

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24..09..2020

CORAM

THE HONOURABLE MR. JUSTICE N. KIRUBAKARAN

AND

THE HONOURABLE MR. JUSTICE P. VELMURUGAN

W.P. No. 8642 of 2020

Mrs.T. Arputham

..Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Home Secretary,
Department of Home,
Government of Tamil Nadu,
Fort St. George,
Chennai – 9.
2. Director General of Police and
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai – 600 008.
3. The Superintendent of Prisons,
Central Prison-I, Puzhal,
Chennai – 600 066.

..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus directing the 1st respondent to release the petitioner's son Mr.A.G. Perarivalan (Life Convict prisoner No. 7640) who is now lodged at Puzhal, Central Prison 1, from the prison on leave for 90 days.

For Petitioner :: Mr.R. Shanmugha Sundaram,
Senior Counsel for
Mr.S. Saravanan

For Respondents :: Mr.R. Prathap Kumar,
Additional Public Prosecutor

ORDER

(Order of the Court was made by N. KIRUBAKARAN,J.)

The mother of the convict, namely, A.G. Perarivalan (Life Convict prisoner No. 7640) has approached this Court seeking 90 days leave for him on the ground that her son is suffering from Hyper Tension since 1996 and Chronic prostatitis, Cystitis, Gout Arthritis, Irritable bowel syndrome, Insomnia and other issues due to prolonged incarceration. He is being treated periodically at Government General Hospital for the past five years. Due to covid pandemic, he could not be provided with proper treatment when he was taken to Stanley Medical College Hospital on 21.02.2020 for

prostate infection and urinary infection. Moreover, the petitioner has stated that she and her husband are aged about 70 years and 78 years respectively and are suffering from age related issues, for which they are taking treatment. Apart from that, her husband has got complicated neurological problems and other ailments. Since the inmates of the prison, where her son is undergoing incarceration are affected by Covid-19 infection, they could not lead a peaceful life as they are afraid that their son is very vulnerable to Covid-19 attack. Therefore, to provide timely medical treatment to her son and to avoid Covid-19 infection in Puzhal Prison, the petitioner sent a representation through email on 24.03.2020 to the respondents to grant leave for her son. Again, on 22.04.2020, a reminder letter was sent. Though the said representations were received by the respondents, no decision had been taken, which compelled the petitioner to approach this Court seeking 90 days leave for her son, who has been incarcerated for the past 29 years, in connection with the assassination of former Prime Minister Rajiv Gandhi and others.

2. A counter affidavit has been filed stating that the petitioner's son has been given appropriate treatment for the ailments he is suffering from. Moreover, he was released by the Government on 24.08.2017 for 30 days and the same was extended by a further period of 30 days by virtue of G.O. (2D) No. 300 Home (Pri III) Department dated 23.09.2017 upto 24.10.2017. Subsequently, he was again granted 30 days leave by the proceedings of the Prison Authorities dated 05.11.2019 and further extended by a period of 30 days by virtue of G.O.(2D) No. 355 Home (Pri V) Department dated 12.12.2019 upto 11.01.2020. Therefore, as per Rule 22(3) of Tamil Nadu Suspension of Sentence Rules, 1982, (hereinafter referred to as 'the Rules') the petitioner son could be granted only after 2 years from the date of return from the last ordinary leave i.e., 11.01.2020.

3. The petitioner sought exemption of application of Rule 22(3) by the Government by invoking Rule 40 of Tamil Nadu Suspension of Sentence Rules, 1982 to grant leave to her son. The same was not considered by the Government and relying upon Rule 22(3), the Government sought dismissal of the petition.

4. Mr. R. Shanmugasundaram, learned Senior Counsel appearing for the petitioner would submit that leave is sought only on medical grounds and the ailments of the petitioner's son are not denied by the Government. The Government could exercise the power under Rule 40 and exempt Rule 22(3) of the Rules, taking into account the multiple ailments being suffered by the petitioner's son. He would rely upon the earlier orders passed by this Court granting leave to Mrs. S. Nalini and Mr. B. Robert Payas, co-convicts in Rajiv Gandhi Assassination case and one Mr. R. Muthuraman. Learned Senior counsel for the petitioner would also submit that as early as on 19.02.2014, the Government recommended under Section 432 Cr.P.C. for release of the convicts of Rajiv Gandhi Assassination case. Subsequently, on 09.09.2018, the Government recommended to His Excellency, the Governor of Tamil Nadu, under Article 161 of the Constitution of India for premature release and the same is pending before His Excellency, the Governor of Tamil Nadu. When the Government itself has taken a decision to release the petitioner's son prematurely, there should not be any prohibition for the Government to grant 90 days leave to the petitioner's son.

