



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	17.09.2021
DELIVERED ON	29.09.2021

CORAM:

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

and

THE HON'BLE MS. JUSTICE R.N. MANJULA

W.P. No.17011 of 2021

K. Pournami

... Petitioner

vs.

- 1 The State of Tamil Nadu
represented by the Secretary to Government
Department of Home
Fort St. George
Chennai 600 009
- 2 The Director General of Police
Tamil Nadu Police Headquarters
Mylapore
Chennai 600 004
- 3 The Superintendent of Police
Namakkal
Namakkal District
- 4 The Inspector of Police
Puduchatram Police Station
Namakkal
Namakkal District
- 5 The Superintendent of Prison
Central Prison
Salem
Salem District

... Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the respondents to release the life convict Elango, S/o Karuppannan, Hindu, aged about 40 years, residing at No.3/197, Pudupillayar Koil Street, Paachal, Namakkal Taluk, Namakkal District, from the prison for a period of six months under parole who is a life convict in



judgment dated 31.10.2019 in S.C. No.99 of 2015 passed by the Principal Sessions Judge, Namakkal.

For petitioner :Ms. Sumathi
for Mr. S. Arunkumar

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

ORDER

P.N. PRAKASH, J.

Seeking release on parole for a period of six months for his brother-convict prisoner Elango (ENR No.740) for him to visit his aged mother and two sick children, his sister Pournami has filed the present writ petition.

2 Heard Ms.Sumathi, learned counsel representing Mr. S. Arunkumar, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondents.

3 It is seen that the convict prisoner Elango (ENR 740) was convicted and sentenced to imprisonment for life in S.C. No.99 of 2015 on 31.10.2019 by the Principal Sessions Court, Namakkal, in Puduchatram P.S.Cr.No.517 of 2014 for the offences under Sections 302 and 201 IPC. Challenging the conviction and sentence, even according to the petitioner, the convict prisoner has preferred an appeal in Crl.A. No.204 of 2021 and the same is pending on the file of this Court. That apart, the question of granting parole under the Sentence Suspension Rules does not arise in view of the Full Bench judgment of this Court in State vs. Yesu¹. Further, in Tamil Nadu, only leave can be granted in terms of the Sentence Suspension Rules. Therefore, the convict prisoner will not be entitled to be released on parole under the Sentence Suspension Rules, pending his appeal. That apart, the said convict prisoner is facing prosecutions before various Courts in the following cases:

Sl.No .	Police Station and Cr. No.	Court
1	Rasipuram P.S. Cr. No.337/2016 u/s 394 r/w 397 IPC (S.C. No.238/2018)	Judicial Magistrate, Rasipuram

¹ 2011 (5) CTC 353



Sl.No .	Police Station and Cr. No.	Court
2	Namagiripettai P.S.Cr.No.765/2011 u/s 392 r/w 397 IPC (S.C.No.52/2014)	Assistant Sessions Judge, Rasipuram
3	Puduchatram P.S.Cr.No.139/2012 u/s 294(b), 324 and 506(II) IPC (S.C.No.82 of 2017)	Judicial Magistrate No.2 Namakkal
4	Ammappettai P.S.Cr.No.256/2019 u/s 379 IPC	Judicial Magistrate No.5, Salem

4 At this juncture, it may be relevant to extract Rule 35 of the Sentence Suspension Rules:

"35. Pending cases.-- No prisoner on whom a case is pending trial shall be granted leave."

5 From a reading of the aforesaid provisions, manifest it is that if a convict prisoner is in judicial custody in connection with another case, the executive authorities, viz., the Prison authorities in this case, are denuded of the power to release him on leave/parole. Interestingly, this aspect has been dealt with in detail by a Division Bench of this Court in S. Santhosam vs. State and 2 others², in which, one of us (PNPJ), was a member. The relevant paragraphs from the said judgment are extracted below:

"12 The objective behind formulating the Sentence Suspension Rules is that a convict prisoner should not be dehumanized by being kept in complete incarceration, without being provided a ventilator for reformation. The idea of sentencing a person to undergo imprisonment is not only to punish him for the offence committed by him, but also to ensure that he turns a new leaf. One way of promoting reformation is to permit convict prisoners to go on leave, off and on, to spend time with their families and return to the prison rejuvenated. However, be it noted that a convict prisoner does not have a fundamental right, much less a right, for temporary release. Rule 3 of the Sentence Suspension Rules makes this clear when it states that leave cannot be claimed as a matter of right and that it is only a concession granted to the prisoner.

