



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

and

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.20048 of 2020

A.P.Ganesan

... Petitioner

Vs.

1.State of Tamilnadu,
Rep. by the Principal Secretary to Government,
Home (Prison V) Department,
Secretariat, Fort St.George,
Chennai - 600 009.

2.Additional Chief Secretary to Government,
Home (Prison V) Department,
Secretariat, Fort St George,
Chennai - 600 009.

3.The Superintendent of Police,
O/o.Superintendent of Police,
Central Prison,
Madurai District,
Madurai.

... Respondents

PRAYER:Writ 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 Government Order(D)No.1432 Home (Pri.V) Department on the file of Respondent No.2, dated 03.12.2020 and quash the same as illegal and consequently, directing the respondents to provide ordinary leave to the petitioner's brother namely Balu @ Balasubramani (C.P.No.4754-Central Prison, Madurai) on Ordinary Leave for one month for effecting settlement the petitioner's property by way of partition, name transfer, maintenance, sale etc., and permit the petitioner's brother to visit his properties in Virudhunagar District and to meet his lawyer, relatives, to go to hospital, temples, register office and other places which similarly situated leave prisoner would be allowed.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.S.Ravi,
Counsel for Govt. of T.N (crl.side)

**O R D E R**

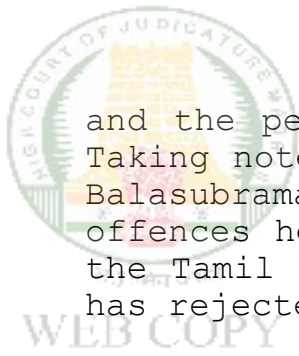
(Order of the Court was made by V.BHARATHIDASAN, J.)

Challenging the order passed by the 1st respondent, rejecting the petitioner's application seeking for ordinary leave to his brother, Life Convict, by name, Balu @ Balasubramani, the present writ petition has been filed.

2. According to the petitioner, his brother Balasubramani was convicted for an offence under Sections 302, 394 and 397 of IPC., in S.C.No. 115 of 2006, by the learned Principal District Judge, Srivilliputhur, dated 31.10.2007. Challenging the same, he filed an appeal in Crl.A.(MD)No.547 of 2008, before this Court and this appeal is also came to be dismissed and he has been in jail from 31.10.2007 and so far he has not applied for any ordinary leave. Now, it has been submitted by the petitioner that a family partition in respect of the property is planned, in which, the presence of the petitioner's brother viz., Balu @ Balasubramani, a Life Convict, is very much required, hence, he made an application before the 3rd respondent, which was rejected and challenging the said order of rejection, the petitioner has filed the present writ petition.

3. Earlier, the petitioner had filed an application seeking ordinary leave, which was rejected, challenging the same, the petitioner has filed a Writ Petition before this Court in W.P.(MD) No.4019 of 2017. This Court, by an order dated 08.03.2017, set aside the order of rejection, directed the authorities to consider the petitioner's application in accordance with law, however, no order has been passed. Subsequently, the petitioner made another application that was not considered. Hence, he filed another Writ Petition in W.P.(MD)No.7756 of 2019 before this Court. Pending writ petition, the authorities passed an order rejecting the request made by the petitioner. Hence, that writ petition was closed. Challenging the said order of rejection, yet another Writ Petition in W.P(MD)No.4723 of 2020, has been filed and by an order, dated 05.03.2020, this Court set aside the order and directed the jail authorities to forward the petitioner's application to the Government, for deciding the application under Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982. Thereafter, the impugned order has been passed by the first respondent, rejecting the petitioner's application, on the ground that, since the petitioner has been convicted for the offence under Sections 302 and 394 r/w 397 IPC., he is not entitled for ordinary leave. Challenging that order, the present Writ Petition has been filed.

4. The first respondent has filed a counter affidavit stating that the petitioner has been convicted for the offence under Sections 302, 394 and 397 IPC., and sentenced for life imprisonment,



and the petitioner is in jail for 15 years, 2 months and 27 days. Taking note of the fact that the petitioner's brother viz., Balu @ Balasubramani, a Life Convict, has been convicted for the aforesaid offences he is not entitled for ordinary leave, under Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules. Hence, the Government has rejected the petitioner's request.

5. We have heard the learned counsels appearing for the petitioner as well the respondents.

6. The application filed under Rule 40 of the Tamil Nadu Suspension of Sentence Rules, seeking exemption for granting ordinary leave. The only objection by the Government is that the petitioner is convicted for the offence of robbery, he is ineligible for Ordinary Leave, under Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules. We are of the opinion that the reason given by the Government for rejecting the application filed under Rule 40 of the said Rule, is not sustainable for the following reasons;

7. Admittedly, the convict prisoner is in jail for more than 15 years and so far he has not been granted any ordinary leave. The present application has been filed under Rule 40 of the said Rules, seeking exemption, which reads as follows:-

"40. Power to exempt.- The Government may exempt any person from all or any of the provisions of theses rules."

8. Rule 21(b) of the Rules, which is a bar for making the prisoner ineligible for seeking ordinary leave. In the present circumstances, the Government cannot once again invoke Rule 21(b) of the Rules and reject the petitioner application. That apart, there is no allegation that the conduct of petitioner is bad and also there is no apprehension that in the event of granting leave, it will be misused by the convict. Now, the petitioner is seeking leave only to settle the family dispute, to effect partition and make arrangement for the livelihood for the family and for settlement for life partner, which will fall under Rule 20(1) of the Rules.

9. In the above circumstances, we are inclined to set aside the impugned order passed by the 2nd respondent, dated 03.12.2020, and accordingly, the same is set aside. The 2nd respondent is directed to consider the petitioner's application and pass suitable orders, granting ordinary leave to the Prisoner / Life Convict, as requested, within a period of four weeks from the date of receipt of a copy of this order.



10. With the above directions, the Writ Petition stands disposed of. No costs.

Sd/-

Assistant Registrar (W)

// True Copy //

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/ /2021

Sub Assistant Registrar(CS)

MPK

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 Principal Secretary to Government,
State of Tamilnadu,
Home (Prison V) Department,
Secretariat, Fort St.George,
Chennai - 600 009.
- 2.Additional Chief Secretary to Government,
Home (Prison V) Department,
Secretariat, Fort St George,
Chennai - 600 009.
- 3.The Superintendent of Police,
O/o.Superintendent of Police,
Central Prison,
Madurai District,
Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-28585[F] dated 08/09/2021)

W.P. (MD) No.20048 of 2020

08.09.2021

_RD(28.09.2021) 4P 5C