

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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.22418 of 2022
and
W.M.P.(MD)No.16583 of 2022

Kandasamy

... Petitioner

Vs.

- 1.State of Tamilnadu represented by,
The Principal Secretary,
Home, Excise and Prohibition Department,
Fort St George, State Secretariat,
Chennai.
- 2.The Additional Director General of Police
(Prisons) and Correction Services,
Tamilnadu Prison and Correctional Services Department,
Office of Additional Director General of Prisons,
Whannels Road,
Egmore, Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road, Madurai – 625 016.
- 4.The Superintendent of Prison,

Palayamkottai Central Prison,
Tirunelveli District.

...Respondents

PRAYER: Petition - filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the Respondents to extend the leave by 30 days from already granted by the Respondent No.4 order in No. 4972/Th.Ku.2/2022 dated 30.07.2022.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

ORDER

J. NISHA BANU,J.

and

N. ANAND VENKATESH,J.

This writ petition was filed by the detenu seeking for extension of the ordinary leave granted to him, by considering his representation dated 19.09.2022 on the ground that the detenu has serious ailments and he has to take treatment.

2.The learned Additional Public Prosecutor, on instructions submitted that the detenu is a life convict and he was granted ordinary leave by the

fourth respondent for a period of 28 days. The said period comes to an end today. The learned Additional Public Prosecutor further submitted that there is no scope for any extension of ordinary leave and there cannot be a second spell of ordinary leave by virtue of the bar contained under Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as “the Rules” for the sake of convenience). In view of the same, the learned Additional Public Prosecutor submitted that the request made by the petitioner is unsustainable.

3.Per contra, the learned counsel appearing for the petitioner brought to our notice the latest Government Order passed in G.O.(Ms).No.205, Home (Prison-V) Department, dated 25.04.2022, whereby Rule 22 of the Rules was amended and as per Rule 22(2)(c) of the Rules, a life convict, who has already undergone imprisonment exceeding fourteen (14) years, is entitled for a maximum period of forty (40) days of ordinary leave, which can be availed in one spell or in two spells of any duration. In view of the same, the learned counsel submitted that since the detenu has already undergone sentence exceeding fourteen (14) years, he is entitled for a maximum period of ordinary leave of forty (40) days. Since only 28 days

was granted, the remaining period of twelve (12) days, can be extended to enable the detenu to take treatment.

4.This Court has carefully considered the submissions made on either side and the materials available on record.

5.There is no dispute with regard to the fact that the petitioner is a life convict and he has served life sentence for a period exceeding fourteen (14) years. The ordinary leave was granted by the fourth respondent for a period of 28 days and the period is going to end today. Considering the age of the petitioner and also his health condition, the petitioner will be entitled to avail the remaining period of ordinary leave of twelve (12) days (40 days – 28 days). However, this Court cannot extend the ordinary leave by issuing a positive direction in this writ petition, since it involves a procedure.

6.In view of the above, this Writ Petition is disposed of with the following directions:-

(a) The petitioner is directed to surrender before the fourth respondent

today by 05.00 p.m.;

(b) The third respondent is directed to consider the representation made by the petitioner dated 19.09.2022 and deal with the same in line with amended Rule 22(2)(c) of the Rules and shall consider granting the second spell of ordinary leave for a period of twelve (12) days. This decision shall be taken by the third respondent on or before 30.09.2022;

and

(c) The ordinary leave already granted to the petitioner by the fourth respondent shall be taken to be the first spell and the above direction issued by this Court for granting ordinary leave for the remaining period shall be taken to be the second spell.

No costs. Consequently, connected miscellaneous petition is closed.

(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,
Home, Excise and Prohibition Department,
Fort St George, State Secretariat, Chennai.
- 2.The Additional Director General of Police
(Prisons) and Correction Services,
Tamilnadu Prison and Correctional Services Department,
Office of Additional Director General of Prisons,
Whannels Road, Egmore, Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Madurai Range, Madurai Central Prison Campus,
New Jail Road, Madurai – 625 016.
- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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and

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