5. Mr.R. Prathap Kumar, learned Additional Public Prosecutor would submit that though the petitioner's son is suffering from multiple ailments, he is being given proper treatment. Moreover, the petitioner's son was already granted leave till 12.01.2020 and therefore, he has to wait till the completion of two years from the date of return from the last ordinary leave as per Rule 22(3) of the Rules. Learned Additional Public Prosecutor would further submit that the Government has considered the representation of the petitioner to grant relaxation of Rule 22(3) of the Rules invoking the power under Rule 40 of the Rules and grant 90 days leave to the petitioner's son and as proper treatment is being given to the petitioner's son, there is no occasion for the Government to exercise the power under Rule 40 of the Rules.

6. Heard the parties and perused the records.

7. The petitioner's son and other accused were convicted by the Designate Court No.1 under TADA Act, 1987, Madras for assassinating former Prime Minister Mr. Rajiv Gandhi and others and were awarded death

sentence. On appeal, the Honourable Supreme Court, by judgment dated 11.05.1999 in Death Reference Case No.1/1998 in Crl.A. No. 321 to 325 of 1998 modified the death sentence into one of imprisonment for life. The petitioner's son is currently undergoing life imprisonment for offences under Sections 120B and 302 IPC.

8. It is evident that the petitioner's son has been undergoing imprisonment for the past 29 years. In view of the pandemic situation, the petitioner gave a representation on 24.03.2020 and a reminder dated 22.04.2020 seeking 90 days leave for her son. Though the representation given by the petitioner was rejected by the prison authorities on 29.07.2020, the said order was passed only after this Court questioned as to why the authorities are keeping quiet without passing any orders. In the rejection letter, it has been stated by the prison authorities that the request for grant of 90 days leave will have to be granted by the Government by relaxing Rule 22(3) of the Rules by invoking Rule 40 of the Rules.

9. The main contention of the petitioner is that her son is suffering from multiple ailments. In paragraph No.6 of the counter affidavit, it has been admitted by the respondents that the petitioner's son has multiple co-morbid illness. His chances of getting infection are high and that is why hospital visits have been avoided. However, the prisoner is being monitored regularly for any related complaints at Prison Hospital in Central Prison -I, Puzhal.

10. The petitioner has stated that her son is suffering from Hyper Tension since 1996 and Chronic prostatitis, Cystitis, Gout Arthritis, irritable bowel syndrome and insomnia. When the petitioner's son is suffering from multiple co-morbid illnesses, chances of getting infection are high inside the prison, especially, when some of the prisoners have been infected by Covid-19. It is also stated in paragraph No.9 of the counter affidavit that one of the Probation Officer died due to covid infection. When such is the position, the apprehension of the petitioner stands proved. Moreover, the hospital visits of the petitioner's son have been avoided even as per the statement in paragraph No.6 of the counter as his chances of getting

infection are high. Therefore, he should be granted leave so as to enable him to take treatment for his multiple co-morbid illness privately as the prison authorities are afraid of taking the petitioner's son/convict for treatment to the Government Hospital.

11. No doubt, the petitioner's son was granted leave twice and the last leave ended only on 12.01.2020. As per Rule 22(3) of the Rules, the next spell of leave could be granted only after two years from the date on which the convict returned from the last ordinary leave. That is the reason why the petitioner has sought to invoke Rule 40 of the Rules which gives power to the Government to exempt any person from all or any of the provisions of the Rules.

12. Only when the matter is pending and adjourned for orders many times, the Government finally rejected the request of the petitioner for relaxation of Rule 22(3) under Rule 40 of the Rules by order dated 03.09.2020 as the convict recently availed 60 days leave and the next spell of ordinary leave could be granted only from 12.01.2022. The relevant

portion of the order is extracted hereunder:

".....(a) The facts and circumstance mentioned in the representations first cited are not valid reasons for invoking the powers granted in Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 to relax Rule 22(3) of the said Rules in view of the fact that Life Convict Prisoner A.G. Perarivalan No. 7640 confined in Central Prison, Puzhal-I is not eligible to grant ordinary leave as per the said Rule since he had recently availed 60 days of ordinary leave which was completed only on 12.01.2020 and he attains eligibility for consideration of sanction of next spell of ordinary leave only from 12.01.2022."

