



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

WRIT PETITION NO.25625 OF 2021

A.Vedhavalli
W/o.Annamalai

.. Petitioner

Vs.

1. The Home Secretary,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.
2. The Deputy Inspector General of Prison,
O/o.Deputy Inspector General of Prison,
Vellore District.
3. The Superintendent of Prison,
Vellore Central Prison,
Vellore District.
4. The Inspector of Police,
All Women Police Station,
Vellore, Vellore District.

.. Respondents

Habeas Corpus Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records in proceedings vide No.12867/Tha.Ku.3/2021 dated 26.10.2021 passed by the third respondent and quash the same and direct the respondents to grant 60 days ordinary leave without escort to my husband Convict Prisoner Annamalai s/o.Rangaiya [CT No.3192], who is now confined at Central Prison, Vellore, for the purpose of fulfilment of the conjugal obligations and giving birth to a child.



WEB COPY

For Petitioner : Mr.P.Muthamizh Selvakumar
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

O R D E R

[Order of the Court was made by P.N.PRAKASH, J]

The petitioner's husband Annamalai is a convict prisoner [CT No.3192], who is undergoing sentence of ten years imprisonment pursuant to the conviction and sentence passed in Spl.S.C.No.28 of 2016 on 31.01.2018 by the Sessions Court, Mahalir Neethimandram [Fast Track Mahila Court], Vellore, for the offences u/s.363, 366 IPC and section 6 r/w 5(m) of the POCSO Act. The order of the trial Court was confirmed in appeal by this Court in Crl.A.No.346 of 2018. Seeking 60 days ordinary leave for the convict prisoner for "fulfilment of the conjugal obligations and giving birth to a child", the petitioner gave a leave application dated 23.10.2021, which was considered and rejected by the prison authorities by the impugned order dated 26.10.2021, aggrieved by which, the petitioner has filed the present petition.

2. Heard Mr.P.Muthamizh Selvakumar, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor, appearing for the State.

3. Mr.P.Muthamizh Selvakumar, learned counsel for the petitioner, reiterated the averments in the petitioner's affidavit and contended that under Rule 20(vii) of the Tamil Nadu Suspension of Sentence Rules, 1982, ordinary leave to a prisoner can be granted for "any other extraordinary reasons". Placing reliance on the judgment in Meharaj v. The State and others [MANU/TN/0226/2018], learned counsel submitted that a Division Bench of this Court has held that for the promotion of reformation amongst prisoners, they should be permitted to go on leave for having conjugal relationship with their spouse. Learned counsel submitted that within 48 days of the marriage of the petitioner with Annamalai, the latter was convicted and sentenced, on account of which, the petitioner got separated from him. At the time of the conviction of Annamalai, the petitioner was in the family way and the conviction of Annamalai resulted in a trauma to the petitioner and consequently, her pregnancy got terminated. Therefore, learned counsel contended that ordinary leave should be granted to Annamalai construing the conjugal relationship as "any other extraordinary reasons"



under Rule 20(vii) of the Tamil Nadu Suspension of Sentence Rules, 1982.

4. Per contra, Mr.R.Muniyapparaj, learned Additional Public Prosecutor, placed before this Court the Full Bench judgment of this Court Meharaj v. The State and others [H.C.P.(MD) No.365 of 2018 dated 20.01.2022], wherein, in paragraph No.25, it has been held as follows:

'25. If we hold that deprivation of conjugal right to a convict offends Article 21 of the Constitution of India, it would mean to give right to a convict for conjugal right, which in common parlance is for maintaining the marital relationship of husband and wife in continuity with companionship. The same cannot be permitted for a convict, as a difference has to be made between the law abider and violator.'

However, learned Additional Public Prosecutor submitted that Annamalai may be entitled to ordinary leave, if he satisfies the other conditions set out in the Tamil Nadu Suspension of Sentence Rules, 1982, which he can avail.

5. We are bound by the Full Bench judgment and therefore, the request of the petitioner for grant of 60 days ordinary leave for her husband for having conjugal relationship with her cannot be sustained. However, liberty is granted to the convict prisoner Annamalai [CT No.3192] to give a fresh application seeking ordinary leave and on such application being given, the same shall be considered in accordance with the rules expeditiously.

With the above observation, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

gm

To

1. The Home Secretary,
Home Department,
Secretariat, Fort St.George,
Chennai - 600 009.



2. The Deputy Inspector General of Prison,
O/o. Deputy Inspector General of Prison,
Vellore District.

3. The Superintendent of Prison,
Vellore Central Prison, Vellore District.

4. The Inspector of Police,
All Women Police Station,
Vellore, Vellore District.

5. The Public Prosecutor,
High Court, Madras.

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KSM(CO)
RLP(14/02/2022)