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W.P.(MD).No.6398 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.08.2023

DELIVERED ON: 29.09.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.P.(MD).No.6398 of 2023

Latha

.. Petitioner/Wife of the
detenu

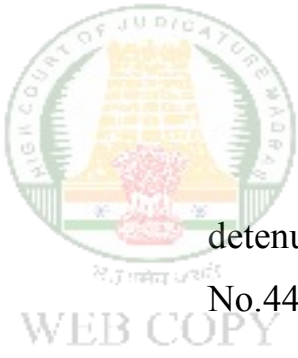
Vs.

The State represented by its,
1.The Deputy Inspector General of Prison,
Madurai Zone,
Madurai – 625 001.

2.The Superintendent,
Palayamkottai Central Prison,
Palayamkottai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.414/Tha.Ku.2/2022, dated 31.01.2023, passed by the 2nd respondent and quash the same and consecutively direct the respondents to grant ordinary leave for 40 days without escort, to the



W.P.(MD).No.6398 of 2023

detenu, Thirupathirajan, S/o.Narayanan life convict prisoner Convict No.4432 detained at central prison, Palayamkottai.

For Petitioner : Mr.S.Manoharan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The petitioner's husband, Thirupathirajan, is a life convict prisoner (CP.No.4432) and detained at Central Prison, Palayamkottai. When the petitioner had made an application on 13.01.2023 seeking for grant of 40 days ordinary leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982, her request was rejected through the impugned order dated 31.01.2023, on the ground that the Madras High Court, in its order passed in W.P.No.10265 of 2021 dated 18.02.2022 (*L.Wasib Khan Vs. The State and others – 2022 (2) CTC 598*), had held that when an appeal against conviction is pending, the suspension of sentence should be sought for only before the Appellate Court. The rejection order is put under challenge in the present Writ Petition.



W.P.(MD).No.6398 of 2023

2. The core issue that arises for consideration in the present Writ Petition is as to whether the pendency of an appeal against conviction, before the Appellate Court, can be cited as an embargo for rejection of a request for grant of leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as “1982 Rules”)?

3. The learned counsel for the petitioner submitted that Rule 35 of the Suspension of Sentence Rules prohibits grant of leave to a prisoner against whom a case is pending trial and therefore, the same cannot be equated to the pendency of an appeal.

4. Per contra, Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondents drew the attention of this Court to the decision in the case of ***L.Wasib Khan Vs. The State and others reported in 2022(2) CTC 598*** (arising out of W.P.No.10265 of 2021 dated 18.02.2022 and referred to in the impugned order) and submitted that when Section 389 of the Code of Criminal Procedure, 1973 (CrPC) empowers the Appellate



W.P.(MD).No.6398 of 2023

Court to suspend the sentence pending the appeal, the executive power of the State cannot be extended to grant suspension of sentence in accordance with the law laid down in this case and therefore, there is no infirmity in the reason assigned in the impugned order. He also drew our attention to a recent decision of a co-ordinate Bench of this Court in the case of ***K.Rajalakshmi Vs. The Principal Secretary to the Government of Tamil Nadu and others passed in W.P.(MD).No.13918 of 2023 dated 15.06.2023***, wherein, the co-ordinate Bench of this Court had placed reliance on *Wasib Khan's* case (supra), as well as the decision of the Hon'ble Supreme Court in the case of ***K.M.Nanavati Vs. State of Bombay reported in AIR 1961 SC 112*** and submitted that suspension of sentence can be sought for only before the Court, where the appeal against conviction is pending and the State has no powers to grant suspension. He also emphasized that earlier when the State had granted parole in a similar situation in the case of ***Manokaran vs. State of Tamil Nadu in Crl.A.No.866 of 2000***, while the appeal was pending, the Hon'ble Supreme Court had frowned upon such an action stating that when the earlier bail petition filed by the appellant was already rejected, the State Government ought not to have released him on parole



W.P.(MD).No.6398 of 2023

pending the appeal, which made the State Government to give an undertaking before the Hon'ble Supreme Court that in future, the State Government would act strictly according to the requirements of the statute and not *de hors* and accordingly expressed its apologies. The learned Additional Public Prosecutor also submitted that *Wasib Khan's* case (supra) had made a reference to both *K.M.Nanavati's* case and *Manokaran's* case and hence, the State may not be empowered to consider an application for suspension of sentence pending an appeal.

5. In *Wasib Khan's* case, the foundation on which the pendency of an appeal was quoted as an embargo for the State to consider grant of ordinary leave under the 1982 Rules was in view of the ratio laid down in *K.M.Nanavati's* case (supra) and in view of the definition of 'sentence' in Rule 2(4) of the 1982 Rules. For such purpose, reliance was placed on paragraph 22 of that judgment, which reads as follows:

"22. In the present case, the question is limited to the exercise by the Governor of his powers under Article 161 of the Constitution suspending the sentence during the pendency of the special leave petition and the appeal to this court; and the controversy has narrowed down to whether for the period



WEB COPY



W.P.(MD).No.6398 of 2023

when this court is in seizin of the case the Governor could pass the impugned order, having the effect of suspending the sentence during that period. There can be no doubt that it is open to the Governor to grant a full pardon at any time even during the pendency of the case in this court in exercise of what is ordinarily called “mercy jurisdiction”. Such a pardon after the accused person has been convicted by the court has the effect of completely absolving him from all punishment or disqualification attaching to a conviction for a criminal offence. That power is essentially vested in the head of the Executive, because the judiciary has no such “mercy jurisdiction”. But the suspension of the sentence for the period when this court is in seizin of the case could have been granted by this court itself. If in respect of the same period the Governor also has power to suspend the sentence, it would mean that both the judiciary and the executive would be functioning in the same field at the same time leading to the possibility of conflict of jurisdiction. Such a conflict was not and could not have been intended by the makers of the Constitution. But it was contended by Mr Seervai that the words of the Constitution, namely, Article 161 do not warrant the conclusion that the power was in any way limited or fettered. In our opinion there is a fallacy in the argument insofar as it postulates what has to be established, namely,



that the Governor's power was absolute and not fettered in any way. So long as the judiciary has the power to pass a particular order in a pending case to that extent the power of the Executive is limited in view of the words either of Sections 401 and 426 of the Code of Criminal Procedure and Articles 142 and 161 of the Constitution. If that is the correct interpretation to be put on these provisions in order to harmonise them it would follow that what is covered in Article 142 is not covered by Article 161 and similarly what is covered by Section 426 is not covered by Section 401. On that interpretation Mr Seervai would be right in his contention that there is no conflict between the prerogative power of the sovereign state to grant pardon and the power of the courts to deal with a pending case judicially."

