

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

H.C.P. No.2028 of 2020

A.M.Ibrahim

.. Petitioner/
Father of Detenu

Vs.

1.State represented by its,
The Home Secretary (Prison),
Home Department, Secretariat,
Fort St.George, Chennai.

2.The Additional Director General
of Prison (ADGP),
Office of the ADGP, Gandhi
Irwin Road,
CMDA Building, Egmore,
Chennai - 600 008.

3.The Superintendent of Prison,
Salem Central Prison,
Hasthampatty, Salem.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of Habeas Corpus directing the respondents to set aside the impugned order in No.18525/tk3/2020 dated 26.08.2020 passed by the 3rd respondent and direct the respondents to grant leave for a period of 15 days without escort to the detenu/son of the petitioner viz., I.Hussain Mohamed @ Hussain, aged about 34 years (C.T.No-8502/18), now confined in Central Prison, Salem, for the purpose of making the arrangements of medical treatment of his mother.

For Petitioner : Mr.M.Mohamed Saifulla

For Respondents : Mr.R.Prathap Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

This habeas corpus petition has been filed seeking to set aside the impugned order in No.18525/tk3/2020 dated 26.08.2020 passed by the 3rd respondent and direct the respondents to grant leave for a period of 15 days without escort to the detenu/son of the petitioner viz., I.Hussain Mohamed @ Hussain, aged about 34 years (C.T.No-8502/18), now confined in Central Prison, Salem, for the purpose of making the arrangements of medical treatment of his mother.

2. It is the case of the petitioner that his son viz., Hussain Mohamed @ Hussain, is a convict prisoner, Convict No.8502 and is undergoing sentence in Central Prison, Salem; the petitioner gave a representation dated 05.06.2020 seeking leave for a period of 15 days for his son on the ground that his wife (convict prisoner's mother) is seriously ill and requires medical treatment. However, by the impugned order dated 26.08.2020, the Superintendent of Prison, Central Prison, Salem, has rejected the request, challenging which, the petitioner has filed this habeas corpus petition.

3. Heard Mr.M.Mohamed Saifulla, learned counsel for the petitioner and Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondents.

4. The Superintendent of Prison, Central Prison, Salem, third respondent herein, has filed a counter affidavit dated 14.10.2020, wherein, he has stated as follows:

"a)The petitioner's son is sentenced to under Section 397 r/w 394 IPC and he is not eligible for ordinary leave as per Rule No 21 (b) of Tamil Nadu Suspension of Sentence Rules 1982.

b)Emergency leave granted for attending death or serious illness of father, mother, wife, husband, son, daughter, full brother or full sister or the wedding of son, daughter, full brother or full sister of the prisoner. It is also submitted that emergency leave granted in four fells only in 6+3+3+3 and not for 15 days at a time as per Rule 13 of Tamil Nadu Suspension of Sentence Rules, 1982.

c)It is also submitted that emergency leave granted in four fells only in 6+3+3+3 and not for 15 days at a time as per Rule 13 of Tamil Nadu Suspension of Sentence Rules, 1982.

d,e,f and g)As the petitioner's son is sentenced to u/s 397 r/w 394 IPC and he is not eligible for ordinary leave as per Rule No 21 (b) of Tamil Nadu Suspension of Sentence Rules, 1982."

5. From the reading of the above, it appears that the petitioner's son will not be entitled to ordinary leave, as he has been convicted and sentenced for the offence under Section 397 r/w 394 IPC, as his case falls under Rule 21 (b) of the Tamil Nadu Suspension of Sentence Rules, 1982.

6. Therefore, the impugned order cannot be said to be illegal. However, this will not preclude the authorities from granting the petitioner son's emergency leave, if he is otherwise entitled to.

With the above observation, this habeas corpus petition is dismissed with liberty to the petitioner and the convict prisoner to approach the Superintendent of Prisons for emergency leave by filing an application. On such application being filed, the same shall be considered in accordance with the extant rules.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

nsd
To

1.The Home Secretary (Prison),
Home Department, Secretariat,
Fort St.George, Chennai.

2.The Additional Director General
of Prison (ADGP),
Office of the ADGP, Gandhi
Irwin Road,
CMDA Building, Egmore,
Chennai - 600 008.

3.The Superintendent of Prison,
Salem Central Prison,
Hasthampatty, Salem.

4.The Public Prosecutor,
High Court, Madras.

RSI (CO)
SM/02/03/2021

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