



WEB COPY

W.P.(MD) No.15433 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.11.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

and

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P. (MD) No.15433 of 2021

Solai Mathi

... Petitioner

-vs-

1.The State of Tamilnadu
rep.by the Principal Secretary
Home (Prison) Department
Fort St.George
Secretariat, Chennai-600 009

2.The Additional Director General of Police (Prisons)
The Inspector General of Prisons
CMDA Tower-II, No.I, Gandhi Irwin Road
Egmore, Chennai

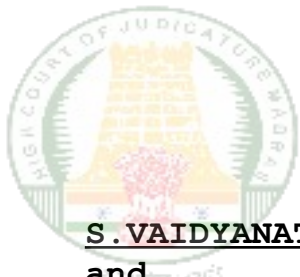
3.The Superintendent of Prison
Coimbatore Central Prison
Coimbatore

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records connected with the impugned order No.12563/jF3/2021, dated 30.07.2021, issued by the respondent No.3 and quash the same as illegal and consequently to direct the respondents to release her husband Murugasen @ Sappani Murugan (C.P.No.225765), son of Munisamy, aged about 40 years, now confined at Coimbatore Central Prison, Coimbatore as life convict for six days on emergent leave by considering the representation by the petitioner, 21.08.2021.

For Petitioner : Mr.Alagumani.R.

For Respondents : Mr.Thiruvadi Kumar.A.
Additional Public Prosecutor



O R D E R

S.VAIDYANATHAN, J.

and

G.JAYACHANDRAN, J.

The petitioner is the wife of Murugesan @ Sappani Murugan, who is confined in Coimbatore Central Prison. The petitioner made a representation on 22.07.2021 seeking emergency leave for six days to her husband to see his bedridden father, which was rejected by the third respondent herein on the ground of pendency of criminal cases against her husband. Thereafter, yet another representation was made by the petitioner on 21.08.2021 to the respondents and the same is pending consideration. According to the petitioner, her husband is confined in Central Prison and he is entitled to emergency leave in terms of the Prison Manual.

2. The respondents have filed a counter affidavit contending that the petitioner's husband is a Life Convict No.225765 and he was sentenced to undergo imprisonment for life and to pay a fine amount of Rs.2,000/-, in default to undergo simple imprisonment for one year for the offence under Section 396 I.P.C. in S.C.No.27 of 2007 and to undergo rigorous imprisonment for seven years and to pay a fine amount of Rs.1,000/-, in default to undergo simple imprisonment for six months for the offence under Section 395 r/w Section 397 I.P.C. in S.C.No.28 of 2007, by the learned Additional Sessions Judge, Paramakudi, on 23.09.2020.

3. According to the respondents, the petitioner's husband is facing as many as eleven cases, which are extracted hereunder:

"1.In PRC No.1/2013, on the file of Principal Sessions Court, Salem in CCB Salem Cr.No.383/11, U/s.414, 392, r/w 397, 120(b), 392 IPC

2.In S.C.No.426/2018, on the file of Assistant Sessions Court, Mettur in Jalakandapuram Police Station Cr.No.245/2011, U/s.307 r/w 34, 294(B), 427 IPC.

3.In S.C.No.439/2016, on the file of 6th Additional District and Sessions Court, Madurai in Keeraithurai Police Station Cr.No.196/2009, U/s.147, 148, 302, 120(b) IPC.

4.In S.C.No.102/2015, on the file of Assistant Sessions Court, Ramanathapuram in Kenikkarai Police Station Cr.No.558/2008, U/s.353, 307 IPC.

5.In C.C.No.213/2014, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.214/2011 U/s.392 IPC.



6.In C.C.No.83/2018, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.703/2011, U/s.392 IPC.

7.In C.C.No.84/2018, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.704/2011 U/s.392 IPC.

8.In C.C.No.218/2014, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.767/2011 U/s.392 IPC.

9.In C.C.No.81/2018, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.768/2011 U/s.392 IPC.

10.In C.C.No.82/2018, on the file of Judicial Magistrate No.3 Court, Salem in Hasthampatti Police Station Cr.No.769/2011 U/s.392 IPC.

11.In S.C.No.199/2013, on the file of Additional District and Sessions Court, Mettur in Mettur Police Station Cr.No.582/2011 U/s.364, 302, 341, 201 r/w 302 IPC."

4. It is further stated by the respondents that, as per Rule 35 of Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter, referred to as "the Rules"), which is extracted hereunder, the convicts against whom cases are pending trial are not entitled for any kinds of leave.

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

Therefore, the petitioner's husband is not entitled to the relief of emergency leave.

5. The learned Additional Public Prosecutor would submit that the validity of Rule 35 of the Rules is challenged before this Court and the same is pending consideration and that apart, taking into consideration the severity of the cases pending against the petitioner's husband, her representation was rightly rejected by the third respondent and therefore, prayed for dismissal of the writ petition.

6. Taking into consideration the facts and circumstances of the case and in view of Rule 35 of the Rules, this Court is not inclined to grant the relief as sought for by the petitioner. However, since the validity of the Rule 35 of the Rules is questioned and it is pending consideration before this Court, subject to the outcome of the result, it is open to the petitioner to make a fresh representation to the Authority concerned, if she is so advised and the same shall be considered in accordance with law.



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7. With the above observation, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(P & A)

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/ /2021

Sub Assistant Registrar(CS)

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To:

1.The Principal Secretary,
Home (Prison) Department,
State of Tamilnadu,
Fort St.George,
Secretariat, Chennai-600 009.

2.The Additional Director General of Police (Prisons),
The Inspector General of Prisons,
CMDA Tower-II, No.I, Gandhi Irwin Road,
Egmore, Chennai.

3.The Superintendent of Prison,
Coimbatore Central Prison,
Coimbatore.

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TP(CO)

TR(06.12.2021) 4P 4C