

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2021

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice R.N.MANJULA

W.P.No.11256 of 2021

M.Mohamed Ali

.. Petitioner

Vs

1. The State Rep. by its
Home Secretary (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Deputy Inspector General of Prison,
Chennai Range, Whannels Road,
Egmore, Chennai - 600 008.
3. The Superintendent of Prison,
Puzhal Central Prison - I,
Puzhal - 600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in No.7873/T.K.2/2020 dated 05.03.2021 passed by the third respondent and quash the same and direct the third respondent to grant one month Ordinary Leave without escort to the petitioner namely, M.Mohamed Ali, S/o.Mohamed Yunus, now confined in Puzhal Central Prison - I.

For Petitioner: Mr.M.Mohamed Saifulla

For Respondents: Mr.R.Muniyapparaj
Government Advocate (Crl. Side)

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

Challenging the order dated 05.03.2021 passed by the third respondent, the present writ petition has been filed.

2. The petitioner is the convict pursuant to the judgment rendered by the II Additional Special Court under NDPS Act, Chennai, dated 19.12.2019 under the NDPS Act, imposing rigorous

imprisonment for a period of 10 years. The trial Court had granted set off, invoking Section 428 Cr.P.C. while rendering the judgment.

3. The petitioner sought for leave on the premise that his presence is required for the family. By the impugned order dated 05.03.2021, it was rejected on the ground that he has completed the period of one year and seven months from the date of conviction. Challenging the same, the present writ petition has been filed.

4. Learned counsel appearing for the petitioner submitted that the impugned order cannot be sustained in the eye of law. The petitioner has been under incarceration right from the date of his initial arrest and, therefore, during the pendency of the trial, he did not come out. The trial Court exercised the power under Section 428 Cr.P.C by giving the benefit for a period of incarceration undergone by him. Therefore, the impugned order has been passed on a wrong factual premise. If the third respondent who passed the impugned order does not have jurisdiction, then he ought not to have passed the order. Reliance has been made on the Division Bench judgment of this Court dated 26.09.2018 in Selvi Vs. The Secretary, Home Department, Government of Tamil Nadu and Others reported in CDJ 2018 MHC 6123 wherein, this Court was pleased to consider the ambit and scope of Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982 and the relevant paragraphs read as under:

"3. For better appreciation, Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982 is, accordingly, extracted hereunder:

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 of 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."

4. The aforesaid rule makes a mention about the initial imprisonment to be reckoned for the purpose of calculating three years of incarceration. Therefore, the period undergone by the detenu pending trial also will have to be taken into consideration for reckoning the three years term.

5.The learned Additional Public Prosecutor would also submit that if that is taken into consideration, the detenu would be completing three years period on 17.08.2018.

6. It appears that there is no other objection other than the technical one raised in the rejection order. Therefore, in the light of the aforesaid rule, we are of the view that the rejection order cannot be sustained. While interpreting rule, we have to adopt a purposive interpretation, keeping in view of liberty of a convict is concerned. Under Section 428 of the Code of Criminal Procedure also, the detenu is entitled for set off. In such view of the matter, we are inclined to set aside the order dated 12.07.2018, though, it is not under challenge herein and accordingly, it is set aside. Consequently, the respondents are hereby directed to grant 15 days ordinary leave to the detenu, viz., namely Karuppasamy @ Rajendran, S/o.Murugesan, aged about 42 years, Convict Prisoner No.CP.9714, detained at Central Prison, Madurai, starting from 28.09.2018, subject to the usual conditions that can be imposed. IT is made clear that after the aforesaid period is over, the detenu will have to be returned back to the prison."

5. Learned counsel appearing for the petitioner has made further reliance upon the orders passed by the Hon'ble Apex Court in Suo Motu Writ Petition (C) No.1 of 2020 reported in CDJ 2021 SC 334 with respect to the need for decongestion of the inmates of prison in view of the ongoing pandemic situation. The following is the relevant paragraph :-

"8. We may notice that India has more than four lakh prison inmates. It is observed that some of the prisons in India are overburdened and are housing inmates beyond optimal capacity. In this regard, we may notice that the requirement of de congestion is a matter concerning health and right to life of both the prison inmates and the police personnel working. Reduction of impact of Covid19 requires this Court to effectively calibrate concerns of criminal justice system, health hazards and rights of the accused. From

limiting arrests to taking care of Covid19 patients, there is a requirement for effective management of pandemic from within the prison walls so as to defeat this deadly virus."

6. Learned Government Advocate (Criminal Side), appearing for the respondents submitted that though the contentions of the learned counsel appearing for the petitioner is correct with respect to the counting of the period of incarceration, the authority to consider the request for leave is the first respondent. If the petitioner gives a fresh representation, the same will be considered.

