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W.P.No.31017 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.31017 of 2024

Mani

... Petitioner

Vs.

1.The State represented by its,
The Deputy Inspector General of Prison,
Coimbatore Range,
Coimbatore - 641 018.

2.The Superintendent,
Coimbatore Central Prison,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.17141/Tha.Ku.3/2024, dated 20.09.2024, passed by the 2nd respondent and quash the same and consequently direct the 1st respondent to grant ordinary leave for 30 days without escort to the detenue, Arun Kumar, S/o.Mani, aged 36 years convict prisoner, bearing Convict No.19883, at Central Prison, Coimbatore.

For Petitioner : Mr.M.Ezhilarasu

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor
asst. by Mr.M.Sylvester John
: Mr.M.Mohamed Saifulla
Amicus curiae

ORDER



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

The lis on hand has been instituted to assail the order of rejection of leave application by the Superintendent of Prisons, Central Prison, Coimbatore, vide proceedings dated 20.09.2024.

2.The petitioner is the father of the convict prisoner Mr.Arun Kumar, S/o.Mani, aged about 36 years, Convict No.19883. It is not in dispute that the prisoner is in actual imprisonment for about eight years. He is sentenced to undergo life imprisonment. The petitioner submitted an application seeking ordinary leave to the prisoner on the ground that he is in old age and through his son/prisoner, he has to make some family arrangements for livelihood. Application seeking leave was filed seeking 30 days ordinary leave. Since the prisoner has completed eight years of actual imprisonment, he would be eligible to avail 28 days of ordinary leave.

3.The respondents rejected the leave application on the ground that criminal appeal in C.A.No.123 of 2017 before the High Court was dismissed and the prisoner filed further appeal before the Hon'ble Supreme Court in Diary No.40515 of 2024, which is pending and therefore, the prisoner is not eligible to avail ordinary leave.

4.The authorities arrived a decision that the pendency of an appeal either



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before the High Court or before the Supreme Court is a bar to consider the leave application submitted by convict prisoners under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982, (hereinafter referred as “Rules, 1982”).

5. Two views are projected through few Division Bench judgments of this Court. First view is that the executive authority has no power to consider the leave application during the pendency of criminal appeal before the Appellate Court under Rules, 1982. The second view is that the executive authority is empowered to grant emergency leave or ordinary leave to the convict prisoners even during the pendency of the criminal appeal. In the context of the above two views, we have decided to consider the scope of Rules, 1982.

6. The Rules, 1982 was issued by the Government of Tamil Nadu in exercise of the powers conferred by Sub Section (5) of Section 432 of Cr.P.C., 1973. Section 432 (5) Cr.P.C. enumerates that,

Section 432 (1).....

.....

(5) The appropriate Government may, by general rules or special orders, give directions as to the suspension of sentences and the conditions on which petitions should be presented and dealt with:



Provided that in the case of any sentence (other than a sentence of fine) passed on a male person above the age of eighteen years, no such petition by the person sentenced or by any other person on his behalf shall be entertained, unless the person sentenced is in jail, and-

(a) where such petition is made by the person sentenced, it is presented through the officer in charge of the jail; or

(b) where such petition is made by any other person, it contains a declaration that the person sentenced is in jail.

7.The phrase “suspension of sentence” under Rules, 1982 and in Cr.P.C., has been misinterpreted by the executive authorities. The powers of the Court to grant suspension of sentence under Section 389 Cr.P.C cannot be equated with the executive powers conferred under Rules 1982 to grant suspension of sentence i.e., ordinary leave or emergency leave. The Judicial powers of the Court and the powers of the executive authorities are independent in nature and the scope its exercise are distinguishable.

8.Section 389 Cr.P.C. confers powers to the Appellate Court to grant suspension of sentence pending appeal; release of appellant on bail during the pendency of appeal. Thus, the judicial powers conferred under section 389 Cr.P.C is independent and cannot be equated with the executive powers to grant



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ordinary leave and emergency leave under Rules, 1982, which was issued by the Government in exercise of the powers conferred under Section 432 (5) Cr.P.C.

