

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2017

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Crl.O.P.No.6352 of 2017

B.Abdul Razak
Convict No.10710
Confined at Central Prison
Coimbatore. Petitioner

Vs

The State represented by its

1.The Secretary to Government of Tamil Nadu
Department of Home,
Fort St. George,
Chennai - 600 009.

2.The Additional Director General of Prison,
C.M.D.A. Towers,
Egmore,
Chennai - 600 008.

3.The Superintendent,
Central Prison,
Coimbatore.

... Respondents

Petition filed under Section 482 of the Criminal Procedure Code, to direct the respondents to grant ordinary leave of 90 days to the detainee, B.Abdul Razak aged about 39, Convict No.10710, detained at Central Prison, Coimbatore.

For Petitioner : Mr.S.Manoharan

For Respondents : Mr.Mohammed Riyaz, GA

ORDER

This Criminal Original Petition has been filed seeking a direction to the respondents to grant ordinary leave of 90 days to the detainee, B.Abdul Razak aged about 39, Convict No.10710, detained at Central Prison, Coimbatore.

2. According to the petitioner, he is a life convict prisoner bearing Convict No.10710 and has been undergoing life imprisonment, pursuant to the judgment passed by the Special Sessions Court, Coimbatore in SC No.2 of 2000. Now, his parents have arranged wedding for him that will be fixed on 06.05.2017. There are numerous formalities and ceremonies to be performed before and after the marriage ceremony. Hence, his father made representation dated 20.03.2017 enclosing a copy of the wedding invitation, to the respondents, requesting to grant three months leave for his son. Finding no response, the petitioner has come up with the present petition for the above stated relief.

3. Today, when the matter was taken up for consideration, learned counsel for the petitioner submitted that in an identical situation, this Court by order dated 29.01.2015 in WP.No.980 of 2015, has granted leave for a period of 20 days to the life convict prisoner S.Santhuhammed for his marriage. Learned counsel sought for similar order in this petition as well.

4. On the other hand, learned Government Advocate reiterated the averments stated in the counter affidavit filed by the respondents, wherein, it has been stated that on receipt of the representation made by the father of the petitioner, the third respondent called for report, pursuant to which, the Probation Officer, Coimbatore and the Commissioner of Police, Coimbatore City have furnished their reports stating that the marriage of the petitioner has been fixed to be solemnized on 06.05.2017 at Coimbatore and in view of the sensitiveness involved in the Coimbatore Serial Bomb Blast Cases, all the convicts concerned in that case are being given leave for one day (7.00am to 6.00pm) with strong police escort due to the law and order to be maintained in Coimbatore without giving room for any rampage situation and as a special case, leave may be granted to the petitioner for a period of 5 days with police escort, during day time only. Based on the said reports and the recommendation of the Superintendent of Prisons, Central Prison, Coimbatore, the Deputy Inspector General of Prisons, Coimbatore Range, Coimbatore has granted 7 days leave to the petitioner by order in No.1638/AA2/17 dated 17.04.2017. Therefore, learned Government Advocate submitted that no further order is necessary in this petition.

5. Heard both sides and perused the materials placed before this Court.

6. Admittedly, the marriage of the petitioner viz., B.Abdul Razak, who is a life convict prisoner, is to be solemnized on 06.05.2017 at Coimbatore. His father made representations to the respondents seeking leave for a period of 90 days, whereas, the respondents have granted seven days leave for the purpose of marriage. At this juncture, it is noteworthy to refer to the earlier order passed by this Court dated 29.01.2015 in WP.No.980 of 2015 cited on the side of the petitioner. In that case, the mother of the convict prayed for a direction to grant leave for a period of 30 days to her son detainee S.Santhuhammed, who has been convicted in connection with the same SC No.2 of 2000, on the file of the Special Court for Bomb Blast Cases, Coimbatore, for his marriage. This Court, after hearing both sides and relying on the decision of the Hon'ble Supreme Court, has granted 20 days leave to the convict.

