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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 07.02.2022
ORDER PRONOUNCED ON : 22.02.2022

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

W.P. Nos.18899 and 21260 of 2021

Sumathi
W/o.Natarajan

Petitioner in both W.Ps.

Vs.

1. The State of Tamil Nadu
represented by its Secretary
Home Department
Fort St.George
Chennai - 600 009

2. The Deputy Inspector General of Prison
Egmore
Chennai - 600 008

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

Respondents in both W.Ps.

Prayer in W.P.No.18899 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records made in impugned order No.7834/Tha.Ku.1/2021 dated 09.08.2021 passed by the third respondent herein and quash the same as illegal and direct the second respondent to grant 30 days ordinary leave to the detenu Natarajan S/o.Ramsamy, aged 55 years, Convict No.7834, who is now confined at Central Prison, Puzhal, Chennai - 600 066.

Prayer in W.P.No.21260 of 2021:

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents to consider the representation of the petitioner dated 23.09.2021 by releasing the detenu Natarajan, S/o.Ramasamy, Convict No.7834, now confined at Central Prison-I, Puzhal, Chennai - 600 066, under Rule 633 of the Tamil Nadu



Prison Rules, 1983.

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For petitioner	Mr.R.Sankarasubbu
[in both W.Ps.]	
For respondents	Mr.R.Muniyapparaj
[in both W.Ps.]	Additional Public Prosecutor

COMMON ORDER

P.N.PRAKASH, J.

Since the parties involved in the two instant writ petitions are the same and also in view of inter connectivity of the issues involved, both the writ petitions are considered and decided by this common order.

2. Heard Mr.R.Sankarasubbu, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor, appearing for the respondents/State.

3. When orders were reserved in these matters on 07.02.2022, these two writ petitions had become infructuous, inasmuch as, the detenu herein, viz., Natarajan (Convict Prisoner No.7834), had died on 04.10.2021 itself. Yet, since Mr.R.Sankarasubbu, while prefacing his submissions, accused this Court of judicial murder and the Prison authorities of executive murder of Natarajan, in the Government Stanley Medical College and Hospital on 04.10.2021 while the latter was undergoing imprisonment, it became imperative for us to pore over all the records and narrate the sequence of events, as under, chronologically.

4. On 13.07.1997, the members of Tamil Nadu Liberation Army, who believe in bringing about the separation of Tamil Nadu from the Indian Union by resorting to violence, looted the Andimadam Police Station, in connection with which, a case in Andimadam P.S.Crime No.234 of 1997 was registered and 14 accused, including Natarajan [A14] faced trial in S.C.No.2 of 2002 in the Special Court for Bomb Blast Cases, Poonamallee, for the offences under Sections 120-B, 148, 450, 395, 395 r/w 397, 307 and 332 IPC, in which, by judgment and order dated 29.11.2019, Natarajan was convicted of the offences under Sections 120-B, 147, 450 and 395 IPC and was sentenced to various terms of imprisonment, the maximum being 10 years rigorous imprisonment. During the investigation of the case, it appears that Natarajan was arrested and admitted in prison on 29.06.2000 and the details of his incarceration are as under:

1. Date of admission in prison	:	29.06.2000
2. Date of release on bail from remand	:	21.08.2006
3. Date of conviction	:	29.11.2019
4. Date of re-admission in prison	:	29.11.2019



5. Challenging his conviction and sentences, Natarajan filed an appeal in Crl.A.No.20 of 2020 and also Crl.M.P.No.408 of 2020 u/s.389 Cr.P.C. for suspension of sentence and bail and they were under consideration at the time of his demise on 04.10.2021. It may be pertinent to state here that the appeal in Crl.A.No.20 of 2020 and the bail petition in Crl.M.P.No.408 of 2020 have been filed by none other than Mr.R.Sanakarasubbu, who is also the counsel on record in the instant two cases.

6. At the time of admission in the prison, Natarajan's general health condition was screened by the Prison Medical Officer and as per the entries recorded in the initial screening form, it is seen that the prisoner's health condition was normal and no abnormalities were found, except that his front tooth was absent and prosthetic tooth was fitted in its place. Further, at the time of admission also, he did not state that he was suffering from Cancer because he himself did not know of it.

