



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	Pronounced on
04.01.2022	12.01.2022

Coram

WEB COPY

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.(MD) No.18314 of 2020 and
W.M.P.(MD) No.16306 of 2021

K.Muthulakshmi
W/o.Kasirajan,
No.66/1, South Street,
Karakampatti, Vagurani Post,
Usilampatti Taluk,
Madurai District.

... Petitioner

-vs-

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

2. The Director General of Prison and
Inspector General of Prison,
Whannels Road, Egmore,
Chennai-600 008.

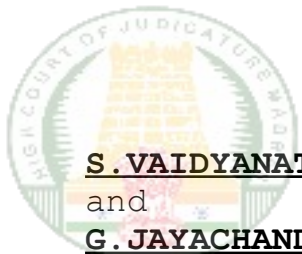
3. The Superintendent of Police,
Madurai Central Prison,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Section 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 3rd respondent in Letter No.13325/TK2/2020 dated 20.10.2020 and quash the same and to direct the 3rd Respondent to grant leave of two months without escort to her husband, namely, O.Kasirajan now confined in Madurai Central Prison.

For Petitioner : Mr.G.Murugendran

For Respondents : Mr.S.Ravi
Addl. Public Prosecutor



J U D G M E N T

S.VAIDYANATHAN, J. ,

and

G. JAYACHANDRAN, J. ,

This Writ Petition has been filed to quash the the impugned order dated 20.10.2020 passed by the 3rd respondent in Letter No.13325/TK2/2020, in and by which, the request of the petitioner to grant leave of two months without escort to her husband, namely, O.Kasirajan, confined in Central Prison, Madurai, has been declined. Aggrieved by the same, the Petitioner is before this Court.

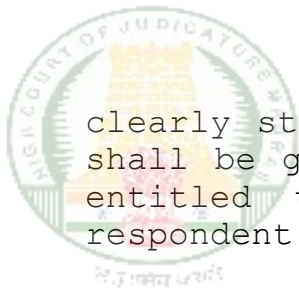
2. It was the case of the Petitioner that on 09.01.2020, her husband was convicted and sentenced to undergo 10 years of imprisonment in C.C.No.99 of 2018 by the learned Additional Principal Special Judge for NDPS Act cases, Madurai and that she has two school going children and has been struggling to maintain the family on account of financial crisis. It was her further case that she made a representation dated 15.10.2020 to the respondents for grant of leave to her husband and the same was rejected on 20.10.2020 on flimsy reason, citing the pendency of yet another case in Kollam. She has stated in her affidavit that parole is not a suspension of the sentence and it can be granted for a special purpose based on the good behaviour of the prisoner.

3. Learned counsel for the Petitioner submitted that in similar circumstances, this Court in the case of **S.Rajan vs. State [W.P.No.4247 of 2021] dated 23.02.2021** had considered the case of the petitioner therein positively for grant of leave. Learned counsel also referred to Paragraph No.4 of the order, which reads as under:

"5. It is left open to the petitioner to seek for bail in the other two pending cases and after obtaining bail, the petitioner can always approach the fourth respondent and seek for leave and such representation shall be considered by the fourth respondent in accordance with the rules."

Thus, it was pleaded that the same benefit can be extended to the Petitioner's husband herein and the rejection order is arbitrary, discriminatory and is in violation of Articles 14 and 21 of the Constitution of India.

4. Per contra, learned Additional Public Prosecutor contended that as per the provisions of Rule 3 of the Tamil Nadu Suspension of Sentence Rules, 1982 (in short 'Rules, 1982'), leave cannot be claimed as a matter of right, which is merely construed as a concession granted to the Petitioner. Moreover, yet another case is pending trial before the 3rd Additional District and Sessions Judge, Kollam, against the petitioner's husband in Crime No.2416 of 2012 under Section 20(b) ii B of NDPS Act on the file of Kollam East Police Station. He further contended that Rule 35 of the Rules, 1982



clearly stipulates that "no prisoner on whom case is pending trial shall be granted leave" and hence, the petitioner's husband is not entitled to leave and the rejection order passed by the 3rd respondent is perfectly valid in the eye of law.

5. Heard the learned counsel for the Petitioner, learned Additional Public Prosecutor for the State and perused the materials available on record.

