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W.P.No.2121 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2023

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR**

and

**THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

W.P.No.2121 of 2023

A.Pachaiyammal  
W/o. (Late) Arumugam

.. Petitioner

Vs.

1. The Home Secretary  
Home Department  
Secretariat, Fort St.George  
Chennai-600 009.
2. Additional Director General of Police and  
Inspector General of Prisons  
Whannels Road, Egmore  
Chennai-600 008.
3. The Superintendent of Prison  
Vellore Central Prison, Vellore District.
4. The Superintendent of Police  
O/o. Superintendent of Police  
Cuddalore District.



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5. The Inspector of Police  
Viruthachalam Police Station  
Viruthachalam, Cuddalore District.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus to call for the records in proceedings vide No.18100/Tha/Ku.3/2022 dated 15.11.2022 passed by the 3rd respondent and quash the same and directing the respondents to grant 10 days ordinary leave with escort to petitioner's son life convict prisoner Mr.Rajadurai, son of Arumugam (CT-3782) now confined in Central Prison, Vellore for the purpose of seeing his daughters and arrangements of daughter education.

|                 |   |                                                   |
|-----------------|---|---------------------------------------------------|
| For Petitioner  | : | Mr.P.Muthamizh Selvakumar                         |
| For Respondents | : | Mr.R.Muniyapparaj<br>Additional Public Prosecutor |

### **ORDER**

**[Order of the Court was made by M.SUNDAR, J.,]**

This order will now dispose of the captioned Writ Petition.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made by us in previous listings on 30.01.2023 and 14.02.2023 which read as follows:

**Proceedings dated 30.01.2023:**

*'In the captioned writ petition, mother of life convict viz.,*



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*Mr.Rajadurai, Son of Arumugam (CT No.3782) now lodged in Vellore Central Prison is the petitioner and the prayer is for certiorarified mandamus. While certiorari limb of prayer assails proceedings dated 15.11.2022 bearing reference No.18100/Tha.Ku.3/2022 made by the third respondent mandamus limb of the prayer is for 10 days ordinary leave.*

*2. Mr.R.Muniyapparaj, learned Additional Public Prosecutor accepts notice on behalf of all five respondents, requests for time to get instructions and revert to this Court. Request acceded to.*

*3. List a fortnight hence. List on 13.02.2023.'*

**Proceedings dated 14.02.2023:**

*'Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 30.01.2023.*

*2. Counter affidavit has been filed by the respondents.*

*3. List on 20.02.2023.'*

3. Today, Mr.P.Muthamizh Selvakumar, learned counsel on record for petitioner and Mr.R.Muniyapparaj, learned Additional Public Prosecutor are before us.

4. In continuation of aforementioned proceedings, learned Additional Public Prosecutor submits that a counter affidavit has been filed.



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5. The crux and gravamen of the counter affidavit turns on Rule 21 of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which is a set of Rules made by the Tamil Nadu Government in exercise of powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of convenience and clarity].

6. Be that as it may, Rule 21, more particularly Rule 21(b) of said Rules makes it clear that the prisoners sentenced under Sections 392 to 402 of 'The Indian Penal Code (Central Act 45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] are not eligible for ordinary leave.

7. Learned counsel for petitioner submitted that the convict has already served 11 years but this really does not help the petitioner as paragraph Nos.3 & 4 of counter affidavit nail the matter. Paragraph Nos.3 & 4 of counter affidavit read as follows:

*'3. Further it is humbly submitted that the petitioner son was convicted in second case was concerned in Edaikal Police Station Crime No.19/2011, u/s 364, 392, 302 IPC and convicted and*



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*sentenced to undergo R.I. for 10 years and fine Rs.5,000/- i/d S.I. for 6 months u/s 364 IPC, R.I. for 10 years and fine Rs.5000/- i/d S.I. for 6 months u/s 392 IPC and imprisonment for life and fine Rs.10000/- i/d S.I. for one year u/s 302 IPC, all the sentences ordered to run concurrently (fine not paid) by learned III Additional Sessions Judge, Villupuram @ Kallakurichi in S.C.No.87/2012, dated 07.10.2016. The above said prisoner not preferred any appeal so far.*

*4. Further it is humbly submitted that the petitioner son was convicted in third case was concerned in Virudhachalam Police Station Crime No.1032/2011, u/s 454, 394 r/w 397 IPC and convicted and sentenced to undergo S.I. for 7 years and fine Rs.1000/- i/d S.I. for one month u/s 454 IPC, S.I. for 7 years and fine Rs.1000/- i/d S.I. for one month u/s 394 r/w 397 IPC, all the sentences ordered to run concurrently (fine not paid) by learned Assistant Sessions Judge, Virudhachalam in S.C.No.198/2014, dated 01.11.2022. The above said prisoner not preferred any appeal. For concurrenting above said three cases.'*

8. There is a second case which is articulated in paragraph No.3 of the counter affidavit. In the second case, a convict prisoner has been sentenced qua under Section 392 IPC. There is no dispute that there is no set off qua first case. We have also carefully perused the reason and grounds on which the ordinary leave has been sought.



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9. Considering the facts and circumstances of the case on hand and the nature of the matter, we are of the view that this is not a fit case for interfering with the impugned order. Therefore, both the limbs of the prayer fail. Sequitur is, captioned Writ Petition is dismissed. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

20.02.2023

Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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To

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Viruthachalam, Cuddalore District.
6. The Public Prosecutor  
High Court, Madras.



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**M.SUNDAR, J.,**  
**and**  
**M.NIRMAL KUMAR, J.,**

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