



WEB COPY

W.P(MD)No.3208 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

AND

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P (MD)No.3208 of 2022

and

W.M.P (MD)Nos.2799 & 2800 of 2022

S.Thiagarajan

:Petitioner

.vs.

1.The Home Secretary,
Home Prison Department,
Secretariat,
Fort St. George,
Chennai-09.

2.The Additional Director General of Prison,
O/o.The Additional Director General of Prison,
No.1, Gandhi Erwin Road,
Egmore, Chennai-08.

3.The Deputy Inspector General of Prison,
O/o.The Deputy Inspector General of Prison,
Department of Prisons & Reform,
Madurai Range,
Madurai.

4.The Superintendent of Prison,
Central Prison, Madurai.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the Respondent No.3 in No.3846/U.Tha.2/2021, dated 24.08.2021 and consequently to the proceeding in No.14408/tha.ku2/2021, dated 28.09.2021 passed by the respondent No.4 and quash the same as illegal and consequently directing the Respondents to grant Ordinary leave for a period of one month to his son namely T.Sankar C.P.No.4012 confined at Central Prison, Madurai.

For Petitioner :Mr.S.M.A.Jinnah

For Respondents :Mr.S.Ravi

Addl. Public Prosecutor



O R D E R

R. SUBRAMANIAN, J

AND

N. SATHISH KUMAR, J

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Challenge in this writ petition is to the order of the third respondent rejecting the request of the petitioner to grant Ordinary Leave for a month for his son, namely, T.Sankar, who is undergoing Life Imprisonment at Madurai Central Prison.

2. The petitioner sought for Ordinary Leave for a period of one month on the ground that he requires his son presence for his own Eye surgery and to make arrangements for payment of Tution fee for education of his grand-daughters by sale of properties. The request was rejected by the third respondent since the Superintendent of Central Prison had not recommended the Ordinary Leave. The recommendation of Superintendent of Central Prison, Madurai, dated 26.07.2021 have been placed before us. It is seen there from that the petitioner's son has been convicted for the offences under Section 302 r/w 34 IPC for life, 398 r/w 34 IPC for 7 years Rigorous Imprisonment with fine of Rs.1,000/- and 392 r/w 397 r/w 34 IPC for 7 years Rigorous Imprisonment with fine of Rs.1,000/-. It is also provided that these sentences shall run concurrently. The imposition of the said punishment has been confirmed by this Court in Crl.A(MD)No.1697 of 2022 on 14.07.2006. The fourth respondent, namely, Superintendent, Central Prison, Madurai, had rejected the request of the petitioner on the ground that as per Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, a person convicted under Sections 392 to 402 IPC is not entitled to Ordinary Leave.

3.Mr.S.M.A.Jinnah, learned counsel for the petitioner would submit that the prohibition contained under Rule 21(b) of the Tamil Nadu Suspension of Sentence Rule cannot be invoked as much as the petitioner has completed the period of sentence, namely, 7 years Rigorous Imprisonment awarded for the offence under Section 397 and 398 of IPC. He would also rely upon the clarification issued by the Additional Director General of Prison on 15.09.2016, wherein, it has been clarified that if the period of imprisonment imposed under Section 397 or 398 IPC had been served by the prisoner, he should be treated only as a lifer undergoing Life Imprisonment under Section 302 IPC and such prisoner would be eligible for Ordinary Leave and the prohibition contained in Rule 21(b) of the Tamil Nadu Suspension of Sentence Rule will not apply to such prisoner.

4. Hence, it is clear that the order impugned suffers from infirmity and it is liable to be set aside. Accordingly, the impugned order is set aside and the writ petition is allowed.



5. It is seen from the letter, dated 15.09.2016 that the prohibition contained in Rule 21(b) will not apply to the petitioner. It is also seen from the proceedings of the third respondent, dated 26.07.2021 that the probation officer has also recommended to grant of Ordinary Leave to the petitioner.

6. Therefore, the third respondent shall reconsider the application for Ordinary Leave in the light of the observations of the fourth respondent in the letter, dated 15.09.2016 and in conformity with other rules and pass orders within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Home Secretary,
Home Prison Department,
Secretariat,
Fort St. George,
Chennai-09.
- 2.The Additional Director General of Prison,
O/o.The Additional Director General of Prison,
No.1, Gandhi Erwin Road,
Egmore, Chennai-08.
- 3.The Deputy Inspector General of Prison,
O/o.The Deputy Inspector General of Prison,
Department of Prisons & Reform,
Madurai Range,
Madurai.
- 4.The Superintendent of Prison,
Central Prison, Madurai.
- 5.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

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RD(08.03.2022) 3P 6C