

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.SUBBIAH

W.P.No.30501 of 2015

N.Muthusamy

... Petitioner

Vs.

1. The State of Tamil Nadu rep by its Secretary to Government, Home (Prison) Department, Fort St. George, Chennai.
 2. The Additional Director General of Prison, CMDA Tower-II, Egmore, Chennai-8.
 3. The Inspector General of Prison, Trichy Range, Trichy.
 4. The Superintendent of Prisons, Central Prison, Cuddalore & District.
- Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records with respect to the impugned order passed by the 1st respondent vide G.O.D.No.641 dated 26.08.2015 rejecting the representation of the petitioner dated 4.3.2015 and to quash the same and consequently, to direct the 1st respondent to grant one month ordinary leave to the petitioner to undergo eye surgery by considering the petitioner's representation dated 4.3.2015, within a time fixed by this Court.

For Petitioner : Mr.I.C.Vasudevan

For Respondents : Mr.Mr.P.Sanjay Gandhi,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner praying for issuance of a writ of certiorarified mandamus calling for the records with respect to the impugned order passed by the 1st respondent vide G.O.D.No.641 dated 26.08.2015 rejecting the representation of the petitioner dated 4.3.2015 and to quash the same and consequently, to direct the 1st respondent to grant one month ordinary leave to the petitioner to undergo eye surgery by considering the petitioner's representation dated 4.3.2015 within a time frame.

2.In the affidavit filed in support of this petition, it is stated by the petitioner that the petitioner was convicted and sentenced to undergo life imprisonment together with a fine of Rs.5,000/- under Section 302 IPC and two years RI together with a fine of Rs.1,000/- under Section 201 of IPC and to pay a fine of Rs.2,000/- under Section 203 IPC, by the learned Principal Sessions Judge, Erode in S.C.No.224 of 2004 by judgment dated 22.12.2004. In pursuance of the sentence imposed on the petitioner, he had been confined in Central Prison, Coimbatore, as a life convict. Subsequently, the petitioner was transferred to Central Prison, Cuddalore, where the petitioner has been serving the sentence.

3.It is further stated by the petitioner that he has been suffering from severe eye problem even from his childhood. In fact, he has undergone an eye surgery in both the eyes at Vijaya Eye Hospital, Chennai, in the year 1995; but, he was not fully recovered. While so, the Doctors at Arvinth Hospital, Coimbatore, after examination, advised the petitioner to go for another surgery during the year 2008, but for one or other reason, the petitioner was not able to do the same. In fact, the problem in both the eyes of the petitioner has become worse day by day. The petitioner is suffering a lot and he is not able to maintain himself in the jail. Since the pain in both the eyes became more severe, the petitioner took treatment in the Jail Hospital. But, the Doctor, who examined the petitioner at Central Prison Hospital, Cuddalore advised him to go for surgery immediately at least with regard to right eye in order to avoid further complications. Hence, on 26.6.2014, the petitioner made representation to the respondents through proper channel requesting to grant him ordinary leave for one month in order to go for eye surgery, but the respondents did not consider the same. Hence, the petitioner filed a writ petition before this Court in W.P.No.27009 of 2014 seeking for a direction to the

respondents to grant him leave for one month for undergoing eye surgery and the same was allowed on 6.11.2014 and the petitioner was granted ten days leave to the petitioner. Subsequently, the petitioner has undergone surgery on his right eye alone, since the Doctor refused to conduct surgery on both the eyes at one time. While so, the left eye of the petitioner has become worse day by day and the petitioner is not able to tolerate the pain. Hence, the petitioner took treatment at Vasan Eye Care, Coimbatore. After examination, the Doctor advised the petitioner to go for surgery immediately on his left eye. Hence, on 02.02.2015, the petitioner made a representation to the 4th respondent requesting to grant emergency leave for one month, so as to enable him to undergo surgery on left eye. But, the same was not considered by the 4th respondent and the was rejected by the 4th respondent on erroneous assumptions by his proceedings dated 20.02.2015 and the petitioner was advised to approach the 2nd respondent. Hence, the petitioner made a representation before the 2nd respondent through proper channel on 4.3.2015, but the 2nd respondent did not consider the same. The 4th respondent has also recommended and forwarded the representation of the petitioner to the 2nd respondent vide his proceedings dated 10.08.2015, along with the medical certificate issued by the Medical Officer, Central Prison Dispensary, Cuddalore, who in turn forwarded the same to the 1st respondent. The 1st respondent without conducting any enquiry rejected the representation of the petitioner by the impugned order. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4. Heard the learned counsel for the petitioner as well as the learned Additional Government Pleader and perused the materials available on record.