7. On 20.05.2021, Natarajan complained of backache and myalgia and therefore, he was admitted in the Prison dispensary and he was given symptomatic treatment. He was sent out for treatment in Ortho Department and x-ray of his spine was taken in order to find out the cause of his backache. He was prescribed analgesics for his backache. On 02.07.2021, he was sent to the Cardiology Department, where, ECG and echo were taken, but they were found to be normal. Since he continued to complain of chest pain and backache, he was sent to the Government Stanley Medical College and Hospital on 09.07.2021, where, various medical examinations, including CT guided biopsy, were done on 27.07.2021, which revealed that he was suffering from lung cancer while he was an inpatient in the said hospital.

8. Sumathi, wife of Natarajan, was informed of the diagnosis. Instead of seeking suspension of sentence and bail under Section 389 Cr.P.C. on health grounds, his wife Sumathi addressed a representation dated 22.07.2021 to the Prison authorities seeking three months leave and also premature release on medical grounds. The said representation was considered by the Superintendent, Central Prison - I, Puzhal and by order dated 09.08.2021, it was rejected on the following grounds:

- a. the Deputy Inspector General of Prisons has the power to grant only 30 days ordinary leave; and
- b. since Natarajan was convicted of the offence under Section 395 IPC and sentenced to 10 years rigorous imprisonment, he would not be eligible for ordinary leave in view of Rule 22(b) of the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules") [wrongly typed as 22(b)



instead of 21(b)].

9. For the sake of convenience, we extract Rule 21(b) of the Sentence Suspension Rules:

"21. Non-eligibility for ordinary leave. - The following categories of prisoners shall not be eligible for ordinary leave: -

(b) Prisoners sentenced under sections 392 to 402 of the Indian Penal Code (Central Act 45 of 1860)."

10. Challenging the rejection order dated 09.08.2021, W.P.No.18899 of 2021 was filed by Sumathi through Mr. Sankarasubbu, seeking quashment of the impugned order as well for a mandamus seeking 30 days ordinary leave. Even in the affidavit in W.P. No.18899 of 2021, there is no mention of the fact that Natarajan's appeal and suspension of sentence petition are pending in the High Court. W.P.No.18899 of 2021 came up for admission before this Court on 08.09.2021. The adjudication of the proceedings on 08.09.2021 in W.P.No.18899 of 2021 in the daily order sheet runs thus:

Mr.R.Muniyapparaj, learned Government Advocate [Crl. Side] takes notice for the respondents. Post the matter on 15.09.2021.

11. On 15.09.2021, counter affidavit was filed. However, this Court directed the learned Additional Public Prosecutor to get instructions about the present health condition of Natarajan and the treatment given to him and adjourned the case to 22.09.2021.

12. On 22.09.2021, learned Additional Public Prosecutor submitted a report dated 17.09.2021 given by the Professor & Head of the Department of General Medicine, Government Stanley Medical College and Hospital, which reads as follows:

"Patient is a known case of Non small cell Carcinoma Left Lung, Stage IV with secondaries in bilateral parietal and occipital lobe of brain, skull, Lung and Spine (D2 - D6, causing paraparesis) on Chemotherapy and Radiotherapy. Patient was initially admitted under Radiotherapy unit and transferred to Intensive Medical Care Unit (IMCU) on 05.09.2021 due to worsening respiratory symptoms and general condition. During the course of stay in the Hospital, patient developed repeated episodes of Hypotension and shock suggestive of adrenal metastasis and the patient was resuscitated with IV fluids Inotropes. Patient is being treated with Nasal Oxygen, IV Antibiotics, Steroids, chemotherapeutic drugs, IV Fluids and periodically reviewed by team of Doctors from Departments of General Medicine, Medical Oncology, Nephrology, Radiotherapy, Neurology, Cardiology. At



present patient continues to be in Intensive Medical Care Unit with fluctuating vital signs and general condition. Patient is under close monitoring.”