After extraction of the aforesaid portion of the judgment, a reference was made to the decision in ***K.Rajamanickam and Others vs. State of Tamil Nadu and others reported in (2015) 3 MWN (Cri) 379***, which in turn had also placed reliance on the aforesaid extract.

6. *Wasib Khan* also placed reliance on the Rule 2(4) of the 1982 Rules to extract the definition of the term “sentence” and had come to the conclusion that as per the definition, a sentence would mean as a sentence



W.P.(MD).No.6398 of 2023

finally fixed on appeal and therefore, pendency of an appeal will be an embargo for claiming ordinary leave under the 1982 Rules. Further, a reference was also made to *Manokaran's* case (supra) and the consequential official memorandum of the Additional Director General of Prisons and held that in view of the stand taken by the State before the Hon'ble Supreme Court to refrain from granting leave to the prisoners pending appeal, Wasib Khan cannot be granted leave under 1982 Rules. In view of the decision in *Wasib Khan's* case, the petitioner's request for grant of ordinary leave has now been rejected.

7. *Wasib Khan's* case had placed reliance on *K.M.Nanavati's* case for the proposition that when the Appellate Court has the power to grant suspension of sentence and bail, pending appeal, the executive power of the State cannot extend to grant parole or leave or suspension of sentence.

8. In *K.M.Nanavati*, the core ratio laid therein was so long as the judiciary has the power to pass an order, the Executive functioning in the same field at the same time will lead to possibility of a conflict of a



jurisdiction. In this background, the Hon'ble Supreme Court had held that while Section 389 CrPC deals with power to suspend the sentence when an appeal is pending before an Appellate Court, Section 432 CrPC deals with the remainder of the period after conviction. In other words, the power under Section 432 CrPC can be exercised by the Executive at any time, but will not lead to the inference that such powers can also be exercised while the Court is seized of the same matter under Section 389 CrPC. There can be no second opinion that the aforesaid ratio in *K.M.Nanavati* requires to be applied in all cases, where “suspension of sentence” is sought for either under Section 389 CrPC or Section 432 CrPC, as the case may be.

9. However, the facts of the case in *Wasib Khan* originates from the rejection of an application of the prisoner, who sought for grant of ordinary leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982. *Wasib Khan* did not seek for suspension of sentence in the said case and therefore, the ratio *decidendi* in *K.M.Nanavati* will have no application to the facts of *Wasib Khan's* case. On the other hand, the claim for ordinary leave by *Wasib Khan* requires to be dealt with in accordance with the provisions of the 1982 Rules only.



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10. At the outset, we intend to point out that the nomenclature or title of the Rules appears to be a misnomer. Though it is termed to be Suspension of Sentence Rules, the rules when considered and interpreted in its entirety, it neither provides for, nor prescribes the eligibility criteria for a prisoner to seek for “suspension of sentence” under this rule. On the other hand, 1982 Rules has been formulated for grant of emergency leave and ordinary leave only. For the purpose of these leave, the eligibility conditions, the maximum period for which the leave can be granted and the conditions on which the leave application should be presented and dealt with, are prescribed therein.

11. In *Wasib Khan's* case, a reference has been made to the definition of the term 'sentence' in Rule 2(4) of the 1982 Rules in paragraph 11 in the following manner:

"11. ..Further, in consonance with the law laid down by the Supreme Court in Nanavati (supra), the definition of the word “sentence” in Rule 2(4) of the Sentence Suspension Rules has been designed as under:



WEB COPY



W.P.(MD).No.6398 of 2023

“(4) “sentence” means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Sentences in default of fine shall not be taken into consideration while fixing eligibility for being released on leave.”

(emphasis supplied) ”

12. Going by the definition of Rule 2(4), there can be no doubt that a sentence would mean a sentence that has been finally fixed on appeal or revision or otherwise. But what would be relevant for applying the definition is the application of this term in the Rules. In the entire Rules, the term 'sentence' has been employed only in two places, namely, under Rule 7 and Rule 22, which reads as follows:

*“**Rule 7:** Eligibility for emergency leave.-No emergency leave shall be granted to prisoner unless-*

(i) he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends:

(ii) his conduct in prison has been satisfactory.

(iii) female pregnant prisoner for having delivery outside the prison provided who are not constituting high security risks or of cases of equivalent grave descriptions.”

*“**Rule 22:** Eligibility for ordinary leave.-(1) No prisoner shall be granted ordinary leave unless he has been sentenced by a court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends*



W.P.(MD).No.6398 of 2023

and he has completed.-

(a) one year of imprisonment in cases of prisoners sentenced to imprisonment for a period not exceeding five years;

(b) two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years;

(c) three years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding fourteen years and for life;

Explanation: The period of actual imprisonment shall be counted from the date of admission to prison as convict.

(2) The ordinary leave shall not exceed the period as specified below at a time, unless extended by the Government-

(a) twenty one days for the prisoners sentenced to imprisonment for a period not exceeding five years;

(b) twenty one days from the third to fifth years of imprisonment and not exceeding twenty eight days during the rest of the term of imprisonment for the prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years;

(c) twenty one days during the fourth and fifth years of imprisonment; not exceeding twenty eight days from the sixth year of imprisonment to fourteenth year of imprisonment and not exceeding forty days during the rest of the term for prisoners sentenced to imprisonment for life and those sentenced exceeding fourteen years;

provided that the maximum period of forty days of ordinary leave may be availed in one spell or in two spells of any duration.

(3) The prisoner shall be granted the second or subsequent spell of ordinary leave not exceeding the period mentioned in sub rule (2) above, after the completion of one year of imprisonment from the date on which he returns from the last ordinary leave.”

13. Rule 7, as well as Rule 22, proposes a pre-condition for eligibility to seek for either of the leave that the prisoner ought to have been sentenced



W.P.(MD).No.6398 of 2023

by a Court “in this State” to imprisonment for a term or life for an offence against law. In this context, a prisoner, who has been sentenced finally on appeal or revision or otherwise within the State of Tamil Nadu, would be eligible to seek for emergency leave either under Rule 7, or ordinary leave under Rule 22.

14. Apart from the employment of the term 'sentence' in Rule 7 and 22, a reference to the term is also found in Rule 39, which relates to grant of emergency leave to prisoners convicted in the State of Tamil Nadu and undergoing sentence in another State. The employment of the term 'sentence' in Rule 39 may not have much relevance for the purpose of determining the present case in hand.

