

1.M.Murugeswari Vs. The State of Tamil Nadu, Represented By

1.M.Murugeswari Vs. The State of Tamil Nadu, Represented By

SooperKanoon Citation : sooperkanoon.com/64151

Court : Chennai

Decided On : Aug-18-2015

Judge : The Honourable Ms.Justice R.Mala

Appellant : 1.M.Murugeswari

Respondent : The State of Tamil Nadu, Represented By

Judgement :

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT DATED: 18.08.2015 CORAM THE HONOURABLE MS.JUSTICE R.MALA W.P(MD)No.8300 of 2015 and M.P(MD)No.1 and 2 of 2015 1.M.Murugeswari 2.Mani Murugesan ...Petitioners .versus The State of Tamil Nadu, represented by 1.The Deputy Inspector General of Prisons, Madurai Range, Central Prison Campus, Arasaradi, Madurai ?.

625 016.

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

625 016.

3.The Deputy Inspector General of Prisons, Vellore Range, Central Prison Campus, Vellore.

4.The Superintendent of Prisons, Central Prison, Cuddalore, Cuddalore..Respondents (Respondents 3 and 4 are impleaded as per order of this Court made in M.P(MD)No.3 of 2015, dated 18.8.2015) PRAYER Writ Petition filed under Article 226 of the Constitution of India, praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records in impugned order No.9373/Tha.Ku 2/2015, dated 12.5.2015 passed by the second respondent and to quash the same as illegal and consequently to grant one month ordinary leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982 to the Petitioners father namely Muthu, Son of Muniasamy, C.P.No.5016, presently lodged in Madurai Central Prison.

!For Petitioners : Mr.Ezhilarasu for M/s.V.Santha Kumaresan ^For Respondents : Mr.N.Manoharan Spl.Govt.Pleader :

ORDER

The Petitioner has come forward with this Writ Petition praying this Court for issuance of a Writ of Certiorarified Mandamus calling for the records in impugned order No.9373/Tha.Ku 2/2015, dated 12.05.2015 passed by the second respondent and to quash the same as illegal and consequently to grant one month ordinary leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982 to the Petitioners father namely Muthu, Son of Muniasamy, C.P.No.5016, presently lodged in Madurai Central Prison.

2.Heard the learned counsel for the Petitioners and the learned Special Government Pleader appearing for the respondents/State and perused the records.

3.The learned counsel for the Petitioners would submit that the Petitioners want to sell the property for giving education to his daughters and also to make income for their livelihood.

The Petitioners father Muthu along with five others were convicted under Sections 302 and 148 of IPC and sentenced to undergo life imprisonment besides three years rigorous imprisonment by judgement, dated 30.09.2009 in S.C.No.132 of 2008, which was confirmed by this Court in CrI.A(MD)No.373 of 2009, by order

dated 05.07.2010.

Against the said judgements, the Petitioners father had preferred an appeal before the Supreme Court in S.L.P(Crl) No.373 of 2011 and the same is pending.

Hence he prayed for the order.

4.Resisting the same, the learned Special Government Pleader would submit that since S.L.P(Crl) No.373 of 2011 filed by the Petitioners.father is pending before the Supreme Court, he has to file suspension of sentence and not eligible for ordinary leave.

He would further submit that as per Rule 22(3) of the Tamil Nadu Suspension of Sentence Rules, 1982, he had already enjoyed ordinary leave for 30 days.

He returned to prison only on 21.07.2014.

Hence he is not entitled for more than that and prayed for dismissal of the Writ Petition.

5.Furthermore, at this juncture, the learned counsel for the Petitioner would rely on a judgement of this Court made in W.P.No.8089 of 2013, dated 20.8.2013 and stated that even S.L.P is pending, the Petitioner's father is eligible for ordinary leave as per the provisions of Tamil Nadu Suspension of Sentence Rules, 1982 and prayed for an order.

