



W.P.(MD) No.14835 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
18.07.2022	02.08.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

W.P.(MD) No.14835 of 2022

Muthumari

... Petitioner

-vs-

1.The Home Secretary (Prison)
Home Department
Secretariat, Fort St.George
Chennai-9

2.The Additional Director General of Prison
Prison Department
No.1, Gandhi Irwin Salai
Egmore, Chennai-600 008

3.The Superintendent of Police
Central Prison
Trichy

... Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records and quash the proceedings of the third respondent in proceedings No.10651/Tha Ku 4/2022, dated 27.06.2022 and consequently direct the respondents to grant parole for one month to the petitioner's husband Dass @ Vattakannu @ Pethaperumal (Life Convict) confined in Central Prison, Trichy.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

P.N.PRAKASH, J.

This writ petition has been filed to quash the order No.10651/Tha Ku 4/2022, dated 27.06.2022, passed by the third respondent and to direct the respondents to grant parole for one month to the petitioner's husband Doss @ Vattakannu @ Pethaperumal, a life convict, confined in the Central Prison, Trichy.



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2. The minimum facts that are required for deciding this writ petition are as under:

2.1. The petitioner, Muthumari, is the wife of Doss @ Vattakkan @ Perumal @ Petha Perumal (hereinafter referred to as “Doss”). Doss faced prosecution in S.C.No.296 of 2010 in the Court of the I Additional Sessions Judge, Tirunelveli and by judgment and order dated 29.07.2011, he was convicted and sentenced as under:

Section of Law	Sentence of imprisonment	Fine amount
302 I.P.C.	To undergo imprisonment for life.	Rs.25,000/- in default to undergo simple imprisonment for three (3) months.
201 I.P.C.	To undergo five (5) years rigorous imprisonment.	Rs.5,000/- in default to undergo simple imprisonment for three (3) months.

2.2. The appeal in CrI.A.(MD) No.301 of 2011 that was filed by Doss was dismissed by this Court on 21.11.2012, against which, Doss approached the Supreme Court by filing CrI.A.No.567 of 2014, which was also dismissed on 28.10.2021.



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2.3. Doss' marriage with the petitioner was fixed on 02.05.2018. Therefore, a habeas corpus petition in H.C.P. No.835 of 2018 was filed by his mother seeking three months leave for Doss, which was disposed of by this Court on 28.04.2018 by granting one week leave from 29.04.2018 to 06.05.2018. Doss married the petitioner on 02.05.2018 and returned to prison on 06.05.2018. Thereafter, another habeas corpus petition in H.C.P.No.2447 of 2018 was filed by the petitioner seeking further leave for her husband Doss for the purpose of conjugal union and the same was ordered on 26.11.2018. Accordingly, Doss was released on ordinary leave with police escort for two weeks from 15.12.2018 to 29.12.2018 and he returned to prison on 29.12.2018.

2.4. While so, the petitioner gave a fresh leave application dated 30.03.2022 seeking leave for Doss, on the ground that Doss has suffered a fracture in the prison and requires treatment for the same. After giving the representation, the petitioner filed W.P.(MD) No.6919 of 2022, in which, this



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Court, by order dated 13.04.2022, directed the prison authorities to consider the petitioner's representation dated 30.03.2022. Since the prison authorities were intransigent, the petitioner filed a fresh writ petition in W.P.(MD) No.13315 of 2022 seeking leave for Doss. During the pendency of the said writ petition, the Superintendent, Central Prison, Trichy, communicated the order of the Deputy Inspector General of Prisons, Trichy, dated 25.06.2022, refusing leave to Doss. Therefore, W.P.(MD) No.13315 of 2022 was closed with liberty to the petitioner to work out her remedy in the manner known to law and hence, the present writ petition.

3. Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Ravi, learned Additional Public Prosecutor for the respondents.

4. The Superintendent of Prisons, Central Prison, Trichy, where Doss is presently lodged, has filed a detailed counter affidavit dated 14.07.2022, together with a typed set of papers containing the report of the Probation Officer, Tirunelveli, dated 24.06.2022 and the report of the Inspector of Police, Manur Police Station, dated 24.06.2022.



