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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mrs. Justice R.HEMALATHA

W.P.No.1527 of 2022

D.Chandra

.. Petitioner

Vs.

1. Government of Tamil Nadu represented by
The Secretary to Government,
Home (Prison IV) Department,
Fort St.George,
Chennai - 600 009.

2. The Additional Director General of Prisons,
Thalamuthu Natrajan Maaligai,
II Floor, Gandhi Irwin Road,
Egmore, Chennai - 600 008.

3. The Superintendent of Prisons,
Central Prison-I (Convict),
Puzhal, Chennai - 600 066.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the petitioner's representation dated 17.01.2022.

For Petitioner : Mr.M.G.B.Jeyakumar
for Mr.R.Arunkumar

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



ORDER
[Made by P.N.PRAKASH, J.]

This writ petition has been filed seeking a direction to the respondents to consider the petitioner's representation dated 17.01.2022.

2. Seeking ordinary leave under the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the TNSS Rules") for her brother Saravanan, who is lodged in the Central Prison-I, Puzhal, the petitioner has given a representation dated 17.01.2022 and has thereafter, filed the present writ of mandamus with the above prayer.

3. Heard Mr.M.G.B.Jeyakumar, learned counsel representing Mr.R.Arunkumar, learned counsel on record for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents.

4. It is seen that in paragraph nos. 3 and 4 of the affidavit filed by the petitioner, it is stated as follows:

"3. I submit that my own brother S.Saravanan murdered to his wife Mrs.Mahadevi and he was charged for the offence U/s 302 of IPC by the Learned VII Additional Sessions Judge at Chennai and at the conclusion of trial my own brother S.Saravanan have been convicted for the offence U/s 304 (part-I) of IPC and sentenced to undergo 10 years Rigorous Imprisonment and order to pay fine of Rs.1000/- and in default undergo six months simple imprisonment by judgment dated 05.03.2018 in S.C.No.306 of 2013. After the conviction and sentenced by the trial Court my own brother S.Saravanan have been in prison from 05.03.2018 to still now.

4. I humbly submit that after the above said judgment in S.C.No.306 of 2013 dated 05.03.2018 against my own brother S.Saravanan has filed Criminal Appeal before this Hon'ble High Court, Madras in Crl.A.No.187 of 2018, which is pending for final hearing."

5. Thus, from the above extract, it can be seen that the appeal of Saravanan is pending on the file of this Court in Crl.A.No.187 of 2018. Therefore, he may not be entitled to ordinary leave under the TNSS Rules in the light of the authoritative pronouncement of the Constitution Bench of the Supreme Court in K.M.Nanavati vs. State of Bombay¹, the relevant paragraph of which, is extracted hereunder:

¹ AIR 1961 SC 112



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"21. In the present case, the question is limited to the exercise by the Governor of his powers under Article 161 of the Constitution suspending the sentence during the pendency of the special leave petition and the appeal to this court; and the controversy has narrowed down to whether for the period when this court is in seizin of the case the Governor could pass the impugned order, having the effect of suspending the sentence during that period. There can be no doubt that it is open to the Governor to grant a full pardon at any time even during the pendency of the case in this court in exercise of what is ordinarily called "mercy jurisdiction". Such a pardon after the accused person has been convicted by the court has the effect of completely absolving him from all punishment or disqualification attaching to a conviction for a criminal offence. That power is essentially vested in the head of the Executive, because the judiciary has no such "mercy jurisdiction". But the suspension of the sentence for the period when this court is in seizin of the case could have been granted by this court itself. If in respect of the same period the Governor also has power to suspend the sentence, it would mean that both the judiciary and the executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction. Such a conflict was not and could not have been intended by the makers of the Constitution. But it was contended by Mr. Seervai that the words of the Constitution, namely, Article 161 do not warrant the conclusion that the power was in any way limited or fettered. In our opinion there is a fallacy in the argument insofar as it postulates what has to be established, namely, that the Governor's power was absolute and not fettered in any way. So long as the judiciary has the power to pass a particular order in a pending case to that extent the power of the Executive is limited in view of the words either of Sections 401 and 426 of the Code of Criminal Procedure and Articles 142 and 161 of the Constitution. If that is the correct interpretation to be put on these provisions in order to harmonise them it would follow that what is covered in Article 142 is not covered by Article 161 and similarly what is covered by Section 426 is not covered by Section 401. On that interpretation Mr Seervai would be



right in his contention that there is no conflict between the prerogative power of the sovereign state to grant pardon and the power of the courts to deal with a pending case judicially."

(emphasis supplied)

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The aforesaid passage was relied on by a Division Bench of this Court in K.Rajamanickam and Others vs. State² which was rendered way back on 03.01.1991.

6. That apart the word "sentence" in TNSS Rules reads as under:

" "sentence" means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Sentence in default of fine shall not be taken into consideration while fixing eligibility for being released on leave."

7. A reading of the above definition shows that the convict prisoner should have been sentenced finally by the appellate Court or revision court.

8. Therefore, Saravanan, convict prisoner herein, may not be entitled to ordinary leave under the TNSS Rules. However, it is open to him to approach the appropriate Court for suspension of sentence and bail under Section 389 Cr.P.C.

With the above observation, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

nsd

To

1. The Secretary to Government,
Home (Prison IV) Department,
Fort St.George,
Chennai - 600 009.



2. The Additional Director General of Prisons,
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II Floor, Gandhi Irwin Road,
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3. The Superintendent of Prisons,
Central Prison-I (Convict),
Puzhal, Chennai - 600 066.

4. The Public Prosecutor,
Madras High Court,
Chennai - 600 104.

W.P.No.1527 of 2022

KSM (CO)
PR (17/02/2022)