6.Considering the rival submissions made on either side and on perusal of the typed-set of papers.it is seen that the Petitioners.father Muthu, son of Muniasamy, C.P.No.5016 has been lodged in Madurai Central Prison, now confined at Central Jail, Cuddalore and he was convicted under Section 302 and 148 IPC and sentenced to undergo life imprisonment besides three years rigorous imprisonment by judgement, dated 30.09.2009 in S.C.No.132 of 2008 which was confirmed by this Court in Crl.A(MD)No.373 of 2009 by order, dated 05.07.2010 and against which he preferred S.L.P(Crl) No.373 of 2011 before the Honourable Supreme Court of India which is pending.

As per Tamil Nadu Suspension of Sentence Rules, 1982 clause (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.

7.At this juncture, learned counsel for the Petitioners relied on a Judgement of the Division Bench of this Court made in W.P.(MD)No.8089 of 2013(Poornam .versus The Superintendent, Central Prison, Madurai).in which the present petitioner has filed the said petition, it was specifically stated that he sought for special leave under the provisions of Tamil Nadu Suspension of Sentence Rules 1982 for ten days and it was appropriate to extract paragraphs 10 to 13 which runs as follows: "10.It is pertinent to note that Rule 6 of the said Rules specifically mentions that serious illness of the father of a person in jail is a ground for grant of emergency leave.

11.That apart, long back in the celebrated SUNIL BATRA'S case reported in 1980(3) SCC488 dealing with Prison Jurisprudence, the Honourable Apex Court emphasised that a person in prison does not ceases to be a human being and lose all his human rights and it is the duty of the State to take care of his justifiable needs and requests.

The longing of a lifer to see his ailing father, whose general condition has worsen has to be approached with a humane touch.

It must be considered liberally on humanitarian ground.

12.Visualizing penry sticken persons seeing such a relief, Rule 16 of Tamil Nadu Suspension of Sentence Rules, 1982 direct that to such persons Escorts shall be at Government Cost.

It is also the duty of the State to ensure the safety of prisoneRs.For that matter, State cannot charge(collect money) from them.

13. In the light of Rule 6 and 16 of the said Rules, the Honourable Apex Court Rulings and on humanitarian ground, Petitioner's son shall be accorded four days of emergency leave." 8. Thus the petitioner's father is entitled for ordinary leave as per Section 22(3) of the Tamil Nadu Suspension of Sentence Rules 1982.

It is already admitted that the Petitioner's father had already granted ordinary leave and returned to prison only on 21.07.2014.

Hence, I am of the view that it is a fit case to grant ordinary leave for 21 days.

9. Therefore taking note of the aforesaid circumstances, this Court directs the fourth respondent herein to release the Petitioner's father Muthu, son of Muniasamy, C.P.No.5016, presently confined in Cuddalore Central Prison on parole from 21.08.2015 at 10 a.m on condition that the said Muthu shall report back to the fourth respondent, the Superintendent of Central Prison, Central Prison, Cuddalore by 4.00 p.m on 10.09.2015.

Necessary escort will be provided to accompany the said Muthu. The Petitioner shall produce all necessary documents along with a copy of this order before the jail authorities.

During parole, the convict prisoner shall abide by all the conditions prescribed in the jail manual.

Taking into account the poor financial condition of the Petitioner's father/life convict, there shall be a direction to the fourth respondent not to collect the charges required for police escort and other related expenses from the Petitioner or the convict.

10. The Writ Petition is allowed as indicated above.

Consequently connected Miscellaneous Petitions are closed.

No costs.

To 1. The Deputy Inspector General of Prisons, Madurai Range, Central Prison Campus, Arasaradi, Madurai ?.

625 016.

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

625 016.

3.The Deputy Inspector General of Prisons, Vellore Range, Central Prison Campus, Vellore.

4.The Superintendent of Prisons, Central Prison, Cuddalore, Cuddalore.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com