A perusal of the order dated 03.09.2020 merely states that the reasons given by the petitioner are not valid reasons for invoking the power granted under Rule 40 to relax Rule 22(3) of the Rules. When the Government itself has admitted that the petitioner's son is suffering from multiple co-morbid illness and his chances of getting infection are high, especially, when co-prisoners are infected with Covid-19 and a Probationary Officer has already died due to covid infection, the convict should be given treatment privately, especially, when it is not possible to give treatment in Government Hospital

as admitted in paragraph No.6 of the counter statement. The health condition of the convict is admitted by the Government and in view of the pandemic situation, his chances of getting infection are high and therefore, the Government cannot reject the reasons stated by the petitioner as not valid which is contrary to the facts. Therefore, the order dated 03.09.2020 rejecting the petitioner's request has to be set aside. Accordingly, the same is set aside.

13. Rule 40 of Tamil Nadu Suspension of Sentence Rules, 1982 has been incorporated to relax any of the Rules when an extraordinary situation arises and the Government could take a decision. The petitioner has made out an extraordinary situation to exempt the convict from all or any of the provisions of Rules, especially, when the facts are admitted by the Government.

14. Though the Petitioner sought for 90 days leave for the convict, as per the Tamil Nadu Suspension of Sentence Rules, 1982, only 30 days leave, at a time, can be granted. Therefore, 90 days leave as prayed for by

the petitioner cannot be granted and this Court directs the Government to grant 30 days leave. After expiry of 30 days leave, it is open to the Government to take a decision to extend further period of 30 days as done earlier in the year 2017 vide G.O.(2D)No.300, Home (Pri.III) Department, dated 23.09.2017 and thereafter, in the year 2019 vide G.O.(2D)No.355, Home (Pri.V) Department, dated 12.12.2019. Therefore, this Court is inclined to direct the Government to grant 30 days leave.

15. The then Government, headed by Late Chief Minister J. Jayalalithaa, invoking powers under Section 432 Cr.P.C, by decision dated 19.02.2014, recommended to the Central Government to release all the convicts. Subsequently, the present Government, by resolution dated 09.09.2018, decided to release the convicts prematurely invoking the powers under Article 161 of the Constitution of India and recommended to His Excellency, the Governor of Tamil Nadu. The Government, after taking all relevant factors into consideration that the convicts would not cause disturbance to the society, their conduct will be good, took a conscious decision as early as in 2014 and subsequently, in 2018. When such

decisions have been taken, when the convicts are eligible to lead a normal life without any restriction along with other citizens, there is no occasion for the Government to oppose the grant of leave to the petitioner's son relying upon Rule 22(3) of the Rules, especially, when a case has been made out for relaxation on undisputed health grounds.

16. This Court has also taken into consideration the earlier orders passed by this Court in the case of Mrs. S. Nalini and Mr. B. Robert Payas. The Government itself twice took decision to grant leave to the petitioner's son and during his leave period, his conduct was good and that is the reason, the Government, after grant of leave in 2014, again granted leave in 2019.

17. Though the Government has recommended for premature release of the petitioner's son and other convicts by resolution dated 09.09.2018 under Article 161 of the Constitution of India, the said resolution is pending with the appropriate Constitutional Authority for the past 2 years in spite of the order dated 21.01.2020 passed by the Honourable Supreme Court directing the State Government to inform whether any

decision has been taken. The said order reads as follows:

"List after two weeks. In the meanwhile, the State of Tamil Nadu is directed to inform this Court as to whether any decision has been taken in respect of the petitioner's claim under Article 161 of the Constitution of India in view of the order dated 06.09.2018 passed in W.P. (CrI.) 48 of 2014. "

Again, when the matter was called on 11.02.2020 before the Honourable Supreme Court, the State of Tamil Nadu informed the Honourable Supreme Court that as the recommendation is pending with the Governor, they are helpless. The Honourable Supreme Court directed the State of Tamil Nadu to take steps to ensure that their resolution is honoured by his Excellence the Governor.

