



WEB COPY

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.28164 of 2021

Samsunisha

..Petitioner

Vs.

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

2.The Additional Director General of Prisons
Thalamuthu Natarajan Maaligai
2nd Floor, Gandhi Irwin Road
Egmore, Chennai 600 008

3.The Superintendent of Prison
Central Prison
Coimbatore

..Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his proceedings made in G.O.(2D) No.228, Home (Prison-V) Department, dated 28.09.2021 and quash the same and direct the respondents to grant leave without escort for 60 days to the petitioner's husband viz., Mohammed Ansari, S/o.Mohammed Sheik, aged 49 years, life convict No.13875, confined at Central Prison, Kovai.

For Petitioner : Mr.D.Krishnamoorthy

For Respondents : Mr.R.Muniyapparaj
Additional Public
Prosecutor



O R D E R

P.N.PRAKASH, J.

The petitioner's husband viz., Mohamed Ansari is a life convict prisoner (CT.No.13875). He was convicted and sentenced on 24.10.2007 in S.C.No.2 of 2000 by the Sessions Judge, Special Court for Bomb Blast Cases, Coimbatore. His appeal before this Court was dismissed, aggrieved by which, he has moved the Supreme Court in S.L.P.(Crl.) No.24293-24297 of 2010 and the same is pending. Seeking 60 days ordinary leave under the Tamil Nadu Suspension of Sentence Rules, 1982 (for brevity "the Sentence Suspension Rules"), the petitioner, who is his wife, gave a representation dated 09.02.2021, to the respondents and has thereafter, filed W.P.No.4705 of 2021, seeking issuance of a writ of mandamus.

2. During the pendency of the said W.P.No.4705 of 2021, the 1st respondent has passed an order dated 28.09.2021, rejecting the petitioner's representation, for the following reasons :

- i. His conviction under Explosive Substance Act and Indian Arms Act 1959 are embargo under the Rule 22 (i) of Tamil Nadu Suspension of Sentence Rules, 1982.
- ii. His appeal in S.L.P.(Crl.) No.24293-24297 of 2010 is still pending and therefore he is ineligible for grant of leave as per rule 35 of Tamil Nadu Suspension of Sentence Rules, 1982.
- iii. The Deputy Inspector General of Prisons, Coimbatore Range, The Probation Officer, TNP & CS, Coimbatore and The Inspector of Police, B-1 Police Station, Coimbatore City have strongly objected to the grant of ordinary leave to the life convict prisoner.
- iv. The life of the prisoner will be in danger because of his involvement with Al-Umma, a banned terrorist outfit and it is a threat to communal harmony.

Aggrieved by the impugned order dated 28.09.2021, the petitioner has filed the instant writ petition.

3. Heard Mr.D.Krishnamoorthy, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor appearing for the respondents.

4. Mr.D.Krishnamoorthy submitted that earlier, the convict prisoner was granted leave by this Court twice and during those occasions, nothing had happened to him and therefore, the impugned order dated 28.09.2021 of the 1st respondent denying leave to him, is per se illegal. He also submitted that the



reasons assigned by the 1st respondent in the impugned order, are not legally sustainable.

5. Per contra, the learned Additional Public Prosecutor refuted the aforesaid contentions of Mr.D.Krishnamoorthy.

6. Coming to the first submission of Mr.D.Krishnamoorthy that neither the prison authorities nor the Government, granted any leave to the convict prisoner, but, it was only the High Court, which granted leave in H.C.P.No.13 of 2019 and H.C.P.No.664 of 2020 vide order dated 17.07.2019 and 13.07.2020, respectively, after the judgment of the Supreme Court in Home Secretary (Prison) and Others, State of Tamil Nadu Vs. H.Nilofer Nisha [(2020)14 SCC 161], a Division Bench of this Court, led by one of us (PNPJ), in Saleema Vs. State rep. by its Secretary to Government of Tamil Nadu, Department of Home Fort St. George and Others [2021(1) MWN (Cr.) 198 (DB) : 2021 SCC OnLine Mad 206], has held that a Habeas Corpus Petition cannot be maintained, for grant of leave/parole and that, leave/parole can be granted, only in terms of the Sentence Suspension Rules and not by the Court. Further, it is to be noted that just because, two Division Benches of this Court, had earlier granted leave to the convict prisoner, it does not automatically mean that the respondents are estopped from considering the leave application, in terms of the extant Sentence Suspension Rules.

7. That apart, a Full Bench of this Court, in State rep. by the Home Secretary and Others Vs. Yesu @ Velaiyan [(2011) 5 CTC 353 : 2011 SCC OnLine Mad 1463], has held that leave can be granted only under the Sentence Suspension Rules and not outside of it. Rule 3, *ibid.* clearly states that leave cannot be claimed as a matter of right and it is a concession that is granted to a prisoner. In Nilofer Nisha (*supra*), the Supreme Court has held as under :

"26. We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations."

(emphasis supplied)

8. Rule 24, *ibid.* states that, all petitions for grant of ordinary leave, shall be referred to the Probation Officer concerned, for report. In this case, The Probation Officer, The Inspector of Police, B-1 Police Station and the Deputy Inspector General of Prison, Coimbatore Range, have strongly objected to the grant of leave to the convict prisoner, as his life may be



in danger, because of his involvement in Al-Umma, a banned terrorist outfit.

9. Just because, on earlier occasions, when the Court granted leave, nothing untoward had happened to the convict prisoner, the State cannot take a chance and grant leave, without obtaining reports from the Probation Officer, ignoring Rule 24, *ibid.*

In view of the foregoing discussion, we do not find any infirmity in the impugned order dated 28.09.2021, passed by the 1st respondent, warranting interference by this Court and accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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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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2nd Floor, Gandhi Irwin Road
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- 3.The Superintendent of Prison
Central Prison, Coimbatore
- 4.The Public Prosecutor
High Court, Madras

W.P.No.28164 of 2021

MT (CO)
PR (17/03/2022)