



W.P(MD)No.26560 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K. RAMAKRISHNAN

W.P(MD)No.26560 of 2023

and

WMP(MD).No.22837 of 2023

G.Ambika

.. Petitioner

Vs.

1.The Superintendent of Prison,
Prison Borstal School and District Jail,
Bose Nagar,
Pudhukkottai – 622 001.

2.Sub-Registrar,
Office of Sub Registrar,
PWD Office Campus,
Pudhukkottai – 622 001

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned proceedings in No. 5990/Ma.A/2023, dated 01.08.2023 passed by the 1st respondent and quash the same as arbitrary and consequently direct the 1st respondent herein to permit the execution of power of attorney by the petitioner's husband T.P.Ganesh, son of Paramasivam under trial Prisoner No.8534 in



W.P(MD)No.26560 of 2023

favour of the petitioner within the prison premises based on the petitioner's representation dated 20.07.2023.

For Petitioner : Mr.C.Gunasekaran

For Respondents 1 & 2 : Mr.R.M.Anbunithi
Additional Public Prosecutor

ORDER

This writ petition has been filed to issue writ of Certiorarified Mandamus, calling for the entire records relating to the impugned proceedings in No.5990/Ma.A/2023, dated 01.08.2023, passed by the 1st respondent and quash the same as arbitrary and consequently, direct the 1st respondent herein to permit the execution of power of attorney, by the petitioner's husband T.P.Ganesh son of Paramasivam under trial Prisoner No.8534 in favour of the petitioner, within prison premises, based on the petitioner's representation, dated 20.07.2023.

2.The petitioner is the wife of the T.P.Ganesan. He was arrested in Crime No.83 of 2021 for alleged offence under Sections 8(c) r/w 20(b) (ii)(C) of NDPS Act, 1985. He subsequently, got anticipatory bail in the said case. Thereafter, the investigating officer completed the investigation and filed the final report and the same was taken on file in



W.P(MD)No.26560 of 2023

C.C.No.200 of 2021. He has not appeared and hence, warrant was issued.

He was already arrested in Crime No.1476 of 2020 on the file of Palakkad Town Police Station, Kerala State. In the said case, he filed the bail application and the same was dismissed by the Honourable Kerala High Court and the same was confirmed by the Honourable Supreme Court. In the meantime, he was produced on the PT warrant in the above case i.e., C.C.No.200 of 2021 and confined in the first respondent prison. He has number of properties. He has also obtained loans by way of mortgaging the house property to the Panjab National Bank, Salem, for running his business in the name and style of 'Sri Sai Exim' and Business Property to Canara Bank. The said loans accounts were become NPA and SARFAESI proceedings have been initiated. The order under Section 14 to take physical possession also ordered. In the said circumstances, the petitioner, wife of the said accused filed this writ petition to allow the jurisdictional Sub Registrar inside the jail to obtain the power of attorney in favour of the petitioner relating to the properties. The same was declined by the first respondent by passing impugned order. Challenging the same, the petitioner filed this writ petition.



W.P(MD)No.26560 of 2023

3.The learned counsel for the petitioner submitted that there is no bar to register the document in the jail premises with the help of the Sub Registrar. The petitioner has not source of income and hence to meet out her daughter's educational expenses and to settle the debt amount, she wants to get the power of attorney from her husband.

4.This Court perused the records and also considered the submission of the learned counsel of the petitioner.

5.Even though the petitioner specifically averred in Parahtsph Nos. 6 and 7 of the affidavit that the Bank have already initiated SARFAESI proceedings against the properties on the ground that the account was declared as NPA. But, she has not impleaded the Bank authorities as a party to the proceedings. Further from the annexure document e-auction notice dated 24.05.2023 and 21.07.2022, it is clear that SARFAESI proceedings is still pending. If the petitioner's prayer to execute the power of attorney in favour of her is accepted, the Bank would not proceed further in accordance with SARFAESI Act. Apart from that, once the SARFAESI proceedings were initiated, the jurisdictional Registration Office has no right to make any alienation. Even though the



W.P(MD)No.26560 of 2023

prayer is for the purpose execution of power of attorney in the name of the petitioner, but the ultimate intention of the petitioner is to sell the properties. In the said circumstances, petitioner to circumvent the proceedings of the SARFAESI, approached this Court without any *bonafides* and hence, this petition is dismissed.

6. Adding to that, as per the 68-E, 68-F of the NDPS Act, the investigating agency is duty bound to initiate the proceedings of attachment of the properties of the accused, ie., against the husband of the petitioner and hence, the said prayer of the petitioner is allowed, the investigating agency can not initiate the proceedings under the NDPS Act.

7. This Court is conscious of the fact that the impugned order only substantiated by the reason mentioned therein, but in the exceptional circumstances, and in the interest of public, the Court substantiated the impugned order with legal reasoning. In this case, even though, the impugned order has been passed without the above reasoning, considering the nature of the proceedings, this Court subscribed its reason and declined to entertain the plea of the petitioner and the same



was fortified by the Hon'ble Three Judges Bench of the Hon'ble Supreme Court reported in 2020 (2) CTC 528.

Internet & Mobile Assn. of India v. RBI,

(2020) 10 SCC 274:

“177. The impugned Circular cannot be assailed on the basis of M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] test, for two reasons. First is that in All India Railway Recruitment Board v. K. Shyam Kumar [All India Railway Recruitment Board v. K. Shyam Kumar, (2010) 6 SCC 614 : (2010) 2 SCC (L&S) 293] , this Court held that M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] test may not always be applicable where larger public interest is involved and that in such situations, additional grounds can be looked into for examining the validity of an order. This was followed in PRP Exports v. State of T.N. [PRP Exports v. State of T.N., (2014) 13 SCC 692] In 63 Moons Technologies Ltd. v. Union of India [63 Moons Technologies Ltd. v. Union of India, (2019) 18 SCC 401] , this Court clarified that though there is no broad proposition that M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] test will not apply where larger public interest is involved, subsequent materials in the form of facts that have taken place after the order in question is passed, can always be looked at in the larger public interest, in order to support an administrative order. The second reason why the weapon of M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] will get blunted in this case, is that during the pendency of this case, this Court passed an interim order on 21-8-2019 [Internet & Mobile Assn. of India v. RBI, 2019 SCC OnLine SC 1800] directing RBI to give a point-wise reply to the detailed representation made by the writ petitioners.



W.P(MD)No.26560 of 2023

Pursuant to the said order, RBI gave detailed responses on 4-9-2019 and 18-9-2019. Therefore, the argument based on M.S. Gill [Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405] test has lost its potency.

8. In the result, this Court finds not merit in the submission of the learned counsel for the petitioner and hence, this petition is dismissed. Consequently, connected miscellaneous petition is closed.

03.11.2023

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
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To

1.The Superintendent of Prison,
Prison Borstal School and District Jail,
Bose Nagar,
Pudhukkottai – 622 001.

2.The Sub-Registrar,
Office of Sub Registrar,
PWD Office Campus,
Pudhukkottai – 622 001

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



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W.P(MD)No.26560 of 2023

K.K.RAMAKRISHNAN. J.,

TM

Order made in
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