

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED :29.01.2020

CORAM

THE HONOURABLE **MR.JUSTICE A.D.JAGADISH CHANDIRA**

WEB COPY

W.P. (MD) No.26952 of 2019

Latha

... Petitioner / W/o. the detenue

Vs.

1.The State represented by,
The Secretary to Government of Tamilnadu,
Department of Home, Fort St. George,
Chennai-600 009.

2.The Additional Director General of Prison,
C.M.D.A.Towers, Egmore, Chennai-600 008.

3.The Superintendent,
Central Prison, Palayamkottai.

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, by directing the first respondent to grant leave for 30 days to petitioner's husband, the detenue, Thirupathirajan S/o Narayanan life convict prisoner Convict No.4432 detained at Central Prison, Palayamkottai under rule 40 the Tamilnadu Suspension of Sentences Rule 1982.

For Petitioner : Mr.R.Narayanan

For Respondent : Mrs.S.Bharathi

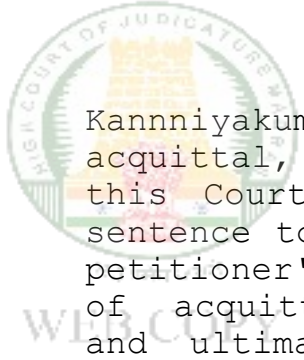
Government Advocate (Crl. Side)

ORDER

This writ petition has been filed seeking for a direction to the first respondent to grant leave for 30 days to petitioner's husband, the detenue, Thirupathirajan S/o Narayanan life convict prisoner Convict No.4432 detained at Central Prison, Palayamkottai under Rule 40 of the Tamil Nadu Suspension of Sentences Rule, 1982.

2.The petitioner is the wife of the detenue, viz., Thirupathirajan S/o Narayanan undergoing life imprisonment in Central Prison, Palayamkottai since 27.07.2019.

3.It is the case of the petitioner that her husband faced trial in S.C.No.99 of 2007 before the learned Sessions Court, Nagercoil and he was acquitted from charges on 29.04.2016. After the acquittal, the petitioner had married the detenue on 24.03.2019 at Sri Hari Narayana Swamy Temple in Kumarapuram, Thoopur,



Kannniyakumari District. In the meanwhile, against the order of acquittal, the State had preferred an appeal before this Court and this Court reversed the judgment of acquittal and awarded life sentence to the petitioner on 27.06.2019. Pursuant to the same, the petitioner's husband surrendered on 27.07.2019. Based on the order of acquittal, the petitioner had married the detainee on 24.03.2019 and ultimately, the order of acquittal was reversed and the petitioner's husband surrendered on 27.07.2019 without making any basic essential arrangements for the day to day life of the petitioner. Since the petitioner had been pushed down to a difficult situation without any support, she had filed this petition to grant leave for 30 days to her husband.

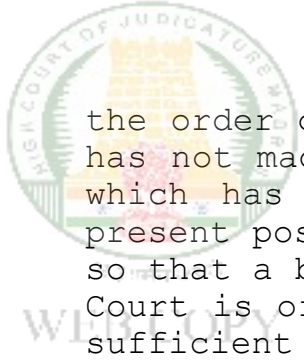
4.The respondent had filed a counter stating that as per Rule 22 of the Tamil Nadu Suspension of Sentences Rules, 1982, no prisoner shall be granted ordinary leave, unless he has completed 3 years ahead of imprisonment. Since the petitioner's husband has undergone only six months and 24 days of imprisonment, the request of the petitioner has been rejected by the respondents.

5.The learned counsel appearing for the petitioner would submit that pursuant to the order of acquittal, the petitioner had married the detainee on 24.03.2019 and all of a sudden, the order of acquittal was reversed and the petitioner's husband surrendered before the Jail authorities on 27.07.2019 within four months of marriage without making any arrangements for the petitioner, who was newly wed. Thereby, the petitioner is facing so many problems regarding her day to day survival and in order to make arrangements for settling the families properties, the petitioner's husband has to come and talk to his family members. Hence, the present petition is filed seeking for leave.

6.The learned counsel appearing for the petitioner would submit that though as per Rule 22 of the Tamil Nadu Suspension of Sentences Rules, 1982, there is a bar to grant leave before completion of 3 years, Section 40 grants power to exempt any person from all or any of the provisions of the rule in an emergency situation. He would further submit that the petitioner is unable to do anything and if only the detainee comes out from the jail, he can discuss with his brothers for making some arrangements for settling the properties in the name of the petitioner.

7.The learned Government Advocate (Crl. Side) would submit that since there is a bar under Rule 22 of the Tamil Nadu Suspension of Sentences Rules, 1982, the request of the petitioner has been rejected by the respondents.

8.It is seen that based on the acquittal, the petitioner had married the detainee on 24.03.2019, whereas, the order of acquittal has been reversed and the petitioner's husband had been convicted on 27.06.2019 within three months from the date of their marriage and that the detainee has also surrendered on 27.07.2019 to comply with



the order of this Court. It is further seen that since the detenue has not made arrangement for the basic necessity of the petitioner, which has put her to a precarious situation, she has filed the present position to grant leave to her husband to come out on leave so that a basic necessities can be arranged for the petitioner. This Court is of the opinion that the requirement of grant of leave is a sufficient and reasonable ground for the State to invoke the discretion vested in the State under Rule 40 of the Tamil Nadu Suspension of Sentences Rules, 1982.

9. In View of the same, this Court is of the view that leave can be granted to the detenue for a period of Twenty (20) days as against one month sought by the petitioner vide her affidavit, dated 12.11.2019. Therefore, the detenue will be released on 04.02.2020. Further, during the leave period, the petitioner shall report before the Anjugramam Police Station, Kanyakumari District on every Monday at 10.30 a.m. The detenue shall surrender before the Jail Authorities on 24.02.2020 by 06.30. p.m.

10. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

To

1. The Secretary to Government,
Government of Tamilnadu,
Department of Home, Fort St. George,
Chennai-600 009.
2. The Additional Director General of Prison,
C.M.D.A. Towers, Egmore,
Chennai-600 008.
3. The Superintendent,
Central Prison, Palayamkottai.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.NARAYANAN, Advocate (SR-3785[F] dated 29/01/2020)

W.P. (MD) No.26952 of 2019
29.01.2020