



W.P(MD) No.13301 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the order	Date of Pronouncing the order
04.07.2022	19.07.2022

CORAM:

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

W.P.(MD) No.13301 of 2022
and
WMP(MD) Nos.9444 & 9446 of 2022

Siraj Nisha

... Petitioner

-VS-

1.The State Represented by its,
Secretary to the Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai.

2.The Superintendent of Police,
Central Prison, Madurai.

3.The Superintendent of Police,
O/o. The Superintendent of Police,
Surveyor Colony, K.Pudur,
Madurai – 625 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India,
to issue a writ of Certiorarified Mandamus calling for the records
pertaining to the impugned order passed by the second respondent vide
his proceedings in No.7479/Thagu.2/2022, dated 13.05.2022 quash the



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same as illegal and consequently directing the second respondent to grant emergency leave (Parole) to the petitioner's son namely Ibrahimsha, S/o.Mohammed Hanifa, Convict Prisoner (C.P) No.5830 now confined at Central Prison, Madurai, for a period of three weeks by considering her representation dated 06.05.2022.

For Petitioner : Ms.A.Rajini

For Respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

(Made by P.N.PRAKASH, J.)

This writ petition has been filed challenging the notice dated 13.05.2022 and for a direction to the second respondent to grant E.L. (Parole) to the petitioner's son for a period of three weeks.

2. The minimum facts that are required for deciding this writ petition are as under:-

2.1 The convict prisoner Ibrahimsha, (C.P) No.5830, who is presently lodged in Central Prison, Madurai, was convicted and sentenced on various grounds of imprisonment in S.C.No.147 of 2015 on 06.02.2019, the maximum being imprisonment for life for the offence under Section 302 IPC.



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2.2 On appeal, the conviction and sentences were confirmed by a Division Bench of this Court in CrI.A.(MD) No.103 of 2019 on 25.03.2022.

2.3 The petitioner, who is the mother of the said convict prisoner, addressed a representation seeking emergency leave for her son on the ground that she is very sick and may not live long. The said leave application has been rejected by the Superintendent of the Central Prison, Madurai, on 13.05.2022, which order is impugned herein.

2.4 The leave application has been rejected on the short ground that, there are other cases pending against the convict prisoner and hence, under Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, (for brevity “the Suspension of Sentence Rules”) leave cannot be granted to him.

3. The Superintendent of Prisons has filed a counter-affidavit, wherein, in paragraph No.4, it is stated as follows:-



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“4. With regard to the averments contained in Paragraphs No.4, 6 and 7 of the affidavit, it is submitted that previously the petitioner's son Life Convict Prisoner No.5830 Ibrahimsha S/o.Mohammed Hanifa has been remanded to Judicial custody concerned in Vilakkuthoon Police Station Crime No.803/2015 u/s 147, 148, 302, 120(b), 201, 212 and 3 of Explosive Act which is still pending in SC No.426/2018 before the VI Additional District Sessions Judge, Madurai. The next date of hearing is 20.07.2022. Moreover, he also remanded to Judicial custody concerned in Subramaniyapuram Police Station Cr No.268/2018 u/s 457 IPC and 380 IPC and the same is pending before the Judicial Magistrate Court No.IV, Madurai. The Remand period has been extended till 11.07.2022. Therefore, as narrated in the paragraph No.2 of this affidavit, the petitioner's son is not eligible for granting Emergency Leave and Ordinary Leave as per the provisions of Tamil Nadu Suspension of Sentence Rules, 1982.”

4. Assailing the impugned order, Ms.Rajini, learned counsel for the petitioner, placed very strong reliance on an earlier order dated



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11.01.2018, which was passed by a Division Bench of this Court in

Banumathi v. The Chief Secretary to the Government, Union of Puducherry, (H.C.P.No.2340 of 2017).

5. This Court carefully perused the above said order. In that case, the question before the Division Bench was the applicability of Rule 631 of the Pondicherry Prison Rules, 1969. Unfortunately, it was not brought to the notice of the said Division Bench that the Government of Pondicherry, vide G.O.Ms.No.75, Home Department, dated 02.11.1987, had passed the Pondicherry Suspension of Sentence Rules, 1982 in supersession of Rules 594 to 636 of the Pondicherry Prison Rules, 1969. Therefore, much reliance cannot be placed upon the order of this Court in ***Banumathi*** (supra).

6. On the contrary, a Division Bench of this Court, in ***S.Santhosam v. State by Secretary to Government, [2022 (3) CTC 689]***, in which one of us (PNPJ) was a member, has discussed in detail, the scope and ambit of Rule 35 of the Suspension of Sentence Rules. It may be apposite to extract hereunder paragraph Nos.12 to 15 of the said decision.



