

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.06.2021
PRONOUNCED ON : 17.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.NO.3317 OF 2021

V.N.Raj Kiran ... Petitioner/(Son of the Convict)

Vs.

1.The State of Tamil Nadu,
Represented by
The Deputy Inspector General of Prison
Prison Department, Gandhi Irwin Road, Egmore
Chennai 600 008.

2.The Superintendent of Prisons,
Central Prison-I,
Puzhal, Chennai.

...Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, Writ of Certiorarified Mandamus, direction in the nature of quashing the reply from the respondents dated 07.01.2021 and directing the respondents herein to grant the ordinary leave for 30 days as provided under Section 20 of Tamil Nadu Suspension of Sentence Rules, 1982 to the father of the petitioner Y.V.Nagaraj (Convict) son of Y.Subba Rao presently held at Central Prison-I, Pughal, Chennai - 66 bearing C.b.No.6707, in order to save the life of his wife and to provide for his son's education, and also to pass any such order or orders as this Court may deem fit in the necessary in the circumstances of this case.

For Petitioner : Mr.R.Rajan

For Respondents: Mr.A.Damodaran
Government Advocate (Crl.Side)

O R D E R

This Writ Petition has been filed to give a direction in the nature of setting aside the reply from the respondents dated 07.01.2021 and directing the respondents herein to grant the ordinary leave for 30 days as provided under Section 20 of Tamil

Nadu Suspension of Sentence Rules, 1982 to the father of the petitioner Y.V.Nagaraj (Convict) son of Y.Subba Rao presently held at Central Prison-I, Pughal, Chennai - 66 bearing C.b.No.6707, in order to save the life of his wife and to provide for his son's education, and also to pass any such order or orders as this Court may deem fit in the necessary in the circumstances of this case.

2.The petitioner is the son of the convict viz., Y.N.Nagaraj, who had been convicted and sentenced to ten years Rigorous imprisonment under NDPS Act passed by the I Additional Special Judge for NDPS Act Cases, Chennai by Judgment dated 27.07.2017 in C.C.Nos.418 of 1995 and 36 of 1995 has filed this writ petition seeking grant of 30 days ordinary leave as provided under Tamil Nadu Suspension of Sentence Rules, 1982.

3.The petitioner had sent a representation to the Superintendent of Police, Central Prison, Puzhal, Chennai on 06.01.2021. By communication dated 07.01.2021, the above said representation was rejected for the reason that as per Section 32 A of the NDPS Act, the petitioner's father is not eligible for Ordinary Leave, against which the present writ petition is filed.

4.The contention of the learned counsel appearing for the petitioner is that the petitioner's father is convicted and sentenced to ten years Rigorous Imprisonment and from 27.07.2017, he is confined in Central Prison, Puzhal, Chennai and he has served more than three years and is presently held in Central Prison-I, Puzhal, Chennai. The petitioner's father was granted emergency leave by this Court in H.C.P.No.2118 of 2020 vide order dated 04.12.2020 for 30 days. Further it was extended for another 14 days vide order dated 05.01.2021 in Crl.M.P.No.14 of 2021.

5.The petitioner had given a representation on 06.11.2020 to the first and second respondents seeking ordinary leave to his father so that his father could arrange finance for the petitioner mother's treatment and brother's college fees, since there was no response another representation dated 04.01.2021 was submitted by the petitioner's father. Thereafter, the respondents vide impugned letter dated 07.01.2021, rejected the grant of ordinary leave for the reason that Section 32A of NDPS Act is a bar.

6.The learned counsel appearing for the petitioner further submitted that in the case of Dadu @ Tulsidas Vs. State of Maharashtra, the Apex Court by order dated 12.10.2000 had held that Section 32 A does not in any way affect the powers of the authorities to grant parole. The petitioner's father has been

granted parole for eight times from 01.05.2018 for nearly 60 days. Further he submitted that the reason given by the second respondent is completely wrong and the second respondent is not applied his mind and the petitioner's father is eligible for ordinary leave as per Section 20 of the Tamil Nadu Suspension of Sentence Rules, 1982.

7.The learned Government Advocate appearing for the respondent has filed his counter and submitted that the petitioner's father was admitted in the prison on 27.07.2017 and he was convicted on 27.07.2017 by the I Additional Special Judge for NDPS Court for the NDPS offence in C.C.Nos.36 of 1995 and 418 of 1995 and sentenced for a period of ten years Rigorous Imprisonment and to pay a fine of Rs.1,00,000/-. The petitioner's father has so far undergone 04 years 04 months and 26 days of imprisonment as on 27.04.2021. The petitioner's father was granted 30 days leave without escort to arrange medical treatment for his wife vide orders in H.C.P.No.2118 of 2020 and subsequently the same was extended by this Court till 20.01.2021 vide orders in Crl.M.P.No.14 of 2021.