18. In view of the above and also the pendency of the Government's recommendation dated 09.09.2018 before the appropriate Constitutional Authority, this Court passed the following order on

29.07.2020:

'The matter is heard through video-conferencing.

2. It is represented by Mr.A. Natarajan learned Public Prosecutor appearing for the respondents that he will file a

detailed counter.

3. Even though the State Government has taken a policy decision to release the convicts of Rajiv Gandhi Assassination case as early as in the year 2018, the matter is still pending before the concerned Constitutional Authority and this Court is not convinced with the submissions as to why so far no order has been passed, when the representation has been sent in March, 2020 and the reminder was sent in April, 2020. It is a fact that when the person is in prison for more than 29 years, naturally, his family members will be distressed. Again, adding fuel to the fire, the petitioner is compelled to approach this Court by spending money by way of this Petition and it is not in good deeds and it will further add unnecessary pressure on the family, as they have to spend money. Moreover, unnecessarily, this Court has to spend its precious judicial time in this avoidable proceedings. Therefore, this Court would be constrained to impose appropriate costs in the next date of hearing.

4. Learned Public Prosecutor appearing for the respondents is directed to file a detailed counter by 31.07.2020 after serving the copy of the same on the other side.

Call the matter on 03.08.2020."

Thereafter only, it was informed to this Court by the Government that the Constitutional Authority is waiting for the final report from the Multi

Disciplinary Monitoring Agency constituted by the Central Bureau of Investigation to decide the premature release issue under Article 161 of the Constitution of India. Since the matter is pending before the Honourable Supreme Court, this Court refrains from making any observation.

19. In view of the undisputed facts regarding multiple co-morbid illness being suffered by the petitioner's son, his chances of getting infection being higher and not being given treatment in Government General Hospital as well as Stanley Medical College Hospital due to pandemic situation and ripe age and illness of the parents of the convict, who is away from them for the past 29 years, it is appropriate to direct the Government to grant 30 days leave to the petitioner's son relaxing Rule 22(3) under Rule 40 of the Rules, for the reasons stated above, within one week from the date of receipt of a copy of this order and the leave granted is subject to the satisfaction of the following terms and conditions and other relevant provisions of the Tamil Nadu Suspension of Sentence Rules, 1982, as imposed in paragraph Nos. 4 & 5 of G.O.(2D) No. 300 Home (Pri.III) Department dated 23.09.2017, which are extracted as follows:

- "(i) The prisoner shall report at the nearest Police Station daily once;
- (ii) The prisoner shall reside at the place specified in the leave petition and shall not go beyond the limits of that place;
- (iii) The prisoner shall be of good behaviour and shall not commit any offence during his extension of leave;
- (iv) The prisoner shall not associate with bad characters or lead a dissolute life;
- (v) The prisoner shall surrender himself to the Superintendent of Prisons at Central Prison, Vellore, on expiry of leave extended or on recall;
- (vi) The prisoner shall not meet or contact any person other than his family members;
- (vii) The prisoner shall not give any interview to any media;
- (viii) The prisoner shall not appear or share any information through any kind of social media;
- (ix) The prisoner shall not participate in any meeting or function;
- (x) The prisoner is liable to be recalled immediately to prison in case he violates any of the conditions stated above or any of the provisions of the said Rules.

The Government direct that strong police escort shall be provided to the prisoner during the leave period. The escort

police should ensure the compliance of the above said conditions and shall submit a daily report to the Additional Director General of Police/Inspector General of Prisons, Chennai."

20. Even though the relief sought for by the petitioner is granted, in view of the pendency of the connected miscellaneous petition in W.M.P.No.16777 of 2020 which has been listed today, the matter is kept pending.

Post the matter on 01.10.2020 so as to enable the learned Government Advocate (Criminal Side) to get instructions and to file counter affidavit.

nv

(N.K.K.J.) (P.V.J.)
24..09..2020

To

1. The Home Secretary,
Department of Home,
Government of Tamil Nadu,
Fort St. George,
Chennai – 9.

2. Director General of Police and
Inspector General of Prisons,
Whannels Road, Egmore,
Chennai – 600 008.

3. The Superintendent of Prisons,
Central Prison-I, Puzhal,
Chennai – 600 066.

W.P. No. 8642 of 2020

N. KIRUBAKARAN,J.

AND

P. VELMURUGAN,J.

nv

W.P.No.8642 of 2020

Dated : 24..09.2020