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5. Before advertng to the arguments advanced at the bar, it may be pertinent to briefly trace the practice position that was obtaining in this Court prior to the judgment of the Supreme Court in ***Home Secretary (Prison) and others vs. H.Nilofer Nisha [(2020) 14 SCC 161]*** (popularly referred to as “**Nisha's** case”). The Principal Seat as well the Madurai Bench were entertaining habeas corpus petitions for grant of leave and also for premature release of convict prisoners and orders were being passed. The State challenged a few orders that were passed by this Court ordering premature release of some convict prisoners, in the Supreme Court in **Nisha's** case, wherein the Supreme Court has clearly held that a habeas corpus petition cannot be entertained for the premature release of a convict prisoner, because he is not under any illegal detention in prison, but, he is only undergoing the sentence of imprisonment imposed on him by the competent Courts. Following the said judgment, a Coordinate Bench of this Court, in which one of us (PNPJ) was a member, in ***Saleema vs. State [(2021) 1 MWN (Cri) 198]***, held that a writ of habeas corpus cannot be maintained for premature release or for grant of leave to a convict prisoner and that the remedy available to him is only by way of a writ petition.



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6. In the State of Tamil Nadu, in exercise of powers under Section 432 of the Code of Criminal Procedure, 1973, rules titled “Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter, referred to as “the 1982 Rules”] have been framed, which is the law within the meaning of Article 13 of the Constitution of India.

7. A Full Bench of this Court, in ***State vs. Yesu [(2011) 5 CTC 353 (FB)]***, observed that in the State of Tamil Nadu, the Honourable Minister for Law was granting parole / leave to convict prisoners from time to time. The Full Bench went into this question and held that no leave / parole can be granted to a convict prisoner outside the framework of the 1982 Rules and held that the Honourable Minister cannot grant leave / parole to convict prisoners. After this ruling of the Full Bench of this Court, the practice of the Honourable Minister for Law granting parole / leave ceased in the State of Tamil Nadu and now, leave is being granted only by the prison authorities in terms of the 1982 Rules.



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8. The above decision of the Full Bench of this Court was not brought to the notice of any of the earlier Division Benches, while granting leave to convict prisoners under Article 226 of the Constitution of India. We are afraid that once it has been authoritatively held by the Full Bench in **Yesu** (supra) that no leave can be granted outside the four corners of the 1982 Rules, it is neither open to the Honourable Minister for Law, nor to this Court under Article 226 of the Constitution of India, to assume the powers of the authorities prescribed in the 1982 Rules and grant leave to convict prisoners. The role of the judiciary ends after a person is tried, convicted and sentenced. Thereafter, the implementation of the order of the judiciary by making the accused suffer the sentence by lodging him to prison rests with the executive, to give effect to which, the Tamil Nadu Prison Rules, 1983 have been framed by the State Government under Section 59 of the Prisons Act, 1894 (Central Act IX of 1894). Similarly, grant of remission of sentence, temporary release of a convict prisoner, etc. fall within the domain of the executive and therefore, the judiciary cannot parallelly exercise the powers under Article 226 of the Constitution of India and open a fresh gateway for releasing a convict prisoner on leave. In fact, the dividing line between the executive and judicial functions on this branch of law is not blurred, especially in the aftermath of the Constitution Bench judgment of the Supreme Court in **K.M.Nanavati Vs.**



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State of Bombay [(AIR 1961 SC 112)]. To put it in simpler terms, when the appeal of a convict prisoner is pending, the executive cannot grant leave and only the Appellate Court can grant suspension of sentence and bail under Section 389 Cr.P.C. That is why, the word “sentence” in Rule 2(4) of the 1982 Rules states that, “sentence” means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Rule 3 of the 1982 Rules clearly states leave cannot be claimed as a matter of right. It is a concession granted to the prisoner. Therefore, no convict prisoner has a fundamental right to be released on leave under the 1982 Rules.

9. In **Nisha**'s case, the Supreme Court has clearly held as under:

“26. *We would also like to point out that the grant of remission or parole is not a right vested with the prisoner. It is a privilege available to the prisoner on fulfilling certain conditions. This is a discretionary power which has to be exercised by the authorities conferred with such powers under the relevant rules/regulations. The court cannot exercise these powers though once the powers are exercised, the Court may hold that the exercise of powers is not in accordance with rules.”*

(emphasis supplied)



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10. In the upshot of the aforesaid discussion, this Court, under Article 226 of the Constitution of India, cannot grant leave to a convict prisoner and can only either direct the prison authorities to consider the representation for leave, if it is found that they are dragging their feet or judicially review the legal validity of the order passed by the prison authorities under the 1982 Rules, refusing leave to a convict prisoner.

