



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.10.2015

CORAM:

THE HONOURABLE Ms.JUSTICE R.MALA

W.P.(MD)No.18391 of 2015

WEB COPY

N.Muthu Irulayee

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to
Government,
Home Department,
Secretariat, Chennai-600 009.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Superintendent of Police,
Central Prison,
Vellore,
Vellore District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to grant 5 days parole/leave to Azhagar @ Pal Azhagar (Prisoner No.24503), who has been detained in Central Prison, Vellore, Vellore District for conducting his mother's First Anniversary Day, which will be held on 12.10.2015.

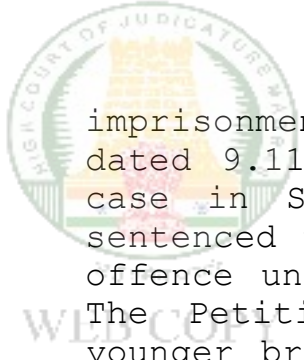
For Petitioner : M/s.N.Sudhagar Nagaraj

For Respondents : Mr.S.Chandrasekar
Government Advocate

O R D E R

The Petitioner has come forward with this Writ Petition praying this Court for issuance of a Writ of Mandamus directing the 3rd respondent to grant 5 days parole/leave to Azhagar @ Pal Azhagar (Prisoner No.24503), who has been detained in Central Prison, Vellore, Vellore District for conducting his mother's First Anniversary Day, which will be held on 12.10.2015.

2.The learned counsel for the Petitioner would submit that the Petitioner is a life convict for the past 25 years. He was sentenced in S.C.No.215 of 1990 which has been confirmed in Crl.A(MD)No.227 of 1991 on 23.11.2000 and while he was in prison, he was convicted in S.C.No.158 of 1993 and sentenced to life



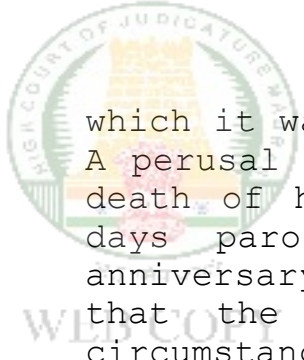
imprisonment which was modified in CrI.A.(MD)No.416 of 2006, dated 9.11.2006 to two years rigorous imprisonment. In another case in S.C.No.333 of 1997, the Petitioner was convicted and sentenced to two years rigorous imprisonment on 30.9.2004 for the offence under Section 148 of IPC. Her mother died on 23.09.2014. The Petitioner had two brothers and one younger sister. The younger brother Balamurugan died in the year 2002 and her father M.Sittiah is no more. Now to conduct the first death anniversary, the presence of the convict is necessary. Hence she come forward with this application for the relief stated supra.

3.At this juncture, the learned Government Advocate (CrI.Side) would submit that the Petitioner is a life convict for the offence under Sections 302 and 148 IPC. Further the convict when he was in jail, he also involved in another case. For that case also, life conviction was given and subsequently modified to two years rigorous imprisonment. The said conduct of the convict is not good and further the Petitioner has already undergone imprisonment for about 25 years. Furthermore, no emergency leave can be given for the first death anniversary of his mother. He is entitled to emergency leave if the conduct of the Petitioner in the prison is satisfactory. But because of his attitude only, he was not released from the prison for about 25 years. Hence he prayed for dismissal of the Petition.

4.Considering the rival submissions and a perusal of the typed set of papers would reveal that the Petitioner's elder brother Azhagar @ Pal Azhagar is a life convict and he is in prison for about 25 years. Further, he was convicted in S.C.No.215 of 1990 which has been confirmed in CrI.A(MD)No.227 of 1991 on 23.11.2000 and while he was in prison, he was convicted in S.C.No.158 of 1993 and sentenced to life imprisonment which was modified in CrI.A.(MD)No.416 of 2006, dated 9.11.2006 to two years rigorous imprisonment. In another case in S.C.No.333 of 1997, the Petitioner was convicted and sentenced to two years rigorous imprisonment on 30.09.2004 for the offence under Section 148 of IPC.

5.Therefore it is appropriate to consider the submissions made by the learned Government Advocate(CrI.Side) that the Petitioner's younger brother/convict has involved in a murder case in the present and also his conduct is not good. Hence he was not discharged from the prison after completing 14 years of imprisonment.

6.At this juncture, the learned counsel for the Petitioner would submit that he filed a Writ Petition before the Division Bench of this Court for deducting the life sentence to 14 years and to release the Petitioner from the prison, which is pending. The learned counsel for the Petitioner has taken the attention of this Court to page 2 of the typed set of papers in



which it was stated that the Petitioner was given emergency leave. A perusal of the said order would show that it was given for the death of his mother. This Writ Petition is filed to grant five days parole/leave to the Petitioner for the first death anniversary of his mother scheduled to be held on 12.10.2015 and that the function is already over by this time. In such circumstances, I do not find any reason to grant leave as sought for by the Petitioner and more over grant of leave is not mandatory and it is only discretionary. If the conduct of the Petitioner's younger brother is satisfactory, then only he is entitled to get the leave as sought for. In such circumstances, I am of the view that it is not a fit case for grant of parole as sought for by the Petitioner.

7. Accordingly, the Writ Petition fails and the same stands dismissed. No costs.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

Sub Assistant Registrar

Vsn

To

1. The Secretary to
Government,
Home Department,
Secretariat, Chennai-600 009.

2. The Commissioner of Police,
Madurai City,
Madurai.

3. The Superintendent of Police,
Central Prison,
Vellore, Vellore District.

+1 CC TO M/S SPL.GOV.T.PLEADER, SR NO:60488

JAM /27.10.15/SKS-RR/3P-5C

W.P. (MD) No.18391 of 2015