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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.04.2022

PRONOUNCED ON : 20.04.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE A.A.NAKKIRAN

W.P.No.8680 of 2022

Chitra ... Petitioner

Vs.

The State rep. by its

1.The Secretary to the 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 Assistant Jailor
Open Prison
Singanallur
Coimbatore 16

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order No.1241/Thi.Ve.C/2022 dated 31.01.2022 issued by the 4th respondent and quash the same and consecutively direct the 1st respondent to grant leave for one month without escort to the detenu viz., Ramachandran, S/o.Kaalirathinam, aged about 48 years, convict No.1241, detained at the Central Prison, Coimbatore.



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For Petitioner Mrs.S.Lakshmi

For Respondents Mr.R.Muniyapparaj
Additional Public
Prosecutor

O R D E R

P.N.PRAKASH, J.

This writ petition has been filed to quash the order passed by the 4th respondent in No.1241/Thi.Ve.C/2022 dated 31.01.2022 rejecting the petitioner's request for grant of one month leave for her husband viz., Ramachandran (CT.No.1241) and to direct the 1st respondent to grant him leave without escort for the said period.

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

3. The petitioner's husband viz., Ramachandran is a convict prisoner (CT.No.1241), who has been convicted for the offences under Section 489-B read with Section 34 IPC and sentenced to undergo imprisonment for 5 years with fine of Rs.1,000/-, in default to undergo imprisonment for a further period of 3 months, by the Assistant Sessions Court, Rasipuram at Namakkal in S.C.No.105 of 2006 on 24.11.2008.

4. The petitioner has not stated in her affidavit as to whether, any appeal has been filed by Ramachandran, challenging his conviction and sentence in S.C.No.105 of 2006. That apart, the petitioner has not even stated as to when Ramachandran was taken into custody for undergoing the sentence.

5. In paragraph 6 of the affidavit, the petitioner has stated that, she had filed W.P.No.2786 of 2022 in the Madurai Bench of this Court for similar relief and the same has been dismissed on 28.02.2022. This information is also incorrect because, the petitioner has filed W.P.No.2768 of 2022 in the Principal Seat, for issuance of a writ of mandamus directing the prison authorities to grant ordinary leave for one month without escort to Ramachandran, which has been dismissed on the ground that he had undergone only 1 year and 7 months of imprisonment



and therefore, he would not be eligible for ordinary leave, since as per Rule 22(1) of the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules"), a convict prisoner should have undergone a minimum of 5 years of imprisonment to be eligible for grant of ordinary leave.

6. Rule 22(1) of the Sentence Suspension Rules reads as under :

"22.Eligibility for ordinary leave

(1) No prisoner shall be granted ordinary leave unless he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed five years of imprisonment from the date of initial imprisonment."

In the teeth of the above rule, we are at a loss to understand as to how the petitioner's husband can be granted 30 days ordinary leave by overlooking the above statutory provision.

7. Mrs.Lakshmi contended that under Rule 40 of the Suspension Sentence Rules, the Government has got the power to grant exemption and therefore, the representation of the petitioner should have been considered only by the Government and not by the Deputy Jailor. This argument was raised by Mrs.Lakshmi even in W.P.No.2768 of 2022 and we have answered the said argument as under :

"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.

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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.



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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.*"

8. Despite we having answered Mrs.Lakshmi's argument in W.P.No.2768 of 2022, the same grounds have been raised again in the instant writ petition.

For all the foregoing reasons, this writ petition is dismissed as being devoid of merits. No costs.

SD/-

ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR



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To

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Department of Home,
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- 4.The Assistant Jailor,
Open Prison,
Singanallur,
Coimbatore 16.
- 5.The Public Prosecutor,
High Court, Madras.

W.P.No.8680 of 2022

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