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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	07.09.2021
DELIVERED ON	16 .09.2021

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH
AND
THE HON'BLE MS.JUSTICE R.N.MANJULA

W.P. NO.12122 OF 2021 & W.M.P. NO.12892 OF 2021

Durga Devi

Petitioner

vs.

1 The Government of Tamil Nadu
Represented by its Secretary to Government
Home (Prison IV) Department
Fort St. George
Chennai 600 009

2 The Additional Director General of Prisons
Thalamuthu Natarajan Maaligai
II Floor, Gandhi Irwin Road
Egmore, Chennai 600 008

3 The Superintendent of Central Prison
Cuddalore

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus, calling for the records of the third respondent in his proceedings no.7691/Tha.Ku.2/2021 dated 13.05.2021 and quash the same and consequently, direct the respondents to grant 30 days leave to the petitioner's husband, viz., R. Palanisamy, Life Convict No.16133, detained at the Central Prison, Cuddalore, without police escort, on the basis of the petitioner's representation dated 01.05.2021.

For petitioner Mr. A.P. Sathyamoorthy
For respondents Mr. R. Muniyapparaj
Government Advocate (Crl. Side)

ORDER

P.N. PRAKASH, J.

This writ petition has been preferred calling into question the legality and validity of the proceedings of the third respondent dated 13.05.2021, in and by which, the petitioner's



request for grant of 30 days leave for her husband Palanisamy, has been turned down and for a direction to the respondents to grant 30 days leave to Palanisamy without police escort, based on the petitioner's representation dated 01.05.2021.

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2 The petitioner's husband Palanisamy is a convict prisoner (CT No.16133), who is undergoing life sentence in the Central Prison, Cuddalore. The petitioner addressed a representation dated 01.05.2021 to the prison authorities seeking 30 days leave, without escort, for Palanisamy, under the Tamil Nadu Suspension of Sentence Rules, 1982, on the ground that he should make arrangements for mobilizing funds for paying the college fees of their daughter who is said to be pursuing her III year B.D.S. course. Finding no response, she preferred W.P.No.11910 of 2021, in which, a Division Bench of this Court, by order dated 13.05.2021, directed the Government to dispose of the petitioner's representation dated 01.05.2021 on merits. However, in the meanwhile, the Superintendent, Central Prison, Cuddalore, has considered the petitioner's representation dated 01.05.2021 and by the impugned order dated 13.05.2021, rejected the same, aggrieved by which, this writ petition has been preferred.

3 Heard Mr. A.P. Sathyamoorthy, learned counsel for the petitioner and Mr.R.Muniyapparaj, learned Government Advocate (Crl. Side) appearing for the respondents.

4 The Superintendent, Central Prison, Cuddalore, has filed a detailed counter affidavit dated 09.07.2021, wherein, it is stated that Palanisamy was convicted and sentenced by the Principal Sessions Judge, Coimbatore vide judgment and order dated 23.06.2005 in S.C. No.303 of 2004 in Anaimalai P.S. Cr.No.159 of 2002 as under:

Provision under which convicted	Sentence
S.302 IPC	Life imprisonment with fine of Rs.10,000/-, in default to undergo rigorous imprisonment for 1 year
S.148 IPC	Rigorous imprisonment for 1 year
S.324 IPC	Rigorous imprisonment for 6 months
S.3 of the Explosive Substances Act	Rigorous imprisonment for 10 years and fine of Rs.1,000/-, in default to undergo rigorous imprisonment for 6 months



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The aforesaid sentences were ordered to run concurrently. The appeal preferred there against in Crl.A.No.573 of 2005 was dismissed by the High Court on 24.01.2007.

5 Apart from the above, the convict prisoner was convicted and sentenced, as under, by the Additional District and Sessions Court (Fast Track Court No.III), Coimbatore in S.C. No.23 of 2005 in Anaimalai P.S.Cr. No.287 of 2004 vide judgment and order dated 27.07.2005:

Provision under which convicted	Sentence
S.392 read with S.397 IPC	Rigorous imprisonment for 7 years and fine of Rs.1,000/-, in default to undergo simple imprisonment for 4 months
S.506(I) IPC	Rigorous imprisonment for 2 years and fine of Rs.1,000/-, in default to undergo simple imprisonment for 4 months

6 Challenging the aforesaid conviction and sentences in S.C.No.23 of 2005, the convict prisoner filed Crl.A.No.327 of 2007 and the same was dismissed by this Court on 07.11.2013.

7 While so, the convict prisoner, invoking Section 482 Cr.P.C., preferred an original petition in Crl.O.P. No.16223 of 2017 before this Court, seeking that the sentences imposed on him in Crl.A.Nos.573 of 2005 and 327 of 2007 may be ordered to run concurrently and the said criminal original petition was allowed on 10.08.2017.

8 At this juncture, it may be relevant to state here that the Government, pursuant to the directions issued by this Court vide order dated 13.05.2021 in W.P.No.11910 of 2021, considered the case of the convict prisoner and by G.O.(2D) No.127, Home (Prison-V) Department dated 01.06.2021, has rejected the petitioner's request for ordinary leave for the convict prisoner on the ground that he would not be entitled to ordinary leave under Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, 1982, as he has been convicted of the offence under Section 392 read with Section 397 IPC.



9 The counter affidavit dated 09.07.2021 also states that the convict prisoner was granted 135 days of emergency leave and 105 days of leave based on the orders passed by this Court from time to time in the various petitions that were filed on behalf of the convict prisoner. Further, it appears that the convict prisoner was involved in four prison offences. Rule 21(b), *ibid.*, reads as under:

"21. Non-eligibility for ordinary leave.—The following categories of prisoners shall not be eligible for ordinary leave:

(b) Prisoners sentenced under Sections 392 to 402 of the Indian Penal Code (Central Act 45 of 1860);

10 Superadded, it is seen that the convict prisoner was granted leave by this Court in H.C.P.No.1404 of 2020 on 19.08.2020, by virtue of which, he was released from the prison on 20.08.2020 and he returned to the prison on 03.09.2020 after availing leave for 15 days. At this juncture, it is noteworthy to refer to Rule 22(3), *ibid.* which reads as under:

"22. Eligibility for ordinary leave.—

(3) The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave.

As per Rule 22(3) extracted above, the convict prisoner may not be entitled to leave until the completion of two years imprisonment calculated from 03.09.2020, which is the date of his last entry into the prison.

11 In the conspectus of the facts and law narrated above, we do not find any infirmity in the impugned order dated 13.05.2021 passed by the third respondent warranting interference.

In the result, this writ petition fails and is accordingly dismissed, however, sans costs. Connected miscellaneous petition stands closed.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

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To

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- 1 The Secretary to Government
Home (Prison IV) Department
Fort St. George
Chennai 600 009
- 2 The Additional Director General of Prisons
Thalamuthu Natarajan Maaligai
II Floor, Gandhi Irwin Road
Egmore, Chennai 600 008
- 3 The Superintendent of Central Prison
Cuddalore
- 4 The Public Prosecutor
High Court, Madras
Chennai 600 104

W.P. No.12122 of 2021

CP(CO)
PM/27/09/2021