7. For two reasons, the order impugned cannot be sustained in the eye of law. Factually, an error has been committed in the impugned order while computing the period of incarceration. It is not in dispute that the petitioner has been under incarceration from the date of initial arrest pending trial. This incarceration continued thereafter till the judgment was delivered by the trial Court and even thereafter. In such view of the matter, we are of the view that it has to be reckoned as discussed in the judgment referred supra with the initial period of imprisonment would be the starting point. Even the trial Court has applied Section 428 Cr.P.C. Secondly, the order impugned ought not to have been passed by the third respondent as the competent authority is the first respondent. Even in the counter affidavit filed by the third respondent, it has been stated as follows:

"8) With regard to the averments made in grounds (iv) to (vii) of the affidavit, it is submitted that as mentioned above, a representation from the prisoner's wife Tmt.Mehabooba Jailani dt. 11.02.2021, was received to this office on 19.02.2021, requesting to grant 1 month leave to the said prisoner in order to enable him to make arrangements for their son's education. As the said prisoner was convicted and imprisoned on 19.12.2019, the said prisoner had completed only 01 year 01 month and 09 days as on 04.03.2021, and hence he did not satisfy Rule No.22 of Tamil Nadu Suspension of Sentence 1982, by which the prisoner should have completed minimum 3 years of imprisonment, and hence he was not eligible for 1 month ordinary leave at that point in time, and the same was communicated to the prisoner's wife vide this office letter No.7873/R2/2020 dt.04.03.2020. It is submitted that however now a

communication has been received from the Director General of Police/Director General of Prisons and Correctional Services, vide memo No.39946/PS4/2020 dt.04.05.2021, enclosing the orders of the Hon'ble High Court of Madras orders in W.P.No.1912 of 2021 dt.08.02.2021, wherein this Hon'ble Court had directed to calculate the period of imprisonment including remand set-off and not from the date of judgment as practised. It is submitted as per the above directions of this Hon'ble Court, now the remand period is also included while calculating the days of imprisonment, and hence the petitioner herein/convict prisoner has completed 04 years 09 months and 19 days of imprisonment as on 25.05.2021 including remand setoff, and so the petitioner/convict prisoner satisfies the criteria mentioned in Rule No.22 of Tamil Nadu Suspension of Sentence 1982. However, as the above said prisoner is convicted under NDPS Act, as per the instructions of the Union Central Government vide Government of India, Ministry of Home Affairs order F.No.V-17013/02/2016-PR dt.06.12.2017 and letter No.V-17013/02/2016-PR dt.13.07.2018, only the State Government has the power to grant ordinary leave to those prisoners who are convicted and sentenced under an law relating to matter to which the executive poser of the Union extends, for a period not exceeding 15 days in a year. Hence, if the petitioner makes a fresh representation, then after getting reports from the concerned Probation Officer and Police Station, a proposal would be submitted to the State Government for suitable consideration."

8. In such view of the matter, we are inclined to set aside the order dated 05.03.2021 impugned in this writ petition. Accordingly, the same stands set aside. The third respondent is directed to send papers to the first respondent along with his recommendation, if any, within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent is directed to pass appropriate final orders within a period of four weeks thereafter.

9. With the above direction, the writ petition stands allowed. No costs.

-s/d-
Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

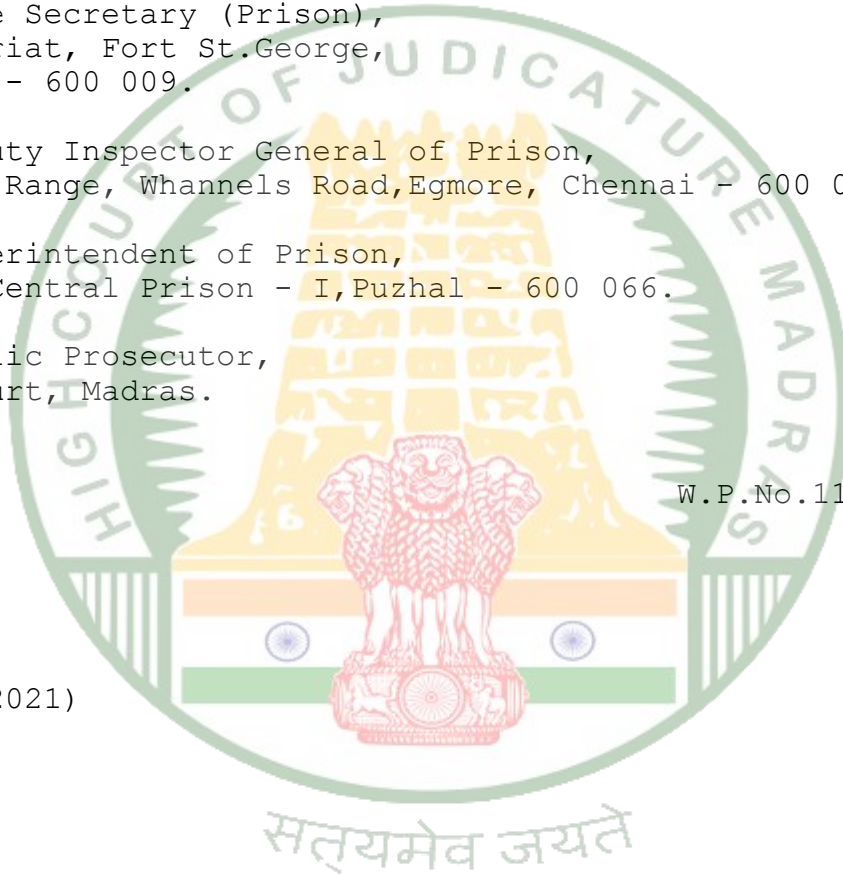
mmi/ssm

To

- 1.The Home Secretary (Prison),
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.The Deputy Inspector General of Prison,
Chennai Range, Whannels Road, Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison,
Puzhal Central Prison - I, Puzhal - 600 066.
- 4.The Public Prosecutor,
High Court, Madras.

W.P.No.11256 of 2021

RP(CO)
SP(18/06/2021)



WEB COPY