13. On the same day, we furnished a copy of this report to Mr.Sankarasubbu, who submitted that the patient may be shifted to Cancer Institute, Adyar, for further treatment for which this Court observed that if Natarajan's family is willing to bear the cost of the treatment, this Court would issue directions accordingly. Mr.R.Sankarasubbu, learned counsel, took time for getting instructions and therefore, the matter was adjourned to 27.09.2021.

14. On 27.09.2021, Mr.Sankarasubbu submitted that Natarajan's family cannot afford to bear the cost of treatment in the private hospital. Therefore, this Court suggested to Mr.Sankarasubbu that a representation could be given to the authorities for premature release on medical grounds under Rule 633 of the Tamil Nadu Prison Rules, 1983 (for short “the Prison Rules”) and adjourned the matter to 04.10.2021.

15. As suggested by this Court, Sumathi, wife of Natarajan, gave a representation dated 23.09.2021 to the Government seeking premature release of Natarajan on medical grounds under Rule 633 of the Prison Rules and followed it up by filing a writ petition in W.P.No.21260 of 2021 on 24.09.2021 seeking a mandamus to consider the said representation and pass orders.

16. On 04.10.2021, both the writ petitions, W.P. Nos.18899 and 21260 of 2021 came up for hearing and at that time, the learned Additional Public Prosecutor, had received instructions that Natarajan had breathed his last on that day, i.e., 04.10.2021. However, this Court directed the respondents to file their counter affidavit along with the medical records, pursuant to which, the Superintendent of Central Prison, Puzhal, has filed a counter affidavit dated 16.10.2021 along with the medical records in W.P.No.21260 of 2021, setting out the entire facts and circumstances of the case along with the supporting medical records.

17. Mr.Sankarasubbu reiterated his submission by contending that had timely medical care been given to Natarajan, his life could have been saved. In support of his contention, he placed reliance on the following judgments of the Supreme Court and Bombay High Court and submitted that the right to life is a fundamental right under Article 21 of the Constitution of India and this right has been infringed by this Court and the Prison authorities and therefore, this Court should fix responsibility for this on someone and award compensation to Natarajan's family.

i. Ahmad Umar Saeed Sheikh v. State of U.P.¹;

ii. Ajab Singh and another v. State of U.P. and

1 1997 SCC (Cri) 47



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- others²;
iii. Sunil Fulchand Shah v. Union of India and others³; and
iv. Dr. P.V. Varavara Rao vs. National Investigation Agency and another⁴.

He also contended that the Government should have invoked Rule 40 of the Sentence Suspension Rules to release Natarajan.

18. Mr. Sankarasubbu finally contended that since the death of Natarajan had taken place while he was in prison, a Magisterial enquiry should have been conducted in terms of Section 176 (1A), Cr.P.C. and this Court may peruse the report and pass appropriate orders.

19. Per contra, Mr. R. Muniyapparaj, learned Additional Public Prosecutor, reiterated the stand taken by the State in the counter affidavits filed in both the writ petitions and submitted that there was no negligence on the part of the Prison authorities whatsoever, as timely and best treatment was given to the convict prisoner, the moment he was diagnosed of Cancer. He further submitted that the Prison authorities have no power to grant ordinary leave during the pendency of appeal in the High Court, in view of the law laid down by the Supreme Court in K.M. Nanavati v. State of Bombay⁵.

20. This Court gave its anxious consideration to the rival submissions.

21. Let us first decide on the correctness of the impugned order dated 09.08.2021 in W.P. No. 18899 of 2021.

22. Mr. Sankarasubbu contended that neither the authorities nor this Court should be swayed by the gravity of the offence for which Natarajan was convicted and that every convict prisoner would be entitled to the protection under Article 21 of the Constitution of India, irrespective of his antecedents.

23. One can have no quarrel on the aforesaid submission of Mr. Sankarasubbu, as a right to protection under Article 21 of the Constitution of India would undoubtedly permeate the prison walls and afford protection to every class of prisoner, irrespective of the heinousness of the offence committed by him. Therefore, we are not carried away by the fact that Natarajan was convicted for attacking a police station in furtherance of a violent ideology. However, the fact remains that Natarajan has been convicted of the offence under Section 395 IPC and by virtue of Rule 21(b) of the Sentence Suspension Rules, extracted above, he would not be eligible for ordinary leave. Therefore, we find no infirmity in the reason assigned in the impugned order for denying ordinary leave to Natarajan.