15. Thus, when the term 'sentence' is found predominantly in Rule 7 and 22 alone, its definition under Rule 2(4) should only be construed to mean as a sentence that has been finally fixed on an appeal by a Court of law within the State of Tamil Nadu, for the purpose of determining the eligibility of a prisoner to seek for leave under the 1982 Rules. Consequently, it requires to be held that the definition of the term 'sentence',



W.P.(MD).No.6398 of 2023

since not being found in any other rule, cannot be applied to the term 'Sentence' as found in the title of the Rules, namely, Tamil Nadu Suspension of "Sentence" Rules, 1982, since the 1982 Rules does not deal with suspension of sentence, but only for grant of emergency and ordinary leave.

16. The effect of misnaming or misterming a statute and the consequence of such a misnomer, came up for consideration before the Hon'ble Supreme Court in the case of ***Amarendra Kumar Mohapatra and others Vs. State of Orissa and others reported in (2014) 4 SCC 583***, whereby, it was held that the misterming of the title, will not have a bearing on the substance of the statute, which alone will prevail. This ratio was laid down in paragraph 27 of the judgment in the following manner:

"27. ...The title of the impugned legislation all the same describes the legislation as a Validation Act. The title of a statute is no doubt an important part of an enactment and can be referred to for determining the general scope of the legislation. But the true nature of any such enactment has always to be determined not on the basis of the label given to it but on the basis of its substance."

(emphasis supplied)

The aforesaid extract is self-explanatory. The aforesaid ratio was further emphasized in the case of ***Council of Architecture Vs. Mukesh***



W.P.(MD).No.6398 of 2023

Goyal and others reported in (2020) 16 SCC 446, by holding that when the text of the statute indicates an absurd or unreasonable meaning, the object and purpose of the statute in its entirety requires to be adopted as its true meaning and not the title. The Hon'ble Dr. Justice D.Y. Chandrachud speaking on behalf of the Bench had laid down this proposition in the following manner:

“43. It is well settled that the first and best method of determining the intention of the legislature is the very words chosen by the legislature to have the force of law. In other words, the intention of the legislature is best evidenced by the text of the statute itself. However, where a plain reading of the text of the statute leads to an absurd or unreasonable meaning, the text of the statute must be construed in light of the object and purpose with which the legislature enacted the statute as a whole. Where it is contended that a particular interpretation would lead to defeating the very object of a legislation, such an interpretative outcome would clearly be absurd or unreasonable.”

(emphasis supplied)

When this ratio is applied to the present case in hand and the Tamil Nadu Suspension of Sentence Rules, 1982 is read in its entirety, we have no



hesitation to come to the conclusion that the scope and object of the 1982 Rules only deal with grant of emergency or ordinary leave and has no applicability for suspension of sentence at all.

17. The next reason assigned in *Wasib Khan* for rejecting his request for grant of leave is the reference to *Manokaran's* case before the Hon'ble Supreme Court. In consequence to *Manokaran's* case, the Additional Director General of Prisons had issued an office memorandum dated 21.10.2002, in which also, reliance of it has been placed. Such a reference in *Wasib Khan's* case, are as follows:

"12. Superadded, during the hearing of the case in Manokaran vs. State of Tamil Nadu [Crl.A. No.866 of 2000] on 01.10.2002, it came to the notice of the Supreme Court that in the State of Tamil Nadu, the convict prisoners were being granted parole/leave during the pendency of their appeal. This was frowned upon by the Supreme Court and the Joint Secretary to the Government was summoned. Apposite it is to extract the observations of the Supreme Court in the said order dated 01.10.2002:

"Mr.J.A. Syed Abdul Khader, Joint Secretary to Government of Tamil Nadu, Home Department, Chennai, is present in terms of the earlier orders of this



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W.P.(MD).No.6398 of 2023

Court. Mr. Khader regrets that unfortunately a practice has grown in the State of Tamil Nadu to act in the fashion as it has been effected in the matter under consideration. Mr. Khader, however, assures this Court that in future, the State Government would act strictly according to the requirements of the statute and not de hors. The question of continuity of there being any practice being followed henceforth would not arise and the same has been discarded by the State Government.”

13. Following this, the office of the Additional Director General of Prisons, issued an Office Memo No.43880/PS4/2002 dated 21.10.2002 which reads as under:

“The Superintendent is informed that the Supreme Court of India in C.A. No.866/2002, has observed that the practice being following in this State for granting leave to prisoners even for short duration during the pendency of their appeal is not in accordance with Tamil Nadu Suspension of Sentence Rules, 1982 and it is also contrary to the Constitution Bench judgment of Supreme Court in K.M. Nanavati vs. State of Bombay AIR 1961 SC 112. The Supreme Court of India has therefore ordered that in future no such short term release should be made by the competent authority without informing the Court in which the prisoner’s appeal is pending and that this order of the Court should be scrupulously followed in future.

2. In this connection, the attention of the Superintendent is invited to Government letter no. 66517/Prison.V/2000-15, Home Department dated 20.06.2002 communicated in this office endt.No. 38245/PS4/2000 dated 04.08.2002 wherein the Government have clarified that for suspension of sentence of a convicted person whose appeal is pending,



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W.P.(MD).No.6398 of 2023

he has to approach only the Appellate Court or High Court.”

3. The Superintendent/Deputy Inspector General of Prisons should therefore act in accordance with the above orders of the Supreme Court of India and should desist from releasing any prisoner on emergency or ordinary leave when his appeal is pending before the appropriate Court without prior permission of the Court. If any violation is noticed in this regard, the Superintendent concerned will be liable for disciplinary action.

4. The receipt of this memo should be acknowledged.

BHOLA NATH
Additional Director General of Prisons”

14. In view of the above, Wasib Khan cannot be granted leave under the Sentence Suspension Rules and therefore, the second reason given in the impugned order stands upheld.”

18. In the office memorandum dated 21.10.2002, which was referred to in *Wasib Khan*, certain facts have been narrated in its recital, touching upon *Manokaran's* case before the Hon'ble Supreme Court. To ascertain the sanctity of such statements, we had perused the five orders passed in *Manokaran's* case in Criminal Appeal No.866 of 2000, from the official website of the Hon'ble Supreme Court of India. We find five orders having



W.P.(MD).No.6398 of 2023

been delivered by the Hon'ble Supreme Court in Criminal Appeal No.866/2000 on 30.04.2001, 16.07.2002, 13.08.2002, 24.09.2002 and 01.10.2002. These orders are as follows:

(i) Order dated 30.04.2001:

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Crl.A.No. 866 OF 2000

ITEM No.1

Court No.10

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Crl.M.P.1806/2001 In

Criminal Appeal.No. 866/2000

MANOKARAN

Appellant (s)

VERSUS

STATE OF TAMIL NADU
(s)

Respondent

(With Appln(s). for bail)
(With Office Report)

Date : 30/04/2001 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.P. MOHAPATRA
HON'BLE MR. JUSTICE SHIVARAJ V. PATIL

For Appellant (s) Mr. S.Aravindh,adv.
Mr. Rakesh K. Sharma,Adv.



