



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Cr1.OP(MD)No.14446 of 2019

Subha
W/o.S.Ganesan

: Petitioner

Vs.

1.The Additional Director General of Police (Prisons),
Gandhi Irwin Road,
Egmore, Chennai.

2.The Superintendent,
Central Prison, Trichy.

: Respondents

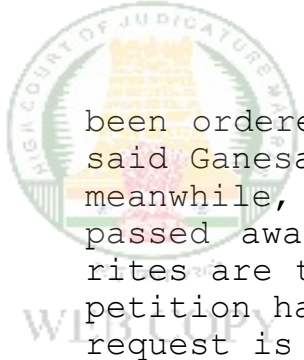
PRAYER: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, praying to direct the second respondent to grant 7 days Emergency Leave/Parole to the petitioner's husband namely, Ganesan, S/o.Sengottaiyan, (Prisoner Role 23187), who is in Central Prison, Trichy, to perform his mother's funeral ceremony and customs on the basis of the petitioner's representation, dated 08.10.2019.

For Petitioner : Mr.S.Gokul Raj

For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor

O R D E R

The petitioner is the wife of the convict prisoner Ganesan, who has been found guilty of the offence under Section 138 of the Negotiable Instruments Act, in C.C.No.266 of 2016, on the file of the learned Judicial Magistrate (Fast Track Court), Karur, vide Judgment, dated 13.07.2018. He had been sentenced to six months Simple Imprisonment, but without any fine. Challenging the same, the said Ganesan filed C.A.No.104 of 2018, before the Additional Sessions Judge, Karur. The appeal was dismissed on 11.01.2019 and the judgment of the trial Magistrate was confirmed as such. Challenging the same, he filed Cr1.R.C.(MD).SR.No.29378 of 2019. Since there was delay in filing the revision case, he filed Cr1.M.P.(MD).No.8541 of 2019 before this Court. It is stated that notice has



been ordered in the said condone delay petition on 01.10.2019. The said Ganesan is presently confined in Central Prison, Trichy. In the meanwhile, the mother of the said Thiru. Ganesan is said to have passed away today (08.10.2019) morning at 06.10 a.m. The funeral rites are to be performed tomorrow, ie., 09.10.2019. Therefore, this petition has been filed by his wife, namely, Subha. The petitioner's request is that the Superintendent of Prison-R2 herein is having the statutory power of granting emergency leave. Eventhough the petitioner filed an application for invoking the said power, the second respondent has declined to even receive the application and that necessitated the filing of this Criminal Original Petition.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

3. Rule 12 of Tamilnadu Suspension of Sentence Rules, 1982 reads as under:

"12. Right to grant or reject emergency leave and appeal thereupon:

The Superintendent of Prison reserves the right either to grant or reject the emergency leave for special reasons to be recorded in writing which shall always be treated as strictly confidential. The reasons for such rejection shall not be communicated to the prisoner but shall be reported to the higher authorities if called upon to do so. The petition preferred by the prisoner against such rejection shall always be submitted to the Inspector-General of Prisons with the remarks of the Superintendent of Prison for his orders and the Inspector-General of Prisons may either grant or reject the emergency leave."

4. Of course, Rule 13 of the said Rules would prescribe an outer ceiling limit. In this case, the convict has not availed any emergency leave, till date.

5. When the mother of the convict has passed away, it is certainly a case for grant of emergency leave, since as a son, he will have to perform final obsequies.

6. In this view of the matter, this Court directs the second respondent to grant seven days emergency leave to Thiru. Ganesan, Husband of the petitioner herein, who has been confined in Central Prison, Trichy, (Prisoner Roll 23187), pursuant to the Judgment, dated 13.07.2018, made in C.C.No.266 of 2016 on the file of the Fast Track Court (Magisterial Level), Karur and confirmed vide, Judgment, dated 11.01.2019, in C.A.No.104 of 2018 on the file of the Additional Sessions Judge, Karur.



7. The Registry to communicate a copy of this order by fax/e-mail to the second respondent. The learned Additional Public Prosecutor is directed to communicate the direction issued by this Court telephonically as well as through any other mode to the second respondent and that the second respondent need not wait for the receipt of certified copy from this Court.

8. The petitioner's counsel, on instructions, gives an undertaking that on the expiry of the emergency leave granted, the convict would, on his own, surrender before the second respondent. Since the convict is in prison only in a case arising under Section 138 of the Negotiable Instruments Act, there is no need for providing any police escort. The Superintendent of Prison, Central Prison, Trichy, will release the prisoner, immediately, on receipt of the fax copy of this order, whatever be the time.

9. With the above direction, the Criminal Original Petition is allowed.

SD
ASSISANT REGISTRAR (RECORDS)

TRUE COPY

ASSISTANT REGISTRAR (CS-II)

PJL

To

1.The Additional Director General of Police (Prisons),
Gandhi Irwin Road,
Egmore, Chennai.

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

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

1CC TO MR. MR.S.GOKUL RAJ, ADVOCATE SR:17226

DM
08/10/2019
3P/5C

ORDER MADE IN
Cr1.OP(MD)No.14446 of 2019
08.10.2019