



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.11651 of 2018

and

W.M.P. (MD) .Nos.10606 and 10607 of 2018

N.Mareeswari

: Petitioner

Vs.

1.State of Tamil Nadu,
Rep. by the Principal Secretary to Government,
Home (Prison V) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

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

3.The Deputy Inspector General of Prison,
Madurai Range,
Central Prison Campus,
Madurai - 625 016.

4.The Superintendent of Prison,
Madurai Central Prison,
Madurai - 625 016.

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order passed by the fourth respondent vide his Proceedings in No.9146/ThaKu2/2018, dated 25.05.2018 and quash the same as illegal and consequently direct the fourth respondent to grant Parole to the petitioner's husband Viz., Nallamaruthu @ Maruthu, S/o Bose Convict Prisoner No.3536, now confined at Central Prison, Madurai for a period of 70 days to make family partition, arrangement of marriage of elder son, further study of third son and to give medical treatment to his mother.

For Petitioner : Mr.C.Mayil Vahana Rajendran

For Respondents : Mr.N.Shanmuga Selvam

Addl. Govt. Pleader



ORDER

The petitioner's request for releasing her husband on Parole, was rejected on 25.05.2018 by the fourth respondent on the ground that a case is pending trial against him and as such in view of the Rule 35 of Tamilnadu Suspension of Sentence Rule, 1982, persons to whom cases are pending trial shall not be granted relief.

2.The scope of Rule 35 came up for consideration before a learned Judge of this Court and in W.P.(MD).No.10033 of 2016 by an order dated 24.06.2016, this Court had held as follows:

"9.From the perusal of the order of the third respondent, it is evident that it is not a case of the respondents that the petitioner's husband suffers from any of the non-eligibility criteria for ordinary leave as contemplated under Rule 21. Therefore, the only question to be considered is whether leave should be refused because of the pendency of case against him. In other words, what is interpretation to be given to Rule 35 of the Tamil Nadu Suspension of Sentence Rules 1982 which has employed the mandatory word "shall" in the rule which reads;

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

10. Whether this provision leaves discretion to the prison authorities to consider the request for ordinary leave or it forecloses the discretion of the prison authorities. In other words, the pendency of the case alone would curtail the liberty of the prisoner to get leave even when there are insurmountable circumstances for him to get leave. In order to decide this, the principle of interpretation has to be looked into.

Interpretation:

11.To interpret a statute is to find the proper meaning so that it may be applied to a particular case. Little or nothing can be done about interpreting a statute apart from the facts of the case to which the statute is to be applied, for issues as to statutory meaning cannot be framed in any other way.

12. Very often the obvious meaning is the correct one, but until one can say that it is the only sensible meaning, the statute has not been fully interpreted. At this point in the process the context must be studied so as to be sure there is no other equally justifiable meaning that the text will bear by fair use of language .

13. Every statute must be interpreted in the light of (1) the subject-matter with which it deals; (2) the

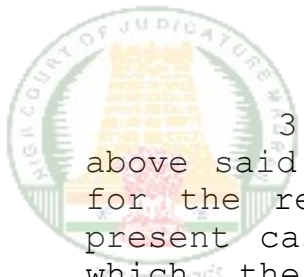


reason or purpose behind its enactment as found in the text and the evil toward which it was directed (including here extrinsic aids and the common law); and (3) the meanings of the several other relevant parts of the same statute or of statutes in pari materia. Likewise, the obvious meaning is not the correct one unless it is sensible. If, then, the literal or obvious meaning is sensible and fulfils these several demands, any other conflicting meaning (contextual or otherwise) not meeting these essentials cannot be regarded as the proper one.

14. In the context of consideration of reason or purpose behind Rule 35, the issue to be considered is whether use of words 'shall' has to be interpreted as mandatory or directory or whether the use of words 'shall' is the determinant factor or it can be interpreted depending upon the context in which it is used. Certainly, regard must be given to the context, subject matter and object of the statutory provision in question, in determining whether the same is mandatory or directory.

15. So far as the context is concerned, there may be several circumstances for the prison authorities to consider the request for leave either for death of the blood relatives or marriage of kith and kin, to get medical treatment or to render assistance in case of maternity of wife, etc. In other words, there may be circumstances under which it may be inhuman to say "No" to the request for leave. Therefore, construing "Shall" as mandatory in Rule 35 would compel the authorities to pass orders which may cause injustice to the prisoners and his relatives. Therefore, it can reasonably be construed only as "May". If the provision is construed only as "May" then the benefit i.e., fruit and benefit of the Rule would go not only to the prisoners but also to the Administrator to maintain the human relationship between the administration and the prisoner in a healthy way.

16. So far as the case of the petitioner's husband is concerned, the leave is asked for in order to arrange for the admission of the child in the college. May be that the petitioner's husband is having two pending cases against him, but at the same time that should not affect the paramount interest of the child to get education in a meritorious college. Education of the child will be the future of the child. Therefore, in the interest of the child, at least the permission sought for has to be granted.



3. In view of the categorical findings of this Court in the above said judgment, it cannot be said that Rule 35 is a total bar for the respondents to release the petitioner on Parole. In the present case, the petitioner cites various reasons for Parole, in which, the petitioner's husband intends to assist his mother for hospitalization and putting his son for further Education after his completion of tenth standard examinations. I am of the view that a sympathetic approach can be given and the petitioner can be released on Parole for a period of fifteen days.

4. Under such circumstances, the impugned order passed by the fourth respondent in Proceedings in No.9146/ThaKu2/2018, dated 25.05.2018, is quashed and consequently, the petitioner's husband, namely, Nallamaruthu @ Maruthu, S/o Bose Convict Prisoner No.3536, now confined at Central Prison, Madurai, is directed to be released on ordinary leave from 09.06.2018 to 23.06.2018 after following the usual procedure.

5. On completion of the said period of fifteen days, the petitioner's husband shall be taken back to the Central Prison, Madurai, on or before 6.00 p.m. on 23.06.2018. It is open to the fourth respondent herein to provide sufficient Escort in Civil dress to the petitioner's husband during the period of ordinary leave, the cost of which, shall be paid by the petitioner's husband. During the period of ordinary leave, the petitioner's husband shall maintain good behaviour and shall not commit any offence, in violation of which, he shall be recalled immediately.

6. With the above observations this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

1. The Principal Secretary to Government,
Home (Prison V) Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Additional Director General of Police,
Inspector General of Prison,
No.1, Gandhi Irwin Salai, Egmore,
Chennai - 600 008.
3. The Deputy Inspector General of Prison,
Madurai Range,
Central Prison Campus,
Madurai - 625 016.



4.The Superintendent of Prison,
Madurai Central Prison,
Madurai - 625 016.

COPY TO:

1.N.Shanmuga Selvam,
Additional Government Pleader,
Madurai Bench of Madras High Court, Madurai.

2.N.Mareeswari,
W/O.Nallamaruthu @ Maruthu,
No.17, 6th West Cross Street,
Meenakshi Nagar, Avaniyapuram,
Madurai - 625 012.

+1cc to M/S.C.Mayil Vahana Rajendran, Advocate SR.No. 67286

Order made in
W.P. (MD) No.11651 of 2018
07.06.2018

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JM/SKN RSK/SAR 1/08.06.2018/5P/8C