W.P.(MD).No.6398 of 2023

WEB COPY

For Respondent (s)

Mr. V.G. Pragasam, Adv.

*UPON hearing counsel the Court made the following
O R D E R*

.....L.....I.....T.....T.....T.....T.....T.J.

SP2

Application for bail is rejected.

.SP1

*(Suman Wadhwa)
Court Master*

*(V.P.Tyagi)
Court Master"*

(ii) Order dated 16.07.2002:

"Crl.A.No. 866 OF 2000

ITEM NO.107

COURT NO.08

SECTION IIA

*S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S*

*CRIMINAL APPEAL NO.866 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC*

Manokaran

... APPELLANT(S)

VERSUS

*STATE OF TAMIL NADU
(With Office Report)*

... RESPONDENT(S)

*Date: 16/07/2002. This/These matter(s) were called on for
hearing today.@@
AAAAAAAAAA*

CORAM:



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W.P.(MD).No.6398 of 2023

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. Rakesh K. Sharma, Adv.(N.P.)

*For Respondent (s) Mr. S. Balakrishnan, Sr. Adv.
Mrs. Revathy Raghvan, Adv.
Mr. Sree Narain Jha, Adv.*

*UPON hearing counsel the Court made the following
O R D E R*

*.....L.....I.....T.....T.....T.....T.....T.....J. .
SP2*

This is a second call when no one appears in support of the appeal. In the normal course of events it would have entailed an order of dismissal by reason of non-appearance. But this being a matter under Section 302 IPC and the appellant Manokaran is in jail suffering a punishment of life imprisonment, we do deem it fit to offer a further opportunity to the appellant herein to make alternative arrangements so that on the next date of hearing somebody else may appear in support of the appeal. The Registry, thus, is

..2/-

-2-

directed to send a notice immediately to the appellant herein through appropriate agencies and let this matter stand over for a period of four weeks.

Let this also be made clear in the notice that in the event no one appears on the next date of hearing, this Court will not have any alternative but to dismiss the appeal.

.SP1

(R.K. Dhawan)

(Shelly Sengupta)@@

AA



W.P.(MD).No.6398 of 2023

Court Master

Court Master"

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(iii) Order dated 13.08.2002:

"CrI.A.No. 866 OF 2000

ITEM NO.103

COURT NO.7

SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.866 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Manokaran

... APPELLANT(S)

VERSUS

STATE OF TAMIL NADU
(With Office Report)

... RESPONDENT(S)

Date: 13/08/2002. This/These matter(s) were called on for
hearing today. @@
AAAAAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. S.Aravindh, Adv. for
Mr. Rakesh K. Sharma, Adv. (N.P.)

For Respondent (s) Mr. S. Balakrishnan, Sr. Adv.
Mrs. Revathy Raghavan, Adv.

UPON hearing counsel the Court made the following



W.P.(MD).No.6398 of 2023

ORDER

.....L.....I.....T.....T.....T.....T.....T.....J. .

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On 16th July, 2002, by reason of the non-availability of the lawyer in support of the appeal, this Court passed an order as below:- .

SP1

.....L.....I.....T.....T.....T.....T.....T.....J.

"This is the second call when no one appears in support of the appeal. In the normal course of events it would have entailed an order of dismissal by reason of non-appearance. But this being a matter under Section 302 IPC and the appellant Manokaran is in jail suffering a punishment of life imprisonment, we do deem it fit to offer a further opportunity to the appellant herein to make alternative arrangements so that on the next date of hearing somebody else may appear in support of the appeal. The Registry, thus, is directed to send a notice immediately to the appellant herein through appropriate agencies and let this matter stand over for a period of four weeks.

..2/-

-2-

Let this also be made clear in the notice that in the event no one appears on the next date of hearing, this Court will not have any alternative but to dismiss the appeal."

.....L.....I.....T.....T.....T.....T.....T.....J. .

SP2

Today, however, in terms of the directions matter appeared and when the matter was taken up we have



WEB COPY



W.P.(MD).No.6398 of 2023

been informed by Mr. S. Aravindh, learned counsel appearing in support of the appeal that the appellant has since been granted parole by the Government though he has no definite information about the same. Learned senior advocate Mr. S. Balakrishnan, present in the Court, also has no knowledge about the factum of grant of parole by the Government of Tamil Nadu. The Office reported, however, that the appellant stands served on 10th August, 2002 with the notice for appearance before this Court on 13th August, 2002. Incidentally, the application for bail was rejected by this Court on 30th April, 2001 and since then the appellant is being lodged in jail and there has been due certification therefor presented before this Court. The learned senior advocate Mr. S. Balakrishnan is requested hereby to inform this Court on the next date of hearing as to the circumstances under which parole was granted when in fact the bail application stands rejected and the appellant is lodged in jail.

..3/-

-3-

Let this matter appear four weeks hence within which the learned senior advocate would be able to obtain the instructions as submitted by him.

Be it also placed on record that the advocate-on-record, for the appellant thought it prudent not to appear before this Court today as well.

.SP1

(K.K. Chawla)

(Shelly Sengupta)@@

AA

Court Master

Court Master"

(iv) Order dated 24.09.2002:



W.P.(MD).No.6398 of 2023

"Crl.A.No. 866 OF 2000

ITEM NO.102

COURT NO.7

SECTION IIA

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S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.866 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC

Manokaran

... APPELLANT(S)

VERSUS

STATE OF TAMIL NADU
(With Office Report)

... RESPONDENT(S)

Date: 24/09/2002. This/These matter(s) were called on for
hearing today. @@
AAAAAAAAAA

CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. S.Aravindh, Adv. for
Mr. Rakesh K. Sharma, Adv.

For Respondent (s) Mr. S. Balakrishnan, Sr. Adv.
Mrs. Revathy Raghvan, Adv.
Mr. Abhay Kumar, Adv.
Mr. R.Gopala Krishnan, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....J. .
SP2



WEB COPY



W.P.(MD).No.6398 of 2023

Let this matter appear on 1st October, 2002, irrespective of any part-heard matter, at the top of the list. The deponent, who affirmed the affidavit, viz., Joint Secretary to Government, Home (Prison) Department, Secretariat, Madras, is directed to be present in Court along with the relevant Manuals and Rules referred to in the affidavit. Learned counsel for the appellant would be at liberty to place on record the translated copy of the evidence by tomorrow.

