

W.P.No.3923 of 2021**N.ANAND VENKATESH,J.,**

Today, the matter is posted under the caption "for being mentioned".

2.The learned Additional Public Prosecutor submitted that the concerned authority who has to grant the leave is the Deputy Inspector General of Police (DIG), Vellore Prison Range. The said authority is Suo Motu added as the 5th respondent in this writ petition. Para 9 of the order shall read as follows:

9.In view of the above discussion, the impugned rejection letter issued by the third respondent dated 08.02.021 is hereby quashed. There shall be a direction to the 5th respondent to grant thirty (30) days ordinary leave to the husband of the petitioner with escort, to enable him to arrange for finance for meeting the medical expenses of the petitioner. It is left open to the 5th respondent to impose any reasonable conditions while granting ordinary leave to the life convict.

N.ANAND VENKATESH.J.,

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3.The Registry is directed to incorporate the amendment and issue fresh order copy without insisting fresh filing copy application.

01.04.2021

Index: Yes/No
Internet: Yes/No
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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.03.2021

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.3923 of 2021

S.Gomathi

... Petitioner

Vs.

1. The Home Secretary,
Home Department,
Secretariat, Chennai-9.

2. The Additional Director General of Police,
and the Inspector General of Police,
Whannels Road, Egmore, Chennai-8.

3. The Superintendent of Prison,
Cuddalore Central Prison,
Vellore District.

4. The Inspector of Police,
Villupuram Police Station,
Villupuram District.

... Respondents

Prayer: The Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari Mandamus, to call for the records in proceedings vide No.19647.Tha.Ku.2/2020 dated 08.12.2020 passed by the 3rd respondent and quash the same and directing the respondents to grant one month ordinary leave without escort to the petitioner's husband life convict Mr.Seenu @ Srinivasan S/o.Late Selvaraj (Prisoner No.CT-13678) now confine in Central Prison, Cuddalore for the purpose of making arrangements for the medical expenses of the petitioner.

For Petitioner : Mr.P.Muthamizh Selvakumar

For Respondents : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This Writ Petition has been filed challenging the impugned rejection order passed by the third respondent dated 08.02.2020 and for a consequential direction to the respondents to grant one month ordinary leave without escort to the husband of the petitioner in order to enable him to make arrangement for medical expenses of the petitioner.

2. The petitioner is the wife of a life convict. It is an admitted case that the life convict has undergone sentence for nearly eleven years and there is also an appeal pending before the Hon'ble Supreme Court. The petitioner is facing serious health condition and there is an immediate requirement to arrange for finance to meet her medical expenses. The petitioner, therefore, made a representation before the respondents seeking for ordinary leave for her husband and the same was rejected by the third respondent on the ground that there is a case pending before the Hon'ble Supreme Court. Aggrieved by the same, the present Writ Petition has been filed before this Court.

3. Heard Mr.P.Muthamizh Selvakumar, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the respondents.

4. The only ground on which the third respondent has rejected the ordinary leave sought for, is that such leave cannot be granted where there are pending cases. For this purpose, the third respondent has relied upon Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as "The Rules").

5. Rule 35 states that *"no prisoner on whom a case is pending trial shall be granted leave"*. In the present case, the husband of the petitioner has already been convicted for the offence under Section 302 of IPC and he has already undergone sentence for nearly 11 years. The pendency of the appeal before the Hon'ble Supreme Court, cannot be brought within the scope of the Rule 35, since the Rule 35 confines itself only to those cases which are pending trial.

6. The reasons assigned in the representation made by the petitioner while seeking for ordinary leave for her husband is that

immediate finance will have to be arranged to meet the medical expenses of the petitioner. Such a ground is available in Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982.

7. The case of the petitioner can be brought under Rule 20 of the Rules. There is also no dispute with regard to the fact that the husband of the petitioner would be entitled for ordinary leave as contemplated under Rule 22 of the Rules.

8. In the considered view of this Court, the ground assigned by the third respondent for rejecting the ordinary leave by citing Rule 35 is totally un-sustainable and the same requires the interference of this Court. It is brought to the notice of this Court that the life convict has been granted leave even on earlier occasions and there are no adverse remarks against him.

9. In view of the above discussion, the impugned rejection letter issued by the third respondent dated 08.02.2021 is hereby quashed. There shall be a direction to the third respondent to grant thirty (30) days ordinary leave to the husband of the petitioner without escort, to enable him to arrange for finance for meeting the medical expenses of the

petitioner. It is left open to the third respondent to impose any reasonable conditions while granting ordinary leave to the life convict.

10. This Writ Petition is accordingly allowed with the above directions. No costs.

01.03.2021

Speaking Order/Non-speaking Order

Index :Yes/No

Internet:Yes/No

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To

1. The Home Secretary,
Home Department,
Secretariat, Chennai-9.

2. The Additional Director General of Police,
and the Inspector General of Police,
Whannels Road, Egmore, Chennai-8.

3. The Superintendent of Prison,
Cuddalore Central Prison,
Vellore District.

4. The Inspector of Police,
Villupuram Police Station,
Villupuram District.

5. The Public Prosecutor
High Court of Madras

Chennai – 600 104.

N.ANAND VENKATESH,J.

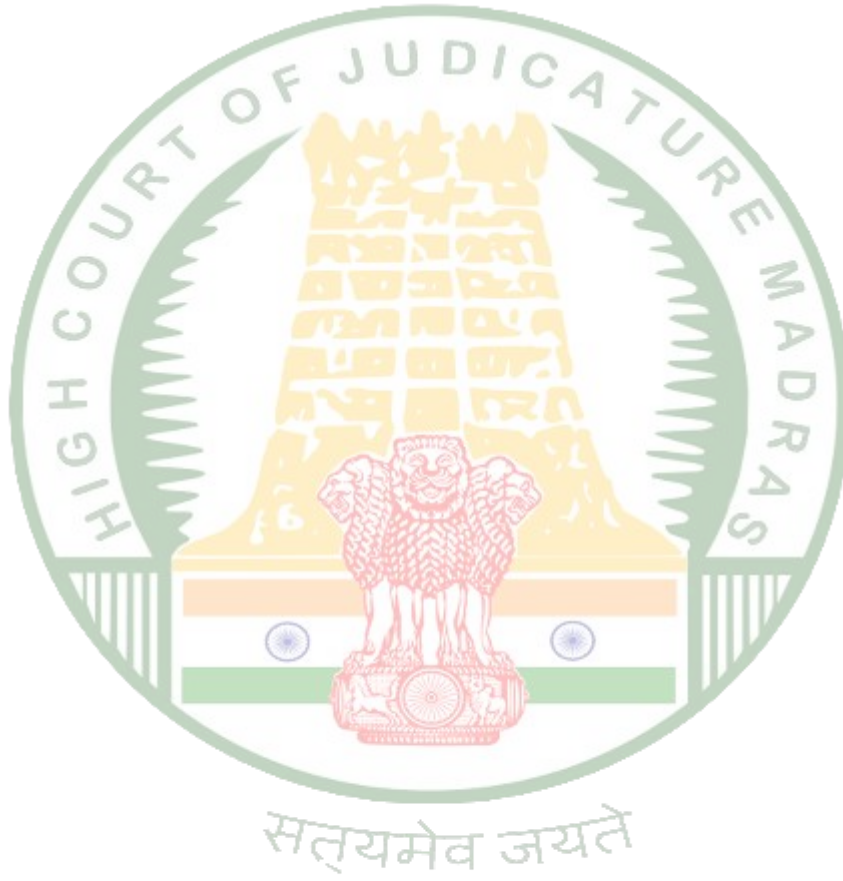
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