



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.06.2016

CORAM:

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD)No.10033 of 2016

M.Mareeswari

... Petitioner

-vs-

1. The Principal Secretary to the
Government of Tamil Nadu,
Home, (Prison-IV) Department,
Fort St.George, Chennai.
2. The Additional Director General of Police /
Inspector General of Prisons,
No.1, Gandhi Irwin Salai,
Egmore, Chennai-600 008.
3. The Superintendent of Prisons,
Central Prison, Madurai.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling of the records pertaining to the impugned order passed by the 3rd respondent in his proceedings in No.8982/Tha.Ku.2/2016 dated 06.06.2016 and quash the same and consequently direct the respondents to grant Parole to petitioner's husband Nalla Maruthu @ Maruthu, C.P.No.3536, now confined in Central Prison, Madurai for a period of 30 days.

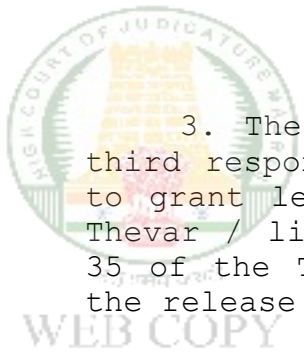
(Prayer amended as per the order of the Court dated 20.06.2016 in W.M.P. (MD).No.7997 of 2016)

For Petitioner : Mr.Veerakathiravan, Senior Counsel
For Mr.R.Manickaraj
For Respondents: Mr.S.Chandra Sekar,
Govt. Advocate

O R D E R

"Law may be resembled to a nut, which has a shell and a kernel within; the letter of the law represents the shell, and the sense of it the kernel, and as you will be no better for the nut if you make use only of the shell, so you will receive no benefit by the law, if you rely only upon the letter, and as the fruit and profit of the nut lies in the kernel, and not in the shell, so the fruit and profit of the law consists in the sense more than in the letter." - FREDERCK J. DE SLOOVRET

2. The petitioner has called upon this Court to interpret Rule 35 of Tamil Nadu Suspension of Sentence Rules, 1982 considering the contextual benefit of the provision to the prisoners as well as to the prison authorities.



3. The writ petition is filed challenging the order passed by the third respondent herein, whereby and whereunder the petitioner's request to grant leave to her husband by name Maruthu @ Nallamaruthu S/o.Bose Thevar / life convict No.3536 has been rejected on the ground that Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 did not permit the release of the prisoner on leave, on whom a case is pending trial.

4. Heard the learned senior counsel for the petitioner and the learned Government Advocate (criminal side) for the respondents.

5. The learned senior counsel for the petitioner would submit that petitioner's husband is a life convict and his premature release was cancelled by the Government due to his subsequent involvement in a criminal case and he was again put in prison. While so, the petitioner has submitted a petition before the third respondent to grant leave to her husband for 30 days in order to mobilize funds for admission of their son in the college, who has completed his higher studies (+2). It is alleged that their request was unjustifiably rejected and therefore, this Court must quash the same and permit the petitioner's husband to go on leave.

6. The learned Government Advocate appearing for the respondents would submit that as a case is pending trial against the petitioner's husband, the leave sought for by the petitioner to her husband cannot be granted, as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules 1982 and accordingly, the same was rightly rejected by the third respondent herein.

7. The petitioner's husband (through the petitioner) has sought for leave for a period of 30 days on the ground that he has to make arrangement for the admission of his son in the college. Therefore, it is necessary to look into the grounds for the grant of ordinary leave. Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982 provides for the grant of the ordinary leave which reads as under:

"(i) to make arrangements for the livelihood of his family and for the settlement of the life after release;

(ii) to make arrangement for the admission of the children in the school or college;

(iii) Construction or repairing the homestead;

(iv) to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sister, as the case may be, of the prisoner;

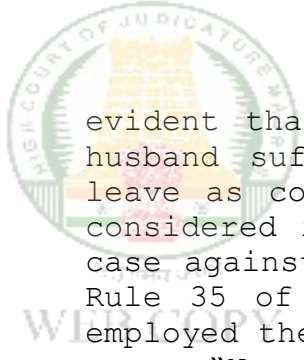
(v) settling family disputes like partition, etc.

(vi) agricultural operations like sowing, harvesting, etc; and

(vii) any other extraordinary reasons."

8. The request of the petitioner is governed under Rule 20(ii). The eligibility of the petitioner's husband for ordinary leave as contemplated under Rule 20(ii) is not under dispute.

9. From the perusal of the order of the third respondent, it is



evident that it is not a case of the respondents that the petitioner's husband suffers from any of the non-eligibility criteria for ordinary leave as contemplated under Rule 21. Therefore, the only question to be considered is whether leave should be refused because of the pendency of case against him. In other words, what is interpretation to be given to Rule 35 of the Tamil Nadu Suspension of Sentence Rules 1982 which has employed the mandatory word "shall" in the rule which reads;

"No prisoners on whom a case is pending trial shall be granted leave".

