



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2017

CORAM

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THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.15935 of 2016

and

W.M.P(MD) No.11671 of 2016

M.Mariamammal

... Petitioner

-Vs-

1.State Represented by

The Secretary to Government,
Home (Prison) Department,
Fort St.George,
Chennai - 600 009.

2.The Additional Director General of Prison,
Office of the Additional Director General of Prison,
No-1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008.

3.The Superintendent of Prison,
Central Prison, Madurai.

4.The Inspector of Police,
Mettur, Salem District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to call for the records relating to the impugned order passed by the first respondent in G.O.(D) No.37, Home (Prison V) Department, dated 12.01.2016 and quash the same and consequently to direct the respondents to grant Parole leave for a period of one month to petitioner's husband namely K.Moorthi, S/o. Kanthasamy @ Vazhathandu in C.P.No.5414 confined at Central Prison Madurai.

For Petitioner : Mr.P.Balamurugan
For Respondent : Mr.D.Muruganandam
Additional Government Pleader.

O R D E R

This Writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the first respondent in G.O.(D) No.37, Home (Prison V) Department, dated 12.01.2016 and quash the same and



consequently to direct the respondents to grant Parole leave for a period of one month to petitioner's husband namely K.Moorthi, S/o. Kanthasamy @ Vazhathandu in C.P.No.5414, confined at Central Prison Madurai.

2. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

3. The case of the petitioner, in brief, is as follows:

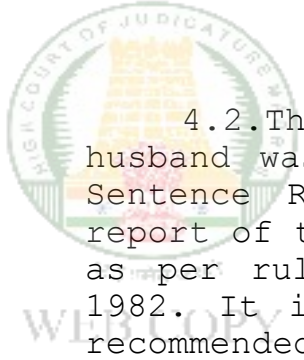
3.1. The petitioner's husband is a life convict prisoner No.5414 and now is confined at Madurai Central Prison in connection with murder case in Crime No.1350 of 1997 on the file of the Omaloore Police Station, Salem District. The petitioner's husband though filed a Criminal Appeal in CrI.A.No.1395 of 2004, before this Court, the same was also dismissed. However it is stated that further an appeal was filed by the petitioner's husband before the Honourable Supreme Court in the year 2007 and the same is pending.

3.2. The petitioner's husband was transferred by the Prison Authorities in the year 2014 from the Central Prison, Salem to the Central Prison Madurai, as per the prisoners rules. The petitioner was granted ordinary leave on several occasions. At least on 3 occasions, he was granted 30 days parole leave and on 18 other occasions, he was granted parole leave for few days for reasons. It was further stated that on all earlier occasions, except in the year 2014, he was granted parole leave without escort. On all earlier occasions, there was no problem and the concerned police has also reported the fact that no other incident was reported pursuant to the parole leave granted to the petitioner's husband.

3.3. The petitioner's husband applied for parole leave for 30 days on 12.06.2015 to the respondents 2 and 3 and no action was taken. Hence, the petitioner filed W.P.(MD) No.10500 of 2015, wherein this Court by order dated 12.01.2016, directed the first respondent herein to consider the petitioner's representation dated 12.06.2015 and pass appropriate orders. However the first respondent rejected the petitioner's representation dated 12.06.2015 vide impugned proceedings. It is only the order of the rejection, that is challenged in this Writ Petition.

4. The respondent filed a detailed counter raising several objections. The ordinary leave granted to the petitioner's husband on all earlier occasions have been referred to in the counter. The primary objections of the respondent to grant parole leave to the petitioner's husband are as follows:

4.1. The impugned order is passed in accordance with existing rules in force and since the order is well considered order and the same cannot be challenged legally.



4.2. The reason for rejecting ordinary leave to the petitioner's husband was on the ground of Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982. For releasing the prisoner on leave, the report of the local Inspector of Police (Law and Order) is mandatory as per rules 24 of the Tamil Nadu Suspension of Sentence Rules, 1982. It is stated that the Inspector of Police, Mettur, has not recommended for grant of ordinary leave without escort to the petitioner's husband due to the fact that there will be law and order problems and that his life is under threat by the victims. Hence the petitioner's husband is not eligible for grant of ordinary leave for 30 days as per rules 22(1) of Tamil Nadu Suspension of Sentence Rules, 1982.