² 2000 SCC (Cri) 718

³ 2000 SCC (Cri) 659

⁴ 2021 SCC Online Bom 230

⁵ AIR 1961 SC 112



24. Mr. Sankarasubbu's contention that the Government should have invoked Rule 40 of the Sentence Suspension Rules and granted leave to Natarajan is not sustainable, as a convict prisoner whose appeal is under consideration in the appellate Court, cannot be granted leave at all under the Sentence Suspension Rules. In this case, Natarajan's appeal in Crl.A. No.20 of 2020 and the petition seeking suspension of sentence and bail in Crl.M.P.No.408 of 2020 were under consideration on the file of this Court. This was brought to our notice by the learned Additional Public Prosecutor during the hearing of the case and subsequently, in the counter affidavit dated 16.10.2021 in W.P. No.21260 of 2021. At this juncture, felicitous it is to refer to paragraph 21 of the judgment of the Supreme Court in Nanavati (supra):

"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 seisin 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 seisin 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



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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)

25. The aforesaid passage was relied on by a Division Bench of this Court in K.Rajamanickam and Others vs. State⁶, which was rendered way back on 03.01.1991.

26. Be it noted, Sections 426 and 401 of Cr.P.C. 1898, are in pari materia with Sections 389 and 432 respectively of Cr.P.C. 1973. The legal principle that has been set out in Nanavati (supra) is that when the appellate Court has the power to grant suspension of sentence and bail, pending appeal, the executive power of the State cannot extend to grant parole or leave or suspension of sentence. Pertinent it is to state that the Sentence Suspension Rules has been framed under Section 432 (5) Cr.P.C. Further, in consonance with the law laid down by the Supreme Court in Nanavati (supra), the definition of the word "sentence" in Rule 2(4) of the Sentence Suspension Rules has been designed as under:

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

(emphasis supplied)

27. Superadded, during the hearing of the case in Manokaran vs. State of Tamil Nadu⁷ on 01.10.2002, it came to the notice of the Supreme Court that in the State of Tamil Nadu, the convict prisoners were being granted parole/leave during the pendency of their appeal. This was frowned upon by the Supreme Court and the Joint Secretary to the Government was summoned. Apposite it is to extract the observations of the Supreme Court in the said order dated 01.10.2002:

⁶ 2015 (3) MWN (Cr) 379 (DB)

⁷ CrI.A. No.866 of 2020



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"Mr.J.A. Syed Abdul Khader, Joint Secretary to Government of Tamil Nadu, Home Department, Chennai, is present in terms of the earlier orders of this Court. Mr. Khader regrets that unfortunately a practice has grown in the State of Tamil Nadu to act in the fashion as it has been effected in the matter under consideration. Mr. Khader, however, assures this Court that in future, the State Government would act strictly according to the requirements of the statute and not de hors. The question of continuity of there being any practice being followed henceforth would not arise and the same has been discarded by the State Government."

28. Following this, the office of the Additional Director General of Prisons, issued an Office Memo No.43880/PS4/2002 dated 21.10.2002 which reads as under:

"The Superintendent is informed that the Supreme Court of India in C.A. No.866/2002, has observed that the practice being following in this State for granting leave to prisoners even for short duration during the pendency of their appeal is not in accordance with Tamil Nadu Suspension of Sentence Rules, 1982 and it is also contrary to the Constitution Bench judgment of Supreme Court in K.M. Nanavati vs. State of Bombay AIR 1961 SC 112. The Supreme Court of India has therefore ordered that in future no such short term release should be made by the competent authority without informing the Court in which the prisoner's appeal is pending and that this order of the Court should be scrupulously followed in future.