10. Whether this provision leaves discretion to the prison authorities to consider the request for ordinary leave or it forecloses the discretion of the prison authorities. In other words, the pendency of the case alone would curtail the liberty of the prisoner to get leave even when there are insurmountable circumstances for him to get leave. In order to decide this, the principle of interpretation has to be looked into.

Interpretation:

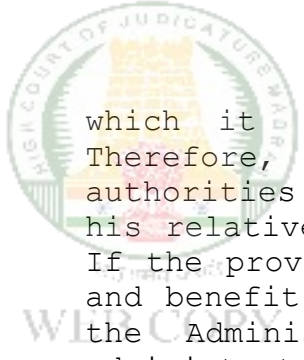
11. To interpret a statute is to find the proper meaning so that it may be applied to a particular case. Little or nothing can be done about interpreting a statute apart from the facts of the case to which the statute is to be applied, for issues as to statutory meaning cannot be framed in any other way.

12. Very often the obvious meaning is the correct one, but until one can say that it is the only sensible meaning, the statute has not been fully interpreted. At this point in the process the context must be studied so as to be sure there is no other equally justifiable meaning that the text will bear by fair use of language .

13. Every statute must be interpreted in the light of (1) the subject-matter with which it deals; (2) the reason or purpose behind its enactment as found in the text and the evil toward which it was directed (including here extrinsic aids and the common law); and (3) the meanings of the several other relevant parts of the same statute or of statutes in pari materia. Likewise, the obvious meaning is not the correct one unless it is sensible. If, then, the literal or obvious meaning is sensible and fulfils these several demands, any other conflicting meaning (contextual or otherwise) not meeting these essentials cannot be regarded as the proper one.

14. In the context of consideration of reason or purpose behind Rule 35, the issue to be considered is whether use of words 'shall' has to be interpreted as mandatory or directory or whether the use of words 'shall' is the determinant factor or it can be interpreted depending upon the context in which it is used. Certainly, regard must be given to the context, subject matter and object of the statutory provision in question, in determining whether the same is mandatory or directory.

15. So far as the context is concerned, there may be several circumstances for the prison authorities to consider the request for leave either for death of the blood relatives or marriage of kith and kin, to get medical treatment or to render assistance in case of maternity of wife, etc. In other words, there may be circumstances under



which it may be inhuman to say "No" to the request for leave. Therefore, construing "Shall" as mandatory in Rule 35 would compel the authorities to pass orders which may cause injustice to the prisoners and his relatives. Therefore, it can reasonably be construed only as "May". If the provision is construed only as "May" then the benefit i.e., fruit and benefit of the Rule would go not only to the prisoners but also to the Administrator to maintain the human relationship between the administration and the prisoner in a healthy way.

16. So far as the case of the petitioner's husband is concerned, the leave is asked for in order to arrange for the admission of the child in the college. May be that the petitioner's husband is having two pending cases against him, but at the same time that should not affect the paramount interest of the child to get education in a meritorious college. Education of the child will be the future of the child. Therefore, in the interest of the child, at least the permission sought for has to be granted.

17. Under such circumstances, the impugned order is hereby quashed and the third respondent/Superintendent of Central Prison, Madurai is directed to release the husband of the petitioner by name Nalla Maruthu @ Maruthu S/o.Bose Thevar - Live Convict No.3536, on ordinary leave from 01.07.2016 to 06.07.2016 after following the usual procedure and other safeguarding measures in accordance with the Prison manual and he shall be taken back to the Central Prison, Madurai before 6.00p.m. On 06.07.2016. The Superintendent of Central Prison, Madurai / Third Respondent shall provide escort with civil dress to the Life Convict from the Central Prison, Madurai, from the time he leaves the Central Prison, Madurai and till such time he is taken back to the Central Prison, Madurai, on the said date and time as ordered by this Court. As the petitioner is in continuous custody, the Government shall bear the expenditure for providing escort to the petitioner's husband. The petitioner's husband shall be of good behavior and shall not commit any offence during his leave. The petitioner's husband is liable to be recalled immediately in case he violates any of the conditions.

18. The Writ Petition is disposed of with the above direction. No costs.

Sd/
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar.

To

1. The Principal Secretary to the Government of Tamil Nadu, Home, (Prison-IV) Department, Fort St.George, Chennai.
 2. The Additional Director General of Police / Inspector General of Prisons, No.1, Gandhi Irwin Salai, Egmore, Chennai-600 008.
 3. The Superintendent of Prisons, Central Prison, Madurai.
- +1CC to M/S.C.Jeganathan, Advocate, SR.No. 33187
+1CC to the Special Government Pleader, SR.No. 33093.

W.P. (MD) No.10033 of 2016

24.06.2016