8.Further he submitted that a representation dated 04.01.2021 was received from the petitioner's father seeking grant of 30 days ordinary leave and as per Section 32 A of NDPS Act, there is a bar and there is no provisions to grant ordinary leave to the prisoners involved in NDPS offence by way of suspension of sentence. Further in the counter, ground seeking for the grant of ordinary leave has been enlisted, in which it is found that ordinary leave can be granted for the prisoners to make arrangement for the admission of the children in the school or college.

9.Considering the submissions and on perusal of the materials, the petitioner's father being a convict for a period of ten years under NDPS Act and he is in prison from 27.07.2017 is not in dispute. As on 25.02.2021, the convict undergone 04 years 03 months and 08 days.

10.The details of the leave availed by the prisoner/petitioner's father is as follows:

SI. No.	From	To	No. of Days	Leave Type	Escort Y/N
1	01.05.2018	01.05.2018	1 day	Emergency Leave	With Escort

SI. No.	From	To	No. of Days	Leave Type	Escort Y/N
2	06.06.2018	12.06.2018	6 days	Court Leave as per order of the Hon'ble High Court of Madras dated 31.05.2018 in W.P.No.2859 of 2018	With Escort
3	22.11.2018	29.11.2018	6 days	Emergency Leave	Without Escort
4	27.12.2018	31.12.2018	3 days	Emergency Leave	Without Escort
5	21.01.2019	28.01.2019	6 days	Emergency Leave	Without Escort
6	11.03.2019	15.03.2019	3 days	Emergency Leave	Without Escort
7	24.06.2019	28.06.2019	3 days	Emergency Leave	Without Escort
8	08.12.2020	20.01.2021	42 days	Court leave vide orders dated 04.12.2020 in H.C.P.No.2118 of 2020 and the same was extended till 20.01.2021 vide orders in CrI.O.P.No.14 of 2021	Without Escort

11. Thus, it is clear that the petitioner's father so far has not availed any ordinary leave. One of the ground for ordinary leave is to make arrangement for the admission of the children in the school or college. The specific plea has been made by the prisoner is that the college admission for his son is to be arranged and now the college admissions are to begin shortly.

12. The Apex Court in the case of Dadu @ Tulsidas Vs. State of Maharashtra has held that Section 32 A in so far as it ousts the jurisdiction of the court to suspend the sentence awarded to a convict under the Act is unconstitutional. Further held that Section 32 A is unconstitutional to the extent it takes away the right of the Courts to suspend the sentence awarded to convict under the Act as per Tamil Nadu Suspension of Sentence Rules, 1982. It is made clear that there is no impediment for this Court to entertain the above writ petition and Section 32 A is not a bar to grant ordinary leave for the prisoners. It is also seen that the petitioner's father so far has not availed any ordinary leave.

13. Considering the above facts and circumstances, this Court is inclined to grant 30 days ordinary leave for the petitioner's father from 23.06.2021 with certain conditions:

i) The prisoner shall execute a surety bond in Form II for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties for a like sum each;

ii) The prisoner shall report before the Inspector of Police, E4 Police Station, Abiramapuram daily once;

iii) The prisoner shall reside at the place specified by the Superintendent of prisons and shall not go beyond the limits of City of Chennai;

iv) The prisoner shall be of good behaviour and shall not commit any offence during his leave;

v) The prisoner shall not associate with bad characters or lead a dissolute life;

vi) The prisoner shall be liable to be recalled immediately to prison in case he violates any of the conditions; and

vii) The prisoner shall surrender himself to the Superintendent of the Prison on expiry of leave granted or on recall.

14. Accordingly, this Writ Petition stands allowed. However, there shall be no order as to costs.

s/d-

Assistant Registrar (CS-III)

True Copy

Sub-Assistant Registrar

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To

1. The State of Tamil Nadu,
Represented by
The Deputy Inspector General of Prison
Prison Department, Gandhi Irwin Road, Egmore, Chennai 600 008.

2. The Superintendent of Prisons,
Central Prison-I,
Puzhal, Chennai.

3.The Inspector of Police
E4 Police Station
Abiramapuram

4.The Public Prosecutor
High Court, Madras 104.

W.P.NO.3317 OF 2021

GSM(CO)
SP(18/06/2021)



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