is very much needed to give a proper treatment to the petitioner's wife, since the petitioner is aged about 72 years. Therefore, the petitioner made a representation on 30.05.2015, to the Superintendent of Prison, Central Prison, Trichy, to grant leave / parole for 20 days, to his son viz., Mangalanathadurai, to enable him to make arrangements for his wife's treatment. However, the 2nd respondent without considering the same, has rejected the representation of the petitioner. The learned Counsel, in support of his contention, has relied on Rule Nos.5 to 13 of the Tamil Nadu Suspension of Sentence Rules, which read as follows :-

“5. Kinds of Leave:

Leave shall be of two kinds, namely, emergency leave and ordinary leave.

6. Grounds for the grant of emergency leave:

Emergency leave may be granted for attending death or serious illness of father, mother, wife, husband, son, daughter, full brother or full sister or the wedding of son, daughter, full brother or full sister of the prisoner and for having delivery outside the prison in case of female pregnant prisoners.

7. Eligibility for emergency leave:

No emergency leave shall be granted to a prisoner unless:-

- i) he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends;
- ii) his conduct in prison has been satisfactory.
- *iii) female pregnant prisoner for having delivery outside the prison provided who are not constituting high security risks or of cases of equivalent grave descriptions.

8. Mode of Request:

The petition containing the request for the grant of emergency leave shall be submitted to the



Superintendent by the prisoner or by a relative of the said prisoner.

9. Certificate of correctness to accompany the petition:

The petition shall be accompanied by a certificate in support of the serious illness or the funeral or the proposed wedding obtained from the Village Administrative Officer or Doctor or Member of the Legislature or Member of the Parliament or Chairman of the Municipal Council or President of a Panchayat or Revenue Inspector or Tahsildar or Deputy Tahsildar or Sub-Inspector of Police or the Probation Officer having Jurisdiction or from any responsible Officer having jurisdiction subject to verification as prescribed in rule 11.

* "In case of female pregnant prisoners, for having the delivery outside the prison, the Prison Medical Officer or Assistant Surgeon shall give medical certificate/report to the effect of pregnancy along with the probable date of delivery, to the Superintendent of Prisons concerned, for grant of emergency leave";

10. Authority who may grant emergency leave:

The Superintendent of Prison shall grant emergency leave to prisoners subject to the other conditions laid down in these rules.

11. Verification of Certificates:

The Superintendent of Prison shall at his discretion verify the genuineness of the certificates produced along with the petition for emergency leave with the Probation Officer or Police concerned before releasing a prisoner on emergency leave. In case the prisoner is to attend the funeral urgently, the Superintendent shall contact the Probation Officer or Police concerned by wire or by phone and get the matter confirmed.

12. Right to grant or reject emergency leave and appeal thereupon:

The Superintendent of Prison reserves the right either to grant or reject the emergency leave for special reasons to be recorded in writing which shall always be treated as strictly confidential. The reasons for such rejection shall not be communicated to the prisoner but shall be reported to the higher authorities if called upon to do so. The petition preferred by the prisoner against such rejection shall always be submitted to the Inspector - General of Prisons with the remarks of the Superintendent of Prison for his



orders and the Inspector - General of Prisons may either grant or reject the emergency leave.

13. Maximum period of emergency leave:

The total period of emergency leave to be granted to a prisoner by the Superintendents of Prisons or the Inspector - General of Prisons, as the case may be, shall be fifteen days in a year to be spread over four spells, subject to the maximum of six days in any one spell according to the need of the prisoner on the occasion and the remaining nine days in three spells, each spell not exceeding three days at a time and the decision of the Superintendent or the Inspector - General of prisons in deciding the duration of the spell shall be final. However, in exceptional cases, the Government may extend the period of emergency leave following the procedure prescribed in rule 34. Application for emergency leave for the fifth time in a year shall be submitted to Government for prior orders.

* Provided that in case of female pregnant prisoners, for having the delivery outside the prison, emergency leave for a period of fifteen days may be granted as a special case without taking into account of the total spell of emergency leave availed earlier."

3. The learned counsel for the petitioner, has also invited the attention of this Court to a Division Bench Judgment of this Court made in **W.P. (MD) No. 8089 of 2013 (Poornam Vs. The Superintendent, Central Prison, Madurai)**, wherein in paragraphs 10 to 13, it has been 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 Honourable 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 worsen has to be approached with a humane touch. It must be considered liberally on humanitarian ground.

12. Visualizing penry stricken persons seeing 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) from them.

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

4. Per contra, Mr.D.Muruganandam, learned Additional Government Pleader appearing for the respondents would submit that the petitioner's son is not eligible for emergency leave for 20 days, as an appeal is pending before the Hon'ble Apex Court and the authority has rightly taken a decision, rejecting the request of the petitioner. He would further submit that even assuming for the sake of arguments, the petitioner is entitled to the leave on emergency, it shall not be more than six days, as per Rule 13 of the Tamil Nadu Suspension of Sentence Rules, the total period of emergency leave shall be 15 days in a year to be spread over four spells, subject to the maximum of six days in any of spell.

5. At this juncture, the learned counsel appearing for the petitioner would submit that the petitioner is willing to agree for six days emergency leave and he is ready to give up his prayer for 20 days leave on emergency.

6. I have heard the learned counsel appearing on either side and perused the materials available on record.

7. It is an admitted case that the petitioner's son is a life convict and an appeal is pending before the Supreme Court. As rightly pointed out by the learned counsel for the petitioner, the pendency of the SLP before the Supreme Court cannot be said to be a bar for the petitioner's to seek extraordinary leave, for his son. Though I find force in the contentions of the learned counsel appearing for the respondents, denying extraordinary leave on emergency for a period of six days, considering the facts and circumstances of the case, the Writ Petition is allowed and the impugned order, dated 04.08.2015, is set aside. Consequently, the 2nd respondent is directed to grant six days leave on emergency (Parole) to the petitioner's son, viz., Mangalanathadurai, from 09.11.2015 at 10.00 a.m. to 14.11.2015 at 5.00 p.m. The petitioner's son/life convict is directed to report back to the Central Prison, Trichy, at 5.00 p.m., on 15.11.2014. During parole, the life convict shall abide by all the conditions prescribed in the jail manual. Taking into account the poor financial condition of the Petitioner's son / life convict, there shall be a direction to the 2nd respondent not to collect the charges required for police escort and other related expenses from the Petitioner or the convict.

Sd/-

Assistant Registrar (AS)

/True Copy/



To

1. The Additional Director General of Police (Prisons),
Gandhi Irwin Road, Egmore,
Chennai.
2. The Superintendent of Central Prison,
Central Prison, Trichy.
3. The Secretary to Home Department,
State of Tamil Nadu,
Fort St. George, Secretariat,
Chennai - 600 009.

+1cc to Mr.P.T.Ramesh Raja, Advocate Sr.No.65126

akm/06.11.15 /6p-5c/

**Order made in
W.P. (MD) No.16726 of 2015
04.11.2015**