



WP (MD)No.20603 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

WP(MD).No.20603 of 2023

Saabeera Banu

: Petitioner

Vs

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

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

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

: Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Mandamus directing the 2nd respondent to grant leave (Parole) to petitioner's husband 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 petitioner's representation dated 27.07.2023.



For Petitioner : Ms.A.Rajini

For Respondents : Mr.A.Thiruvadikumar

Additional Public Prosecutor

ORDER

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

The petitioner's husband is a life convict, who is now confined in the Central Prison, Madurai, for the past 4½ years. On the ground that her daughter had attained puberty and they intend to conduct a puberty function on 30.08.2023, she had sought for grant of extra ordinary leave to the petitioner's husband through a representation dated 27.07.2023. Since the representation was not considered within a reasonable time, the present writ petition has been filed.

2. Today, when the matter was taken up for hearing, the learned Additional Public Prosecutor produced a copy of the proceedings in No. 12680/தகு2/2023 dated 21.08.2023 of the second respondent herein, whereby the petitioner's application dated 01.08.2023 seeking for emergency leave has been rejected, predominantly on the ground that there are two other cases pending against the petitioner's husband in S.C.No.426/2018 before the 6th



WP (MD)No.20603 of 2023

Additional District and Sessions Judge, Madurai and C.C.No.271/2018

arising out of Crime No.268/2018 on the file of the Judicial Magistrate, No.IV, Madurai and in view of Rule 35 of the Tamil Nadu Suspension and Sentence Rules, 1982 (hereinafter referred to as 'the Rules'), leave cannot be granted, when a trial is pending. The further reason assigned in the said proceedings is that her husband's participation in their daughter's puberty function is not permissible reason for grant of emergency leave under Rule 6 of the Rules.

3. Rule 40 of the Rules grants power to the Government to exempt all or any of the provisions of the Rules, in view of which, Rules or the provisions therein are not absolute and cannot come in the way or become an impediment for the judiciary to exercise these powers to grant leave. In the case of Shakila v. State of Tamil Nadu, Home Department and others (W.P.No. 2761/2023 dated 10.02.2023), a Coordinate Bench had taken a such a view and had granted leave to the prisoner.

4. Thus, the reasons assigned by the second respondent by quoting either Rule 35 or Rule 6, which is not mandatory in nature but only directory,



WP (MD)No.20603 of 2023

will not be an impediment for this Court to exercise its powers to grant leave.

At this juncture, it is stated by the learned Additional Public Prosecutor that the pending case in S.C.No.426/2018 is posted for hearing on 25.08.2023 and the case in C.C.No.271/2018 is posted for hearing on 05.09.2023. The petitioner seeks for grant of leave to her husband for attending her daughter's function, which is scheduled to be held on 30.08.2023. In these circumstances, if three days of leave is granted between 29.08.2023 and 31.08.2023 with escort, it would facilitate the respondents to produce him before the concerned Courts during the next hearing dates.

5. Though the petitioner had sought for issuance of a writ of mandamus, the proceedings of the second respondent dated 21.08.2023, has been passed after the present writ petition has been filed and therefore, we deem it fit to interfere with the said order also. Accordingly, the proceedings dated 21.08.2023 is hereby quashed. Consequently there shall be a direction to the second respondent herein to forthwith pass orders granting emergency leave to the petitioner's husband, namely, Ibrahimsha, (CP No.5830) S/o.Mohammed Hanifa from 29.08.2023 to 31.08.2023 with escort. While passing such orders granting leave, the second respondent would be at liberty



WP (MD)No.20603 of 2023

to impose any reasonable conditions.

WEB COPY

With the above direction, the writ petition is ordered.

[M.S.R.,J] [M.N.K.,J]

24.08.2023

Index : Yes / No

Internet : Yes

Office to Note: Order copy on 28.08.2023

RR

To

- 1.The Secretary to the Government
Home, Prohibition and Excise Department
Secretariat, Chennai.
- 2.The Superintendent of Prison,
Central Prison, Madurai.
- 3.The Superintendent of Police,
O/o.the Superintendent of Police,
Surveyor colony, K.Pudur,
Madurai 625 007.
- 4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.



WP (MD)No.20603 of 2023

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

RR

WP(MD).No.20603 of 2023

24.08.2023