



WP No.4185 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.02.2023

Coram

The Hon'ble Mr. Justice **M.SUNDAR**
and
The Hon'ble Mr. Justice **M.NIRMAL KUMAR**

W.P.No.4185 of 2023

Bhuvaneshvari

.. Petitioner

-VS-

The State rep. By its

- 1.The Secretary to the Government
of Tamil Nadu, Department of Home,
Fort St. George, Chennai – 9.
- 2.The Deputy Inspector General of Prison,
Coimbatore Range,
Coimbatore Central Prison,
Coimbatore – 641 018.
- 3.The Superintendent,
Salem Central Prison,
Salem – 636 007.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying to issue a Writ of Certiorarified Mandamus to call for the
records pertaining to the impugned order bearing Letter



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No.1359/thaku3/2023 dated 19.01.2023 passed by the third respondent and quash the same and consequently direct the respondents to grant ordinary leave for 40 days without escort to the convict Nagarajan, S/o.Mariappan, aged about 56 years, Convict No.8161, detained at Central Prison, Salem.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.R.Muniyapparaj
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. Captioned writ petition has been filed by the spouse of a convict prisoner i.e., a life convict (Convict No.8161 – Nagarajan @ Koolai Nagarajan, S/o.Mariappan) now lodged in the Central Prison, Salem.

3. The writ petitioner sent a representation dated 20.10.2022 seeking 40 days ordinary leave for convict prisoner, primarily on the ground that arrangements have to be made for the marriage of their



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daughter (We are not giving the name of the daughter with the intention of masking). Thereafter this was followed up with another representation dated 26.11.2022.

4. Acting on aforementioned representations, third respondent before us made an order in January 2023. The month and year have been set out in this order but the date is blank. This order bears Ref.No.1359/ThaKu/2023. However, this order has been signed by the third respondent on 19.01.2023. This order signed by the third respondent on 19.01.2023 shall henceforth be referred to as 'impugned order' for the sake of convenience and clarity.

5. At the outset, we find that the impugned order is a terse order. Be that as it may a careful perusal of the impugned order brings to light that the petitioner's aforementioned applications for leave for convict prisoner (petitioner's spouse) has been rejected primarily on two grounds and those two grounds are as follows:

(i) The reason or the ground on which leave was sought is incorrect /false according to the report of the jurisdictional Probation Officer;

(ii) The jurisdictional Inspector i.e., Inspector of Police, Mettur police station has opined that there would



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be threat to the life of the convict prisoner if leave is granted.

To be noted, no other reason mentioned has been much less articulated in the impugned order.

6. Dr.S.Manoharan, learned counsel for petitioner drew our attention to Rule 20 more particularly sub-rule (iv) of Rule 20 of 'Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter 'said Rules' for the sake of convenience and clarity), which reads as follows:

'20.Grounds for the grant of ordinary leave:

(i)

(ii).....

(iii).....

(iv) to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sisters, as the case may be, of the prisoner.'

Learned counsel adverting to aforementioned sub-rule (iv) of Rule 20 of said Rules submitted that making arrangements for the marriage of daughter is one of the grounds on which ordinary leave can be sought. To be noted, the impugned order proceeds on the basis of the



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jurisdictional Probation Officer's report (as alluded to supra) which says that the marriage has not been fixed. Learned counsel adverting to the first of the representations of the writ petitioner dated 20.10.2022 submits that the representation says that arrangement for the marriage has to be made and it does not say that marriage has been fixed. However, in the second representation which is dated 26.11.2022, there is a mention that marriage has been fixed. Be that as it may, as the rule provides for leave for making arrangements for marriage, it may not be necessary to delve more into this aspect of the matter as it is nobody's case that no arrangements need to be made for the marriage of the daughter. The Probation Officer has only said that the marriage has not been fixed. However, even this is based on the statement of writ petitioner and now, the writ petitioner who is the deponent of the writ affidavit submits that she did give a statement to the Probation Officer that marriage arrangements are being made. This being a writ petition, we do not want to embark upon the exercise of adjudicating upon this factual dispute in the legal drill on hand. Suffice to say that it is nobody's case that arrangements for marriage are not being made.



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7. This leaves us with only one other point viz., threat to the life of the convict. A careful perusal of the jurisprudence in this regard makes it clear that threat to a life convict prisoner is not his fault or in other words, it is attributable to somebody else's possible misconduct or possible misdeed and therefore, this may not become a ground against grant of leave.

8. The sequittur is, we find that both the points set out in the terse impugned order have now been adequately met neutralized, which in turn leads to the further sequittur that the impugned order has to perish.

9. Be that as it may, an elaborate counter affidavit has been filed and in the counter affidavit, two other points have been projected. First point is that on an earlier occasion, when the convict prisoner was on leave he was involved in a murder, case being Crime No.105 of 2011 on the file of Mettur police station. The second point projected in the counter affidavit is that the convict prisoner has been involved in twelve prison offences.

10. Before we proceed further, we remind ourselves of the



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celebrated and oft quoted judgment in **Mohinder Singh Gill Vs. Chief Election Commissioner, New Delhi** reported in **(1978) 1 SCC 405**.

