

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	12.02.2021
Date of Judgment	05.03.2021

CORAM:

**THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM
AND**

THE HONOURABLE MR. JUSTICE G.ILANGO VAN

W.P. (MD)No.18312 of 2020

K.Perumal Selvi : Petitioner

Vs.

1.The Home Secretary,
Home Department (Prision),
Secretariat, Fort St., George,
Chennai - 600 009.

2.The Director General of Prison and
Inspector General of Prison,
Whannels Road, Egmore, Chennai - 08.

3.The Superintendant of Police,
Madurai Central Prison,
Madurai District.

: Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India praying for the issue of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in letter No.13324/TK2/2020 dated 20.10.2020 and quash the same and to direct the 3rd respondent to grant leave of two months without escort to her husband namely B.Kaliyugakannan now confined in Madurai Central Prison.

For Petitioner : Mr.G.Murugendran

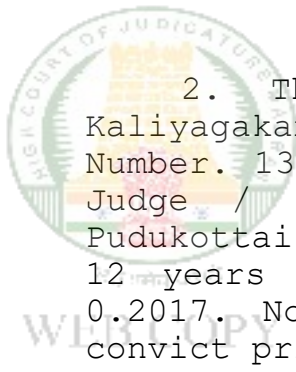
For Respondents : Mr.R.Anandharaj

Additional Public Prosecutor

ORDER

(Order of the Court was made by G.ILANGO VAN, J)

This writ petition is filed seeking writ of Certiorarified mandamus to call for the records pertaining to the impugned order passed by the respondent herein dated 20.10.2020 and quash the same and to direct the respondent to grant leave of two months without escort to the husband of the petitioner now confined in Central prison Madurai and pass any orders as this honourable court may deem fit and proper in the circumstance of the case and thus render justice



2. The petitioner is the wife of the convict namely, Kaliyagakannan, who was arrested on 25.05.2015, in Calender Case Number. 131 of 2015 on the file of Additional District and Sessions Judge / Presiding Officer Special Court for NDPS Act Cases, Pudukottai. After the completion of the trial, he was convicted for 12 years of rigorous imprisonment by the judgement dated 06.10.2017. Now, he is imprisoned in Central prison Madurai and his convict prisoner number is 9681.

3. The petitioner and the convict got two children and the elder son is aged 7 and the younger one four years, at the time of the arrest of the husband of the petitioner. After the imprisonment passed on the husband of the petitioner, the petitioner and as well as the children are depressed. Particularly, the childrens are crying all the time for the father and they are not regularly going to school. Moreover, the petitioner is also facing financial issues and not able to continue the studies of the children. In addition, due to the pandemic, the petitioner is not in a position to meet the family expenses also.

4. So, the petitioner made a representation on 15.10.2020, to the respondents through registered post and the respondent, rejected the representation, made by the petitioner on 20.10.2020.

5. Counter filed by the third respondent:-

The husband of the petitioner namely, Kaliygakannan, son of Balakrishnan, was concerned in file number 48 / 02 / 2015-NCB Madurai, under section 8 (C) read with 22 and read with 29(C) of NDPS Act, 1985, and was convicted and sentenced to undergo 12 years and a fine of Rs.1 lakh, in default, to undergo, rigorous imprisonment for three months, as per the judgement of the Special Court for Economic Crimes, Pudukottai, in C.C.No.131/2015 dated 06.10.2017 and was admitted as prisoner in central prison Madurai on 06.10.2017.

6. The representation made by the petitioner dated 17.10.2020, was received by the third respondent on the same date. But, however, as per Rule 6 of Tamil Nadu Suspension of Sentence Rules, 1982, Ordinarily Leave can be granted only for attending death or serious illness of relatives. As per Rule 20 Ordinarily leave can be granted for the following reasons:-

7. To make arrangements for the livelihood of his family and for the settlement of life after release;

(i) To make arrangements for the admission of the children in the school or college;

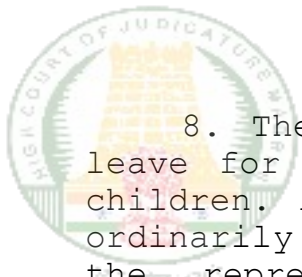
(ii) Construction or repairing of the home stead;

(iii) To make arrangements or to participate in the marriage of the sons and daughters, full brothers or full sisters;

(iv) Settling family disputes like Partition etc.,

(v) Agricultural operations like Sowing, harvesting etc., and,

(vi) Any other extraordinary reasons.

