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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.02.2022
PRONOUNCED ON : 28.02.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

W.P.No.2768 of 2022

Chitra

..Petitioner

Vs.

The State rep. by its

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

2.The Director Inspector General of Prison
Central Prison
Coimbatore 641 018

3.The Superintendent
Central Prison
Coimbatore 641 018

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the 1st and 2nd respondents to grant ordinary leave for one month without escort to the petitioner's husband, the detenu viz., Ramachandran, S/o.Kaalirathinam, aged about 48 years, convict No.1241, detained in the Central Prison, Coimbatore.

For Petitioner : Mrs.S.Lakshmi

For Respondents : Mr.R.Muniyapparaj
Additional Public
Prosecutor



O R D E R

P.N.PRAKASH, J.

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Seeking ordinary leave for the convict prisoner viz., Ramachandran (CT.No.1241), his wife Chitra, the petitioner herein, gave an application dated 11.01.2022 and has thereafter, filed this petition with the above prayer.

2. Heard Mrs.S.Lakshmi, 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 the leave application of the petitioner has been rejected on 31.01.2022, by the Deputy Jailor, Open Prison, Singanallur, on the ground that Ramachandran has completed only one year and seven months and therefore, he would not be entitled to ordinary leave under Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules").

4. Mrs.Lakshmi submitted that she is aware of this rejection order, but, she is assailing the order on two grounds, viz.,

- (i) The Deputy Jailor has no authority to pass the impugned order, as ordinary leave can be granted, only by the Deputy Inspector General of Prisons;
- (ii) The petitioner is seeking leave under Rule 40 of the Suspension Sentence Rules.

5. We are unable to agree with the aforesaid submissions of Mrs.Lakshmi, for the following reasons :

- i. Ramachandran is not in a closed prison, but, is in open prison situated in Singanallur, Coimbatore.
- ii. The Deputy Jailor is in charge of the said prison.
- iii. When a leave application is submitted, it will have to be first processed by the officer in charge of the prison, where the prisoner is lodged and if the prisoner satisfies the threshold eligibility conditions, only then, the papers could be sent to the Deputy Inspector General of Prisons, for taking a decision in this regard. To avail ordinary leave, a prisoner should have completed three years of imprisonment under Rule 22(1) of the Sentence Suspension Rules.



6. As stated above, in this case, Ramachandran has completed only one year and seven months of imprisonment and therefore, he would not be eligible for ordinary leave. Hence, the Deputy Jailor, by order dated 31.01.2022, has only conveyed this fact and has not arrogated to himself the power of the Deputy Inspector General of Prisons.

7. As regards the second submission, Rule 40 of the Sentence Suspension Rules is a negative power to grant exemption in a given case, that is vested with the Government and it does not confer any right to a prisoner for the purpose of issuance of a writ of mandamus. In the absence of any legal right, a writ of mandamus cannot lie. Apropos it is to allude to the following observation of the Supreme Court in Mani Subrat Jain and Others Vs. State of Haryana and Others[(1977) 1 SCC 486] :

"It is elementary though it is to be restated that no one can ask for a mandamus without a legal right. There must be a judicially enforceable right as well as a legally protected right before one suffering a legal grievance can ask for a mandamus. A person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. (See Halsbury's Laws of England, 4th Edn., Vol. I, para 122; State of Haryana Vs. Subash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Jasbhai Motibhai Desai Vs. Roshan Kumar Haji Bashir Ahmed [(1976) 1 SCC 671 : (1976) 3 SCR 58] and Ferris : Extraordinary Legal Remedies, para 198.)"

8. Further, the power to exempt is a discretionary power vested with the State Government. The exercise of such discretion cannot be arbitrary or uncanalised, but, must be based on objective and intelligible material. It goes without saying that the exercise of such power is always subject to judicial review.

9. It is equally well settled that a writ of mandamus would not lie to compel the exercise of discretion by an authority. The position is put beyond the ken of any controversy by a Constitution Bench of the Supreme Court in State of Karnataka Vs. State of A.P. [(2000) 9 SCC 572], wherein it was observed thus:

"The law as regards the issuance of a mandatory order or writ depends upon the authority exercising the power as well as the nature of the function and obligations arising therefrom. It is settled law that such a direction cannot possibly be granted so as to



compel an authority to exercise a power which has a substantial element of discretion.”

(emphasis supplied)

10. Ergo, no mandamus can be issued to the Government to pass an order under Rule 40, *ibid.* Of course, if the Government passes an order under Rule 40, *ibid.* in a given case, the legality of it, can be subjected to judicial review by the Constitutional Court. However, the Constitutional Court cannot direct, by way of a mandamus, the exercise of its power under Rule 40, *ibid.*

11. In fact, as per Rule 3, *ibid.*, leave is not a matter of right, but, it is a concession granted to the prisoner. Similarly, in *Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha [(2020)14 SCC 161]*, the Supreme Court has categorically held that, parole is a privilege and not a right vested with the prisoner.

In view of the foregoing discussion, this writ petition is dismissed as being devoid of merits. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Secretary to Government of Tamil Nadu,
Department of Home, Fort St. George, Chennai 600 009
- 2.The Director Inspector General of Prison,
Central Prison, Coimbatore 641 018.
- 3.The Superintendent,
Central Prison, Coimbatore 641 018.
- 4.The Public Prosecutor,
High Court, Madras.

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KG (CO)
PR (11/03/2022)