SPI

<i>(K.K. Chawla)</i>	<i>(Shelly Sengupta)@@</i>
AA	AA
<i>Court Master</i>	<i>Court Master"</i>

(v) Order dated 01.10.2002:

"Crl.A.No. 866 OF 2000
ITEM NO.101 COURT NO.6 SECTION IIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CRIMINAL APPEAL NO.866 OF 2000@@
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Manokaran ... APPELLANT(S)

VERSUS

STATE OF TAMIL NADU ... RESPONDENT(S)
(With Office Report)

Date: 01/10/2002. This/These matter(s) were called on for



W.P.(MD).No.6398 of 2023

hearing today. @@
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CORAM:

HON'BLE MR. JUSTICE U.C. BANERJEE
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Appellant(s) Mr. S.Aravindh, Adv. for
Mr. Rakesh K. Sharma, Adv.

For Respondent (s) Mr. S. Balakrishnan, Sr. Adv.
Mrs. Revathy Raghvan, Adv.
Mr. Abhay Kumar, Adv.
Mr. R.Gopala Krishnan, Adv.

UPON hearing counsel the Court made the following
O R D E R

.....L.....I....T.....T.....T.....T.....T....J. .
SP2

Heard learned counsel for the parties for twenty
minutes.

The appeal is dismissed in terms of the signed
order.

SP1

(K.K. Chawla) (Shelly Sengupta)@@
AA
Court Master Court Master

[Signed order is placed on the file]

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IN THE SUPREME COURT OF INDIA



W.P.(MD).No.6398 of 2023

CRIMINAL APPELLATE JURISDICTION

**CRIMINAL APPEAL NO.866 OF 2000@@
CCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCCC**

MANOKARAN

APPELLANT

STATE OF TAMIL NADU

RESPONDENT

**O R D E R@@@
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SP2

Mr. J.A. Syed Abdul Khader, Joint Secretary to Government of Tamil Nadu, Home Department, Chennai is present in terms of the earlier orders of this Court. Mr. Khader regrets that unfortunately a practice has grown in the State of Tamil Nadu to act in the fashion as it has been effected in the matter under consideration. Mr. Khader, however, assures this Court that in future the State Government would act strictly according to the requirements of the statute and not de hors. The question of continuity of there being any practice being followed henceforth would not arise and the same has been discarded by the State Government.

..2/-

-2-

The appellant herein being the first accused in Sessions Case No.93/89 on the file of VI Additional Sessions Judge, Madras was tried along with 10 others. The fact situation of the matter in issue has been very succinctly dealt with by the High Court in paragraph 13 of the judgment.



W.P.(MD).No.6398 of 2023

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.....L.....I.....T.....T.....T.....T.....T.....J. .

"13. According to the prosecution, the occurrence took place at about 12.30 p.m. and it was witnessed by PWs.1 to 4. PWs.1 to 4 have sustained injuries at the time of occurrence. It is the case of all these witnesses that at 12.15 p.m. when the dead body of tailor Munusamy was taken in a procession through N.M.K. Street and Pachaikkal Veerasamy Street, PW.5 asked all the shopkeepers to close their shops apprehending some trouble since some of the processionists were dancing. A1 appeared at the scene and questioned the processionists as to who they are to ask the shopkeepers to close their shops in his locality and cut the deceased with M.O.3, a knife. When the witnesses intervened, PW.1 was cut by A1 and PWs.2 to 4 were cut by A2. In respect of the incident which took place at 12.30 p.m., a complaint was also laid with PW.17, the Sub-Inspector of Police, at 12.45 p.m., i.e. within 15 minutes of the incident. Immediately, the injured were referred to the hospital where the Duty Doctor, PW.12 started examining the injured from 1.00 P.M."

.....L.....I.....T.....T.....T.....T.....T.....J. .

SP2

It is on these set of facts the accused persons faced trial before the learned Sessions

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Judge. Four injured witnesses were examined as eye witnesses and the incident herein brought about unfortunate end of the deceased Nagaiah. The post mortem report found a stab injury on the left side of the



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W.P.(MD).No.6398 of 2023

root of the neck one cm. lateral to the lateral border of the left sterno-mastoi muscle 4 cm. x 1 cm. x 4cm. clear cut margins. Blood clots were present dark Red in colour pointing downwards and medially. In the opinion of the doctor the deceased died of shock and haemorrhage due to the stab injuries sustained by him and the stab injuries were otherwise sufficient to cause death. The learned Sessions Judge thought it fit to pass an order of acquittal as regards A3 to A11 but convicted A1 and A2 whereas A2 was convicted under Section 324 of the Indian Penal Code, A1 was convicted under Section 302 of the Indian Penal Code with a punishment for life imprisonment. A2, however, has served the sentence and now stands released from the jail. This appeal thus by A1 before this Court.

The learned advocate appearing in support of the appeal rather strenuously contended that the High Court was in manifest error by reason of not considering exception IV to Section 300 of the

..4/-

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-4-

Indian Penal Code. It has been contended that as a matter of fact there was a sudden quarrel and fight and the accused was persuaded by the exigencies of the situation to take steps and while taking steps unfortunately the injury stood suffered by the victim.

Considering the nature of the injury, however, we are not in a position to render our concurrence with the submissions made in support of the appeal. The nature of the injury shows how cruelties and brutalities were meted out to injure a person on the root of the neck. The issue of aggression also came up during the course of submissions but we are unable to record our concurrence therewith as well by reason of



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W.P.(MD).No.6398 of 2023

the fact that the prosecutor cannot be termed to be aggressors in the contextual facts.

On the wake of the aforesaid, we do not find any merit in the appeal. The appeal, therefore, fails and is dismissed.

.SPI

.....J.
(U.C. Banerjee)

.....J.
(B.N. Agrawal)

*New Delhi,
October 01, 2002."*

19. The sequence of these orders, as found above, are to the effect that on 30.04.2001, the bail application filed by Manokaran, pending the Criminal Appeal No.866 of 2000, was rejected. On 16.07.2002, there was no appearance for Manokaran pursuant to which an opportunity was given by adjourning the appeal by four weeks. On 13.08.2002, the Hon'ble Supreme Court had recorded the appellant's counsel's representation that Manokaran was granted "parole" by the Government. It was further recorded therein that the Registry had reported that the appellant was served with a notice for appearance on 10th August, 2002 and that his appeal was already rejected on 30.04.2001 and since then, he has been lodged in jail. In this background, the Government counsel was called upon to obtain



W.P.(MD).No.6398 of 2023

instructions. On 24.09.2002, the Joint Secretary to Government, Home Department, Chennai, who had affirmed the affidavit, was directed to be present before the Hon'ble Supreme Court on 01.10.2002 and on 01.10.2002, the appearance of the Joint Secretary and his regrets were recorded. While recording, the assurance of the Joint Secretary that the State Government, in future, would act strictly according to the requirements of the statute and not *de hors* and his statement that the question of continuity of there being any practice being followed henceforth would not arise and the same has been discarded by the State Government, were also recorded.