9.The Court in exercise of the powers under Section 389 Cr.P.C. might or might not grant the relief of suspension of sentence pending appeal or release of appellant on bail. However, the said judicial powers conferred under Section 389 cannot be an impediment for the executive authority to consider the leave application submitted seeking emergency leave or ordinary leave under Rules, 1982. Powers of the executive authority under Rules, 1982 is also independent to that of the judicial powers conferred under Section 389 Cr.P.C.

10.In the above backdrop, let us consider the scope of the Rules, 1982. Rule 2 (4) of Rules, 1982 reads as follows:

2(4) Right of withdrawal and debarring –
The Government, the Inspector General of Prisons, the Deputy Inspector General of Prisons and the Superintendent of Prisons reserve the right to debar or withdraw any prisoner or categories of prisoners from the concession of leave.

11.Rule 3 commences by stating that leave is not a right. It is a concession granted to the prisoner. The very spirit of Rule 3 would indicate that the power to grant emergency leave or ordinary leave cannot be compared with the judicial powers conferred on the Court under Section 389 Cr.P.C., to grant



suspension of sentence pending appeal or release of appellant on bail.

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12.Rule 5 deals with kinds of leave. Accordingly, two kinds of leave are contemplated under the Rules, namely, emergency leave and ordinary leave.

Rule 6 denotes grounds for grant of emergency leave and it reads as under:

6.Grounds for the grant of emergency leave –

Emergency leave may be granted for attending death or serious illness of father, mother, wife, husband, son, daughter, full brother or full sister of the prisoner, as the case may be, and for having delivery outside the prison in the case of female pregnant prisoners.

13.Rule 7 speaks about the eligibility for emergency leave, which reads as under,

7.Eligibility for emergency leave.– No emergency leave shall be granted to a 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



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delivery outside the prison provided who are not constituting high security risks or of cases of equivalent grade descriptions.

14.Rule 13 which was substituted by G.O.Ms.No.1134, Home (Pri.V), dated 27.06.1989, stipulates the maximum period of emergency leave, which can be granted by the executive authority.

15.Rule 14 states about providing of police escort. Rule 20 contemplates grounds for the grant of ordinary leave. Eligibility for ordinary leave has been provided under Rule 22.

16.Perusal of the scheme of Rules, 1982, would indicate that it is all about grant of emergency leave or ordinary leave to the convict prisoners by the executive authority, considering the mitigating circumstances arising to the convict prisoners. The grounds and scope for grant of emergency leave and ordinary leave are independent and distinct. Therefore, the executive authority is empowered to grant leave with reference to the grounds stipulated under Rules, 1982.

17.The emergency leave shall be granted by the Superintendent of Prisons, under Rule 10 of Rules, 1982. Ordinary leave is to be considered by



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the Deputy Inspector General of Prisons under Rule 19 of Rules, 1982. Rule 6 deals about the grounds for grant of emergency leave. It stipulates that the emergency leave may be granted for attending death or serious illness of the father, mother and wife etc. In such circumstances, the convict prisoner need not be driven to approach the Deputy Inspector General of Prisons. He can submit an application to the Superintendent of Prisons seeking emergency leave, who in turn has to ascertain the genuineness of the reasons stated in the leave application and consider the same for the grant of emergency leave. However, the powers to grant ordinary leave is conferred on the Deputy Inspector General of Prisons under Rule 19. For grant of ordinary leave, due process is to be followed by verifying the prison records, conduct of the prisoner and other conditions stipulated under the Rules. Therefore, the scope for considering the ordinary leave is different and the Deputy Inspector General of Prisons is the competent authority under Rule 19.

18.Pertinently, Rule 18 denotes that a report to the Government is to be submitted by the Superintendent of Prisons or the Inspector General of Prisons as the case may be. Such report being submitted by the executive authority, the Government may on consideration of the report and petition, order that the period of absence from the prison to be treated as “suspension of sentence”.



