



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.11.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.20995 of 2021

J.Vidhya

... Petitioner

vs.

1.The Additional Director General of Prison,
O/o.The Additional Director General of Prison,
No.1, Gandhi Erwin Road,
Egmore, Chennai - 8.

2.The Superintendent of Prison,
Central Prison, Madurai.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to permit the petitioner and her Advocate to visit her husband, namely, M.Jegathish, S/o.Muthukumar, now confined at Central Prison, Madurai in R.P.No.7488 by considering the representation dated 18.11.2021.

For Petitioner	: Mr.C.Senthil Murugan
For Respondents	: Mr.T.Senthil Kumar, Additional Public Prosecutor.

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2.The petitioner's husband is presently confined in Central Prison, Madurai. The petitioner alleges that she has been denied permission to meet her husband. The representation sent by her in this regard did not elicit any response. Hence, this writ petition came to be filed.

3.When the matter was taken up for hearing, the learned Additional Public Prosecutor submitted that the petitioner's husband is involved in as many as ten cases. Out of them, one is a murder case. The petitioner's husband was originally confined in Puzhal Central Prison, Chennai. On account of his misbehavior, he was transferred to Madurai Central Prison. Even in Madurai Central Prison, he continued to indulge in unruly conduct and that is why, he has been debarred from receiving visitors for one month. The said period would expire on 06.12.2021. The petitioner's husband is free to receive visitors thereafter as per the rules set out in



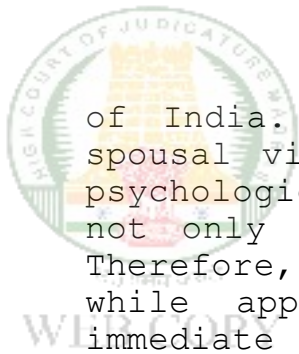
Tamil Nadu Prison Manual.

4.The petitioner is said to be seven months' pregnant. She is desirous of meeting her husband. The question that falls for consideration is whether the power of the jail Superintendent to withdraw or postpone the privilege of the undertrial/convict from seeing his or her spouse. Even a convicted prisoner shall be allowed reasonable facilities for seeing or communicating with his relatives or friends or legal advisors and shall also be allowed to have interviews with them, subject to the restrictions set out in Rule 520 of the Tamil Nadu Prison Rules, 1983. In addition to the privileges referred to in Rule 520, every convicted prisoner falling under Class B shall be allowed to have an interview with his friends and relatives once in fortnight. But the exercise of privilege shall be contingent on good conduct and may be withdrawn or postponed by the Superintendent for bad conduct (Rule 521).

5.The stand of the respondents is that since the petitioner's husband had exhibited bad conduct, the privilege of seeing and receiving visitors has been temporarily withdrawn. The power and authority of the jail Superintendent to enforce and maintain discipline among prisoners is not only beyond dispute but also necessary. But no power can be exercised disproportionately. Rule 297 catalogs the prison offences. Rule 302 sets out the minor and major punishments. Stopping interviews is not one of them. The statutory scheme is anchored on the premise that what has been conferred on the prisoner is a privilege. In jurisprudential terms, the person conferring the privilege can always withdraw it. If it is seen as a right, then, the principle of proportionality will have to be factored in.

6.Following *Sunil Batra* decisions starting with the one reported in (1978) 4 SCC 494, there has been paradigm shift. The Prison Rules will have to satisfy the rigors of Articles 14, 19 and 21 of the Constitution of India. He is entitled to certain fundamental rights even while in custody [(2016) 3 SCC 1]. It is the obligation of the prison authorities to protect the human rights of the prisoners [(2016) 10 SCC 17]. The United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) have been taken note of in the decision reported in [(2017) 10 SCC 658]. Rule 58 of the said Rules reads that prisoners shall be allowed to communicate with their family and friends at regular intervals. The conjugal right of the prisoners has been upheld in *Jasvir Singh vs. State of Punjab* (2015 CrI.LJ 2282). In *Rahmath Nisha vs. The Additional Director General of Prison and ors* (2020 (2) CTC 417), I had held that the privacy of the prisoner must be respected when he meets his spouse.

7.Looked at from this angle, ban on even spousal visits appears to be grossly disproportionate and also a violation of the fundamental right guaranteed under Article 21 of the Constitution



of India. A disturbed mental state leads to bad conduct. If spousal visits are also forbidden, that would only aggravate the psychological condition of the prisoner. Denial of spousal visit not only does not serve any purpose but is counter-productive. Therefore, the power of the jail Superintendent to ban interviews while applicable to friends and relatives cannot extend to immediate family members. Of course, the immediate family members cannot insist that they have the right to meet the prisoner at any time. That is subject to the general jail norms currently applicable.

8.This writ petition stands allowed. No costs.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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 Additional Director General of Prison,
O/o.The Additional Director General of Prison,
No.1, Gandhi Erwin Road, Egmore, Chennai - 8.
- 2.The Superintendent of Prison,
Central Prison, Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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RS (09.12.2021) 3P 4C