11. Now, coming to the case on hand, we find that while Doss was in the Central Prison, Trichy, he had a fall and sustained a fracture in his left forearm, for which, a surgery was done in the Government Hospital, Trichy, on 30.03.2022. Of course, the medical records show that his vital parameters are normal. The Probation Officer, Tirunelveli, has recommended the case of Doss for grant of leave. But, the Inspector of Police, Manur Police Station, has objected to the grant of leave on the ground that release of Doss on leave may lead to retaliation by the family of Doss' victim. We are aware that the Deputy Inspector General of Prison, who is the authority for grant of ordinary leave, is not bound by the recommendation / opinion of the Probation Officer or the Inspector of Police concerned. In this case, the murder is said to have taken place in the year 2008 and Doss was released twice earlier as stated above.



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The Deputy Inspector General of Prisons, by order dated 25.06.2022, has refused to grant ordinary leave to Doss, on the following three grounds.

- (i) The Probation Officer, Tirunelveli, in paragraph No.10(1) of his report dated 24.06.2022, has stated that if Doss is granted leave, there would be a law and order problem.
- (ii) The Probation Officer, Tirunelveli, in paragraph No.10(2) of his report dated 24.06.2022, has stated that Doss was a hired killer and there is a possibility of retaliation by the family of the victim.
- (iii) Doss quarreled with one Arunpandian, a Prison Guard, on 09.03.2017, assaulted and pushed him down, for which, a police case was registered against him, he (Doss) was denied interview facilities for three months and was sent for counselling.



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12. The fact remains that leave was last given to Doss only in the year 2018 and for the last five years, he has not availed any leave. We also find that, except the *ipse dixit* of the Probation Officer, Tirunelveli, in paragraph No.10(1) of his report dated 24.06.2022, that Doss was a hired killer, there is no material available with the Deputy Inspector General of Prisons in support of this allegation. Even according to the Deputy Inspector General of Prisons, after the quarrel that occurred on 09.03.2017, between Doss and Arunpandian, Doss was sent for counselling. Thereafter, he was granted leave, of course, not by the prison authorities, but by this Court in H.C.P.Nos.835 of 2018 and 2447 of 2018. Doss availed ordinary leave and returned to prison on the due dates. Now, Doss has suffered a fracture in his forearm and has undergone a surgery. That is why, in paragraph No.10 (3 & 4) of the report of the Probation Officer dated 24.06.2022, ordinary leave has been recommended for Doss.

13. In our opinion, the Deputy Inspector General of Prisons has not considered all these aspects and has refused to ordinary leave to Doss by holding that he was a hired killer, without any supporting material thereof. Hence, for all these reasons, the impugned order warrants interference.



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However, we can only set aside the impugned order and remit the case to the Deputy Inspector General of Prisons, Trichy Range, Trichy, for reconsideration.

14. Furthermore, the contention of the learned counsel for the petitioner that leave should be granted for exercising conjugal rights cannot be countenanced in the light of the Full Bench decision of this Court in ***Meharaj vs. State [AIR 2022 Mad 69 : 2022 Cri LJ 936 (FB)]***.

15. It is open to the Deputy Inspector General of Prisons, Trichy, to obtain fresh reports from the Probation Officer, Tirunelveli and the Inspector of Police, Manur Police Station and assess the desirability of granting ordinary leave to Doss, especially in the light of the fact that he has undergone a surgery.

16. In the result, the writ petition is allowed and the order No. 1166/முஉ/2022, dated 25.06.2022, passed by the Deputy Inspector General of Prisons and the consequential order No.10651/த.கு.4/2022, dated 27.06.2022, passed by the Superintendent of Prisons, Central Prison, Trichy, are hereby set aside and the matter is remitted to the Deputy Inspector



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General of Prisons, Trichy Range, Trichy, for fresh consideration as stated above, within a period of four weeks from the date of receipt of a copy of this order. No costs.

[P.N.P., J.]

[R.H., J.]

02.08.2022

Index : Yes / No

Internet : Yes / No

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To:

- 1.The Home Secretary (Prison),
Home Department,
Secretariat, Fort St.George,
Chennai-9.
- 2.The Additional Director General of Prison,
Prison Department,
No.1, Gandhi Irwin Salai,
Egmore, Chennai-600 008.
- 3.The Superintendent of Police,
Central Prison, Trichy.



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P.N.PRAKASH, J.
and
R.HEMALATHA, J.

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ORDER
IN
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