



WEB COPY



W.P. No.25682 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.11.2022

PRONOUNCED ON : 29.11.2022

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE Mr.JUSTICE RMT.TEEKAA RAMAN

W.P.No.25682 of 2022 & W.M.P. No.24719 of 2022

Zubaida Begum

Petitioner

v

1 The State represented by its
Secretary to Government of Tamil Nadu
Department of Home
Fort St. George
Chennai 600 009

2. The Deputy Inspector General of Prison
Vellore Range
Vellore 632 001

3. The Superintendent
Central Prison
Vellore 632 002

Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of mandamus, directing the respondents to
grant ordinary leave for 40 days to the detenu, Sarfudeen, S/o.P.K.Abdul



W.P. No.25682 of 2022

Salam, aged about 45 years, Convict No.6583, confined in the Central Prison, Vellore.

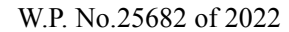
For petitioner : Dr.S.Manoharan
For respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

P.N.PRAKASH, J.

The petitioner is the wife of one Sarfudeen, S/o Abdul Salam (Convict No.6583), confined at the Central Prison, Vellore. The petitioner addressed a representation dated 22.08.2022 seeking 40 days ordinary leave for her husband on the ground that her health condition is very bad and she needs his presence for mobilising funds for her treatment as well for eking out her family's livelihood, in terms of Rule 20(i) and (vii) of the Tamil Nadu Suspension of Sentence Rules, 1982. Thereafter, the petitioner has filed the instant writ petition seeking a mandamus to the prison authorities to grant 40 days ordinary leave to her husband.

2 In response to the above, the in charge Superintendent of Prison, Central Prison, Vellore, has filed a counter affidavit dated 28.09.2022, wherein, at paragraph nos.8 to 10, it is stated as under:



10. In these circumstances, it is humbly prayed that this Hon'ble Court may be pleased to dismiss the W.P. No.25682/2022 and thus render justice.”



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3 A reading of the above shows that the petitioner's representation dated 22.08.2022 seeking ordinary leave has been rejected by order dated 16.09.2022 and the same has also been intimated to the petitioner.

4 The learned counsel for the petitioner submitted that all the earlier Benches, both Single Benches and Division Benches, except this Division Bench, have been granting leave munificently. In support of the said submission, he placed reliance on the following orders:

- i. M. Uma Manickam v State (Single Bench)¹
- ii. A. Fathima v The State (Single Bench)²
- iii. Pooranam v The Superintendent, Central Prison, Madurai (Division Bench)³
- iv. Mohammed Ghouse v The State (Division Bench)⁴
- v. Zubaida Begum v The State (Division Bench)⁵
- vi. R. Chellammal v The State (Division Bench)⁶

5 We do not want to embark upon the exercise of distinguishing each of the aforesaid orders in the light of the statutory provisions in the

1 W.P. No.25184 of 2014 decided on 15.10.2014

2 W.P. No.980 of 2015 decided on 29.01.2015

3 W.P. (MD) No.8089 of 2013 decided on 20.08.2013

4 H.C.P. No.1673 of 2018 decided on 27.08.2018

5 H.C.P. No.1937 of 2020 decided on 20.11.2020

6 W.P. No.11939 of 2022 decided on 29.08.2022



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Tamil Nadu Suspension of Sentence Rules, 1982, the authoritative pronouncement of the Constitution Bench of the Supreme Court in **Nanavati v State of Mumbai**⁷ and the law laid down by the Supreme Court in **Home Secretary (Prison) and Others v H. Nilofer Nisha**⁸, because, it would preempt any challenge to the rejection order by seeking a writ of certiorari.

In the result, this writ petition is closed with liberty to the petitioner to challenge the rejection order dated 16.09.2022, if so advised. Costs made easy. Connected W.M.P. is closed.

[P.N.P., J.] [T K R, J.]

29.11.2022

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7 AIR 1961 SC 112

8 (2020) 14 SCC 161



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P.N.PRAKASH, J.
AND
RMT.TEEKAA RAMAN, J.

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To

1. The Secretary to Government of Tamil Nadu
Department of Home
Fort St. George
Chennai 600 009
2. The Deputy Inspector General of Prison
Vellore Range
Vellore 632 001
3. The Superintendent
Central Prison
Vellore 632 002
4. The Public Prosecutor
Madras High Court
Chennai 600 104

Pre-delivery order in
W.P. No.25682 of 2022

.11.2022