



W.P(MD)No.25412 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 28.11.2022

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE N. ANAND VENKATESH**

W.P(MD)No.25412 of 2022
and
W.M.P(MD)No.19500 of 2022

Rameswari

.. Petitioner

Vs.

The Superintendent,
Central Prison,
Madurai-16.

.. Respondent

Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order No.3677/த.கு.2/2022, dated 31.03.2022 and quash the same as illegal and consequently direct the respondent to grant Ordinary Leave of the petitioner's husband namely Saravanan in C.P.No.6045, Central Prison.

For Petitioner	:Mrs.S.Prabha
For Respondent	:Mr.A.Thiruvadikumar, Additional Public Prosecutor



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ORDER

WEB COPY (Order of the Court was made by N. ANAND VENKATESH)

M.S.RAMESH,J.
and
N. ANAND VENKATESH,J.

This petition has been filed by the wife of the detenu challenging the impugned proceedings No.3677/த.க.2/2022, dated 31.03.2022 of the respondent rejecting the request made by the petitioner seeking for 30 days ordinary leave for the detenu, who is confined at Madurai Central Prison.

2.Heard Mrs.S.Prabha, learned counsel appearing for the petitioner and Mr.A.Thiruvadikumar, learned Additional Public Prosecutor appearing for the respondent.

3.The detenu was convicted and sentenced by the Chirang District Court in S.C.No.144 of 2015 for an offence under Section 302 IPC and sentenced to undergo life imprisonment. The detenu was undergoing imprisonment right from 20.08.2015 onwards and he continued to be



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confined in the prison at Assam till 10.03.2021. Thereafter, pursuant to the approval of the Government of Assam, sanction was accorded by the Inspector General of Prisons, Assam through proceedings dated 03.11.2020 for transfer of the detenu to the prison at Tamil Nadu. Accordingly, the detenu was transferred and has been confined at Central Prison, Madurai from 11.03.2021 onwards.

4.The petitioner made a representation to the respondent seeking for ordinary leave for her husband on the ground that the mother of the detenu was suffering from some ailments and the house is in a dilapidated condition and requires immediate renovation. This representation was rejected by the respondent through impugned proceedings dated 31.03.2022, on the ground that the detenu has not completed 3 years sentence at Central Prison, Madurai. Aggrieved by the same, this writ petition was filed before this Court.

5.The respondent has filed a counter affidavit. A stand has been taken by the respondent to the effect that under the relevant Rules viz., Rule 239(3) of Tamil Nadu Prison Rules, grant of leave for a prisoner, who was



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received by transfer from other State on reciprocal basis can be considered only by the concerned State where the detenu was originally convicted and sentenced. Therefore, only on receipt of the orders from the appropriate authority belonging to the concerned State, the request made by the petitioner can be considered. On this ground, the respondent has rejected the representation made by the petitioner.

6. When the matter was taken up for hearing, the learned Additional Public Prosecutor brought to our notice the communication received from the Inspector General of Prisons, Assam, dated 19.11.2022. For better appreciation, the entire communication is extracted hereunder:

“In inviting a reference to your letter cited above, forwarding a petition dated 17.08.2022 submitted by life convict No.6045, Saravanan of your prison, praying for grant of leave for 30 days. I am to state that since the petitioner after being convicted and sentenced within the State of Assam, has been transferred to the State of Tamil Nadu under the Transfer of Prisoners Act, 1950, all the matters regarding his detention, including the grant of release on leave, etc., are to be governed by the relevant laws and rules of the transferee State of Tamil Nadu, except for the matter of



premature release by remission of sentence under Section 432 of Cr.P.C., which is to be referred to the Government of Assam, being the 'appropriate Government' to exercise the power conferred by that section.

It may be stated that the relevant rules of this State in the regard, viz., the Assam Prisons (Leave & Emergency Release) Rules, 1968, are applicable only to the prisoners confined in the prisons of this State, irrespective of whether a prisoner was convicted within this State or was convicted within some other State and thereafter transferred to this State under the Transfer of Prisoners Act, 1950.

The aforesaid petition of the above named life convict of your prison is, therefore, returned herewith for disposal as per relevant rules of your State.”

7.It is clear from the above communication that insofar as the grant of leave is concerned, it will be governed only by the relevant Rules of the transferee State, viz., The State of Tamil Nadu and only when premature release is sought for, the Government of Assam will have the exclusive jurisdiction to consider the same. Hence, it is clear that the ordinary leave sought for by the petitioner has to be dealt with only in accordance with the Tamil Nadu Prison Rules, 1983. For better appreciation, Rule 239(3) of the



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Tamil Nadu Prison Rules, 1983 is extracted hereunder:

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“239.Periods that will not count towards sentence.-

.....

(3)Convicted prisoners removed from a prison in one State to a prison in another State under the provisions of the Transfer of Prisoners Act, 1950 (Central Act XXIX of 1950) shall be deemed to be undergoing their original sentence in the prison where they have been transferred. ...”

8.A plain reading of the above rule shows that the convicted prisoner, who has been removed from a prison in one State to a prison in another State, the prisoner shall be deemed to be undergoing the original sentence even after he is transferred to the transferee State. In the present case, the detenu was suffering incarceration from 20.08.2015 to 10.03.2021 at Assam and thereafter he has been transferred to the Central Prison Madurai. Applying the above rule, it is clear that the detenu is deemed to have suffered the sentence from 20.08.2015 onwards at Central Prison, Madurai. In view of the same, the detenu will be entitled for ordinary leave under the Tamil Nadu Prison Rules, 1983.



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9.Taking into consideration the reasons assigned by the petitioner in the representation seeking for ordinary leave and also taking into account the fact that the detenu has undergone sentence for nearly 7 years, we are inclined to grant 30 days ordinary leave to the detenu. It is left open to the respondent to impose such conditions as are required and an order shall be passed in this regard within a period of one week from the date of receipt of a copy of this order.

10.In the light of the above discussion, the impugned proceedings No. 3677/ த.க.2/2022, dated 31.03.2022 of the respondent, is hereby quashed and this writ petition is allowed with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) (N.A.V.,J.)
28.11.2022

Index : Yes/No
Internet : Yes
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M.S.RAMESH,J.
and
N. ANAND VENKATESH,J.
Ns

To

- 1.The Superintendent,
Central Prison,
Madurai-16/
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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and
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