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“12. The objective behind formulating the Sentence Suspension Rules is that a convict prisoner should not be dehumanized by being kept in complete incarceration, without being provided a ventilator for reformation. The idea of sentencing a person to undergo imprisonment is not only to punish him for the offence committed by him, but also to ensure that he turns a new leaf. One way of promoting reformation is to permit convict prisoners to go on leave, off and on, to spend time with their families and return to the prison rejuvenated. However, be it noted that a convict prisoner does not have a fundamental right, much less a right, for temporary release. Rule 3 of the Sentence Suspension Rules makes this clear when it states that leave cannot be claimed as a matter of right and that it is only a concession granted to the prisoner.

13. In the aforesaid backdrop, we now propose to analyse Rule 35 of the Sentence Suspension Rules which reads as follows:

"35. Pending cases:

No prisoner on whom a case is pending trial shall be granted leave."



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14. What is the *raison d'etre* behind Rule 35 of the Sentence Suspension Rules?

15. If a convict prisoner has, to his credit, another criminal case in which he is facing trial, a duty is cast upon the prison authorities to produce him before the trial Court from time to time. This is limpid from Rule 832 of the Tamil Nadu Prisons Rules, which reads as under:

"832. Production before Court:-

(1) The duty of ascertaining the time at which a prisoner committed to the Sessions is to be produced before the Sessions Court, and of providing the necessary escort for this purpose, rests with the police.

(2) The Superintendent is responsible for the production in Court, at the appointed time, of a prisoner remanded pending a magisterial inquiry or trial, and shall make suitable arrangements with the Police for the provision of the necessary escort. When possible, a prisoner shall be conveyed to and from the Court in a special conveyance.

(2A) If a prisoner remanded pending a magisterial enquiry or trial refuses to attend the Court at the appointed time or resists endeavour to produce him or attempts to evade his production before the Court such minimum force as may be considered necessary by the Superintendent may be used to encounter such resistance of the accused so as to produce him before the Court



which has directed the production of the accused.

(3) A receipt in Form No.60 shall be obtained from the senior police officer of the escort whenever a prisoner, whether committed to the Sessions or under remand, is made over to the charge of such police officer for production in Court.

(4) The police are responsible for the safe custody of any prisoner committed to their charge under the preceding sub rule of this rule till he is returned to the prison or discharged from custody in due course of law. It is for the police to decide whether such prisoner shall be handcuffed or not.

(5) When an undertrial or remand prisoner has to be brought back to the prison even in the event of his acquittal or discharge, the senior police officer of the escort should be informed of the fact and the receipt in form No.61 substituted.

(6) When female undertrial or remand prisoners are taken from Courts to prisons or vice versa, they shall be provided with conveyance where the distance to be traversed by them exceeds 1.6 k.m. Conveyances may also be provided for the shorter distances in cases in which, for reasons of health or custom or other valid reason failure to make such provision would cause undue hardship to them."

If such a convict prisoner is already on bail in that case, the trial Court would ensure his attendance by issuing a



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Prisoner's Transfer Warrant under Section 267 Cr.P.C. If the convict prisoner is not on bail in that case, the trial Court would remand him to custody under Section 309 Cr.P.C. with a direction to the prison authorities to produce him on a particular date. Thus, a convict prisoner who is facing trial in a Court of law, is kept in the custody of the prison authorities under the orders of the Court for that case. It would, therefore, be impermissible for the executive to circumvent a judicial order by releasing the prisoner on leave. That would, ex facie, amount to an interference in the administration of justice by the Court. It would also fall foul of the principle of separation of powers enshrined in Article 50 of the Constitution of India. Rule 35 of the Sentence Suspension Rules, thus, strikes a balance. The executive power to suspend a sentence by granting leave is unavailable qua a person facing trial before a competent Court.

7. That apart, Rule 3 of the Suspension of Sentence Rules, clearly states that leave cannot be claimed as a matter of right. It is a concession granted to a prisoner. Therefore, a mandamus cannot be issued for enforcing a concession. In the judgment of the Supreme Court in *Home*



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Secretary (Prison) & Ors., v. H.Nilofer Nisha, [(2020) 14 SCC 161], in

paragraph No.26, it was held as follows:

“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. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules.”

8. In the result, this writ petition fails and is accordingly dismissed as being devoid of merits. No costs. Consequently, connected miscellaneous petitions are closed.

[P.N.P., J.] [R.H., J.]
19.07.2022

Index : Yes / No
Internet : Yes / No

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To:

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P.N.PRAKASH, J.
and
R.HEMALATHA, J.

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Pre-Delivery Order
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