

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.10.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

H.C.P. No. 1693 of 2020

K.Idhayakani ...Petitioner/Wife of Detenu

-vs-

1. The Deputy Inspector General of Prison,
Vellore Range,
Vellore.

2. The Superintendent of Prison,
Central Prison,
Cuddalore

...Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus directing the respondent to grant 30 days ordinary leave by considering the representation dated 03.09.2020 to the petitioner's husband Mr.Kumar S/o.Koothan, aged 34 years, convict Prison, now confined in the Central Prison, Cuddalore.

For Petitioner : Ms.S.Nadhiya

For Respondents Mr.R.Prathap Kumar,
: Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner, who is the wife of the convict, has filed this habeas corpus petition, seeking 30 days ordinary leave.

2. For the offence punishable under Section 304(1) I.P.C, in S.C.No. 191 of 2008, the convict was sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-, in default, to undergo one year rigorous imprisonment.

3. On appeal before this Court in Crl.A.No. 192 of 2014 dated 29.07.2019, the sentence imposed by the trial Court was modified to five years rigorous imprisonment.

4. Now, the present habeas corpus petition has been filed seeking ordinary leave on the premise, the presence of the convict is required for the purpose of making arrangements for the livelihood of the family consisting of two school going children.

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

6. The report produced before us would reveal that the reason assigned is true. The conduct of the convict is also found to be satisfactory. However, the request made by the petitioner on 03.09.2020 was not considered in view of Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982, which speaks on the eligibility for ordinary leave.

7. We do not find any reason to reject the request of the petitioner by merely placing reliance upon Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982. Rule 22 is subject to Rule 40 of the Tamil Nadu Suspension of Sentence Rules. The Government, namely has got power to exempt any person from all or any of the provisions of the Rules. This is a fit case where such an exemption is required to be exercised especially when the convict has already undergone one year and three months of incarceration.

8. The condition of three years cannot be made mandatory in all cases. Otherwise, as rightly observed by this Court in T.Angayarkanni v. The Home Secretary (Prison), Home Department, Secretariat, Chennai and others reported in CDJ 2020 MHC 2344, it would be discriminatory and violative of Article 14 of the Constitution of India. To put it differently, the convict who is undergoing the life imprisonment will be entitled to be considered, after merely serving three years of imprisonment as against the another, who has got less than three years. This would defy the reason and logic. Such an approach would also be contrary to Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 itself. Similarly, a person convicted for about five years cannot be made to undergo imprisonment for three years to be eligible for leave.

9. We are also of the view that Rule 22 is meant to be applied only to such cases where the period of incarceration is more with the maximum punishment of life imprisonment. Therefore, it may not be applied in all cases especially the

cases where the sentence imposed is for lesser years. In fact, by applying the Rule of purposive interpretation, for any imprisonment less than three years, the Rule itself may not have an application and in such cases, it is well open to the respondents to consider the request made on its own merits.

10. We find that the anomaly as aforesaid has not been looked into and rectified despite the observation made in this regard by the Division Bench in T.Angayarkanni (supra). The learned Additional Public Prosecutor is directed to inform the learned Advocate General to assist the Court for the purpose of amending the Rules suitably to rectify the aforesaid anomaly.

11. In such view of the matter, we direct the Government/Secretary to Government, Home Department, Fort St. George, Chennai, to apply the power available under Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 and pass appropriate orders on merit and in the light of the observations made above, within a period of two weeks from the receipt of the proposal from the second respondent. The second respondent is directed to submit a proposal within a period of one week from the date of receipt of a copy of this order.

12. With the above direction, the habeas corpus petition is disposed of.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Secretary to Government,
Home Department,
Fort Saint George, Ch-9.
2. The Deputy Inspector General of Prison,
Vellore Range,
Vellore.
3. The Superintendent of Prison,
Central Prison,
Cuddalore
4. The Public Prosecutor,
High Court, Madras.

H.C.P. No. 1693 of 2020

SR(CO)
RV(01/12/2020)