



WP(MD)No.23177 of 2022

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2022

CORAM

**THE HON'BLE MRS JUSTICE J. NISHA BANU**

AND

**THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

**W.P.(MD)No.23177 of 2022**

Alageswari

... Petitioner

Vs.

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

...Respondent

PRAYER: Petition - filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the Respondent to grant 3 days emergency leave without escort to petitioner's brother namely, Balamurugan (Life Convict Prisoner No.5698) aged about 32 years S/o.Ramamoorthy, who is now confining at Madurai Central Prison for perform his father's Asthi Visarjan spiritual process and immersion ceremony on 08.10.2022



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under Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982 by considering petitioner's representation dated 26.09.2022 in accordance with law.

For Petitioner : Mr.R.Prakash  
For Respondent : Mr.A.Thiruvadi Kumar  
Additional Public Prosecutor

### **ORDER**

**J. NISHA BANU,J.**

and

**N. ANAND VENKATESH,J.**

This Writ Petition was filed by the sister of the detenu seeking for a direction to the respondent to grant emergency leave to her brother, in order to perform his father's last rites.

2. The learned Additional Public Prosecutor, on instructions, submitted that the representation made by the petitioner was rejected through proceedings No.16546/jF/2/2022, dated 29.09.2022 on the ground



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that the detenu has filed an appeal before the Apex Court against the order and judgment passed by the Division Bench of this Court confirming the conviction and sentence imposed on the detenu. The learned Additional Public Prosecutor also relied upon the judgment of this Court in **L.Wasib Khan Vs. The State rep. by its Deputy Inspector General of Prisons (Chennai Range) Gandhi Irwin Road, Egmore, Chennai and others** reported in **2022-1-L.W. (Crl.) - 416** to substantiate his submission that leave cannot be granted once the appeal has been filed before the Apex Court.

3. The learned counsel for the petitioner submitted that his clients are illiterates and they did not inform the counsel, about the appeal filed before the Apex Court. The learned counsel further submitted that the criminal Appeal has not been effectively prosecuted before the Apex Court and hence, the grant of emergency leave may be considered by this Court.



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4. In the considered view of this Court, our hands are tied since the detenu has already filed an appeal before the Apex Court and it has been categorically held by this Court in the judgment cited supra that once an appeal has been filed, the executive power of the State cannot be extended by granting leave or suspension of sentence and only the concerned Court where the appeal has been filed, can grant suspension of sentence and bail. In view of the same, the detenu has to necessarily work out his remedy before the Apex Court.

5. Accordingly, this Writ Petition is disposed of. No costs.

**(J.N.B.,J.) (N.A.V.,J.)**  
**10.10.2022**

Index : Yes/No  
Internet : Yes  
rm



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Madurai District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
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