

(1983) 07 MAD CK 0033
In the Madras High Court
Case No : Criminal M.P. No. 4246 of 1983

Ramakrishnan

APPELLANT

Vs

The State of Tamil Nadu and Another

RESPONDENT

Date of Decision : 15-07-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 432(2), 482
Penal Code, 1860 (IPC) — Section 302

Citation : (1983) CriLJ 1763

Hon'ble Judges : Natarajan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; N. Dinakar, Government Advocate, for the Respondent

Judgement

Natarajan, J.

1. This petition under S. 482, Cr.P.C. has come to be filed in somewhat unusual circumstances. The petitioner Ramakrishnan is a life convict undergoing imprisonment. He has been convicted for an offence of murder under S. 302, I.P.C. and sentenced to undergo simple imprisonment for life in Sessions Case No. 36 of 1977 on the file of the Sessions Judge, South Arcot at Cuddalore. The conviction and sentence were subsequently confirmed by this Court in Crl. Appeal No. 688 of 1980. The petitioner would state that his sister is getting married on 17-7-1983, that he happens to be the only male member of his family and as such his presence at his sister's marriage is indispensable. The petitioner applied to the Government for parole but the Government declined to grant his request. Hence he has approached this Court with this petition and has prayed for grant of parole and suspension of sentence for a period of one month to secure

the ends of justice. In support of this prayer the petitioner has stated that keeping a lifer in continuous detention for over seven years without granting temporary suspension of sentence is violative of Art. 21 of the Constitution and that the Government ought not to have rejected his petition for parole off-hand without obtaining the opinion of the Sessions Judge of Cuddalore as envisaged in S. 432(2), Cr.P.C.

2. Notice of the petition was given to the Public Prosecutor and the first respondent, viz. the State of Tamil Nadu, has filed a counter. In the counter it is stated that according to the Tamil Nadu Suspension of Sentence Rules, 1982 issued in G.O.Ms. No. 1688 Home Department dt. 2-

7-1982, the prisoners are eligible for two kinds of leave, viz., emergency leave and ordinary leave. As per R. 10, the Superintendents of Prisons

can grant emergency leave to prisoners subject to the satisfaction of certain conditions prescribed in the rules. In so far as ordinary leave is

concerned, the Government is the competent authority to issue orders of release of prisoners as per R. 19 of the Rules. In the present case the

convict's request for grant of leave for two months was examined by the Government. The convict's petition was dt. 17-12-1982 and the petition

reached the hands of the Government on 2-2-1983. Therein the petitioner has stated that he wanted to sell his land, effect repairs to his house and

make arrangements for his sister's marriage. The Government called for a report from the Probation Officer, Tirukoilur but he did not recommend

the release of the convict. Moreover the convict has also not completed five years of imprisonment from the date of the initial imprisonment. The

Government was not therefore inclined to grant leave to the petitioner. The convict again submitted a petition on 14-3-1983 but on this occasion

also the Probation Officer did not recommend the grant of leave on the ground that the victim's family is still having enmity towards the convict and

that the grant of leave to the convict is not welcomed by the villagers. The Government states that the procedure adopted by it before refusing to

grant leave to the petitioner is not violative of S. 432(2), Cr.P.C. lastly it is stated that according to R. 3 of the Rules, a convict is not entitled to

claim leave as a matter of right. The grant of leave is only a matter of concession to the prisoner, and according to R. 21(c), if the Government has

materials to hold that the release of a convict would be dangerous or prejudicial

to public peace and tranquillity, then the Government will be justified in refusing to grant ordinary leave to the petitioner. On the basis of such a stand, the Government wants to not only justify its refusal to grant leave to the petitioner but also to oppose the grant of suspension of sentence to him by this Court.

3. The learned Public Prosecutor says that u/s 432(2), Cr.P.C. only the Government has the power of suspension or remission of sentence and, therefore, it is not open to this Court to grant any relief to the petitioner in this petition. On the other hand, the learned counsel for the petitioner invokes the power of this Court under S. 482, Cr.P.C. and states that nothing in the Code shall be deemed to limit or affect the inherent powers of the High Court to pass any order for securing the ends of justice.

4. On a careful consideration of the matter I think this is a case where this Court can well exercise its powers under S. 482, Cr.P.C. and grant parole and suspension of sentence to the petitioner for a period of 15 days. The earlier applications of the petitioner to the Government were for the grant of ordinary leave. With reference to those application, the Government called for reports from the Probation Officer and since his reports proved to be adverse, the Government was not inclined to grant ordinary leave. The present situation is entirely different. The petitioner's sister is getting married on the 17th of July, 1983. The petitioner's counsel has produced a printed invitation to show that the marriage of the petitioner's sister is to be celebrated on the 17th of July, 1983. It can, therefore, be taken that the leave asked for is of an emergent nature. In such circumstances, routine factors which have normally to be taken note of before granting leave cannot have any part to play. In extraordinary situations, the Courts should relegate technical and procedural matters to the background and take human factors into consideration and give relief to the parties within the bounds of law. Otherwise, the functioning of Courts would be only as Courts of law and not as Courts of justice. The words, "to secure the ends of justice," occurring in S. 482, Cr.P.C., have real meaning and content in them and hence the High Court is bound to exercise its inherent powers on all such occasions when it deems it its duty to do so. In this case, expect the opinion given by the Probation Officer in his report, that the grant of leave to the petitioner may prove a hazard to

public peace and safety and that his return to the village, even on short leave, will not be welcomed by the villagers, there is no tangible material on the basis of which it can be positively held that the suspension of sentence and grant of parole to the petitioner for a short period, is fraught with danger to the peace and tranquillity of the village where the petitioner hails from. In this connection, it will be apposite to state that four of the co-accused of the petitioner who have also been awarded life sentences have been granted parole by the Government. Therefore, I overrule the objections raised by the Government for granting relief to the petitioner. Even so, since leave can be granted only on grounds of emergency, the petitioner cannot be granted leave for one month as prayed for by him. Hence, there will be suspension of sentence and grant of parole to the petitioner for a period of two weeks from 16-7-1983 to 29-7-1983 and the petitioner will surrender himself back to prison custody before the superintendent, Central Prison, Vellore, before 12 Noon on 30-7-1983.

5. Order accordingly.