



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP (MD)No.3094 of 2020

Kumar @ Palanikumar

... Petitioner

Vs.

- 1.The Additional Chief Secretary to Government,
Home Department, Government of Tamilnadu,
Fort St. George, Chennai - 9.
- 2.The Additional Director General of Police,
Inspector General of Prisons,
Chennai - 8.
- 3.The Superintendent of Prison,
Madurai Central Prison, Madurai,
Madurai District.

... Respondents

Prayer : Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent relating to order in G.O.(pa) No.497 H0me (Prison V) department dated 22.5.2019 and quash the same and directing the first respondent to grant ordinary leave for 30 days to the petitioner by giving relaxation from Rule 21(b), of Tamilnadu Suspension of Sentence Rules, 1982 under Rule 40 of the said Rules within the time stipulated by this Court.

For Petitioner	:	Mr.V.Kannan
For Respondents	:	Ms.M.Anantha Devi, Government Advocate (crl.side)

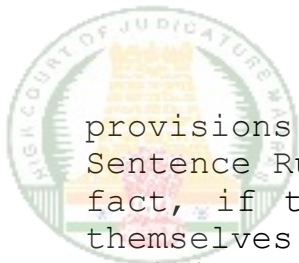
ORDER

Heard the learned counsel on either side.

2.The petitioner is a life convict. He was convicted for the offences under Sections 396 and 458. The petitioner applied for grant of ordinary leave. The said application was forwarded to the Government for consideration. The Government by the impugned order rejected the petitioner's request by citing Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, 1982. This rejection order is under challenge in this writ petition.

3.The learned Government Advocate (crl.side) for the respondents submitted that the impugned order does not warrant any interference. She drew my attention to Rule 21(b) of the said Rules. The said Rule states that prisoners sentenced under Sections 392 to 402 IPC shall not be eligible for ordinary leave. She, therefore, wanted me to sustain the impugned order and dismiss this writ petition.

4.I am unable to agree with the said submission of the learned Government Advocate (crl.side). As rightly pointed out by the learned counsel appearing for the petitioner, even though the petitioner is not eligible for ordinary leave, still it is open to the Government to exempt any person from all or any of the



provisions of the Rules. Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 confers power to exempt on the Government. In fact, if the petitioner was otherwise eligible, the jail authority themselves could have granted him relief. In this case, since the petitioner was not eligible for such relief in terms of the Rule 21(b), the matter was sent to the Government. The Government had chosen to reject the petitioner's request by citing the very same Rule 21(b). This shows non application of mind. It is for the Government to consider if in the case of the petitioner herein, exemption deserves to be made or not. In this case, this exercise was not even undertaken. This rejection is rather mechanical. Except citing the Rule 21(b), there is nothing on record to indicate that the Government applied its mind with reference to Rule 40.

5. In this view of the matter, the order impugned in this writ petition is set aside and the matter is remitted to the file of the first respondent to pass orders afresh in accordance with law. This writ petition is allowed on these terms. The first respondent shall pass such orders within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed anything on the merits of the matter. No costs.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Skm

To

1. The Additional Chief Secretary to Government,
Home Department, Government of Tamilnadu,
Fort St. George, Chennai - 9.
2. The Additional Director General of Police,
Inspector General of Prisons, Chennai - 8.
3. The Superintendent of Prison, Madurai Central Prison, Madurai,
Madurai District.
4. The Additional Public Proscutor,
madurai Bench of madaras High court,
Madurai.

+2 CC to M/s.V.KANNAN, Advocate (SR-10268[F] dated 05/03/2020)

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KB(20/03/2020) 2P 7C