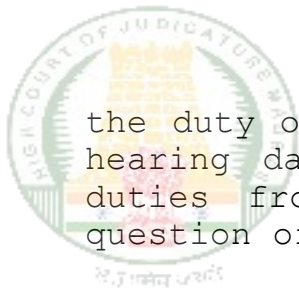
6. Admittedly, the petitioner's husband was a Convict No.653 in respect of a case in C.C.No.99 of 2018 on the file of Additional Principal Special Judge for NDPS Act cases, Madurai for offences under Section 8(c) r/w 20 (b) (ii) (C) of NDPS Act. In addition to the said case, one more case has been registered against her husband by the Kollam East Police in Crime No. 2416 of 2012 under the provisions of NDPS Act. Though learned counsel for the Petitioner relied upon a decision of this Court dated 23.02.2021 (supra) in support of his stand, the Paragraph No.5 of that case cannot be read in isolation and a conjoint reading of Paragraph Nos.4 and 5 will unearth the clear picture, whereby, learned Single Judge held in Paragraph No.4 that by virtue of Rule 35, the Petitioner therein was not entitled to the relief sought for. For the sake brevity, Paragraph No.4 is extracted hereunder:

"4. It is an admitted fact that the petitioner is in judicial custody in two pending cases. Therefore, unless he is released on bail in those two cases, he cannot be granted either an ordinary leave or an emergency leave. The same is clear from the language of Rule 35 of the Tamilnadu Suspension of Sentence Rules 1982, which makes it very clear that no prisoner on whom the case is pending trial shall be granted leave. The term 'leave' has been defined under Rule 2(3) of the same rules as including both 'emergency' and 'ordinary' leave. By virtue of this mandate prescribed under Rule 35, the fourth respondent was perfectly right in rejecting the representation given by the petitioner and there are no grounds to interfere with the same."

7. In yet another case in N.Bhuvaneswari vs. State and others [W.P.No.26605 of 2016] dated 30.08.2016, this Court had discussed the scope of Rule 35 of the Rule, 1982 elaborately and held as follows:

"25. Rule 35 is intended to ensure that the Executive does not release a convict prisoner on ordinary leave during the pendency of trial against him and thus, shirk the responsibility to produce him before the Trial Court, irrespective of whether a person is on bail in that case or not."

8. In the present case on hand, consequent to the pendency of a case against the petitioner's husband before the Kollam Court, it is



the duty of the Police to produce him before the Court as and when hearing date is fixed and the Executive cannot evade from their duties from producing him before the Court and therefore, the question of granting leave will not arise in this case.

9. The Apex Court, in a recent judgment in **State of Gujarat and another vs. Narayan @ Narayan Sai @ Mota Bhagwan Asaram @ Adumal Harpalani [Crl.Appeal No.1159 of 2021 arising out of SLP (Crl.) No.5699 of 2021]** decided on 24.06.2021, while dealing with Rule 17 of Prisons (Bombay Furlough and Parole) Rules, 1959, which is similar to Rule 3 of the Rules, 1982, refused to grant leave to the respondent therein.

10. The petitioner's husband seems to be a habitual offender, involving himself in NDPS offences and he falls under the first category of Rule 21 of the Rules 1982, namely, (a) **Offenders classified as habituals**. That apart, Rule 22(3) stipulates as under:

"(3) The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave."

In the present case on hand, the petitioner's husband was convicted only on 09.01.2020 and he has just completed two years. Moreover, Rule 22(3) may not be applicable to the case of the petitioner's husband in view of the bar under Rule 35 of the Rules, 1982.

11. Taking note of the fact that the prisoner cannot ask for leave as a matter of right and in view of pendency of another case against him, we are of the view that the petitioner's husband is not entitled to the relief sought for in this Writ Petition and the rejection order passed by the 3rd respondent is perfectly justified, warranting no interference by this Court.

12. In the result, this Writ Petition is dismissed as devoid of merits. No cost. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

ar

To:

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

<https://hcservices.ecourts.gov.in/hcservices/>



2. The Director General of Prison and
Inspector General of Prison,
Whannels Road, Egmore,
Chennai-600 008.

3. The Superintendent of Police,
Madurai Central Prison,
Madurai District.

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

W.P. (MD) No.18314 of 2020

MGJ(31.01.2022) 5P 5C