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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.11.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

W.P.No.19271 of 2021
and W.M.P.No.20578 of 2021

Aasika

..Petitioner

Vs.

1.State rep. by

The Principal Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai-9

2.The DGP & Inspector General of Prisons

Prison Head Quarter Office
Gandhi Irwin Road
Egmore, Chennai-8

3.The Superintendent of Prisons

Central Prison
Cuddalore

..Respondents

Petition filed under Article 226 of the Constitution of India, praying to issue a writ of certiorarified mandamus calling for the records in the order bearing No.10827/tha.ku.2/2021 passed by the 3rd respondent and quashing the same and directing the 1st respondent to grant 30 days ordinary leave to the petitioner's husband viz., David @ Davidraj, aged 28 years, S/o.Murugan, Convict No.16830, life convict now confined in the Central Prison, Cuddalore.

For Petitioner : Ms.S.Nadhiya

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



O R D E R

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

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The petitioner's husband viz., David @ David Raj, who has been sentenced to imprisonment for life in S.C.No.164 of 2016 on 30.06.2020 for the offence under Section 302 IPC read with 34 IPC by the learned Additional District and Sessions Judge, Cuddalore, is at present lodged in the Central Prison, Cuddalore. While that being so, the petitioner gave an application dated 26.06.2021, for ordinary leave under the Tamil Nadu Suspension of Sentence Rules, 1982, which has been rejected by the Superintendent, Central Prison, Cuddalore on 28.06.2021, aggrieved by which, the present writ petition has been filed.

2. Ms.Nadhiya, learned counsel for the petitioner submitted that ordinary leave can be granted only by the Deputy Inspector General of Prisons, whereas, the impugned order has been passed by the Superintendent, Central Prison, Cuddalore and therefore, the said impugned order deserves to be quashed.

3. However, Mr.Muniyapparaj, learned Additional Public Prosecutor submitted that the Deputy Inspector General of Prisons has also passed an order dated 29.10.2021, rejecting the request for ordinary leave on several grounds, one of which is that, the convict prisoner's appeal in C.A.No.345/2021 is pending on the file of this Court.

4. We gave our anxious consideration to the aforesaid submissions. It is trite that when an appeal is pending, the executive power, for grant of leave, cannot be exercised and only the judicial power, for suspension of sentence and bail, can be exercised under Section 389 Cr.P.C. [See K.M.Nanavati Vs. State of Bombay (AIR 1961 SC 112)]. That apart, the word "sentence" has been defined in the Tamil Nadu Suspension of Sentence Rules, 1982, as under :

"Sentence means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Sentences in default of fine shall not be taken into consideration while fixing eligibility for being released on leave."

Therefore, ordinary leave cannot be granted by the prison authorities to a convict prisoner when statutory appeal is pending.



Hence, this petition is dismissed with liberty to the convict prisoner to seek suspension of sentence and bail in accordance with law. No costs. Connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai-9.
- 2.The DGP & Inspector General of Prisons,
Prison Head Quarter Office,
Gandhi Irwin Road,
Egmore, Chennai-8.
- 3.The Superintendent of Prisons,
Central Prison,
Cuddalore.
- 4.The Public Prosecutor,
High Court, Madras.

W.P.No.19271 of 2021

VSNII (CO)
PR (29/11/2021)