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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.03.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.(MD) No.6230 of 2018

Rajeshwari

... Petitioner

-Vs-

1.The Additional Director General  
of Police (Prisons),  
Prison Department,  
Egmore, Chennai.

2.The Superintendent of Prison,  
Central Prison,  
Trichy.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issuing a Writ of Certiorified Mandamus, to direct the respondents to call for the record pertaining to the proceedings of the second respondent in No.3756/T.Ku.4/2018, dated 01.03.2018 and to direct the respondents to enlarge the petitioner's son Muthu, S/o. Maniyarachamy, a life convict (Life Convict No.10254) on parole, who is confined in the second respondent's prison.

For Petitioner :Mr.S.Valmekanathan

For Respondents :Mr.N.Shanmugaselvam  
Additional Government Pleader

ORDER

This Writ Petition has been filed to quash the order passed by the second respondent in No.3756/T.Ku.4/2018, dated 01.03.2018 and consequently, direct the respondents to enlarge the petitioner's son Muthu, S/o. Maniyarachamy, a life convict (Life Convict No.10254) on parole, who is confined in the second respondent's prison.



2. Heard, Mr.S.Valmekanathan, learned counsel appearing for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondents.

3. The learned counsel for the petitioner has submitted that the petitioner's son namely, Muthu has been convicted for the offence punishable under Section 302 I.P.C. and sentenced to under go life imprisonment and hence, the said Muthu now imprisoned in the second respondent's Central Prison. He further submitted that the petitioner's husband, who is father of life convict is severely suffering from Diabetes Mellitus and also suffering from Chronic Appendicitis and hence, the petitioner has submitted a representation before the second respondent to release her son (Muthu) on parole to enable him to see his ailing father. He further submitted that the second respondent has rejected the petitioner's representation stating that the SLP filed by the said Muthu is pending before the Hon'ble Supreme Court. He further submitted that as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 prisoner is not entitled to get leave only in the case of pending trial. But, in this case already trial has been conducted and the petitioner's son was convicted and sentenced to undergo life imprisonment. As against the said conviction appeal was filed before this Court and the same was also dismissed and now S.L.P. is pending before the Hon'ble Supreme Court and that cannot be a bar for considering the petitioner's representation and hence, he requests to set aside the said order and direct the second respondent to grant parole for the petitioner's son namely, Muthu.

4. The learned Government Advocate (Crl.side) has submitted that since SLP is pending before the Hon'ble Supreme Court, the second respondent has rightly rejected the petitioner's request. He further submitted that if the petitioner's son is released on parole, he may abscond and hence, he strongly opposed the petition.

5. Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 reads thus:-

"35. Pending Cases:

No prisoner on whom a case is pending trial shall be granted leave"

6. From the aforesaid Rule, it is clear that if a case is at trial stage then the prisoner is not entitled to apply for leave. In other words, the person who has been detained in the prison during pre-conviction stage alone is not entitled to apply for leave. Whereas in this case, admittedly, the petitioner's son was convicted and sentenced to undergo life imprisonment and hence the aforesaid Rule will not apply. The learned Government Advocate has not cited any other rule for rejecting the petitioner's representation.

7. Therefore, impugned order passed by the second respondent is set aside. This Writ Petition is allowed and the second respondent is directed to consider the petitioner's representation and pass



appropriate orders within a period of one week from the date of receipt of a copy of this order. If necessary, adequate escorts may be provided. No costs.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

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Sub Assistant Registrar

To

1.The Additional Director General of Police (Prisons),  
Prison Department, Egmore, Chennai.

2.The Superintendent of Prison,  
Central Prison, Trichy.

+1CC to Mr.S.Valmekanathan, Advocate, SR.No. 57422

W.P.(MD) No.6230 of 2018  
23.03.2018

Ls

AM/SKN RSK/SAR 1/23.03.2018/3P/4C