



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P (MD) No.1438 of 2020

Sathya

... Petitioner

Vs.

The State represented by its,

1.The Secretary to Government of Tamilnadu,
Department of Home,
Fort St. George,
Chennai - 600 009.

2.The Deputy Inspector of General Prison,
Trichy Zone Central Prison,
Trichy - 620 020.

3.The Superintendent,
Central Prison,
Trichy - 620 020.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Mandamus, directing the respondents to grant leave for 30 days to the detenu, Sathyaraj, S/o.Vadivel aged about 31 years, Convict No.20187, detained at Central Prison, Trichy.

For Petitioner : Mr.Dr.S.Manoharan

For Respondents : Mr.A.Thiruvadikumar,
Additional Public Prosecutor

ORDER

The writ petition has been filed seeking for issuance of a Writ of Mandamus, directing the respondents to grant leave for 30 days to the detenu, Sathyaraj, S/o.Vadivel aged about 31 years, Convict No.20187, detained at Central Prison, Trichy.

2. It is the contention of the petitioner that despite her representation dated 02.01.2020, no leave has been granted to her husband. Therefore, she has come forward with this petition with the aforesaid prayer.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondents.



4. As the direction sought for by the petitioner is in the nature of Mandamus to grant leave to her husband, who is a convict prisoner, at the outset, this Court is of the view that the High Court is not having power to grant leave under the Tamil Nadu Suspension of Sentence Rules, 1982 and in the light of the judgment of the Full Bench of this Court in **State represented by the Home Secretary and 4 others v. Yesu** reported in (2011) 5 CTC 353 and in the decision of a Division Bench of this Court in **Saleema vs. State and others** reported in 2021 (1) MWN (Cri.) 198.

5. The Honourable Supreme Court in **Home Secretary (Prisons) v. H.Nilofer Nisha** reported in 2020(14) SCC 161, has held that it is not for the Writ Court to decide whether a prisoner is entitled to parole and direct the release forthwith. The proper course for the Court is to direct the State to issue direction in the nature of Mandamus, directing the State to perform its duty by considering the prisoner's representation within a reasonable period depending upon when it was filed.

6. In view of the above pronouncement, the exercise of power for grant of leave to be exercised only by the authorities concerned as contemplated under the Tamil Nadu Suspension of Sentence Rules, 1982. Therefore, the relief sought for by the petitioner cannot be granted. However, as the representation of the petitioner has not been considered, the second respondent shall consider the representation dated 02.01.2020 and pass orders on merits, within a period of two weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is disposed of.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

pm

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



To:

1.The Secretary to Government of Tamilnadu,
Department of Home,
Fort St. George,
Chennai - 600 009.

2.The Deputy Inspector of General Prison,
Trichy Zone Central Prison,
Trichy - 620 020.

3.The Superintendent,
Central Prison,
Trichy - 620 020.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

W.P(MD)No.1438 of 2020
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MGJ(02.03.2022) 3P 5C