

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.05.2021

CORAM:

THE HON'BLE Dr. JUSTICE ANITA SUMANTH
AND
THE HON'BLE Mr. JUSTICE SENTHILKUMAR RAMAMOORTHY

WP No.12053 of 2021

P.Pushpa
W/o.Rajendran

..Petitioner

vs.

1.Principal Secretary,
Home Excise and Prohibition,
Secretariat, Chennai-600 008.

2.The Inspector General of prisons,
No.1, Gandhi Irwin Road,
Egmore, Chennai-600 008.

3.The Superintendent of Prison,
Central Prison-I, Puzhal,
Chennai-600 066.

..Respondents

Prayer: WRIT Petitions filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the record and quash the same in respect of rejection order of 3rd respondent vide 6803/tharu/1/2020 dated 10.05.2021 received on 17.05.2021 in respect of parole to petitioner's son and consequently direct the 3rd respondent for grant of parole to petitioner's son Sheshadri Rajendran Convict (CT-6803) for period of 8 weeks presently confined in 3rd respondent Puzhal jail (CT 6803) Chennai for immediate medical treatment to save his life.

For Petitioner : Mr.G.Ravikumar

For Respondents: Mr.R.Muniyapparaj,
Government Advocate

ORDER

(Order of the Court was made by Dr.ANITA SUMANTH, J.)

Heard Mr.G.Ravikumar, learned counsel for the petitioner and Mr.R.Muniapparaj, learned Government Advocate for the respondents.

2. The petitioner challenges order dated 10.05.2021 rejecting the representation of the detenu one Seshathri

Rajendran @ Prabhu Seralanthan [detenu] son of Rajendran, who is the son of the petitioner, presently undergoing imprisonment of 10 years as a convict for offences under various provisions of the NDPS Act, in Central prison, Puzhal.

3. Detenu has served 7 years with 3 years of sentence remaining and had sought leave for 60 days. The request has come to be rejected vide the impugned non-speaking order.

4. Learned counsel for the petitioner submits that the detenu is unwell and has also produced medical records to substantiate this. Medical records placed for our perusal does indicate that the petitioner has chronic kidney ailments with associated medical issues.

5. Learned Additional Public Prosecutor, defending the impugned order, would state that applicable Rules and Regulations do not provide for grant of leave as sought for, and thus the impugned order has been passed in accordance with law.

6. We do not agree as a perusal of Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982, ('Rules') indicates otherwise. Section 22 (4) is directly applicable to the present case as the detenu satisfies all the relevant and applicable parameters for the grant of leave. Rules 22 [1] to [4] are extracted below:

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 for 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 the last leave, shall be granted so as to enable them to make arrangements for settling the family life after release.

7. The first applicable parameter in Rule 22(4) is the remainder of the sentence, which is 3 years, This, the detenu, satisfies. The second is the eligibility of the detenu for leave for a period of 30 days per remaining year. The period of one year is to commence from the date of return of the detenu to prison from the last leave availed. In this case, the detenu has last availed leave between 07.08.2020 and 07.09.2020. Thus the period of one year for determining the eligibility criteria for the detenu would be 08.09.2020 to 07.09.2021 and the present request falls squarely within the aforesaid period. Thus, in our considered view, the eligibility of detenu in terms of Section 22(4) is beyond doubt.

8. Another objection raised by the learned Government Advocate is to the effect that the request of the detenu is general and does not specify specifically whether it is on emergency basis or medical grounds. We find this objection, hyper-technical, to say the least.

9. Admittedly, the detenu is suffering from serious medical issues and thus leave sought could be taken to be either under the head of 'medical' or 'emergency' as both are equally applicable in the present case. Moreover, the Hon'ble Supreme Court taking suo moto cognizance of the impact of the ongoing COVID-19 pandemic in overcrowded prisons has, In Re: Contagion of Covid 19 Virus in Prisons (Suo Motu Writ Petition (c) No.1/2020 dated 07.05.2021, urged that prisons be decongested as far as possible as a measure of combating the pandemic. For that reason also, and particularly since the petitioner has proved his entitlement in terms of Rule 22(4) of the Rules, we allow this Writ Petition.

10. The petitioner/detenu is permitted to avail leave commencing from 24.05.2021 for a period of 30 days. The detenu may leave the Puzhal prison at 10.00 a.m. on 24.05.2021 and should return to the prison at 5.00 p.m, on Wednesday, 23.06.2021.

11. There is no clarity on the question of whether escort has been provided on earlier occasions. We are informed by learned counsel for the petitioner that pursuant to Order of this Court in H.C.P.No.745 of 2020, relating to the same detenu, the detenu was permitted to leave without an escort. If that be so, the same procedure be followed this time as well. In such a case, the detenu shall report every morning at 10.00 a.m., to the jurisdictional police station. Failure to comply with the aforesaid condition will result in cancellation of this order, without further reference to the petitioner and all resultant consequences.

12. Writ Petition in W.P.No.12053 of 2021 is disposed in the above terms. No costs.

s/d-
Assistant Registrar (CS V)

True Copy

Sub-Assistant Registrar

rpl/vrc

To

1. Principal Secretary,
Home Excise and Prohibition,
Secretariat, Chennai-600 008.

2. The Inspector General of prisons,
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3. The Superintendent of Prison,
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Copy to: The Public Prosecutor,
High Court, Madras.

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SSN (CO)
EU 4.6.2021

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