

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2021

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Ms. Justice R.N.MANJULA

W.P.No.12300 of 2021
and W.M.P.No.13084 of 2021

M.Syed Abuthahir

... Petitioner

Vs

1.The Deputy Inspector General of Prison
(Vellore Range),
Office of the Range DIG,
Ramset Nagar, Thorapadi, Vellore.

2.The Superintendent of Prison,
Central Prison at Vellore.

... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in impugned order in No.263/m.u/2021 dated on 21.05.2021 passed by the first respondent and quash the same so far as the condition of escort during ordinary leave accompanying the petitioner's brother namely Mohamed Zahir, S/o.Muthu Mohamed (C.T.No.3395) confined at Central Prison, Vellore.

For Petitioner : Mr.V.Paarthiban

For Respondents : Mr.R.Muniyapparaj
Government Advocate (Crl. Side)

ORDER

(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner is the brother of the convict, who was made to undergo incarceration for a period of 10 years under the NDPS Act.

2. Pursuant to the order passed by the Division Bench dated 20.05.2021, the impugned order was passed on 21.05.2021, granting 30 days ordinary leave to the convict, who admittedly,

completed half of the period of incarceration subject to the condition of escort being provided at his cost.

3. In the impugned order, it has been stated that inasmuch as the direction to obtain Below Poverty Line Certificate was cancelled, the convict can only be permitted to go out of the prison with escort.

4. Learned counsel appearing for the petitioner submitted that on the earlier occasions, the convict was allowed to go without escort though he was able to produce such certificate. Production of such certificate is not mandatory under all circumstances. It is his further submission that once a decision has been made to grant permission to go out of the prison, the conditions imposed are to be seen on the facts of the case. In the case on hand, the convict did comply with the conditions imposed earlier and he has also completed half the period of sentence in prison. Therefore, such a condition being onerous, cannot be imposed.

5. Learned Government Advocate (Criminal Side) submitted that on the earlier occasions, the convict did produce such certificates and, therefore, there is no embargo for producing the same once again.

6. We are concerned with the liberty of the convict. Admittedly, he has completed half the period of sentence imposed. On the earlier occasions also, he did comply with the conditions. During the earlier occasions, he was allowed to go out of the prison without escort on the sole premise that he produced the below poverty line certificate. By the impugned order, such a direction issued to produce the certificate has been cancelled. The convict has not been put on notice on this.

7. It is nobody's case that the financial condition of the convict's family has improved. Admittedly, the convict has been under incarceration and therefore, he could not contribute to the betterment of the family. A decision has already been made to grant emergency leave. Therefore, what has been granted on the assessment of the facts cannot be denied on a technical ground indirectly.

8. The Division Bench of this Court in W.P.No.11972 of 2021 dated 20.05.2021 took into consideration the relevant materials

while passing the appropriate orders of which paragraphs 6 to 8 are apposite:-

"6. De hors the requirement for the certificate, we are persuaded by the argument advanced on behalf of the detenu that the escorts, numbering two per day for a period of 30 days, would result in congestion and crowding of the premises, which may not be desirable bearing in mind the on-going pandemic situation as well as the Standard Operating Procedures in force. Largely on the basis of this argument, we are inclined to order that the requirement for escorts be dispensed with and the detenu be granted leave without escort for a period of 30 days. The impugned order is modified to this extent.

7. We also record the undertaking by learned senior counsel appearing on behalf of the petitioner that the detenu will report to the Inspector of Police, D3 Ice House Police Station, Triplicane, thrice a day, at 10.00 a.m., 2.00 p.m and 6.00 p.m. to record his presence. Failure to report even on one occasion would render this order inoperative and the respondents may take immediate action to ensure custody of the detenu and cancellation of the remainder of the leave. The detenu must stay in the vicinity of his residence and not travel beyond city limits during the period of leave.

8. We reiterate that this order is passed taking into account, and solely in view of the circumstances noted above, and may not be construed as a waiver of the requirement to produce the certificate in relevant cases."

9. Thus, we are of the view that the impugned order has been passed without considering the order passed by this Court in the correct perspective. In such view of the matter, the order impugned has been set aside insofar as the insistence of the escort while granting leave to the convict is concerned. Accordingly, the respondents are directed to release the convict without insisting for the escort. However, during the period in which the convict is set at liberty, he shall report before the Sevenwells Police Station at 5.00 p.m., everyday. We make it clear that the convict has to return on the expiry of the time granted by the respondents without fail.

10. The writ petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

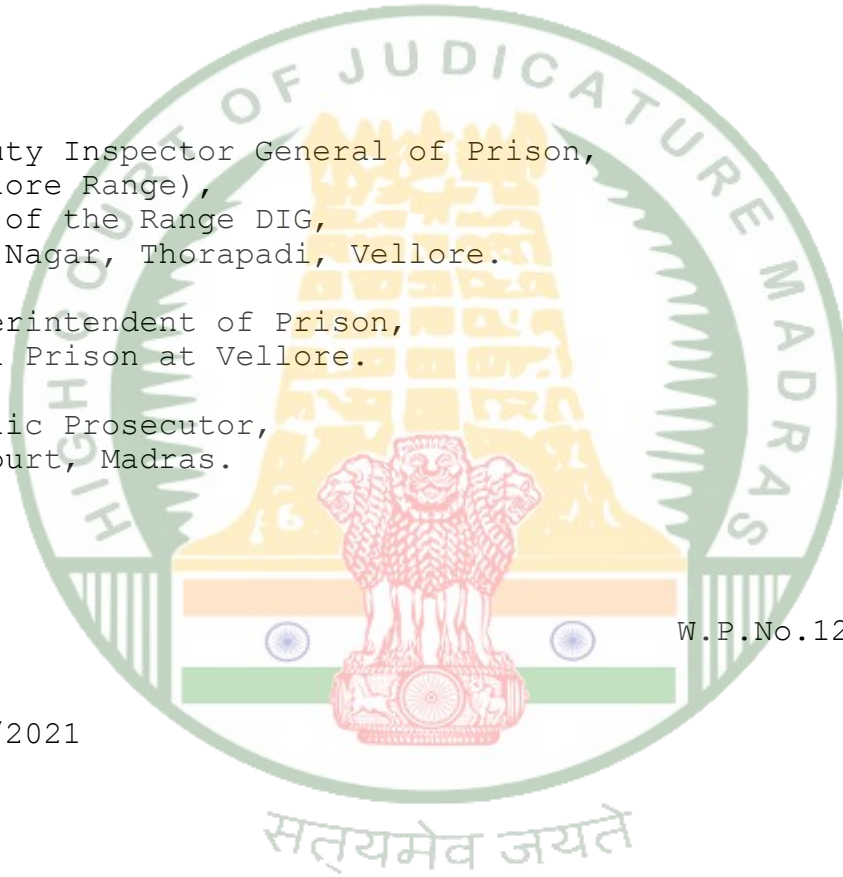
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To

- 1.The Deputy Inspector General of Prison,
(Vellore Range),
Office of the Range DIG,
Ramset Nagar, Thorapadi, Vellore.
- 2.The Superintendent of Prison,
Central Prison at Vellore.
- 3.The Public Prosecutor,
High Court, Madras.

W.P.No.12300 of 2021

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