

Crl.M.P.No.6800 of 2017

in

H.C.P.No.133 of 2017

**Nooty. Ramamohana Rao, J.,
and
S.M.Subramaniam, J.,**

(Order of the Court was delivered by **Nooty. Ramamohana Rao,J.,**)

This Criminal Miscellaneous Petition has been instituted, essentially, for securing leave on emergency grounds to the convicted prisoner, the husband of the writ petitioner.

2. It is stated that the husband of the writ petitioner, convicted prisoner No.3452, is lodged in a Central Prison, Palayamkottai, Tirunelveli District. Pursuant to his conviction and sentence, dated 5th October, 1998, in Sessions Case No.392 of 1997, he will undergo imprisonment for life ever since. However, lately, the convicted prisoner was diagnosed to suffer from intestinal cancer. It appears that, he was granted leave, and, he is presently undergoing treatment in the Regional Cancer Centre, at Thiruvananthapuram. It is now asserted that the convicted prisoner was

advised to undergo a Radical Surgical Procedure, for which purpose, he requested to grant leave on extraordinary grounds of a fairly longer duration. Hence, the Miscellaneous Petition is moved.

3. The learned Additional Public Prosecutor, who has since obtained instructions in the matter, has placed before us, the Tamil Nadu Suspension of Sentence Rules, 1982, (henceforth referred to as 'Rules', for short) framed by the Government of Tamil Nadu, in exercise of powers conferred under sub-section 5 of Section 432 of the Code of Criminal Procedure 1973, and put forth his contentions, firstly that, as per Rule 3 of the Rules, leave cannot be claimed as a matter of right, but, it is a mere concession granted to a prisoner. Secondly, he urges that Rule 5 has classified leave that can be granted as either emergency leave or ordinary leave. Finally, by referring to Rule 22 (2), it is submitted that, the period of ordinary leave shall not exceed one month, at a time, unless, it is extended by Government, and, since the convicted prisoner was already granted a month's ordinary leave, it is pointed out that the period of such ordinary leave can only be extended by the Government, and hence, the prisoner should approach the State Government instead, for securing the extension of

ordinary leave granted already.

4. Heard the learned counsel appearing for the writ petitioner on the aforesaid submissions.

5. The contentions putforth by the learned Additional Public Prosecutor are unsustainable. Though the learned Additional Public Prosecutor placed reliance upon Rules 3, 5 and 22(2) of the aforesaid Rules to buttress his contentions, we have noticed certain Rules, which lend support to the cause of the writ petitioner. Apropos, it would be worthwhile to scan the relevant Rules, which are set out hereinbelow:-

i) **Rule 6** enables that emergency leave to be granted to convicted prisoners, who seek to attend to death, or serious illness of father, or mother, or spouse, or children or siblings of the prisoner, and also for attending to the wedding of the son or daughter, or full brother or full sister of the prisoner.

ii) **Rule 7 (ii)** makes it clear that, no emergency leave shall be granted to a prisoner, unless, his conduct in the prison has been satisfactory.

iii) **Rule 13** specifies the maxim period of emergency leave to be granted to a prisoner, to be 15 days in a year, and to be spread over 4 spells subject to a maximum of 6 days in anyone such spell, according to the need of the prisoner.

and

iv) **Rule 14** contemplates that Police Escort shall be provided at the discretion of the Sanctioning Authority, if the convicted prisoner is considered dangerous to Community.

6. The question, that requires to be answered in this Petition is

Whether emergency leave can be granted for a duration, longer than the duration, that is provided under Rules 3, 6, 7 (ii), 13, 14, 22 (2) of the Rules ?

7. Rule 6 of the Rules is more in the nature of illustrative one.

The grounds for grant of emergency leave to the extent possible, are sought to be laid down therein, and by no stretch of imagination, the grounds specified in Rule 6 of the Rules can be construed or considered to be

wholly exhaustive. The reason is very simple... 'The grounds mentioned therein, are relatable to one or the other third party, but, not to the prisoner himself'. All those contingencies contemplated by Rule 6 are the ones, which arise, with reference to one close relative or the other of the prisoner.

8. As we have noticed in the preceding para, leave on emergency grounds can be accorded to a prisoner, where, father, mother, spouse, or a son/daughter, or a full brother/full sister is suffering from illness. Thus, if any of a close relative of the prisoner is suffering from illness, leave on emergency grounds can be granted, and since Rule 6 talks of grounds attributable to the third parties, obviously, Rule 13 has attempted to put a ceiling of 15 days in a year, to be spread over 4 spells, subject to a maximum of 6 days, in any one such spell.

