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**(2002) 07 MAD CK 0214**

**In the Madras High Court**

**Case No :** Writ Petition No. 17867 of 2002 and W.P.M.P. No. 34413 of 2002

P. Rajeswari

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

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**Date of Decision :** 26-07-2002

**Acts Referred:**

Tamil Nadu Suspension of Sentence Rules, 1982 — Rule 11, 12, 3, 6, 8

**Citation :** (2002) 07 MAD CK 0214

**Hon'ble Judges :** P.K. Misra, J

**Bench :** Single Bench

**Advocate :** G.T. Subramanian and V.V. Ravichandran, for the Appellant; N.G. Kalaiselvi, Special Govt. Pleader, for the Respondent

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**Judgement**

P.K. Misra, J.—Heard the learned counsels appearing for the parties.

2. Petitioner is the mother of Ravichandran, who has been convicted in the case relating to assassination of Rajiv Gandhi and he is undergoing sentence of life imprisonment in Central Prison, Vellore. Ravichandran had filed a representation dated 16.5.2002 before the prison authorities to grant leave to him to go and meet his ailing father, who is stated to be suffering from cancer. His representation having been rejected on 17.5.2002, the present writ petition has been filed by the mother, obviously on behalf of the prisoner for quashing the order of refusal dated 17.5.2002 and to grant necessary permission.

3. The question of grant of leave to a prisoner is governed under Tamil Nadu Suspension of Sentence Rules, 1982. The relevant provisions as contained in Rules 3, 6, 8 9 and 12 are extracted hereunder :-

Rule 3. Leave is not a right :- Leave cannot be claimed as a matter of right. It is a concession granted to the prisoner.

Rule 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 or the wedding of son, daughter, full

brother or full sister of the prisoner.

Rule 8. Mode of Request :- The petition containing the request for the grant of emergency leave shall be submitted to the Superintendent by the prisoner or by a relative of the said prisoner.

Rule 9. Certificate of correctness to accompany the petition :- The petition shall be accompanied by a certificate in support of the serious illness or the funeral or the proposed wedding obtained from the Village Administrative Officer or Doctor or Member of the Legislature or Member of the Parliament or Chairman of the Municipal Council or President of a Panchayat or Revenue Inspector or Tahsildar or Deputy Tahsildar or Sub-Inspector of Police or the Probation Officer having jurisdiction or from any reasonable Officer having jurisdiction subject to verification as prescribed in rule 11.

Rule 12. Right to grant or reject emergency leave and appeal thereupon :- The Superintendent of Prison reserves the right either to grant or reject the emergency leave for special reasons to be recorded in writing which shall always be treated as strictly confidential. The reasons for such rejection shall not be communicated to the prisoner but shall be reported to the higher authorities if called upon to do so. The petition preferred by the prisoner against such rejection shall always be submitted to the Inspector-General of Prisons with the remarks of the Superintendent of Prison for his orders and the Inspector-General of Prisons may either grant or reject the emergency leave.

A perusal of the aforesaid Rules make it clear that certain guidelines have been fixed for consideration of such representation and order refusing to grant permission can be challenged in appeal before the Inspector General of Prisons.

4. In the present case, as revealed from the counter filed by the Superintendent of Prison, Central Prison, Vellore, the respondent No.4, the representation of the petitioner has been rejected for the following reasons :-

I. He has not furnished proper medical certificate for prove whose father Tr. Poyyali is really seriously ill (for proof of his fathers serious illness)

II. Under the security of Prisoners life, because he is life threaten from public and former Prime Minister Late Rajiv Gandhi believers and supporters in Tamil Nadu and as well as in whole India.

III. As he involved in sensational murder case of Former Prime Minister Late Tr. Rajiv Gandhi. His life outside may not be secured in the present situation.

IV. Moreover he is declared as Tamil Nadu Retrieval Trop Head (TNRT), vide in G.O.SSI/563/11/2000 pub(SC) Dept., 9-11-2001 and Inspector General of Prisons, Chennai Memo No:17095/CS4/2001 dated 27-11-2001. (quoted from paragraph-3 of the counter)

5. Along with the writ petition, the petitioner has furnished certain documents indicating about the illness of her husband, the father of the prisoner. From the

counter affidavit it is not possible to know whether those documents have been produced before the Superintendent. It is true that the matter relating to grant of leave is within the discretion of the concerned authority, namely the Superintendent of Prison, but, the said discretion is to be exercised in a reasonable manner and not in an arbitrary manner.

6. Learned counsel appearing for the petitioner has submitted that even last year such an application filed having been rejected, the matter had been challenged in this Court in W.P.No.18233 of 2001 and by order dated 10.9.2001, the learned single Judge of this Court had directed the prison authorities to release the present petitioner on parole for five days. It has been submitted that circumstances now where also similar at that time and therefore, the Superintendent should not have rejected the application.

7. Having heard the learned counsels appearing for both parties and having gone through various materials on record and keeping in view the fact that order of rejection is statutorily appellable before the Inspector General of Prisons, the respondent No.3, in the interest of justice, I pass the following order :-

The question relating to grant of parole shall be considered by Inspector General of Prisons, the appellate authority. While considering such application, the respondent No.3 shall apply his mind to the documents filed in support of the present writ petition, particularly documents relating to health condition of the father of the prisoner. The respondent No.3 is also required to apply his mind to the reasons indicated in the order of the Superintendent and to find out whether the reasons are sustainable. The fact that the petitioner had earlier been released for few days pursuant to the order of this Court and no untoward incident had happened may also be taken note of by respondent No.3 and it is made clear that the respondent No.3 has to consider the matter in accordance with the relevant provisions contained in the Rules including Rules 3,6,8,9 & 12 and to pass appropriate orders in accordance with law within a period of seven days from the date of communication of the order.

Subject to the aforesaid observations, the writ petition is disposed of without any order as to costs. Consequently, W.P.M.P.No.34413 of 2002 is closed.