



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2022

PRONOUNCED ON : 27.01.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Ms.JUSTICE R.N.MANJULA

W.P.No.178 of 2022

R.Gandhi

..Petitioner

Vs.

1.State rep. by

Home Secretary to the Government of Tamil Nadu
St. George Fort
Chennai 600 009

2.The Superintendent of Prison

Central Puzhal Prison-I
Puzhal

3.The Inspector of Police

E-3 Teynampet Police Station
Chennai

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 2nd respondent to grant emergency leave to the petitioner's son M.Prakesh @ Thavakalai Prakesh, S/o.Late Mahendiran to attend his brother's 16th day death ceremony in pursuance of Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982 and considering the representation dated 02.01.2022.

For Petitioner : Mrs.S.Nadhiya

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



O R D E R

R.N.MANJULA, J.

Seeking emergency leave for life convict prisoner viz., M.Prakesh @ Thavakalai Prakesh (CT.No.7651) for attending the 16th day death ceremonies of his deceased brother Mayilvel, scheduled to be held on 07.01.2022, the petitioner who is the mother of the convict prisoner, gave a representation dated 02.01.2022 and has thereafter, filed this petition seeking issuance of a writ of mandamus.

2. Heard Mrs.S.Nadhiya, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the State.

3. When the matter was taken up for hearing, the learned Additional Public Prosecutor submitted that when the convict prisoner's brother Mayilvel died on 26.12.2021, emergency leave was granted to the convict prisoner to attend the funeral. He also submitted that the Superintendent of Prison, Puzhal, by his order dated 06.01.2022, stated that there is no provision in the Rules for granting emergency leave for such ceremonies.

4. Mrs.Nadhiya contended that this rejection order should have been passed by the Deputy Inspector General of Prisons and not by the Superintendent of Prison, Puzhal. She further contended that the denial of leave violates Articles 14 and 21 of the Constitution of India.

5. We gave our anxious consideration to the aforesaid submission.

6. It has been held beyond cavil by the Supreme Court in Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha [(2020)14 SCC 161] as follows :

"26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations."

(emphasis supplied)

7. When the rules do not provide for grant of emergency leave for such purposes, this Court cannot carve out an exception and grant leave to the convict prisoner, as that would tantamount to exceeding the jurisdiction vested with this Court under Article 226 of the Constitution of India.



8. As regards the contention of Mrs.Nadhiya that the Deputy Inspector General should have passed the orders of rejection, we are afraid that the same cannot be countenanced. In this regard, a Division Bench of this Court, authored by one of us (PNPJ), in Bhuvaneshwari Vs. State (2021 SCC OnLine Mad 2721), has held that when a convict prisoner does not even qualify for grant of leave under the Tamil Nadu Suspension of Sentence Rules, 1982, it is not necessary for the Deputy Inspector General to pass an order. In this case also, by the order dated 06.01.2022, the Superintendent of Prison, has conveyed to the petitioner that the Tamil Nadu Suspension of Sentence Rules do not provide for grant of emergency leave for the convict prisoner to attend 16th day death ceremonies.

In the light of the above, a mandamus as prayed for by the petitioner, cannot be issued and accordingly, this writ petition is dismissed as being devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Home Secretary to the Government of Tamil Nadu,
St. George Fort, Chennai 600 009.

2.The Superintendent of Prison,
Central Puzhal Prison-I,
Puzhal.

3.The Inspector of Police,
E-3 Teynampet Police Station,
Chennai.

4.The Public Prosecutor,
High Court, Madras.

+1cc to Government Pleader SR. No.1942

W.P.No.178 of 2022

PMK (CO)
PR (08/02/2022)