



WP(MD)No.22052 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 23.09.2022

CORAM

THE HON'BLE MRS JUSTICE J. NISHA BANU
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH

W.P.(MD)No.22052 of 2022

S.Malathi

... Petitioner

Vs.

1.The State of Tamilnadu

Represented by the Principal Secretary to Government,
Home (Prison) Department,
TamilNadu Government Chief Secretariat,
Fort St.George,
Chennai – 600 009.

2.The Additional Director General of Police /

Inspector General of Prisons,
C.M.D.A.Towers II,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.

3.The Deputy Inspector General of Prisons,

Madurai Range,
Madurai.

4.The Superintendent of Prison,

Madurai Central Prison,
Madurai.

...Respondents



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PRAYER: Petition - filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the proceedings passed by the 3rd respondent in No. 568/U.Tha2/2022 dated 23.08.2022 and quash the same as illegal and consequently to direct the respondents to grant parole for 30 days to petitioner husband namely V.Sudhakar S/o. Vairavakalai aged 40 years, who is confined at Central Prison, Madurai as Life Convict Prisoner in C.P.No.5851 for the purpose of medical emergency treatment of his ailing mother and for arranging money for the family.

For Petitioner : Ms.P.Yasmin Begum

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This writ petition has been filed by the wife of the detenu challenging the proceedings of the third respondent dated 23.08.2022, wherein ordinary leave sought for by the detenu to visit his ailing mother, was rejected by the third respondent.



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2. When the matter was taken up for hearing on 19.09.2022, the following order was passed by this Court:

“It is brought to the notice of this Court that there is a pending case against the petitioner and it is at the stage of trial.

The Learned Counsel for the petitioner shall produce all the relevant materials and shall serve the copy of the same to the learned Additional Public Prosecutor in advance.

The learned Addl. Public Prosecutor shall also take instructions.

Post this case on 23.09.2022.”

3. When the matter was taken up for hearing today, the learned counsel appearing for the petitioner filed a memo and it is seen that there is yet another case against the detenu pending in S.C.No.401 of 2016 before the learned Principal Sub Judge, Madurai. In this case, the detenu was remanded to judicial custody on 02.02.2010 and bail was granted on 09.02.2010. The case is now posted for evidence on 12.10.2022.

4. The learned counsel appearing for the petitioner submitted that since the detenu has already been enlarged on bail in S.C.No.401 of 2016, it



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is well within the powers of the respondents to grant leave to the detenu to enable him to be with his ailing mother.

5. The learned Additional Public Prosecutor submitted that Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, is a complete bar for the detenu and no leave can be granted, when there is a pending trial against the detenu. The learned Additional Public Prosecutor also brought to the notice of this Court a Judgment of the Hon'ble Division Bench of this Court in **S.Santhosam v. State by Secretary to Government** reported in **2022 (3) CTC 689** in this regard.

6. In the considered view of this Court, this Court cannot grant leave to the detenu by disregarding the rules and the earlier Judgment passed by the Division Bench mentioned supra. The only other avenue that is left to the detenu is to make a representation to the Government and it will be left open to the Government to consider exemption under Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982. Beyond this, no further orders can be passed in this Petition.



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WEB COPY 7. This Writ Petition is disposed of accordingly. No costs.

(J.N.B.,J.) (N.A.V.,J.)
23.09.2022

Index : Yes/No
Internet : Yes
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To:

- 1.The Principal Secretary to Government,
Home (Prison) Department,
TamilNadu Government Chief Secretariat,
Fort St.George,
Chennai – 600 009.
- 2.The Additional Director General of Police /
Inspector General of Prisons,
C.M.D.A.Towers II,
No.1, Gandhi Irwin Road,
Egmore, Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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J. NISHA BANU,J.

and

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Order made in
W.P.(MD)No.22052 of 2022

Dated
23.09.2022