20. Apart from these orders, there are no other orders passed as alleged in the official memorandum of the Additional Director General of Prisons, dated 21.10.2002. We are confounded with the recitals in the office memorandum allegedly recording the order of the Hon'ble Supreme Court that in future no such short time release should be made by the competent authority without informing the Court in which the prisoner's appeal is pending and that this order should be scrupulously followed in future.



W.P.(MD).No.6398 of 2023

21. It is no doubt true that the Hon'ble Supreme Court in its order dated 01.10.2002, had recorded the statement of the Joint Secretary to Government, Home Department and his regrets, as well as his undertaking that the State Government would act strictly according to the requirements of the statute and not *de hors*. There is no reference in the orders of the Hon'ble Supreme Court with regard to grant of ordinary or emergency leave. Neither is there a reference touching upon “suspension of sentence”. On the other hand, in the order dated 13.08.2002, the appellant having been granted “parole” alone has been recorded. If that be so, we are unable to appreciate as to how the official memorandum can make a reference to statements that have not been recorded in Criminal Appeal No.866 of 2000, as alleged by them in the recital to the memorandum. Incidentally, it is in the light of these fallacious recitals, had the Additional Director General of Prisons directed the Superintendent/Deputy Inspector General of Prisons to desist from releasing any prisoner on emergency or ordinary leave, when his appeal is pending before the appropriate Court, without prior permission of the Court.



W.P.(MD).No.6398 of 2023

22. In our view, the official memorandum itself has not only misconstrued the orders of the Hon'ble Supreme Court in Criminal Appeal No.866 of 2000, but is also against the object and purpose of the 1982 Rules, which prescribes the eligibility conditions and procedure for grant of emergency and ordinary leave.

23. As held by the Hon'ble Supreme Court in the case of ***P.D.Aggarwal Vs. State of U.P reported in (1987) 3 SCC 622***, a memorandum is nothing but an administrative order or instruction and as such, it cannot amend or supersede the statutory rules by adding something therein. In ***Union of India Vs. Ashok Kumar Aggarwal reported in (2013) 16 SCC 147***, the Hon'ble Supreme Court had held that it is a settled proposition of law that an authority cannot issue orders or office memorandum or executive instructions in contravention of the statutory rules and that such instructions can be issued only to supplement the statutory rules, but not to supplant it. Such instructions should be subservient to the statutory provisions. This legal position has also been reiterated in various other decisions, including ***Union of India Vs. Majji Jangamayya [(1977) 1 SCC 606]***, ***Paluru Ramkrishnaiah Vs. Union of***



W.P.(MD).No.6398 of 2023

India [(1989) 2 SCC 541], C.Rangaswamaiah Vs. Karnataka Lokayukta [(1998) 6 SCC 66], Joint Action Committee of Air Line Pilots' Assn. of India Vs. DG of Civil Aviation [(2011) 5 SCC 435].

24. In a recent decision in the case of ***Employees' State Insurance Corporation Vs. Union of India and others reported in (2022) 11 SCC 392***, the Hon'ble Dr.Justice D.Y.Chandrachud had placed reliance on all the aforesaid decisions and had come to a conclusion that a statutory regulations will have precedence over an official memorandum.

25. When *Manokaran's* case had not dealt with a prisoner being granted ordinary leave or emergency leave, but rather being released on parole and the undertaking given by the State Government before the Hon'ble Supreme Court was only to the effect that the Government would henceforth act strictly according to the requirements of the statute and not *de hors*, we are of the view that such an undertaking before the Hon'ble Supreme Court in *Manokaran's* case will not be an impediment for their consideration of an application seeking for “emergency or ordinary leave”



W.P.(MD).No.6398 of 2023

under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982. Thus, the second reasoning adopted in *Wasib Khan's* case with reference to *Manokaran's* case before the Hon'ble Supreme Court will also not have a binding effect in this regard.

26. The learned Additional Public Prosecutor placed reliance on Rule 35 of the Suspension of Sentence Rules and submitted that when an appeal is pending before the Hon'ble Supreme Court, leave cannot be granted. Rule 35 of the 1982 Rules reads as follows:

“35. Pending Cases.- No prisoner on whom a case is pending trial shall be granted leave.”

27. The term used in Rule 35 is 'pending trial' and not pending appeal. The object behind prohibiting a prisoner to be released on leave when a case is pending trial is to ensure his presence before the competent trial Court during the time of trial. Rule 832 of the Tamil Nadu Prison Rules casts a duty and responsibility on the prison authorities to produce a prisoner before the Court at the time of trial. We are unable to comprehend as to how the term 'pending trial' can be equated to that of an appeal, more particularly when it is not a statutory appeal under the criminal code.



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28. The rationale behind Rule 35 came up for consideration before a co-ordinate Bench of this Court in the case of ***S.Santhosam Vs. State and others reported in 2022 (3) CTC 689***, where the object and scope of Rule 35 and the executive power to grant leave to a prisoner facing trial was dealt with in the following manner:

"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."

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.



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W.P.(MD).No.6398 of 2023

(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 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."

The decision in *S.Santhosam's* case was subsequently followed by another co-ordinate Bench of this Court in the case of ***K.Pournami Vs. The State of Tamil Nadu and others*** passed in ***W.P.No.17011 of 2021 dated 29.09.2021***.



W.P.(MD).No.6398 of 2023

29. Thus, in the absence of a specific prohibition for grant of leave to a prisoner, whose appeal is pending before the competent Court, Rule 35, which deals with prisoners facing trial alone, cannot be put forth as a bar to consider grant of leave when an appeal is pending.

30. The learned Additional Public Prosecutor also brought to our notice of *K.Rajalakshmi's* case (supra), where, a similar view as that of *Wasib Khan's* case has been pronounced by the co-ordinate Bench. We have perused the order in *K.Rajalakshmi's* case in its entirety and find that the decision is substantially a reiteration of the predominant legal ratios dealt with in *Wasib Khan's* case by another co-ordinate Bench. We have already assigned our reasons as to how *Wasib Khan's* case may not have a binding precedent value and the same would also apply to the decision in *K.Rajalakshmi's* case, insofar as it touches upon the definition of the term 'sentence' in Rule 2(4) of the 1982 Rules, apart from the reference to *Manokaran's* case before the Hon'ble Supreme Court, the consequential office memorandum of the Additional Director General of Prisons, as well as Rule 35 of the 1982 Rules, which have been dealt in detail by us in the



W.P.(MD).No.6398 of 2023

preceding paragraphs. Thus, the decision in *K.Rajalakshmi*, insofar as it relates to the reasoning adopted in *Wasib Khan's* case, also will not have a binding effect on us.