2. In this connection, the attention of the Superintendent is invited to Government letter no.66517/Prison.V/2000-15, Home Department dated 20.06.2002 communicated in this office endt.No.38245/PS4/2000 dated 04.08.2002 wherein the Government have clarified that for suspension of sentence of a convicted person whose appeal is pending, he has to approach only the Appellate Court or High Court."

3. The Superintendent/Deputy Inspector General of Prisons should therefore act in accordance with the above orders of the Supreme Court of India and should desist from releasing any prisoner on emergency or ordinary leave when



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his appeal is pending before the appropriate Court without prior permission of the Court. If any violation is noticed in this regard, the Superintendent concerned will be liable for disciplinary action.

4. The receipt of this memo should be acknowledged.

BHOLA NATH
Additional Director General of Prisons"

29. As regards Rule 40 of the Sentence Suspension Rules, the same cannot be invoked by the Government when Natarajan's appeal is pending.

30. Coming to the submission of Mr. Sankarasubbu with regard to the enquiry under Section 176 (1A) Cr.P.C., the scope of the Magisterial enquiry under the said provision is to find out whether the death of a person in custody was on account of any violence meted out to him or not. Such allegations have not been levelled here and it is, therefore, not necessary for us to call for a report of the Magisterial enquiry under Section 176 (1A) Cr.P.C. for deciding these writ petitions.

31. The fact that Natarajan was suffering from Cancer was not known even to him as well to the petitioner, because, even in CrI.M.P.No.408 of 2020 in CrI.A. No.20 of 2020, this ground has not been raised. This fact came to light only after CT guided biopsy was done on 27.07.2021, as could be seen from the in-patient treatment details signed by three specialists, issued after his demise on 04.10.2021, which reads as follows:

"Patient admitted with complaints of breathlessness and back pain for one month duration. He was permitted in convict ward and evaluated by the team of doctors from medical oncologist, radiation oncologist, Neurophysician, General Physician, Nephrologist and Cardiologist.

Investigations:

CT Thorax: 13 * 7.4 cm. Mass in the posterior apical lobe of left lung with erosion of the fifth rib and another mass lesion 3.8 * 3.8 cm inn right lower lobe and collapse of D3 and D4 vertebra and lytic lesion in D2 and D6 and multiple mediastinal lymph nodes and bilateral lung nodules. Impression suggestive of Bronchogenic Carcinoma with multiple metastasis.

CT guided biopsy done on 27.07.21: Biopsy No.2662/21 which showed features of non small cell lung cancer.

CT Brain: Multiple Brain secondaries in bilateral parietal and occipital lobe with lytic lesion in the skull.



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Treatment given: Palliative chemotherapy and palliative radiotherapy, I.V. antibiotics, antiepileptics and supportive care CARBOPLATIN AND ZOLEDRONIC ACID - 2 CYCLES (10.08.2021 & 17.09.21)

PALLIATIVE RADIOTHERAPY TO THE VERTEBRAL AND BRAIN SECONDARIES - Seven Fractions (23.08.2021 TO 02.09.2021) at Rajiv Gandhi Government General Hospital.

In spite of palliative and good supportive care, patient condition deteriorated and was shifted to the intensive medical care unit and constantly reviewed by team of doctors. On 04.10.2021, patient had one episode of seizures following which patient condition was further deteriorated. In view of poor GCS and fall in saturation, he was intubated and started on mechanical ventilator. Patient had sudden cardiac arrest. In spite of intensive resuscitation, patient could not be revived and was declared dead on 04.10.2021 at 11.50 p.m."

From Mr.Sankarasubbu's submissions,we are able to discern that the family members of Natarajan were given free access to meet him in the Government Stanley Medical College & Hospital during his hospitalisation.

