



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.07.2021

PRONOUNCED ON : 30.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

AND

THE HON'BLE MR.JUSTICE R. PONGIAPPAN

W.P. No. 13462 of 2021 & W.M.P. No.14334 of 2021

Bhuvaneshwari

Petitioner

vs.

1 State by:
The Secretary to Government
Home, Prohibition & Excise Department
Secretariat, Chennai 600 009

2 The Deputy Inspector General of Prisons
Coimbatore Range, Coimbatore 18

3 The Superintendent of Prisons
Central Prison, Salem - 7

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records in the order bearing no.6965/tha.ku.3/2021 dated 28.05.2021 passed by the second respondent (sic third respondent) and quashing the same and directing the respondents to grant 30 days ordinary leave and release the petitioner's husband Mohan, S/o Chinnaraj, aged 44 years, Ct. No.6965, Life Convict, now confined in the Central Prison, Salem.

For petitioner : Mrs. S. Nadhiya

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

ORDER

P.N. PRAKASH, J.

This writ petition has been preferred challenging the order dated 28.05.2021 passed by the third respondent and for a direction to the respondents to grant 30 days ordinary leave to the petitioner's husband Mohan (Ct. No.6965), Life Convict, who



is now confined in the Central Prison, Salem.

2 The petitioner's husband Mohan faced a prosecution in S.C. No.86 of 2008 in the Court of the Principal Sessions Judge, Salem, and was convicted on 14.09.2010 of the offence under Section 302 IPC and was sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default to undergo rigorous imprisonment for a period of one year. The appeal in Crl.A. No.783 of 2010 filed by Mohan thereagainst was dismissed by this Court on 12.07.2011. Thus, Mohan (Ct. No.6965) is undergoing life sentence in the Central Prison, Salem.

3 It is the petitioner's case that her daughter Shankari, aged about 16 years, is having a heart ailment and that her medical records show that she has a hole in her heart; therefore, the doctors who are treating her, have suggested that a surgery should be performed for her urgently; hence, the petitioner made an application dated 13.05.2021 to the prison authorities for grant of 30 days ordinary leave to Mohan (Ct.No.6965); since the said leave application was not considered, she filed a writ petition being W.P. No.12103 of 2021, in which, this Court, by order dated 26.05.2021, had directed the prison authorities to consider the petitioner's application and pass orders in accordance with law within a period of ten days from the date of receipt of a copy of the said order; accordingly, the petitioner's representation dated 13.05.2021 was considered and rejected by the Superintendent of Prison, Central Prison, Salem, vide order dated 28.05.2021, aggrieved by which, she has preferred the present writ petition.

4 The Superintendent of Prison, Central Prison, Salem, has filed a counter affidavit dated 16.07.2021, wherein, it is stated that Mohan (Ct.No.6965) has been granted leave 34 times, out of which, ordinary leave for a spell of 30 days has been granted on three occasions, viz., 26.04.2016 to 27.05.2016, 08.08.2018 to 08.09.2018 and 09.12.2020 to 09.01.2021; therefore, in the light of Rule 22(3) of the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules"), he is not eligible for ordinary leave for a period of two years from 09.01.2021.

5 Mrs. Nadhiya, learned counsel for the petitioner, submitted that the request for ordinary leave for 30 days can be considered only by the Deputy Inspector General of Prisons and not by the Superintendent of Prison and therefore, the impugned order that has been passed by the Superintendent of Prison stands vitiated.

