



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.10.2018**

CORAM:

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.[MD].No.20154 of 2018

and

W.M.P(MD) Nos.17913 and 17914 of 2018

N.Mareeswari

...Petitioner

Vs.

1. The 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- 625016
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 to issue 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.17017/Thaku2/2018, dated 11.09.2018 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 six weeks to make family partition and to take medical treatment.



For Petitioner : Mr.C.Mayilvahana Rajendran
For Respondents: Mr.B.Bhagawathi
Government Advocate

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ORDER

This petition has been filed seeking to quash the impugned order passed by the fourth respondent by his proceedings dated 11.09.2018 and for a direction to the fourth respondent to permit the petitioner to come out on ordinary leave for a period of six weeks.

2. The learned counsel for the petitioner would submit that the petitioner's husband was a life convict and he was convicted by the I Additional District and Sessions Judge, Madurai in S.C. No.506 of 1997 by judgement dated 08.02.2000. Thereafter the petitioner's husband was granted remission in the year 2008, after he had undergone a period of eight years imprisonment. However, two cases were filed against the petitioner's husband again by the police in Crime Nos.130 of 2009 and 283 of 2009. Thereafter remission was cancelled and the petitioner's husband was again confined to the jail and is undergoing imprisonment as life convict.. The learned counsel brought to the notice of this Court that the petitioner had applied for ordinary leave during the month of June 2018 and a writ petition was filed before this Court in W.P.(MD)No.11651 of 2015 seeking for ordinary leave . Pursuant to the orders passed by this Court, the petitioner was granted 15 days leave and he was released from the prison on 09.06.2018. Thereafter the petitioner returned to the prison on 29.06.2018 on the expiry of the leave. The learned counsel for the petitioner also brought to the notice of this Court that the petitioner's husband is suffering from severe throat ailment and he is also required to execute certain partition deeds. Therefore a representation dated 08.09.2018 was made to the fourth respondent seeking for ordinary leave for a period of six weeks. The fourth respondent by his impugned proceedings dated 11.09.2018 had rejected the application made by the petitioner.

3. The learned counsel for the petitioner would further submit that under Rule 20 of the Tamil Nadu Suspension of Sentence Rules 1982, ordinary leave can be granted even for settling family dispute like partition etc and therefore the fourth respondent ought to have considered the request made by the petitioner to grant ordinary leave to her husband.

4. The learned Government Advocate would submit that after the petitioner's husband was granted remission, he indulged in committing two other offences and therefore remission was ~~cancelled~~ ^{revoked}. He would further submit that the petitioner is not entitled for grant of leave, in view of pending trial in two cases

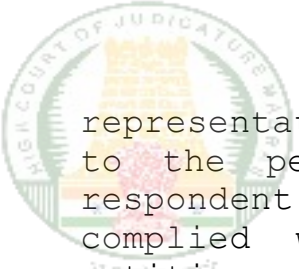


that were registered against the petitioner. He would further submit that the petitioner was already granted ordinary leave during the month of June 2018 for a period of 15 days and therefore the petitioner will be entitled to ordinary leave only after two years from the last ordinary leave as per Rule 22(iii) of the Tamil Nadu Suspension of Sentence Rules. The learned Government Advocate also brought to the notice of this Court, the counter affidavit filed by the fourth respondent wherein detailed reasons have been given as to why the petitioner is not entitled for grant of ordinary leave.

5. This Court carefully considered the submission made on either side.

6. The only valid reason that needs to be considered in this case, is as to whether the petitioner should be granted ordinary leave in order to enable him to execute certain partition deeds in order to settle the family property among the members of the family. Rule 20(v) of the Tamil Nadu Suspension of Sentence Rules, 1982 specifically provides for grant of ordinary leave on the ground of settling family dispute like partition. The next question that has to be considered by this Court is whether the petitioner's husband will be entitled to seek for ordinary leave again after he was already granted ordinary leave for a period of 15 days by virtue of the orders passed by this Court in W.P(MD) No.11651 of 2015. Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 deals with the eligibility for ordinary leave. Rule 22(ii) specifically provides that ordinary leave can be granted for a period of one month at a time unless it is extended by the Government. In this case on an earlier occasion, the petitioner was granted 15 days leave by this Court and was released from jail on 09.06.2018. A combined reading of the Rule 22(ii) and (iii) of the Tamil Nadu Suspension of Sentence Rules, 1982, enables this Court to grant the petitioner another 15 days of ordinary leave. Bar contemplated under Rule 22 (ii) of the Tamil Nadu Suspension of Sentence Rules, 1982 will apply where the petitioner has already been granted ordinary leave for one month. Therefore it is possible for the fourth respondent to consider the grant of ordinary leave for a further period of 15 days to the petitioner in view of the grounds raised by the petitioner to settle the family dispute by executing partition deed. Since the petitioner has already been convicted and undergoing life imprisonment, the pendency of the trial insofar as the other two cases are concerned, cannot be read into under Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 .

7. In view of the above, there shall be direction to the fourth respondent to consider the request made by the petitioner for a maximum period of 15 days. The petitioner is directed to make a fresh representation to the fourth respondent and the fourth respondent shall consider the



representation and grant ordinary leave for a period of 15 days to the petitioner's husband. It is left open to the fourth respondent to impose any conditions that are required to be complied with during the period of ordinary leave, by the petitioner's husband.

8. With the above direction, the writ petition is disposed of . No Costs. consequently connected miscellaneous petitions are is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar (CS-IV)

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- 625016.
4. The Superintendent of Prison,
Madurai Central Prison,
Madurai- 625 016.

+ 1 CC TO MR.C.MAYILVAHANA RAJENDRAN, ADVOCATE IN SR NO.88390
+ 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO. 88695

aav

BU/SKN/SAR-IV : 05.10.2018 : 4P/7C

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