32. A reading of the above report shows that Natarajan suffered from non small cell lung cancer. In order to satisfy our judicial conscience as to whether this type of cancer would show its manifestations at the preliminary stage, we did some research and found the answer in the book "Principles & Practice of Lung Cancer"⁸. The relevant portion from Chapter 23 of the said book - Clinical Presentation of Non-Small Cell Carcinoma of the Lung by Antoinette J.Wozniak and Shirish M. Gadgeel, reads thus:

"The clinical manifestations of lung cancer are varied. Patients are usually asymptomatic in early stages of the disease. This is related to the sparse pain fiber innervation of the lungs and the significant respiratory reserve that both lungs provide. The lack of symptoms is particularly true for lung cancers that originate in the periphery of the lungs. Approximately 5% to 10% of lung cancer patients are asymptomatic at presentation. These cancers are often detected during evaluation for an unrelated medical problem or on a chest radiograph performed for preoperative evaluation. Screening to identify a greater proportion of lung cancer patients has been the focus of much effort over the last 3 decades, and this may lead to an increase in the

8 The official reference text on the IASLC,IV Edition,edited by Harvey I.Pass, M.D.,David P.Carbonate, M.D.,Ph.D.,John D.Minna, M.D.,David H.Johnson, MD, Giorgio VScagliotti, M.D. & Andrew T.Turrisi III,M.D.



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percentage of lung cancer patients who are asymptomatic at diagnosis. In recent years, promising results have been reported with the use of high-resolution computed tomography (CT) scans. The applicability of CT scans or other methods as screening tools for lung cancer remains to be determined.

Most lung cancer patients who are symptomatic have advanced disease. In a series of more than 600 patients, 27% presented with symptoms related to the primary tumor. Most of the patients had either symptoms related to metastatic disease (32%) or nonspecific constitutional symptoms such as anorexia, fatigue, and weight loss (Table 23.1). Outcomes of patients appeared to be better when they were asymptomatic at presentation, whereas patients who presented with symptoms related to metastatic disease fared the worst. Furthermore, patients with absence of symptoms and abnormalities on standard laboratory tests were very unlikely to have scan evidence of metastatic disease.

A delay in reporting of new symptoms or change of existing symptoms by lung cancer patients has been observed. In a series from the United Kingdom, the median time between onset of symptoms and patients seeking medical attention was 12 months. A further delay often occurs since primary care physicians may not consider lung cancer in the differential diagnosis. Various reasons account for the delay in considering lung cancer as a diagnosis by physicians, including the nonspecific nature of lung cancer symptoms and the fact that common lung cancer symptoms are more often attributable to benign etiologies. The impact of this observed delay on patient prognosis is unclear."

Thus, from the above medical literature, it can be seen that lung cancer would get diagnosed very late, for which, none can be blamed.

33. Coming to W.P. No.21260 of 2021, as adverted to in paragraph 14 (supra), it was this Court which suggested to Mr. Sankarasubbu to give an application for release under Rule 633 of the Prison Rules and accordingly, an application was given by the petitioner on 23.09.2021 and W.P. No.21260 of 2021 was filed. Releasing a sick prisoner from the prison cannot be routinely done, because, first and foremost, it is the duty of the State to ensure that every sick prisoner is given the best treatment at the cost of the State, as failure to do so, would infringe Article 21 of the Constitution of India.



34. For releasing a sick prisoner under Rule 632 of the Prison Rules, the Medical Officer should give a certificate that, in his opinion, the prisoner is likely to die, if he remains in confinement, but, he will have a reasonable chance of recovery, if he is released.

35. For release under Rule 633 of the Prison Rules, the Superintendent of the Prison should give a certificate to the effect that the convict prisoner will, if released, be suitably cared for by his friends or relatives. The said rule also states that "the nature of medical relief which the prisoner is likely to be able to command at his home, is an important consideration which should not be overlooked." In this case, when Natarajan complained of backache, he was initially given treatment in the Prison Hospital and thereafter, he was shifted to Stanley Medical College and Hospital, which is a premier institution in the State and boasts of the state-of-the-art facilities for treating victims of various ailments. In this case also, the report dated 17.09.2021 shows that Natarajan was kept in the Intensive Medical Care Unit as there were fluctuations in his vitals and was being closely monitored by a team of doctors from the Departments of General Medicine, Medical Oncology, Nephrology, Radiotherapy, Neurology and Cardiology. This facility, obviously, cannot be commanded by the petitioner in her house.