5. The request of the petitioner was rejected by the 1st respondent mainly on the ground that the petitioner is not eligible for grant of ordinary leave for 30 days as per Rule 22 (3) of the Tamil Nadu Suspension of Sentence Rules, 1982, as the period of two years has not been completed from the date on which he returned from the leave last availed. Irrespective of the reason assigned by the 1st respondent for rejecting the request of the petitioner, I find that the 4th respondent has sent a letter to the 1st respondent, stating that the petitioner has to undergo surgery on his left eye as per the report of the Medical Officer, Prison Hospital; thus, he recommended for granting leave, by relaxing the rules.

6. In my considered opinion, when the petitioner is very much in need of surgery, he cannot be made to wait for another two years. Therefore, the prayer sought for by the petitioner deserves to be entertained. Accordingly, the writ petition is allowed, directing the (*) **first respondent** to grant emergency leave to the petitioner to undergo eye surgery on his left eye. The petitioner shall be granted a leave of at least three weeks. No costs.

Sd/-
Assistant Registrar(CO)
[dated : 06/11/2015]

(*) **Corrected as per order**
dated 09/12/2015

Sd/-
Assistant Registrar(CO)
[dated : 10/12/2015]

/True Copy/

Sub-Assistant Registrar

To

1. The Secretary to Government,
State of Tamil Nadu,
Home (Prison) Department,
Fort St. George, Chennai.
2. The Additional Director General of Prison,
CMDA Tower-II, Egmore,
Chennai - 600 008.
3. The Inspector General of Prison,
Trichy Range, Trichy.
4. The Superintendent of Prisons,
Central Prison, Cuddalore & District.

To be Substituted
to the order
already
despatched on
16/11/2015.

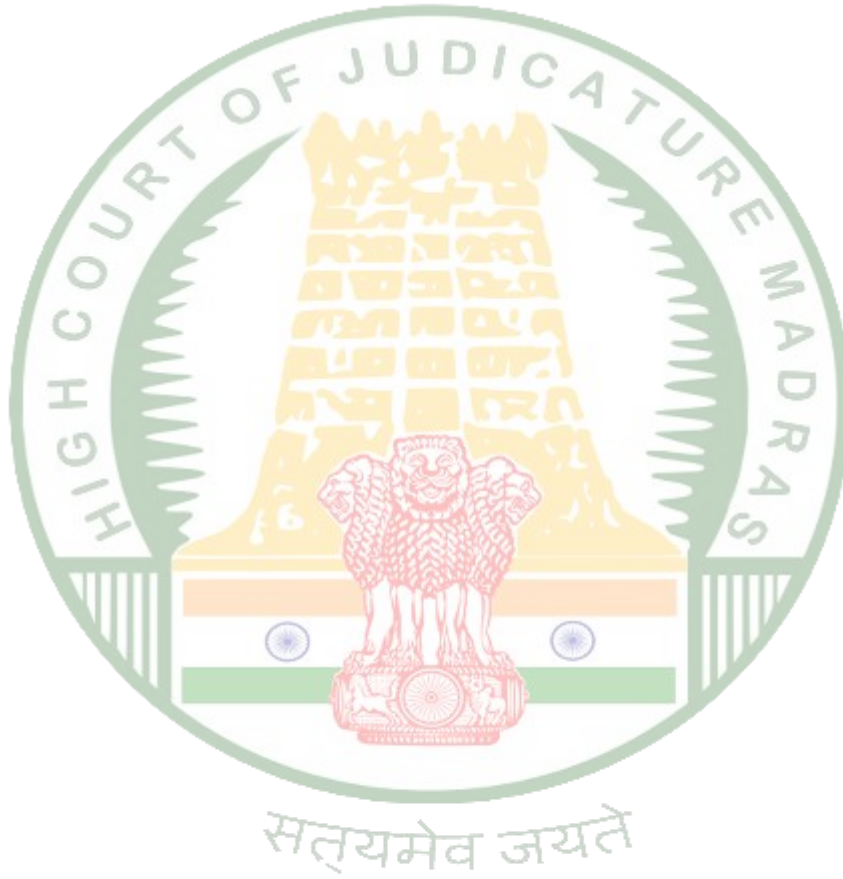
+1 c.c to M/s.I.C.Vasudevan, Advocate, S.R.No.66058

+1 CC. to Government Pleader in Sr.No.61781

W.P.No.30501 of 2015

MSM(CO)
CA(06/11/2015)

SD : 10/12/2015



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