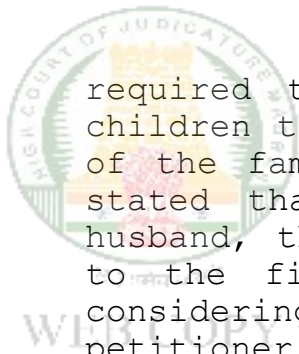


8. The petitioner on behalf of her husband sought two months leave for her husband on the ground that he is to stay with her children. According to the rules, there is no provision, to grand ordinarily leave, on the ground, as mentioned by the petitioner. So, the representation, dated 15.10.2020, was rejected by the respondent, by the order dated 20.01.2020 .

9. Heard Mr.G.Murugendran, learned counsel appearing for the petitioner and Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the respondents.

10. It is the contention, on the part of the petitioner that as per the representation annexed along this petition, she has clearly stated that after the imprisonment of the petitioner's husband in the Prison, in pursuance of the conviction and sentence passed by the court, the children of the petitioner did not see the father. As a result of which, they were mentally depressed. So, because of the absence of the petitioner's husband, they have become dull and restless. So, if the father namely, the convict is able to spend two months time with the children, their future will be good.

11. Reading of Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982, shows that ordinary leave can be granted only for the limited purposes that have been enunciated. If the petitioner is able to fit her representation within any one of the grounds, then the husband of the petitioner is entitled for ordinary leave. But, in the petition, she has vaguely stated that because of the imprisonment the Children's are unable to see their father and because of that, they become dull and depressed. According to the learned counsel for the petitioner, her case, clearly fits in the grounds mentioned as the extraordinary reasons, so, it can be granted and also submitted that his request will also fit, under the condition of making arrangements for the livelihood of the family and for the settlement of life after release and to make arrangements for the admission of the children, in the school or college. But, reading of the representation made by the petitioner does not make any such sense fitting in to any of the grounds mentioned in Rule 20. Depression caused, due to the absence of the father to the children cannot be considered to be an extraordinary reason. Because, as per the jail rules, visiting of the family members to the convict is permitted. So, that cannot be considered to be an extraordinary ground. Moreover, in the representation, she has not stated that to make arrangements for the livelihood of the family the presence of the convict is necessary. Moreover, there is no specific request that presence of the Convict is required for making arrangements for the admission of the children in the school. So, the vague grounds that are made in the petition, cannot be considered. So, it was rightly rejected by the third respondent which requires, no interference at the hands of this court. However, from the submissions, made by the learned counsel for the petitioner, it is seen that the the presence of the convict is



required to make arrangements for the purpose of admitting the children to the school and as well as for the making of livelihood of the family. In the affidavit filed along this petition, it is stated that subsequent to the imprisonment of the petitioner's husband, the petitioner is not in a position to run the family due to the financial difficulties in view pandemic lockdown . So, considering this fact we are of the considered view that the petitioner can make a fresh representation making proper grounds for releasing the petitioner on ordinarily leave and if any petition or representation is made, the authorities may consider the same as per rules.

12. So this petition is disposed of with the following direction:-

The petitioner is at liberty to make a fresh representation making the grounds properly for releasing the convict on ordinarily leave within 15 days from the date of receipt of a copy of this order. The respondents on receipt of representation either from the petitioner or from the convict are directed to consider the same within 15 days, thereafter, as per law and the rules and pass appropriate orders.

13. With this direction this writ petition Stands disposed of. No cost.

Sd/-

Assistant Registrar (CSII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

- 1.The Home Secretary,
Home Department (Prision),
Secretariat, Fort St., George,
Chennai - 600 009.
- 2.The Director General of Prison and
Inspector General of Prison,
Whannels Road, Egmore, Chennai - 08.



3.The Superintendant of Police,
Madurai Central Prison,
Madurai District.

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

+1 CC to M/s.G.MURUGENDRAN, Advocate (SR-9382[F] dated 08/03/2021)

W.P.(MD)No.18312 of 2020
05.03.2021

ES(CO)

KB(16.03.2021) 5P 6C