7. For better appreciation, the relevant paragraphs of the said order are extracted hereunder:

"6. At this juncture, it is relevant to note that a Division Bench of this Court in Pooranam Vs. The Superintendent, Central Prison, Madurai, in W.P.(MD) No.8809/2013, in the judgment dated 20.08.2013 also considered an identical question as to whether the pendency of Special Leave Petition before the Hon'ble Apex Court would be a bar to entertain the application for emergency or ordinary leave. The Hon'ble Division Bench 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 Hon'ble 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. Visualising penury stricken persons seeking 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) them.

13. In the light of Rule 6 and 16 of the said Rules, the Hon'ble Apex Court Rulings and on humanitarian ground, petitioner's son shall be accorded 4 days of emergency leave.

14. In view of the foregoing, the Superintendent, Central Prison, Madurai, shall grant 4 days of emergency leave to petitioner's son Muthu from 22.08.2013 with necessary police protection and on the expiry of the leave he shall be brought back and lodged in the Central Prison, Madurai. Petitioner shall not be asked to pay for providing security for her son's safety. It is made clear that petitioner's son shall not indulge in any unlawful activity during his emergency leave."

7. In fact somewhat identical objection was raised in the case of M. Uma Manickam V. The State represented by its Secretary to Government of Tamil Nadu, Department of Home, Fort St. George, Chennai - 600 009 and others, in W.P.No.25184 of 2014 and this Court considered the same in its order dated 15.10.2014 and observed as follows :

"4. The only reason stated by the respondents for rejecting the application of the petitioner now is that an appeal is pending before the Apex Court. Therefore, Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 is a bar.

5. But I do not think that the decision of the Supreme Court in Nanawati V. State of Maharashtra, AIR 1961 SC 112 would apply. The appeal is pending as against the conviction, at the instance of the accused. The appeal is not against acquittal. It was not by the State.

6. If an appeal is pending against acquittal or if an appeal is pending for enhancement of penalty, then the convict cannot be granted leave. In any appeal filed by the

accused arising out of conviction, there are only three things that could happen, namely, (i) the dismissal of the appeal outright, (ii) allowing of the appeal in total or (iii) allowing of the appeal in part and the reduction of the sentence. Therefore, the grant of leave would have no nexus to any of the three alternatives."

8. In the light of the above decisions declaring that the pendency of the S.L.P. before the Hon'ble Apex Court at the instance of the petitioner as against his conviction is not an absolute bar to considering the prayer for grant of leave, and taking note of the entire facts, this Court is of the view that the petitioner's son and the life convict prisoner Mr.S.Santhuhammed, S/o.A.M.Sharab, is entitled for grant of leave for a period of 20 days. Accordingly, the third respondent is directed to grant leave to the petitioner's son for a period of 20 days from 05.02.2015 to 25.02.2015 before 6.00 p.m. with two escort police personnel and subject to other usual terms and conditions and on the expiry of the leave on 25.02.2015 before 6.00 p.m., the petitioner shall be brought back and lodged in the Central Prison, Coimbatore. The petitioner is directed to bear all the expenses for leave in accordance with the Rules.

9. With the above directions, this writ petition is disposed of. No costs."

Following the above order, this Court is inclined to grant similar relief to this petitioner, as he is a similarly placed person like that of the convict in that case.

8. Accordingly, the third respondent is directed to grant leave to the petitioner viz., Abdul Razak S/o.Bazeer Ahammed, who is a life convict prisoner bearing Convict No.10710, for a period of 20 days from 04.05.2017 to 24.05.2017 before 6.00 p.m. with two escort police personnel and subject to other usual terms and conditions and on the expiry of the leave on 24.05.2017 before 6.00 p.m., the petitioner shall be brought back and lodged in the Central Prison, Coimbatore. The petitioner is directed to bear all the expenses for leave in accordance with the Rules.

9. With the above directions, this Criminal Original Petition is disposed of.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu
Department of Home,
Fort St. George,
Chennai - 600 009.
- 2.The Additional Director General of Prison,
C.M.D.A. Towers,
Egmore, Chennai - 600 008.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Director General of Police,
Mylapore, Madras-4.
- 5.The Public Prosecutor,
High Court, Madras - 104.

+1cc to Dr.S.Manoharan, Advocate Sr.36476

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