



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 01.07.2021
PRONOUNCED ON : 08.07.2021

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CORAM:
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
and
THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9440 of 2021
and
W.M.P(MD)Nos.7163 and 8028 of 2021

Kaliammal ... Petitioner

-vs-

- 1.The Secretary to Government,
Department of Home,
Fort St.George,
Chennai - 600 009.
- 2.The Director General of Prisons,
Chennai - 600 008.
- 3.The Superintendent of Prison,
Central Prison,
Puzhal,
Thiruvalluvar District.
- 4.The Superintendent of Prison,
Central Prison,
Trichy.

... Respondents

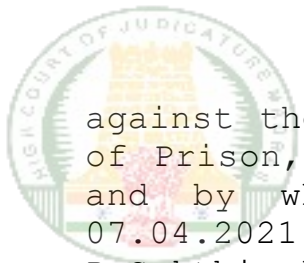
PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus, to call for the records pertaining to the impugned order No.5927 / Thaku.4/2021, dated 12.04.2021 passed by the 4th respondent and quash the same and consequently issuing directing the respondents to give 4 weeks parole for medical treatment of the petitioner's son P.Sakthivel, S/o.Palanisamy, life convict prisoner in Central Prison, Trichy.

For Petitioner : Mr.R.Murugappan
For Respondents : Mr.S.Ravi,
Standing Counsel for the State

O R D E R

[Order of the Court was made by B.PUGALENDHI, J.]

The petitioner, mother of a life convict prisoner, namely P.Sakthivel, S/o.Palanisamy has filed this writ petition as

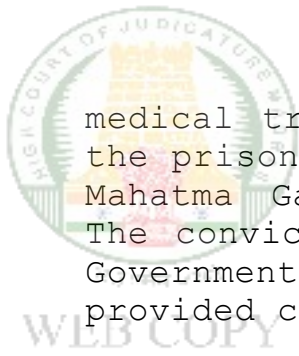


against the order of the fourth respondent / the Superintendent of Prison, Central Prison, Tiruchirappalli dated 12.04.2021, in and by which, the representation of the petitioner dated 07.04.2021 for emergency leave of one month to her son P.Sakthivel, a life convict prisoner, was rejected on the ground that there is no provision available under the Statute to grant such a leave. Challenging the said rejection order, the present writ petition is filed.

2.Mr.R.Murugappan, learned Counsel for the petitioner assailing the impugned order would submit that the petitioner's son is suffering from hepatitis-B, diabetes and piles, but he is not getting proper treatment in prison. He would further submit that the petitioner's son is not having vision in one of his eyes, the vision in the other eye is also getting affected and he has lost the hearing capacity of one of his ears also and therefore, for providing better treatment in a private multi speciality hospital outside the prison, a representation has been made by the petitioner for grant of one month emergency leave to her son. But without assigning any valid reason, the fourth respondent has rejected the representation of the petitioner.

3.The learned Counsel further submits that the right to life is a fundamental right and when the convict prisoner is suffering with several ailments, he must be provided with necessary treatment by allowing him to take proper treatment in a private multi speciality hospital outside the prison and for that he needs one month emergency leave. He also relied on the decision of the Hon'ble Apex Court in **Kerala Union of Working Journalists Vs Union of India and others** [W.P(Crl) Nos.397 of 2020, dated 28.04.2021] in support of his contention.

