



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

W.P.[MD]No.8669 of 2020

WEB COPY

Ramesh

... Petitioner

Vs.

1.The State Represented by the
Home Secretary,
Home (Prison) Department,
St.George Fort,
Secretariat, Chennai-600009.

2.Additional Director General of Prison,
A.D.G.P Office,
Wanels Road,
Egmore, Chennai-600 008.

3.The Superintendent
Central Prison,
Cuddalore,
Cuddalore-625 016.

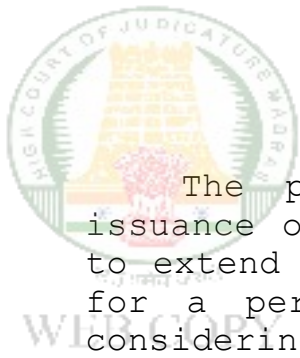
4.The Inspector of Police,
Pattukkottai Circle Police Station,
Thanjavur Distric.
(Crime No.74 of 2000)

... Respondents

PRAYER : This Writ Petition is filed under Article 226 of Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to extend the ordinary leave granted to the petitioner, dated 08.07.2020, which expires on 08.08.2020, for a further period of six weeks from 08.08.2020, by considering the petitioner's representation dated 24.07.2020.

For Petitioner : Mr.AK.Gopalan

For Respondents : Mr.S.Chandrasekar
Additional Public Prosecutor



O R D E R

The petitioner has filed this Writ Petition seeking for issuance of a Writ of Mandamus, directing the respondents 1 to 3 to extend the ordinary leave, which granted earlier on 08.07.2020 for a period of four weeks, which expires on 08.08.2020, by considering his representation dated 24.07.2020.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the Life Convict Prisoner [C.T.No.10140]. He was convicted as above in S.C.No.53 of 2002 on the file of the Principal District Session Court, Nagapattinam, for the offence punishable under Section 302 of I.P.C. as such, he had already undergone more than 18 years of imprisonment, as a Life Convict. Against the said judgment, the petitioner had preferred an appeal in Crl.A.No.1371 of 2002 before the Principal Bench of this Court and the same was dismissed on 08.11.2004.

3.It is represented on behalf of the petitioner before this Court that the petitioner's wife viz., Rani, aged about 60 years, is suffering from back pain and uterus problems and therefore, for giving assistance the petitioner applied for 30 days Parole. Based on the said request, the prison authorities had granted 30 days Parole to him, i.e., from 07.07.2020 to 08.08.2020.

4.Now, the grievance of the petitioner is that his wife was admitted in a private hospital and the Doctor advised to remove the Uterus and to take continuous treatment for back pain. Further, the petitioner's mother viz., Muthulakshmi, aged about 79 years, who is also in the custody and care of the petitioner, is also suffering old age ailments and cardiac problems. Since the petitioner being elderly person, he is having the duty to maintain his wife Rani and his children, extending the ordinary leave for another one month is very much necessary to him. In this regard, the petitioner has sent a representation dated 24.07.2020, but, the same has not been considered so far. Hence, the present Writ Petition.

4.The learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the third respondent/Superintendent, Central Prison, Cuddalore, has already rejected the request of the petitioner, vide his proceedings dated 30.07.2020 and therefore, the prayer sought for by the petitioner in the present Writ Petition has become infructuous and hence, this Writ Petition cannot be entertained.

5.Heard the learned counsel on either side.



6. Upon considering the arguments advanced by the learned counsel on either side, it appears that as of now, the petitioner is enjoying one month ordinary leave from 07.07.2020, which expires on 08.08.2020. As per Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982, now the petitioner is not entitled to second spell of ordinary leave. In the said circumstances, it is useful to see Rule 22 Tamil Nadu Suspension of Sentence Rules, 1982, of the which reads as follows:-

22. Eligibility for ordinary leave:- (1) No prisoner shall be granted ordinary leave unless he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed (Three years) of imprisonment from the date of initial imprisonment.

(2) The period of ordinary leave shall not exceed one month at a time unless it is extended by Government.

(3) The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave.

(4) In cases of prisoners who have got a balance of three years to serve ordinary leave not exceeding one month for each of three years, the year being calculated from the date of his return to prison from last leave, shall be granted so as to enable them to make arrangements for settling the family life after release.

7. In view of the above said Rule, the respondents 2 and 3 are prohibited from granting another one month ordinary leave to the petitioner, unless the same was considered by the Government, since the petitioner had already availed one month ordinary leave. On that score alone, the petitioner's loses the eligibility for applying the second spell of ordinary leave before the second and third respondent. Apart from that, as of now, the representation of the petitioner, dated 24.07.2020, had also been rejected by the third respondent, vide his proceedings dated 29.07.2020.

8. At this juncture, the learned counsel appearing for the petitioner would submit that the third respondent, Superintendent, Central Prison, Cuddalore, is not the competent authority to dispose the representation given by the petitioner, dated 24.07.2020.



9.In this regard, on going through the copy of the representation dated 24.07.2020, it is seen that the same was submitted to the first respondent/Home Secretary, Government of Tamil Nadu, Home (Prison) Department, Secretariat, who is the competent authority to extend the second spell of ordinary leave. Therefore, the first respondent has to duty bound to consider the same. But, here in this case, the third respondent herein rejected the representation of the petitioner, dated 24.07.2020, which is not in accordance with law.

10.In view of the above, the first respondent is directed to consider the representation of the petitioner, dated 24.07.2020 and pass appropriate orders on merits and in accordance with law forthwith.

11.Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

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Secretariat, Chennai-600009.

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