2 W.P. No.14685 of 2021 decided on 02.09.2021



13 In the aforesaid backdrop, we now propose to analyse Rule 35 of the Sentence Suspension Rules which reads as follows:

WEB COPY

"35. Pending cases:

No prisoner on whom a case is pending trial shall be granted leave."

14 What is the raison d'etre behind Rule 35 of the Sentence Suspension Rules?

15 If a convict prisoner has, to his credit, another criminal case in which he is facing trial, a duty is cast upon the prison authorities to produce him before the trial Court from time to time. This is limpid from Rule 832 of the Tamil Nadu Prisons Rules, which reads as under:

"832. Production before Court:-

(1) The duty of ascertaining the time at which a prisoner committed to the Sessions is to be produced before the Sessions Court, and of providing the necessary escort for this purpose, rests with the police.

(2) The Superintendent is responsible for the production in Court, at the appointed time, of a prisoner remanded pending a magisterial inquiry or trial, and shall make suitable arrangements with the Police for the provision of the necessary escort. When possible, a prisoner shall be conveyed to and from the Court in a special conveyance

(2A) If a prisoner remanded pending a magisterial enquiry or trial refuses to attend the Court at the appointed time or resists endeavour to produce him or attempts to evade his production before the Court such minimum force as may be considered necessary by the Superintendent may be used to encounter such resistance of the accused so as to produce him before the Court which has directed the production of the accused.

(3) A receipt in Form No.60 shall be obtained from the senior police officer of



WEB COPY

the escort whenever a prisoner, whether committed to the Sessions or under remand, is made over to the charge of such police officer for production in Court.

(4) The police are responsible for the safe custody of any prisoner committed to their charge under the preceding sub rule of this rule till he is returned to the prison or discharged from custody in due course of law. It is for the police to decide whether such prisoner shall be handcuffed or not.

(5) When an undertrial or remand prisoner has to be brought back to the prison even in the event of his acquittal or discharge, the senior police officer of the escort should be informed of the fact and the receipt in form No.61 substituted.

(6) When female undertrial or remand prisoners are taken from Courts to prisons or vice versa, they shall be provided with conveyance where the distance to be traversed by them exceeds 1.6 k.m. Conveyances may also be provided for the shorter distances in cases in which, for reasons of health or custom or other valid reason failure to make such provision would cause undue hardship to them."

If such a convict prisoner is already on bail in that case, the trial Court would ensure his attendance by issuing a Prisoner's Transfer Warrant under Section 267 Cr.P.C. If the convict prisoner is not on bail in that case, the trial Court would remand him to custody under Section 309 Cr.P.C. with a direction to the prison authorities to produce him on a particular date. Thus, a convict prisoner who is facing trial in a Court of law, is kept in the custody of the prison authorities under the orders of the Court for that case. It would, therefore, be impermissible for the executive to circumvent a judicial order by releasing the prisoner on leave. That would, ex facie, amount to an interference in the administration of justice by the Court. It would also fall foul of the principle of separation of powers enshrined in Article 50 of the Constitution of India. Rule 35 of the Sentence Suspension Rules, thus, strikes a balance. The executive power to suspend a sentence by granting leave



is unavailable qua a person facing trial before a competent Court."
(emphasis supplied)

6 In view of the above, we are afraid that the relief sought by the petitioner cannot be granted.

Resultantly, this writ petition fails and is accordingly dismissed as being devoid of merits. Costs made easy.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

cad
To

- 1 The Judicial Magistrate,
Rasipuram (SC No.238/18).
- 2 The Judicial Magistrate No.2,
Namakkal(SC No.82/17).
- 3 The Judicial Magistrate No.5,
Salem.(Cr.NO.256/19, Ammapettai P.S)
- 4 The Assistant Sessions Judge,
Rasipuram. (SC No.52/2014)
- 5 The Secretary to Government,
Department of Home,
Fort St. George,
Chennai 600 009.
- 6 The Director General of Police,
Tamil Nadu Police Headquarters,
Mylapore,
Chennai 600 004.
- 7 The Superintendent of Police,
Namakkal, Namakkal District.
- 8 The Inspector of Police,
Puduchatram Police Station,
Namakkal, Namakkal District.



9 The Superintendent of Prison,
Central Prison,
Salem, Salem District.

WEB COPY

10 The Principal Sessions Judge,
Namakkal.

11 The Public Prosecutor,
Madras High Court,
Chennai 600 104.

W.P. No.17011 of 2021

rgn[co]
srg 20/10/2021