

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH
AND
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

H.C.P.NO.1900 OF 2020

Nalini ... Petitioner/Wife of the
Detenue

-vs-

1. The State, represented by its
Secretary, Government of Tamil Nadu,
Home Department, Fort St. George,
Chennai - 600 009.
 2. The Deputy Inspector General of Prison,
Cuddalore District,
Cuddalore.
 3. The Superintendent of Central Prison,
Cuddalore Central Prison,
Cuddalore District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India to issue a writ of habeas corpus directing the respondents to grant six months ordinary leave to the petitioner's husband detenu Rajiv Gandhi, son of Gopalakrishnan, C.No.16486 on human consideration, now confined in Central Prison, Cuddalore to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

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

ORDER

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

The petitioner is the wife of Rajiv Gandhi, who has been convicted for life for the offence committed under Section 6 of the Protection of Children from Sexual Offences Act, 2012(POCSO

Act). The petitioner seeks 60 days leave for the convict in order to make sure that their progeny continues.

2.The learned counsel for the petitioner submitted that such a right cannot be denied and therefore, appropriate orders will have to be passed.

3.The learned Additional Public Prosecutor appearing for the State submitted that Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 speaks about ordinary leave. Such a leave can only be considered when a convict undergoes a minimum period of three years of incarceration. Even the emergency leave cannot be considered since the reason based upon which it has been sought for do not come within the purview of any one of the grounds for such a grant. In any case, an emergency leave at one stretch can be given for a maximum period of six days alone.

4.The Probation Officer has stated that the reason assigned for grant of leave is correct. If that is the case we can consider the request made by the petitioner by bringing it under Rules 6 and 7 of the Tamil Nadu Suspension of Sentence Rules, 1982. Though taking treatment or steps to bring about a child has not been mentioned as one of the grounds to grant of leave under Rule 6 of the Rules, the said Rule is only directory in nature insofar as the contingencies mentioned therein. Thus, one has to apply the principle governing purposive interpretation in considering the said Rule. When a convict is entitled for emergency leave to attend to the wedding of the son or daughter, which is inclusive of full brother or full sister, it cannot be stated that the same cannot be extended for taking treatment to have a child. However, we do agree with the submission made by the learned Additional Public Prosecutor appearing for the State. In such a case, a maximum period permissible is six days. Accordingly, we are inclined to grant six days leave to the petitioner.

5.Considering the above, we are inclined to direct the respondents to grant leave to the convict for six days commencing from 11.11.2020 subject to the usual conditions that can be imposed by the respondents. The convict shall be released from the prison at 10.00 a.m. on 11.11.2020 and he shall return back to the prison at 05.00 p.m. on 18.11.2020 (the day on which the convict is released from the prison and the day on which he is readmitted has been excluded). The respondents shall provide necessary escort to the convict from the Central Prison from the time he leaves the prison and till such time he is taken back to the Central Prison, on the said date and time as ordered by this Court.

6.We also make it clear that the convict will have to undergo COVID 19 test before his release and after his return. When he comes back, he may be kept in quarantine as per the medical advice.

7.With the above directions, this Habeas Corpus Petition is disposed of.

Post the matter 'for reporting compliance' on 19.11.2020.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary, Government of Tamil Nadu,
Home Department, Fort St. George,
Chennai - 600 009.
2. The Deputy Inspector General of Prison,
Cuddalore District,
Cuddalore.
3. The Superintendent of Central Prison,
Cuddalore Central Prison,
Cuddalore District.
4. The Joint Secretary to Government Public (Law & Order),
Fort St.George, Chennai-9.
5. The Public Prosecutor,
High Court, Madras.

Copy To
The Section Officer,
Criminal Section, High Court,
Madras-104.

H.C.P.No.1900 of 2020

LN(CO)
CS/09/11/2020