36. As stated above, this Court was ready to shift Natarajan to the Cancer Institute, Adyar, but, the question was, who would bear the cost. Mr.Sankarasubbu candidly stated that the petitioner cannot afford to bear the cost. To be noted, the Government can be directed to bear the cost only if the Government is not able to provide the required medical facility for a particular ailment. When the Government Stanley Medical College and Hospital, an institution of renown with hoary tradition, was providing the best medical treatment to Natarajan, in the given circumstances, we cannot shift him to Cancer Institute overnight with a direction to the Government to foot the medical bill. Admittedly, Natarajan was in the Intensive Care Unit in Stanley Medical College and Hospital and on our orders to shift him from there, if he dies en route, we would be accused of committing a judicial murder, which accusation even now we are facing from Mr. Sankarasubbu.

37. In the counter affidavit dated 16.10.2021 filed in W.P.No.21260 of 2021, it is stated as follows:

"10 It is further submitted that a representation from the petitioner dt. 23.09.2021 was received to this office, requesting to release the said prisoner under Rule No.633 of Tamil Nadu Prison Rules, 1983 as the said prisoner in danger of death due to cancer.



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It is submitted that in compliance a report from the Prison Medical Officer was called for vide this office letter no.7834/R1/2022 dt. 27.09.2021 and it was under process as per the above said Rules. But, unfortunately, the said prisoner has died on 04.10.2021."

38. Superadded, as alluded to above, only if the Government is satisfied that the nature of medical relief which Natarajan is likely to be able to command at his home would be available, can an order under Rule 633 of the Prison Rules be passed. When Natarajan's family has stated they cannot afford to bear the medical expenses for the treatment in Cancer Institute, which, when compared to other private hospitals, is abysmally low, how could he be shifted to his home from the Intensive Care Unit in Stanley Medical College and Hospital? If the Government Hospital does that, it would amount to "medical murder". Therefore, it is incumbent on the Government Hospital to do everything possible to save the life of a patient until he breathes his last and not wash their hands off midway. The rigour of Rule 633 of the Prison Rules is very tough and an order of release has to pass through different filters. Unfortunately, in this case, while the papers were under process, Natarajan died.

39. Finally, coming to the accusation by Mr. Sankarasubbu against us, we can easily turn the tables against him by holding that he has suppressed the fact that a learned single Judge is in seizin of Natarajan's appeal against conviction in CrI.A.No.20 of 2020 and the petition for suspension of sentence and bail in CrI.M.P. No.408 of 2020 and that the same are pending. Had he disclosed these as averments in the affidavit filed in support of W.P. No.18899 of 2021, besides making a submission to that effect when W.P. No.18899 of 2021 was taken up for admission on 08.09.2021, this Court would have requested the learned single Judge to dispose of the application for suspension of sentence and bail on medical grounds or inter alia, Mr. Sankarasubbu, being a seasoned lawyer, could have easily obtained suspension of sentence and bail on medical grounds, even without our intervention, instead of beating around the bush by seeking legally impermissible reliefs like leave under the Sentence Suspension Rules and release under Rule 633 of the Prison Rules. We do not want to say this and cause embarrassment to him as our shoulders are too broad to take his insinuations stoically.

40 We wish to bring down the curtains in these cases with the following couplet from the chapter titled "Impermanence" from Tirukkural:

நெருநல் உளனொருவன் இன்றில்லை என்தும்
பெருமை உடைத்திவ் வலகு.



குறள் 6, அதிகாரம் 34 - நிலையாமை

Meaning:

This world has the greatness that one who lived yesterday is not alive today.

In the result, these two writ petitions fail and are accordingly, dismissed, however, sans costs, with liberty to the petitioner to work out her remedy, if any, in the manner known to law.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

gm/cad

To

- 1 The Secretary
Home Department
Government of Tamil Nadu
Fort St.George
Chennai - 600 009
2. The Deputy Inspector General of Prison
Egmore
Chennai - 600 008
3. The Superintendent of Prisons
Central Prison - I, Puzhal, Chennai - 600 066
4. The Public Prosecutor
High Court of Madras
Chennai 600 104

W.P. Nos.18899 & 21260 of 2021

KG(CO)
GMY(09/03/2022)