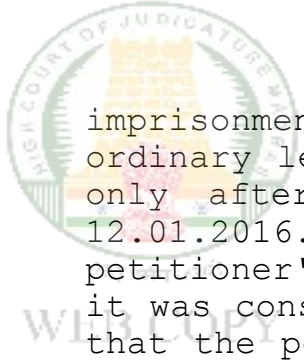
4.3. Since the petitioner's husband was granted earlier ordinary leave for 30 days from 12.08.2013 to 12.09.2013, he is not eligible to apply for ordinary leave for 30 days, in view of Rule 22(1) of Tamil Nadu Suspension of Sentences Rules-1982.

5. The impugned order passed by the first respondent, specifically states about the recommendation of the Inspector of Police, Mettur. As per the recommendation, the petitioner's husband is not entitled to ordinary leave without escort and there would be law and order problem. It was also stated in the impugned order that jurisdictional Inspector of Police has even mentioned about the life threat to the petitioner's husband by the victims. It was therefore the request for grant of ordinary parole leave for 30 days without escort cannot be granted. Since the petitioner's request cannot totally be rejected on the basis of the recommendation of the Inspector of Police, Mettur, this Court is of the view that the petitioner's husband can be granted ordinary parole leave for 30 days with escort only.

6. The the next submission is regarding the applicability of Rule 22(1) of the Tamil Nadu Suspension of Sentences Rules-1982. In this case, the petitioner's husband was granted parole leave for 30 days earlier, between 12.08.2013 and 12.09.2013. The learned Special Government Pleader, submitted that the petitioner's husband was not eligible for second spell of ordinary leave as per the Rule 22(3) of Tamil Nadu Suspension of Sentences Rules-1982, since, the petitioner has not completed two years of imprisonment from the date on which he returned from the last ordinary leave. Rule 22(3) of the Tamil Nadu Suspension of Sentences Rules-1982, reads as follows:

"The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave".

7. From the above rule, it is stated that the prisoner is entitled to the second spell of ordinary leave not exceeding one month only after completion of two years of imprisonment. The said Rule does not speak about the application, but about the grant of leave. The rule only contemplates the prisoner is entitled to ask for ordinary leave only after completion of two years of



imprisonment from the date on which he returns from the last ordinary leave and from the facts, he is liable for ordinary leave only after 13.09.2015. The impugned order was passed only on 12.01.2016. Though the application was submitted earlier, the petitioner's husband has completed two years of imprisonment, when it was considered in the year 2016. Hence this Court is of the view that the permission cannot be rejected by citing Rule 22(3) in the case of petitioner's husband by the order which is long after the crucial date, namely, 13.09.2015.

8. The learned Special Government Pleader, on instructions, submitted that the petitioner's husband is notorious and grant of ordinary leave without escort is not recommended by the jurisdictional Inspector of Police. Though the learned counsel for the petitioner, submitted that the petitioner's husband was entitled to ordinary leave without escort, in view of the mandatory recommendation of the Inspector of Police, Mettur, the petitioner is not entitled to ordinary leave without escort. Hence this Court is of the view that the petitioner's husband can avail ordinary parole leave with escort. Then, the learned counsel for petitioner pointed out that the cost of police escort shall be borne by the Government in terms of the Rule 60. The eligibility of the petitioner under Rule 60 was stoutly denied by the learned Special Government Pleader. As per Rule 60, the relatives of the petitioner's husband is required to produce the poverty certificate from the Officer of the Revenue Department, not lower than the rank of Tahsildar. Only if such a certificate is produced by the petitioner, the petitioner's husband is eligible to claim cost of police escort from the Government.

9. Hence this Writ Petition is allowed, the impugned proceeding passed by the first respondent in G.O.(D) No.37, Home (Prison V) Department, dated 12.01.2016, is quashed and the respondents are directed grant parole leave to the petitioner's husband for a period of one month with escort. The cost of escort shall be borne by the petitioner unless she produces the certificate as contemplated under Rule 60, in which case the respondents will reimburse the cost of escort. No costs. Consequently the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar.

To

<https://hcservices.ecourts.gov.in/hcservices/>
 1. The Secretary to Government,
 Home (Prison) Department,



Fort St.George,
Chennai - 600 009.

2.The Additional Director General of Prison,
Office of the Additional Director General of Prison,
No-1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008.

3.The Superintendent of Prison,
Central Prison, Madurai.

4.The Inspector of Police,
Mettur, Salem District.

+1CC to Mr.P.Balamurugan, Advocate, SR.No. 71211

+1CC to the Special Government Pleader SR.No. 71382

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cmr/gsp

AM/MMS/SAR 2/10.08.2017/5P/7C