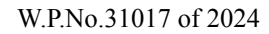
This exactly is the reason why the rule has been named as “Tamil Nadu Suspension of Sentence Rules, 1982” and therefore, the Rule need not be misconstrued or misinterpreted with reference to the judicial powers conferred on the Courts under Section 389 Cr.P.C. The leave granted under Rule, 1982, is to be treated as suspension of sentence by the Government based on the report to be submitted by the Superintendent of Prisons or the Inspector General of Prisons as the case may be. Since the leave is to be ultimately treated as suspension of sentence, the Rule is named as “Suspension of Sentence Rules”.

19. Rule 31 of Rule 1982 provides power to recall. Accordingly, the Superintendent of Prison is empowered to recall any prisoner on leave, if,

- (a) the Superintendent receives a report that the prisoner on leave misbehaves;*
- (b) there is, any breach of any of the conditions of leave.*

20. The Rule is comprehensive and provides power to recall the leave granted to the prisoner by the executive authority, who granted the leave. When the Rule by itself provides power to recall, it is to be applied independently.

21. The exercise of powers under the executive authority under Rules, 1982 and exercise of Judicial powers by the Courts under Section 389 Cr.P.C



22. Rule 35 of Rules, 1982 stipulates that “No prisoner on whom a case is pending trial shall be granted leave”. The Rule refers about “pending trial” and not “pending appeal”. Pending trial can be interpreted in two ways. If he/she is a remand prisoner, the executive authority may not have power to grant leave under Rules, 1982. Rule 35 can be interpreted in other way by the executive authority that a convict prisoner facing pending trial in respect of other cases, may not be granted leave by the executive authority. But Rule 35 of the Rules, 1982 is no way connected with the criminal appeal pending against the order of conviction. Thus, pendency of an appeal before the Appellate Court is not a bar for the executive authority to consider the leave application submitted by a prisoner under the provisions of the Rules, 1982. The executive powers under Rules, 1982 is independent and to be exercised by scrupulously following the terms and conditions stipulated under the Rules. Pendency of an appeal or pendency of a petition seeking suspension of sentence or bail before the



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Appellate Court, cannot be a ground to reject the leave application by the executive authority under Rules, 1982. Therefore, the leave applications submitted under Rules, 1982 by a prisoner has to be considered within the period of limitation stipulated under Rules, 1982 itself.

23.In the present case, the probation officer has not recommended for grant of ordinary leave to the convict prisoner. The reason stated in the leave application is also found to be incorrect. However, the learned counsel for the petitioner would submit that the prisoner is in actual imprisonment for about eight years and so far, he has not availed the benefit of leave under the Rules.

24.Considering the fact that the prisoner is continuously in prison for about eight years, we are inclined to grant six days ordinary leave with escort from 18.11.2024 till 23.11.2024. Accordingly, the convict prisoner viz., Mr.Arun Kumar, S/o.Mani, aged about 36 years, Convict No.19883, Central Prison, Coimbatore, is hereby granted ordinary leave for a period of **six days**, with escort commencing from **18.11.2024** on the following conditions.

(i)Respondents are directed to release the Convict Prisoner viz., Mr.Arun Kumar, S/o.Mani, aged about 36 years, Convict No.19883, Central Prison, Coimbatore, on ordinary leave for a period of **6 days i.e., from 18.11.2024 to 23.11.2024.**



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(ii) The Convict Prisoner shall be released on **18.11.2024** at 10.00 am and surrender before the Superintendent, Central Prison, Coimbatore, on **23.11.2024** at 05.30 p.m.

(iii) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.

25. Accordingly, the writ petition stands allowed. No Costs. Consequently, the connected Miscellaneous Petition, if any, is closed. The Registry is directed to communicate the copy of this order to the Additional Chief Secretary to the Government, Home Department (Prison), Secretariat, Chennai – 9.

[S.M.S., J.] [M.J.R., J.]
11.11.2024

Index: Yes/No
Speaking/Non-speaking order
sli
To

1. The State represented by its,
The Deputy Inspector General of Prison,
Coimbatore Range,
Coimbatore - 641 018.
2. The Superintendent,
Coimbatore Central Prison,
Coimbatore.
3. The Additional Chief Secretary to the Government,
Home Department (Prison),
Secretariat, Chennai – 9.
4. The Public Prosecutor



High Court of Madras.

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M.JOTHIRAMAN, J.

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