



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.10.2016

CORAM

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

W.P(MD)No.15333 of 2016

WEB COPY

Muthu Irulayee

... Petitioner

-vs-

1.The Jail Superintendent of Prison,
Central Jail, Madurai.

2.The Inspector of Police,
Thirupatsethi Police Station,
Sivagangai, Sivagangai District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the rejection letter in No.9043/TK2/2016, dated 28.07.2016 of the first respondent, quash the same and consequently direct the respondents to release the petitioner's husband forthwith for 10 days to take treatment of his father's serious illness whom is nearing his last breath and for the partition detailed of his father's property.

For Petitioner : Mrs.V.Jeyarani

For Respondents : Mr.K.P.Krishna Doss
Government Advocate

O R D E R

This Writ Petition is filed to quash the impugned order of the first respondent passed in his letter No.9043/TK2/2016, dated 28.07.2016 and for a direction to the respondents to grant emergency leave to the husband of the petitioner, namely Malaikannu, Son of Alagarsamy, Life Convict No.3330, who is now confined at Central Prison, Madurai, for a period of 10 days, to take treatment for his ailing father and for partition of the family properties.

2.The case of the petitioner is that her husband was implicated in a criminal case in Crime No.265 of 1996 on the file of the Thirupatsethi Police station for the offences under Section 341, 308 r/w 149 IPC. The petitioner's husband was convicted by the trial court and sentenced to life imprisonment and the conviction was confirmed by the High Court in Crl.A.No.170 of 1999 and the appeal is preferred against the conviction is pending before the Hon'ble Supreme Court.



3.The petitioner would further state that her father-in-law is 91 year old and he is suffering from Diariya and also having Kidney problem and for that, he is taking treatment with Dr.S.Kameshwaran. Since, her husband is the only son to his father, he has to make arrangements for taking better treatment for his aged father and to settle the family properties. In such circumstances, the petitioner made a representation to the first respondent, dated 22.06.2016 along with the medical and poverty certificate for grant of parole to her husband, which was rejected by the first respondent observing that appeal is pending before the Hon'ble Apex Court, there is no material to show that he is taking treatment as inpatient and the 2nd respondent has not recommended for grant of emergency leave. Aggrieved over the said order, the present Writ Petition has been filed.

4.The learned Counsel for the petitioner would submit that Rule 6 of Tamil Nadu Suspension of Sentence Rules, 1982 enables the first respondent to grant emergency leave for attending the death or serious illness of the father, mother, wife, husband, son, daughter etc., and the petitioner has specifically pleaded that the father of the convict is suffering from serious ailments and for giving proper treatment, he should be granted emergency leave and the reasons assigned by the first respondent for rejecting the representation are contrary to the Rule.

5.It is further submitted that when the convict's mother died, the petitioner moved a writ petition in W.P.(MD)No.6368 of 2013 and this Court, after considering the facts and circumstances, granted special emergency leave for period of seven days to the convict.

6.The learned Government Advocate would submit that the petitioner's father is a senior citizen and he is not taking treatment as in-patient, hence, the convict is not entitled for special leave.

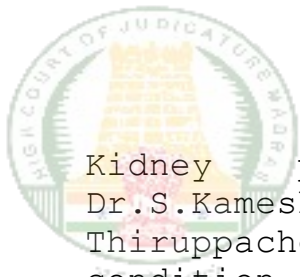
7.Heard both sides and perused the materials available on record.

8.Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982, runs as follows:-

"6.Ground 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."

<https://hcservices.ecourts.gov.in/hcservices/>

9.The specific case of the petitioner is that her father-in-law is 91 year old and he has been suffering from



Kidney problem. The Doctor certificate issued by Dr.S.Kameshwaran, Registration No.24033 of Chellaraja Clinic in Thiruppachethi, shows that the convict's father is in a serious condition and the ailment is also not disputed by the respondents. However, the impugned order came to be passed without reference to the relevant Rule. This court has already held that pendency of SLP cannot be a ground to refuse special leave. Hence, the impugned order suffers from illegality and the same is liable to be set aside and it is hereby set aside.

10.In the result, this writ petition is allowed with a direction to the 1st respondent to release the petitioner's husband on parole, namely Malaikannu, Son of Alagarsamy, Life Convict No.3330, who is now confined at Central Prison, Madurai, for a period of seven days, commencing from **08.10.2016 to 14.10.2016** after following the usual procedure and after ensuring the safeguarding measures in accordance with the Prison Manual and he shall be taken back to the Central Prison, Madurai on or before 06.00 p.m, on 14.10.2016. The Superintendent of Central Prison, Madurai shall provide utmost escort 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.

11.The Village Administrative Officer, 48, Sullangudi, Manamadurai Taluk, Sivagangai District has given Certificate stating that the Life Convict Malaikannu is living below the poverty line. It is not seriously disputed by the learned Government Advocate. So, the petitioner cannot be directed to pay the costs. The Government shall bear the expenditure for providing escort to the husband of the petitioner.

12.The Writ Petition is allowed with the above directions. No costs.

Sd/
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Jail Superintendent of Prison, Central Jail, Madurai.
- 2.The Inspector of Police,

Thirupatsethi Police Station, Sivagangai, Sivagangai District.
+1cc to M/S.V.Jeyarani, Advocate in SR.No.59658
+1cc to Special Government Pleader in SR.No.59864

W.P(MD)No.15333 of 2016

06.10.2016

<https://hcservices.ecourts.gov.in/hcservices/>

PA/CK/SAR III/07.10.2016/3P/5C