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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MS.JUSTICE R.N.MANJULA

Writ Petition No.13631 of 2021

Archana

D/o.Thambu @ Karthik

... Petitioner

Vs

1.State of Tamil Nadu,
represented by its
Secretary to Government,
Home (Prison) Department,
Secretariat, Chennai - 9.

2.The Additional Director General of Prison,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008.

3.The Superintendent of Prison,
Central Prison,
Cuddalore, Cuddalore District.

4.The Inspector of Police,
Auroville Police Station,
Villupuram District.
Crime No.310 of 2003

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the order passed by the third respondent in order No.5993/Tha.Ku.2/2021 dated 16.04.2021, quash the same and direct the respondents to grant 30 days ordinary leave (parole) to the petitioner's father Thambu @ Karthick, male, aged 43 years, (CT No.14616), who is confined at Central Prison Cuddalore.

For Petitioner : Mr.V.Elangovan

For Respondents: Mr.R.Muniyapparaj
Government Advocate [Crl.side]
[R1 & R2]



O R D E R
[Order of the Court was made by P.N.PRAKASH, J]

This petition has been filed seeking quash of the order passed by the third respondent in order No.5993/Tha.Ku.2/2021 dated 16.04.2021, and a consequential direction to the respondents to grant 30 days ordinary leave (parole) to the petitioner's father Thambu @ Karthick (CT No.14616), who is confined at Central Prison, Cuddalore.

2. It is the case of the petitioner that her father Thambu @ Karthik is a convict prisoner (CT No.14616) and he is now confined at Central Prison, Cuddalore. An application dated 12.04.2021 was submitted to the prison authorities for grant of 30 days leave to the convict prisoner under the Tamil Nadu Suspension of Sentence Rules, 1982 and the same was rejected by the authorities on 16.04.2021. Challenging the said order, the present Writ Petition has been filed.

3. Heard Mr.V.Elangovan, learned counsel appearing for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate [crl.side] appearing for the State.

4. The Superintendent of Central Prison, Cuddalore, has filed a detailed counter affidavit dated 22.07.2021, wherein in paragraph Nos.6 and 7, it is stated as follows:

'6) Further, I submit that the petitioner Selvi.Archana enclose the remand set off period 20.10.2003 to 07.02.2004 for 110 days and 22.08.2011 to 15.03.2012 for 205 days is undergone by her father the Convict Prisoner No.14616 Thambu @ Karthick S/o.Moorthy. But, the Remand Period 27.01.2004 to 07.02.2004 for 12 days is only mentioned in re-committal warrant issued by the First Additional District and Sessions Judge, Tindivanam. Hence, set off period for 12 days is only taken for the calculation of conviction period as detailed below:

Description	Date	Month	Year
Date taken for calculation	30	06	2021
Date of conviction	16	03	2012
(Substract)			
	14	03	09
Set off (Remand Period) 12 days	12	00	00
(Added)			
	26	03	09



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Description	Date	Month	Year
Bail At large 2598 + Leave 10 days = 2608 days (Substract)	23	01	07
	03	02	02
Therefore, the above said Convict Prisoner has completed 02 years 02 months and 03 days of imprisonment as on 30.06.2021.			

7. Further, I humbly submit that the petitioner's father the Convict Prisoner No.14616 Thambu @ Karthick S/o.Moorthy has completed 02 years 02 months and 03 days of actual imprisonment on 30.06.2021 and the following trial case is pending against the petitioner's father on PT Warrant.

S. No.	Police Station/ Cr.No.	Under Section	Court
1	Laspet Police Station, Cr.No.25/2003	U/s.147, 148, 341, 307 IPC r/w 149 IPC	Chief Judicial Magistrate, Puducherry

5. A reading of the above shows that the convict prisoner has completed only 2 years 2 months and 3 days as on 30.06.2021 and therefore, he was not eligible for ordinary leave in view of Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982, which reads as under:

' 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.'

6. Mr.V.Elangovan, learned counsel, disputed the computation of the period of detention that has been made in the counter affidavit of the Superintendent of Central Prison, Cuddalore and submitted a different computation to this Court.

7. We furnished to Mr.V.Elangovan, learned counsel, a copy of the remand warrant issued by the trial Court, which convicted and sentenced the convict prisoner and the computation has been done based on the entries in the remand warrant. If there is any



error in the remand warrant, this Court has no authority to correct the same in a collateral proceeding, as this. That apart, the convict prisoner is also facing prosecution in Laspet PS Crime No.25/2003 before the learned Chief Judicial Magistrate, Puducherry. In such view of the matter, we do not find any infirmity in the impugned order warranting interference.

8. Mr.V.Elangovan, learned counsel, submitted that the mother of the convict prisoner is very sick as she is said to be afflicted with breast cancer. Learned counsel also submitted that the convict prisoner is required to make arrangements for raising funds for the education of his daughters.

9. In our view, the convict prisoner may be entitled to emergency leave on the ground that his mother is very sick provided he satisfies the other eligibility conditions. Therefore, we give liberty to the convict prisoner to seek emergency leave with appropriate supporting documents, for visiting his ailing mother and the same shall be considered in accordance with the eligibility conditions prescribed under the Tamil Nadu Suspension of Sentence Rules, 1982.

With the above direction, the Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

- 1.The Secretary to Government,
Home (Prison) Department,
Secretariat, Chennai - 9.
- 2.The Additional Director General of Prison,
No.1, Gandhi Irwin Salai,
Egmore, Chennai - 600 008.
- 3.The Superintendent of Prison,
Central Prison,
Cuddalore, Cuddalore District.



4.The Inspector of Police,
Auroville Police Station,
Villupuram District.

5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Elangovan, Advocate SR No.39961

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GPL (CO)
PR (19/08/2021)