31. The learned counsel for the petitioner made a submission that when Rule 40 of the 1982 Rules empowers the Government to exempt a prisoner from any or all of the provisions of the Rules, the objections pointed out by the authorities for grant of leave, can very well be exempted and the petition for leave can be considered.

32. Per contra, the learned Additional Public Prosecutor submitted that a co-ordinate Bench of this Court in the case of *S.Santhosam* (supra), had placed reliance on a full Bench decision of this Court in the case of ***State Vs. Yesu reported in 2011 (5) CTC 353*** and held that the power to exempt cannot be used to grant leave outside the scope of Suspension of Sentence Rules. So also, the learned Additional Public Prosecutor placed reliance on the case of ***M.Jeyammal Vs. State and others reported in 2022-1-LW (Crl) 833*** for the same purpose.



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33. Before we address this ground raised, the decision relied upon by the learned Additional Public Prosecutor in *S.Santhosam's* case requires to be examined. The following is the portion of the order in *Santhosam's* case, which has been cited as an impediment by the learned Additional Public Prosecutor:

“17. The next submission of Mrs. Nadhiya is that the State should invoke Rule 40 of the Sentence Suspension Rules to exempt the petitioner's brother from the operation of Rule 35, ibid. We are, however, afraid that this does not cut ice with us. The scope of Rule 40, ibid., came up for consideration before a Full Bench of this Court in State vs. Yesu, wherein, at paragraph 42, it was held that if Rule 40, ibid. was exercised to exempt a person from the Sentence Suspension Rules, the resultant position was that the State Government would have no power to grant suspension of sentence at all. This is because the Full Bench, at paragraph 52, has observed that "outside the scope of the Tamil Nadu Suspension of Sentence Rules, no authority has got any power to grant suspension of sentence in any form." Ex consequenti, the power to exempt cannot be used to grant leave outside the four corners of the Sentence Suspension Rules, as there exists no plenary power with the State Government to grant leave dehors the provisions of the



Sentence Suspension Rules. What cannot be done on account of the express bar contained in Rule 35, ibid., cannot be indirectly circumvented through the back door of Rule 40, ibid. The decision of the Full Bench in Yesu (supra), binds us, with the result that the contention premised on Rule 40, ibid. cannot be countenanced.”

34. In *Santhosam's* case, a reliance was placed on paragraph 42 of the full Bench decision in *Yesu's* case, which reads as follows:

“42. A perusal of the same would show that if a prisoner is so exempted by the Government from the provisions of the said Rules in toto, then the Government cannot grant suspension at all. But at the same time, the Government can exempt some of the provisions such as provisions relating to bond etc., in respect of a particular prisoner and release him on leave. Such exercise of the power by the Government exempting some of the provisions of the Suspension Rules shall be for reasons to be recorded and the same shall not be exercised in an arbitrary manner. As rightly pointed out by Mr.P.N.Prakash, the Amicus Curiae, the entire Suspension Rules may be exempted in respect of an individual prisoner for valid reasons. For example, if the prisoner is a hardcore terrorist, even if he satisfies the conditions enumerated in the Suspension Rules, the



W.P.(MD).No.6398 of 2023

Government will be within its competence to exempt him from all the provisions of the Suspension Rules and to decline to release him temporarily either on emergency leave or ordinary leave.”

35. A perusal of the aforesaid extract would reveal that the Full Court had not completely placed an embargo for the Government to invoke its exemption powers in *S.Santhosam's* case, reliance was placed on a portion of paragraph 42, namely, *“if Rule 40, ibid. was exercised to exempt a person from the Sentence Suspension Rules, the resultant position was that the State Government would have no power to grant suspension of sentence at all”*. However, the following findings in paragraph 42 of *Yesu* has not been brought to the notice of the Court in *S.Santhosam's* case, which reads as *“But at the same time, the Government can exempt some of the provisions such as provisions relating to bond etc., in respect of a particular prisoner and release him on leave. Such exercise of the power by the Government exempting some of the provisions of the Suspension Rules shall be for reasons to be recorded and the same shall not be exercised in an arbitrary manner.”*. If this portion of the decision in *Yesu's* case had been considered in *S.Santhosam's* case, a total embargo may not have been placed for



W.P.(MD).No.6398 of 2023

facilitating the Government to invoke the exemption powers. Thus, when *Yesu's* case did not completely prohibit the Government to consider granting of exemption of some of the provisions to a particular prisoner, the resultant findings in *S.Santhosam's* case in this regard, contrary to this, would not have a binding effect of a precedent.

36. In the case of *M.Jeyammal* (supra), Rule 40 was referred to as a negative power to grant exemption in a given case by holding that such powers to exempt will not confer any right on a prisoner, but is a discretion which is vested with the State. The Full Bench of *Yesu's* case has not referred to Rule 40 as a negative power. On the other hand, an example has been quoted for exemption of the entire Rules to prevent an eligible hardcore terrorist from obtaining leave. But, at the same time, *Yesu's* case also held that the Government can exempt some of the provisions to enable a particular prisoner to be released on leave.

37. Rule 40 of the 1982 Rules reads as follows:

“40. Power to exempt: The Government may exempt any prisoner from all or any of the provisions of these rules.”



W.P.(MD).No.6398 of 2023

There is no reference to any negative power in Rule 40, nor does *Yesu's* case indicate of exercise of negative powers by the Government under Rule 40.

The 1982 Rules is a beneficial piece of legislation and every Rule thereunder, when confronted with interpretation, must be done on a liberal approach.

38. In the case of ***Reserve Bank of India Vs. Peerless General finance and Investment Co. Ltd. and others reported in (1987) 1 SCC 424***, the Hon'ble Supreme Court had in an exemplary manner held the mode of interpretation of a statute. Hon'ble Mr. Justice Chinnappa Reddy had explicitly set out such mode of interpretation in the following manner:

“33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and



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W.P.(MD).No.6398 of 2023

words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression 'Prize Chit' in *Srinivasa* and we find no reason to depart from the Court's construction.

