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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.02.2017

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM
W.P.(MD) Nos.722 and 978 of 2017

Aberna : Petitioner in both WPs

-vs-

1.The State, represented by its
Secretary, Home Department,
Secretariat,
Fort St. George,
Chennai-09.

2.The Additional Director General of Prison,
O/O.The Additional Director General of Prison,
No.-1, Gandhi Erwin Road,
Egmore, Chennai-08.

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

: Respondents in both WPs

Prayer in W.P.(MD)No.722 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the respondents to grant Parole leave to the petitioner's husband, namely, Ashokkumar, s/o.Late Ramalingam @ Ramanathan confined at Central Prison, Madurai, for the period from 04.02.2017 to 06.02.2017.

Prayer in W.P.(MD)No.978 of 2017: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the respondent No.3, dated 10.01.2017 and quash the same and consequently, direct the respondents to grant leave to Petitioner's husband namely, Ashokkumar, S/o.(Late) Ramalingam Alias Ramanathan confined at Central Prison, Madurai on 04.02.2017, 05.02.2017 and 06.02.2017.

[Prayer amended, vide court order,
dated 02.02.2017 in WMP(MD)No.1509 of 2017]

For Petitioner

: Mr.S.M.A.Jinnah

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

: Mr.K.P.Krishnadoss



COMMON O R D E R

These petitions have been filed to grant leave to the petitioner's husband Ashokkumar, S/o.Late Ramalingam @ Ramanathan, now, confined at Central Prison, Madurai, for 3 days from 04.02.2017 to 06.02.2017.

2.The learned counsel appearing for the petitioner would submit that the petitioner's husband was falsely implicated in a case in Crime No.94 of 1992 and he was convicted and awarded life imprisonment and thereafter, appeal preferred against the conviction is pending in CrI.A(MD)No.297 of 2016 before this court and that he has been languishing at Prison for the past five months and that the petitioner's mother, who is the own sister of the Life Convict, expired on 06.01.2017 and on request, the petitioner's husband was granted parole by the 3rd respondent for one day I.e., on 07.01.2017 to perform last rites and he has done the funeral rites of his sister and on the same day, he was taken back to prison and that as per the family customs, the person, who cremates the corpus, is bound to perform three days mourning respect and that a representation was sent to the 3rd respondent on 10.01.2017 and that since, no order has been passed on that representation, the petitioner has constrained to approach this court by way of filing W.P.(MD)No.722 of 2017 seeking parole for three days from 04.02.2017 to 06.02.2017. In the interregnum, the impugned order came to be passed by the 3rd respondent on 10.01.2017 rejecting the request of the petitioner. Hence, the petitioner has filed W.P.(MD)No.978 of 2017 seeking a direction to the 3rd respondent to grant leave to her husband for 3 days, as stated above.

3.Per contra, learned counsel appearing for the respondents filed a counter and contended that as per the Tamil Nadu Suspension of Sentence Rules 1982 as stated in the impugned, the petitioner is not entitled for the reason that a convict prisoner is eligible for granting of ordinary leave, after completion of three years of imprisonment only and since, the petitioner admitted in prison only on 03.08.2016 and he has completed only 6 months and 7 days of his sentence as on 23.01.2017, he is not eligible for any ordinary leave. Hence, the 3rd respondent has rightly rejected the application made by the petitioner. Hence, he prayed for the dismissal of the petitions.

4.Heard the rival submission made on either side and perused the materials available on record.

5.In this case, it is useful to refer Sections 6 and 7 of the Tamil Nadu Suspension of Sentence Rules 1982, which reads as follows:-



"6. Grounds 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 so, daughter, full brother or full sister of the prisoner.

7. Eligibility for emergency leave:-

No emergency leave shall be granted to a prisoner unless:-

(i) he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends;

(ii) his conduct in prison has been satisfactory."

6. It is seen from the records that admittedly, the petitioner's husband was already granted emergency leave for one day on 07.01.2017 to attend the funeral ceremony of his sister. Now, the request of the petitioner is that 30th ceremony of his mother has to be performed for three days from 04.02.2017 to 06.02.2017 and hence, the petitioner's husband has to be granted leave.

7. On reading of Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982, for grant of emergency to the prisoner, it is not applicable to the present facts of the case and hence, the request of the petitioner was rightly rejected by the 3rd respondent by passing the impugned order, dated 10.01.2017.

8. Further, the petitioner's husband was convicted and sentenced to life imprisonment and admitted in prison only on 03.08.2016 and he has completed nearly 7 months only. Further, as per Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982, the convict prisoner has become eligible for granting ordinary leave, after completion of three years of imprisonment only.

9. Keeping in view of the above facts, the 3rd respondent, has passed the impugned order, dated 10.01.2017. This court finds no illegality or infirmity in the order passed by the 3rd respondent, since the petitioner is not entitled for any leave as stated in the impugned order. Hence, the relief sought for by the petitioner cannot be granted.



10. In the result, both the writ petition are **dismissed**. No costs. Consequently, connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

To:

1. The Secretary, Home Department,
Secretariat,
Fort St. George,
Chennai-09.
2. The Additional Director General of Prison,
O/O. The Additional Director General of Prison,
No.-1, Gandhi Erwin Road,
Egmore, Chennai-08.
3. The Superintendent of Prison,
Central Prison,
Madurai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 cc to Special Government Pleader SR.No.6274

W.P. (MD) Nos.722 and 978 of 2017
03.02.2017

SMA/CM-MSA/14.02.2017:4P/6C