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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	16.09.2021
DELIVERED ON	05.10.2021

CORAM:

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

and

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

W.P. No.17837 of 2021

Visalakshi

Petitioner

vs.

- 1 The Additional Director General of Police and
Inspector General of Prison
Tamil Nadu Prison Department
Egmore
Chennai 600 008
- 2 The Deputy Inspector General of Prisons
Chennai Range
Tamil Nadu Prison Department
Egmore
Chennai 600 008
- 3 The Superintendent of Prisons
Central Prison- 1
Puzhal, Chennai

Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of mandamus directing the second respondent to grant leave for one month to the petitioner's husband, viz., P. Nagendran, S/o Ponnusamy, aged about 54 years (serving as life convict no.1236) enabling to make arrangement to his son's marriage.

For petitioner

Mr. M.R. Senthil Kumar

For respondents

Mr. R. Muniyapparaj
Additional Public Prosecutor



ORDER

P.N. PRAKASH, J.

Seeking one month ordinary leave under Rule 20(4) of the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules"), for her husband-convict prisoner P. Nagendran (CT No.7498) for him to make arrangements for their son's marriage, his wife Visalakshi has filed the present writ petition.

2 Heard Mr. M.R. Senthil Kumar, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents.

3 The petitioner's application dated 05.08.2021 seeking one month ordinary leave for the convict prisoner has been disposed of by the Superintendent of Prisons, Central Prison-I, Puzhal, Chennai, the third respondent herein, on 24.08.2021, stating that the said convict prisoner will not be entitled to ordinary leave, as he is facing prosecution in another case in P.R.C. No.10 of 2015 before the Judicial Magistrate No.1, Tiruvellore, for the offences under Sections 147,148, 149, 120-B, 506(II), 307, 302 and 201 read with Section 302 IPC and Section 25(1-B) (a) of the Arms Act.

4 At this juncture, it may be relevant to extract Rules 3 and 35 of the Sentence Suspension Rules:

"3. Leave is not a right.-- Leave cannot be claimed as a matter of right. It is a concession granted to the prisoner."

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

5 From a reading of the aforesaid provisions, it is limpid that leave cannot be claimed as a matter of right and that it is, after all, only a concession granted to the prisoner. It is also manifest 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. Interestingly, this aspect has been dealt with in detail by a Division Bench of this Court in S. Santhosam vs. State and 2 others¹, 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

¹ W.P. No.14685 of 2021 decided on 02.09.2021



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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.

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

"35. Pending cases:

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

14 What is the *raison d'être* 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



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(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 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



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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-VI)

//True copy//

Sub Assistant Registrar

cad

To

- 1 The Judicial Magistrate No.1, Tiruvallur.
- 2 The Additional Director General of Police and
Inspector General of Prison
Tamil Nadu Prison Department
Egmore, Chennai 600 008
- 3 The Deputy Inspector General of Prisons
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Tamil Nadu Prison Department
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4 The Superintendent of Prisons
Central Prison- 1
Puzhal, Chennai

5 The Public Prosecutor
Madras High Court
Chennai 600 104

W.P. No.17837 of 2021

BS (CO)
GMY (22/10/2021)