The aforesaid decision in *Reserve Bank of India* was subsequently followed in the case of ***Regional Transport Authority and another Vs. Shaju etc., in Civil Appeal Nos. 1453-1454 of 2022 dated 17.02.2022.***

39. Similarly, in the case of ***High Court of Judicature at Madras Vs. M.C.Subramaniam and others reported in (2021) 3 SCC 560***, it was held that interpretation of statutes should be done in a liberal manner in order to achieve the object of the enactment. The relevant portion of the order reads as follows:



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W.P.(MD).No.6398 of 2023

"14. Before expounding further on our interpretation of the aforesaid provisions, regard must be had to the following postulation of this Court's interpretive role in Directorate of Enforcement v. Deepak Mahajan, (1994 3 SCC 440):

"24...Though the function of the Courts is only to expound the law and not to legislate, nonetheless the legislature cannot be asked to sit to resolve the difficulties in the implementation of its intention and the spirit of the law. In such circumstances, it is the duty of the court to mould or creatively interpret the legislation by liberally interpreting the statute.

25. In Maxwell on Interpretation of Statutes, Tenth Edn. at page 229, the following passage is found:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. ... Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used." (emphasis supplied)

15. Therefore, it is well settled that the Courts may, in order to avoid any difficulty or injustice resulting from



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W.P.(MD).No.6398 of 2023

inadvertent ambiguity in the language of a statute, mould the interpretation of the same so as to achieve the true purpose of the enactment. This may include expanding the scope of the relevant provisions to cover situations which are not strictly encapsulated in the language used therein.

16. This principle of statutory interpretation has been affirmed more recently in the decision in ,Shailesh Dhairyawan v. Mohan Balkrishna Lulla (2016) 3 SCC 619 –

“33....Though the literal rule of interpretation, till some time ago, was treated as the “golden rule”, it is now the doctrine of purposive interpretation which is predominant, particularly in those cases where literal interpretation may not serve the purpose or may lead to absurdity. If it brings about an end which is at variance with the purpose of statute, that cannot be countenanced.”

(emphasis supplied)

This was followed in the subsequent decision of this Court in Anurag Mittal v. Shaily Mishra Mittal, (2018) 9 SCC 691.”

The aforesaid extracts are self-explanatory and if applied to the present case in hand, it would be seen that the object of the Suspension of Sentence Rules is to grant the concession to a prisoner to avail emergency or ordinary



W.P.(MD).No.6398 of 2023

leave. It is no doubt true that Government's power under Rule 40 is a discretionary one and the prisoner cannot as a matter of right claim for grant of leave. However, when the object of the entire rule is to make certain classes of prisoners eligible for availing emergency or ordinary leave, Rule 40 requires to be interpreted in a liberal manner to achieve the object of the rules, in accordance with the law laid down by the Hon'ble Supreme Court as aforesaid.

40. There may be instances where a prisoner would have exhausted the maximum emergency leave in a year and still require grant of emergency leave on any of the grounds referred to in Rule 6 like serious illness of father, mother, wife, husband, son, daughter, etc., or to attend the wedding of his immediate family members or to a female pregnant prisoner for having delivery outside the prison. In such circumstances, Rule 40 cannot be interpreted in a negative sense, which would be totally against the object of the framing of the Rules. As held by the Hon'ble Supreme Court, a liberal interpretation should be given to Rule 40 so as to enable the Government to exempt any of its provisions or all of its provisions to the



W.P.(MD).No.6398 of 2023

benefit of a prisoner also, rather than applying the exemption powers only for the purpose of denying grant of leave.

41. Incidentally, the findings of *Jeyammal's* case restricting the exemption powers of the Government in a negative sense, were also reiterated in *K.Rajalakshmi's* case. In the absence of any specific finding or direction in *Yesu's* case, which has been subsequently relied upon in *Jeyammal's* case, we do not find the reasonings in *Jeyammal's* case to be binding in nature. Consequently, the Government will be well within its powers to exempt any of the provisions in the Rules to grant leave to a particular prisoner on specific conditions.

42. Incidentally, another co-ordinate Bench of this Court, in the case of *Shakila Vs. The State represented by its Secretary to Government of Tamil Nadu, Department of Home, Fort St.George, Chennai-600 009 and others, passed in W.P.No.2761 of 2023 dated 10.02.2023*, had rendered a liberal interpretation to Rule 40 and held that the Rules as such are not absolute. The relevant portion of the order reads as follows:



W.P.(MD).No.6398 of 2023

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“19. A careful perusal of Rule 40 makes it clear that the Executive itself has ample and adequate powers to exempt any one from the provisions of said Rules. Therefore, said Rules has an inbuilt provision vesting the Executive itself with the power to exempt a convict prisoner from the operation of said Rules. This makes it clear that said Rules or provisions thereunder are not absolute and cannot come in the way or become an impediment in judiciary exercising its powers to grant leave.”

We are thus of the view that in view of Rule 40 of the 1982 Rules, the other provisions under the Rules, touching upon the eligibility criteria, the period of leave, mode of consideration, etc., are not mandatory in nature, but rather directory.

43. In the context of our aforesaid findings, we are of the affirmed view that the decision in *Wasib Khan* is not in conformity with the Rules, as well as the other binding authorities referred to by us. If that be so, it is not necessary to make a reference of *Wasib Khan* to a larger Bench, as held by the five Judges Constitutional Bench of the Hon'ble Supreme Court in the judgment in the case of ***Dr Shah***



W.P.(MD).No.6398 of 2023

Faesar and others Vs. Union of India and another reported in (2020) 4

SCC 1.

44. In the light of the above findings, the reason adopted by the second respondent by quoting the decision in *Wasib Khan's* case as an impediment for consideration of the petitioner's husband's leave application in view of the pendency of his appeal before the Hon'ble Supreme Court, cannot be sustained. Accordingly, the impugned order dated 31.01.2023 on the file of the second respondent is quashed.

45. We hasten to add here that under Rule 19 of the 1982 Rules, the Deputy Inspector General of Prisons is the competent authority to consider the petitions seeking for release of prisoners on ordinary leave, who is the first respondent herein. Accordingly, there shall be a direction to the first respondent herein to re-consider the petitioner's application dated 13.01.2023 afresh, without reference to the pendency of her husband's criminal appeal petition before the Hon'ble Supreme Court or the order passed in W.P.No.10265 of 2021 dated 18.02.2022 (*L.Wasib Khan Vs. The*



W.P.(MD).No.6398 of 2023

State and others) or any other similar case holding the same ratio and pass appropriate orders on its own merits and in accordance with law, within a period of four (4) weeks from the date of receipt of a copy of this order.

46. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
29.09.2023

NCC : Yes / No
Index : Yes / No
Lm

To

- 1.The Deputy Inspector General of Prison,
Madurai Zone,
Madurai – 625 001.
- 2.The Superintendent,
Palayamkottai Central Prison,
Palayamkottai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P.(MD).No.6398 of 2023

M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

Lm

order made in
W.P.(MD).No.6398 of 2023

29.09.2023