4.Mr.S.Ravi, learned Standing Counsel appearing for the State would submit that the petitioner by representation dated 07.04.2021 has sought for grant of four weeks emergency leave to her son P. Sakthivel, a life convict prisoner, for proper treatment for hepatitis-B and other ailments outside the prison. However, such a leave could not be granted by the fourth respondent / the Superintendent of Prisons, Central Prison, Tiruchirappalli. In view of the provisions under Rules 6 and 13 of the Tamil Nadu Suspension of Sentence Rules, 1982, the emergency leave is available only for attending death or serious illness of father, wife, husband, son, daughter, full brother, full sister, wedding of son, daughter, full brother, full sister of the prisoner and the emergency leave shall maximum be for fifteen days in a year to spread over in four spells and the first spell being six days and the remaining three spells being three days each at a time. He would further submit that proper



medical treatment is being provided to the convict prisoner by the prison Doctor as per the advice of the Medical Officer, from Mahatma Gandhi Memorial Government Hospital, Tiruchirappalli. The convict prisoner is also taken twice per month to the said Government Hospital, for medical review and advice. He is provided continuous treatment for hepatitis -B [Positive].

5.By referring to the counter affidavit filed by the fourth respondent, the learned Standing Counsel would further submit that the condition of the convict prisoner is clinically stable and normal. Further this convict prisoner is also involved in a case in crime No.101 of 2019 of K.G.Chavadi Police Station, Coimbatore District for the offence under Sections 365 and 362 IPC and in connection with that case, he has to be produced before the learned Judicial Magistrate, Madukarai, Coimbatore District. Moreover, as per Rule 35 of the Tamil Nadu Suspension of Sentence of Rules, no under trial prisoner shall be granted any leave.

6.This Court paid its anxious consideration to the rival submissions and also perused the materials placed on record.

7.The petitioner has already approached this Court by way of a writ petition in W.P(MD)No.8453 of 2021, for a mandamus directing the respondents to release the petitioner's son P.Sakthivel, a life convict prisoner, on four weeks emergency leave from the Central Prison, Tiruchirappalli for giving him medical treatment. The said writ petition was dismissed by this Court on 23.04.2021 by recording the written instructions of the fourth respondent that the fourth respondent is not having powers to grant ordinary leave to the petitioner's son and the medical condition of the prisoner was certified to be stable as of then.

8.In the meantime, the petitioner has submitted a representation to the fourth respondent on 07.04.2021 and the same was rejected by the impugned order dated 12.04.2021, which is challenged in the present writ petition on the very same grounds raised by the petitioner in W.P(MD)No.9440 of 2021.

9.The fourth respondent has filed a counter affidavit stating that the petitioner's son has been provided with proper treatment by the prison Doctor as per the advice of the Medical Officer of Mahatma Gandhi Memorial Government Hospital, Tiruchirappalli and he is also being taken to the said Government Hospital for medical review monthly twice. It is also stated that continuous best treatment is provided to him and his condition is clinically stable and normal.



10.Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982, deals with the grounds on which, the emergency leave can be granted to a convict prisoner, which reads as follows:

"Emergency leave may be 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"

11.The petitioner's son is also involved in another case, where the trial is still pending. An under trial prisoner is not entitled for any leave, as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, which reads as follows:

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

12.The ground on which, the petitioner seeks emergency leave to his son, a life convict prisoner, cannot be taken into consideration for grant of emergency leave, in view of Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982. The petitioner's son being an under trial prisoner, cannot be granted any leave, in view of Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982. That apart, according to the fourth respondent, the best treatment is being given to the petitioner's son and his medical condition is also stable and normal.

13.In the light of the above discussion, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS-II)

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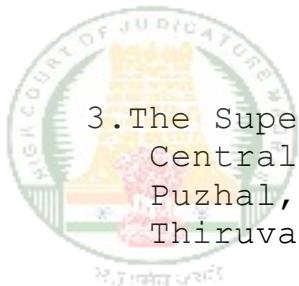
/ /2021

Sub Assistant Registrar(CS)

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To

1.The Secretary to Government,
Department of Home,
Fort St.George,
Chennai - 600 009.

2.The Director General of Prisons,
Chennai - 600 008.



3.The Superintendant of Prison,
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Puzhal,
Thiruvalluvar District.

4.The Superintendant of Prison,
Central Prison, Trichy.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

W.P (MD) No. 9440 of 2021
08.07.2021

CM(CO)
RD(15.07.2021) 5P 6C