



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.11.2017

Coram

THE HON'BLE MR. JUSTICE S.S.SUNDAR

Writ Petition (MD) No.19741 of 2017

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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 Prison,
Central Prison,
Madurai.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents herein to grant parole to my husband viz., Nalla Maruthu @ Maruthu, S/o. Bose, Convict Prisoner No.3536 now confined at Central Prison, Madurai for a period of 30 days.

For Petitioner : Mr.Veera Kathiravan,
Senior counsel for
Mr.R.Manickraj

For Respondents : Mr.D.Muruganantham
Additional Government Pleader

ORDER

This writ petition is filed for a writ of Mandamus directing the respondents to grant parole to the petitioner's husband by name Nalla Maruthu @ Maruthu, S/o. Bose, who is the convicted Prisoner No.3536, now confined at Central Prison, Madurai for a period of 30 days.

2. The petitioner is the wife of one Nalla Maruthu @ Maruthu. The petitioner's husband was earlier convicted for the offences under Sections 147, 148, 341, 302 r/w. Section 149 of I.P.C., by the learned First Additional District and Sessions Judge, Madurai in S.C.No.506 of 1997. The petitioner's husband was sentenced to undergo imprisonment for life and he had been

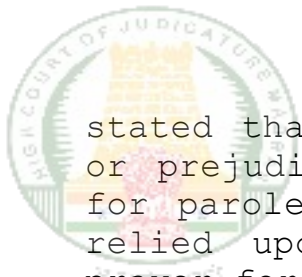


confined in jail as a life convict from the year 2000. Though the petitioner's husband has been released on remission during 2008, on the basis of the Government Order in G.O.Ms.No.1155, dated 11.09.2008, the remission was also cancelled because of two cases alleged to have been registered against the petitioner during the conditional period. Thereafter, the petitioner was arrested. Stating that the mother of the petitioner's husband is very serious and that the presence of her husband is very much necessary for making arrangement for raising funds for her treatment and her son's studies and also for registering a family partition of the properties held by her mother-in-law, the petitioner has given a representation seeking parole leave for a period of 30 days for her husband. Since no action was taken on the petitioner's representation, the present writ petition has been filed.

3. The Probation Officer has submitted a report with regard to the conduct of the petitioner's husband. In the report of the Probation Officer, dated 01.11.2017, the Probation Officer has recommended for the grant of parole leave to the petitioner's husband. However, in the report of the Inspector of Police, Avaniyapuram Police Station, who is the jurisdictional police officer, it is stated that there is likelihood of the petitioner's husband being involved in some criminal activities and that there is likelihood of some of the legal heirs of victim attacking the petitioner's husband. Since the Probation Officer on his own has recommended in his report but refused to grant parole leave to the petitioner's husband only on the report of the police officer concerned, this Court directed the learned Additional Government Pleader to produce the files to know as to the basis of such adverse report by the Inspector of Police, Avaniyapuram Police Station.

4. The learned Additional Government Pleader fairly conceded that the report of the Inspector of Police, Avaniyapuram Police Station is not on the basis of any material collected by him, but on mere apprehension. It is stated that the petitioner was granted parole leave earlier on number of occasions not less than 37 times and that there was no untoward incident or any other incident involving the petitioner's husband in any crime. Since the petitioner's husband has satisfactorily completed his parole leave on earlier occasions, it is submitted by the learned counsel appearing for the petitioner that the petitioner in the writ petition is entitled to succeed.

5. The learned Additional Government Pleader earlier raised legal objection for the grant of parole leave to the petitioner on the ground by referring to Rule No.35 of the Tamil Nadu Suspension of Sentence Rule, 1982, which prohibits the grant of parole leave to a person against whom criminal cases are pending trial. The learned Additional Government Pleader relied upon Rule 21(c) of Tamil Nadu Suspension of Sentence Rule, 1982, wherein, it is



stated that the prisoners whose presence is considered dangerous or prejudicial to public peace and tranquility are not eligible for parole leave. The learned Additional Government Pleader also relied upon Rule 21(c) and strongly opposed the petitioner's prayer for grant of parole leave.

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6. As pointed out earlier since the report is not based on any objective consideration, this Court is not in a position to appreciate the objection of the learned Additional Government Pleader, based on the recommendation of the jurisdictional police officer, which is reflected in the report of the Probation Officer. With regard to the contentions of the learned Additional Government Pleader relying upon Rule 35, the learned Senior counsel has relied upon the judgment of this Court earlier in W.P. (MD).No.10033 of 2016 filed by the petitioner. Similar objection raised by the learned Government Advocate was rejected by this Court in the earlier writ petition filed by the petitioner and it was held that the petitioner is entitled to get parole leave, despite the fact that a criminal case is pending trial as against him.

7. Without going into the legal issue whether the judgment is correct or not, having regard to the fact that the writ petition filed by the petitioner earlier was allowed on the interpretation of the Rules, this Court is not inclined to go into the veracity of the judgment as it was not seriously argued by the learned Additional Government Pleader. Hence, considering the objections and the facts and circumstances of the case, taking into consideration the purpose for which the relief is asked for by the petitioner for her husband, this Court is inclined to pass the following direction:

The third respondent / the Superintendent of Prison, Central Prison, Madurai, is directed to grant ordinary leave for a period of 10 days with effect from 16.11.2017 to 25.11.2017 and the petitioner's husband shall be taken back to the Central Prison, Madurai before 6.00 p.m. on 25.11.2017. The Superintendent of Central Prison, Madurai shall provide minimum escort with two police constables with civil dress to the life convict / the petitioner's husband till such time he is taken back to the Central Prison, Madurai. Accordingly, the Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar(AE)

/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 Prison,
Central Prison,
Madurai.

+1cc to Mr.R.MANICKRAJ,Advocate,SR. 87237

+1cc to M/S.Special Government Pleader,SR. 87449

AKV

KK/SKN RSK/SAR 2/15.11.2017/ 4P- 6C/

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