6 Though the aforesaid argument of the learned counsel for the petitioner appears attractive, yet, there is a fallacy



in it. Under Section 11 of the Prisons Act, 1894, it is the Superintendent who shall manage the prison in all matters relating to discipline, labour, expenditure, punishment and control. However, Rule 19 of the Sentence Suspension Rules which deals with leave states that the Deputy Inspector General of Prisons is the competent authority to issue order of release of prisoners on ordinary leave, subject to the satisfaction of all conditions in the Rules (emphasis supplied). This means that a prisoner must have satisfied all the other conditions in the Sentence Suspension Rules for availing ordinary leave and only thereafter, the Deputy Inspector General of Prisons can order release of the prisoner on ordinary leave. Pertinent it is to point out that the Deputy Inspector General of Prisons is a Range Officer under whose jurisdiction, more than one prison will fall. Whether a particular prisoner satisfies the other conditions in the Rules is a question of fact that has to be decided only by the Superintendent of the Prison where the prisoner is lodged. It is only the office of the Superintendent of Prison which will maintain all the records of the prisoners of that prison. That is why, perhaps, the petitioner in this case, has addressed the representation dated 13.05.2021 to the Superintendent of Prisons, Salem also. Whether a prisoner qualifies the threshold requirements for availing ordinary leave has, perforce, to be determined only by the Superintendent of the Prison where he is lodged. In the instant case, the Superintendent of Prison, Salem, has gone into the relevant records pertaining to Mohan (Ct. No.6965) and has found that he would not be eligible for ordinary leave as he had gone on 30 days ordinary leave from 09.12.2020 to 09.01.2021, in the light of Rule 22 (3) of the Sentence Suspension Rules, which reads thus:

"22. Eligibility for ordinary leave:

(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."

7 Thus, it is perspicuous that Mohan (Ct. No.6965) does not qualify to avail ordinary leave of 30 days now. Via the impugned order, the Superintendent of Prison, Salem, has merely conveyed to the petitioner and to Mohan (Ct.No.6965) that the latter is ineligible for ordinary leave of 30 days as he had gone on ordinary leave from 09.12.2020 to 09.01.2021. Therefore, it cannot be stated that the Superintendent of Prisons, Salem, has denied ordinary leave to Mohan (Ct.No.6965) by the impugned order, but, it is the law which has denied ordinary leave to him.



8 Mrs. Nadhiya submitted that Rule 40 of the Sentence Suspension Rules gives the power to the Government to exempt any person from all or any of the provisions of the Rules and therefore, the Government should have invoked this power and granted ordinary leave to Mohan (Ct. No.6965) by taking into consideration the health condition of his daughter. We are unable to countenance this submission. Rule 3, *ibid.*, clearly states that leave cannot be claimed as a matter of right and that it is only a concession granted to the prisoner. Therefore, Rule 40, *ibid.*, relied on by the learned counsel for the petitioner, should have to be read conjunctively with Rule 3, *ibid.*, and not disjunctively to Mohan's advantage.

9 At this juncture, it is felicitous to refer to the judgment of a Full Bench of this Court in *State vs. Yesu*¹, wherein, the contours of Rule 40, *ibid.*, have been discussed and it has been held that if a prisoner is exempted by the Government from the provisions of the Sentence Suspension Rules in toto, then, the Government cannot grant suspension at all. In other words, if a prisoner wants to avail of leave, be it emergency or ordinary, it can be only within the four walls of the Sentence Suspension Rules and not beyond it. Rule 40, *ibid.*, merely gives the Government the power to exempt and does not give the consequential power to the Government to grant leave beyond the limitations prescribed by the Sentence Suspension Rules.

10 The counter affidavit of the Superintendent of Prison, Central Prison, Salem, informs that the petitioner has now applied for emergency leave for her husband and that the same is under process. It is for the respondents to deal with the said request in accordance with law.

Ergo, we find no infirmity in the impugned order and as a sequitur, this writ petition fails and is accordingly dismissed. Costs made easy. Connected W.M.P.No.14334 of 2021 stands closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

cad

¹ 2011 (5) CTC 353



To

1 The Secretary to Government
Home, Prohibition & Excise Department
Secretariat
Chennai 600 009

2 The Deputy Inspector General of Prisons
Coimbatore Range
Coimbatore 18

3 The Superintendent of Prison
Central Prison
Salem - 7

4 The Public Prosecutor
High Court, Madras
Chennai 600 104

W.P. No.13462 of 2021

SS(CO)
RGA(23/08/2021)