9. Law in India has been consistently recognizing the rights of prisoners, which include the fundamental rights guaranteed under Part III of our Constitution, and also the human rights. It is one of the salient features of Article 21 of our Constitution, which recognizes the 'Right to Life'. 'Right to Life' includes the right to receive appropriate treatment for

sustaining life, if the inevitable end of life can be prolonged by taking recourse to treatment or medication. Any such obligation, or the necessity to allow the human being to undergo the same, it transforms into an obligation thrust upon the State. In other words, the prisoner being entrusted for his custody to the State to be confined to the correctional homes, for a period or terms, established in the form of prisons, it is the obligation of the State to provide all facilities for preserving the life of such convicted persons. But, sometimes, appropriate facilities to tackle with various varieties of health problems or issues cannot be afforded within the limited infrastructural facilities for conservatively preserving the health of the prisoners. For instance, if a prisoner is suffering from a heart ailment, or kidney ailment, or cancerous tumour, referring the prisoner to a specialised Hospital, where, appropriate treatment can be accorded to, such a prisoner becomes an obligation thrust upon the State.

10. In the instant case, we are informed that the convicted prisoner was diagnosed to be suffering from intestinal cancer, and he was diagnosed as such, by the Regional Cancer Centre, at Thiruvananthapuram, an approved Medical Research Institution, to tackle with various kinds of

cancerous disease, and hence, if such a Medical Institution suggests a Radical Surgical Procedure to be undergone by the prisoner, it goes without saying that, ceiling of 6 days at a time specified in Rule 13 does not really come in the way of the State. As we have noticed above, Rule 6 read in the context with Rule 13 is only dealing with various contingencies arising from the relationship, the prisoner had with those close relatives, as specified in Rule 6.

11. Thus, for the purpose of tiding over any such emergency situation, the Rule Making Authority contemplated it appropriate to put a ceiling of 6 days, in any one such spell of leave on emergency. When the prisoner himself suffers from serious ailment, the ceiling contemplated in Rule 13 does not come in the way of the State. The illness suffered by the prisoner may, or may not, get cured within 6 days period specified therein. Some of the illness involving vital parts of human physiology, may require a longer duration of hospitalization or recuperation.

12. Therefore, in case of serious illnesses, affecting the prisoners, in our considered opinion, the ceiling on the maximum of 15 days period of

emergency leave granted in a year, or 6 days, in any one such spell will not come in the way of the State. It is the medical opinion, concerning the state of affairs of health of the prisoners, which will be determinative for regulating the emergency leave on emergency grounds in such cases.

13. Looking at, in the above perspective, we are of the opinion that, it would be reasonable for us to assume, for the present that, the convicted prisoner, bearing No.3452, lodged in Central Prison, Palayamkottai, deserves to be granted leave on emergency grounds for a period of 3 months, unless, a contra opinion is rendered by the Regional Cancer Centre, Thiruvananthapuram. If, on the other hand, a larger period of hospitalization is suggested by the Regional Cancer Centre, for enabling the prisoner to recover completely or recuperate, the prisoner would also become entitled to be granted for such emergency leave of longer duration than even 3 months. The duration of such emergency leave, in such cases, is squarely dependent upon the opinion of the Institution/physician, who treats or intends to treat the prisoner.

14. The question is answered accordingly. Resultantly, we allow

this Petition, by directing the Superintendent of Central Prison, Palayamkottai, Tirunelveli District, to grant the convicted prisoner, bearing No.3452 of Central Prison, Palayamkottai, leave on emergency basis for an initial duration of three months and regulate the entire exercise in that regard, as noted supra by us.

15. This Miscellaneous Petition stands disposed of, with this order.

(N.R.R.J.) & (S.M.S.J)
05.06.2017

Index: Yes
Internet : Yes
tkp/sd

Registry is directed to communicate the copy of this order to

1. Superintendent of Central Prison,
Palayamkottai, Tirunelveli District.
2. The Writ Petitioner.
3. The Public Prosecutor,
High Court, Madras.

Note to Office :

Issue on 13.06.2017

**Nooty. Ramamohana Rao, J.,
and
S.M.Subramaniam, J.,**

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S.M.Subramaniam, J.,**

Admit.

Mr.V.M.R.Rajentran, learned
Additional Public Prosecutor, accepts
notice on behalf of the
respondent/Police.

As soon as pleadings are
complete, at any rate within next
three months, list the matter for final
hearing.

(N.R.R.J.) & (S.M.S.J)
05.06.2017

sd

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