The principle is that an impugned order cannot be improved upon by way of subsequent explanations by the officer making the order as to what he meant, what was in his mind or what he intended to do. In **Mohinder Singh Gill**, a portion of eloquent prose of **Bose,J.** in **Commissioner of Police, Bombay Vs. Gordhandas Bhanji** reported in **AIR 1952 SC 16** was reiterated in paragraph no.8. It was metaphorically alluded to and expressed that orders are not like old wine becoming better as they grow older. Paragraph no.8 in **Mohinder Singh Gill** case reads as follows:

'8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose,J. In Gordhandas Bhanji [Commr. Of Police, Bombay v Gordhandas Bhanji, 1951 SCC 1088 : AIR 1952 SC 16]:

"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are



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meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

Orders are not like old wine becoming better as they grow older.'

Therefore, it may not be really necessary to examine the aforementioned two points raised in the counter affidavit but considering the facts and circumstances of the case, we made an exception in this case as a one off matter and deal with the same also.

11. As regards the murder case on the file of Mettur police station, we are now informed at the Bar by learned State Additional Public Prosecutor on instructions that the same has ended in acquittal. This by itself drops the curtains on this aspect of the matter. In any event, learned counsel for petitioner submits that the occurrence was not when he was on leave but after he returned and surrendered in the jail. It may not be necessary to enter upon this factual controversy as the case has ended in acquittal.

12. As regards the second point on twelve prison offences, a careful perusal of counter affidavit before us, we find that they are minor offences and even according to the prosecution version, the



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convict prisoner has been let off with a warning. Therefore, both the points though not mentioned much less articulated in the impugned order do not hold water.

13. We also find from the counter affidavit of the State that there is a tabulation in paragraph 5 which gives the ordinary leave details granted to the convict prisoner. We find from the tabulation that earlier leaves granted by executive arm and leave pursuant to an order of this Court in H.C.P. No.2612 of 2019 have been granted to the convict prisoner (six occasions in all). To be noted, leave pursuant to the orders of this Court is for 16 days. On all earlier occasions, the convict prisoner has returned/surrendered on the leave period elapsing. The said tabulation reads as follows:

Sl.No.	Granted Leave details	Dates	Days
1	Emergency leave (with escort)	17.04.2010	01
2	Emergency leave (without escort)	26.05.2010 to 30.05.2010	03
3	Emergency leave (without escort)	28.06.2010 to 02.07.2010	06
4	Emergency leave (without escort)	01.01.2011 to 05.01.2011	03
5	Emergency leave (without escort)	14.01.2011 to 21.01.2011	03
6	High Court leave	13.12.2019 to 28.12.2019	16



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Sl.No.	Granted Leave details	Dates	Days
	HCP 2612 of 2019		
		Total	32 days

However, in this case, as threat perception has been projected in the impugned order, considering the fact that the lengthy leave sought is 40 days we deem it appropriate to grant leave with escort but the strength of the escort will be left to the discretion of the State.

14. Discussion and disposition reasoning thus far, makes it clear that the convict prisoner is entitled to leave and the impugned order has to perish. This takes us to the further question as to the number of days leave the convict prisoner would be entitled to. Before going into this aspect of the matter, we also notice that under Rule 21 of the said Rules captioned 'Grounds for the grant of ordinary leave', there is an adumbration of categories where the convict prisoner would not be eligible for ordinary leave and there is no dispute that the convict prisoner in the case on hand does not come under any one of the categories adumbrated in Rule 21. Therefore, this is a non-issue/non-starter. Be that as it may, reverting to the number of days, there are amendments to Rule 22 of said Rules and we find that there is a cap of 40 days vide Rule 22(2)(c). There is no dispute that the



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convict prisoner in the case on hand is entitled to 40 days leave as he has completed 19 years. Therefore, we pass the following order:

(i) The impugned order being No.1359/த.சூ.3/2023 dated 19.01.2023 made by the third respondent is set aside;

(ii) The convict prisoner (Convict No.8161 – Nagarajan @ Koolai Nagarajan, S/o.Mariappan), now lodged in Central Prison, Salem is granted 40 days ordinary leave with escort for arranging daughter's marriage under Rule 20 (iv) of the Tamil Nadu Suspension of Sentence Rules, 1982;

(iii) 40 days leave shall be from 01.03.2023 to 09.04.2023 (both dates inclusive);

(iv) On the 40 days elapsing, the convict prisoner shall surrender in the Central Prison, Salem and that would be by 17:00 hours on 09.04.2023.

15. Captioned writ petition is disposed of in aforesaid manner with the directives adumbrated supra. There shall be no order as to



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costs.

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(M.S., J.) (M.N.K., J.)
23.02.2023

Index:Yes
Neutral Citation : Yes
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Note: Issue copy of the order on 24.02.2023

To

- 1.The Secretary to the Government
of Tamil Nadu, Department of Home,
Fort St. George, Chennai – 9.
- 2.The Deputy Inspector General of Prison,
Coimbatore Range,
Coimbatore Central Prison,
Coimbatore – 641 018.
- 3.The Superintendent,
Salem Central Prison,
Salem – 636 007.
- 4.The Public Prosecutor,
High Court, Madras.



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

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