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WP.No.7062 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

CORAM

THE HON'BLE Mr.JUSTICE **M.SUNDAR**
and
THE HON'BLE Mr.JUSTICE **M.NIRMAL KUMAR**

WP.No.7062 of 2023

A.Rahamath Nisha

... Petitioner (Wife of detainee)

-Vs-

The State represented by its

1. The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George, Chennai-600 009.
2. The Deputy Inspector General of Prison,
Chennai Range, Chennai-600 008.
3. The Superintendent,
Puzhal-I, Central Prison,
Chennai-600 066.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the Respondents to grant ordinary leave for three months without escort from 07.03.2023 to the detainee, N.S.Abdul Hakkim S/o. Syed Mohammed aged about 45 years Convict No.4662, detained at Central prison, Puzhal, Chennai.



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For Petitioner : Mr.S.Manoharan
For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor

ORDER

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

Captioned writ petition has been filed with a prayer seeking mandamus qua respondents. The mandamus sought is by way of a direction to respondents to grant ordinary leave for three months (from 07.03.2023).

2. Dr.S.Manoharan, learned counsel on record for petitioner (to be noted, wife of convict prisoner is the petitioner before us) and Mr.R.Muniyapparaj, learned Additional Public Prosecutor on behalf of all the three respondents are before us.

3. With the consent of both sides, main writ petition has been taken up.

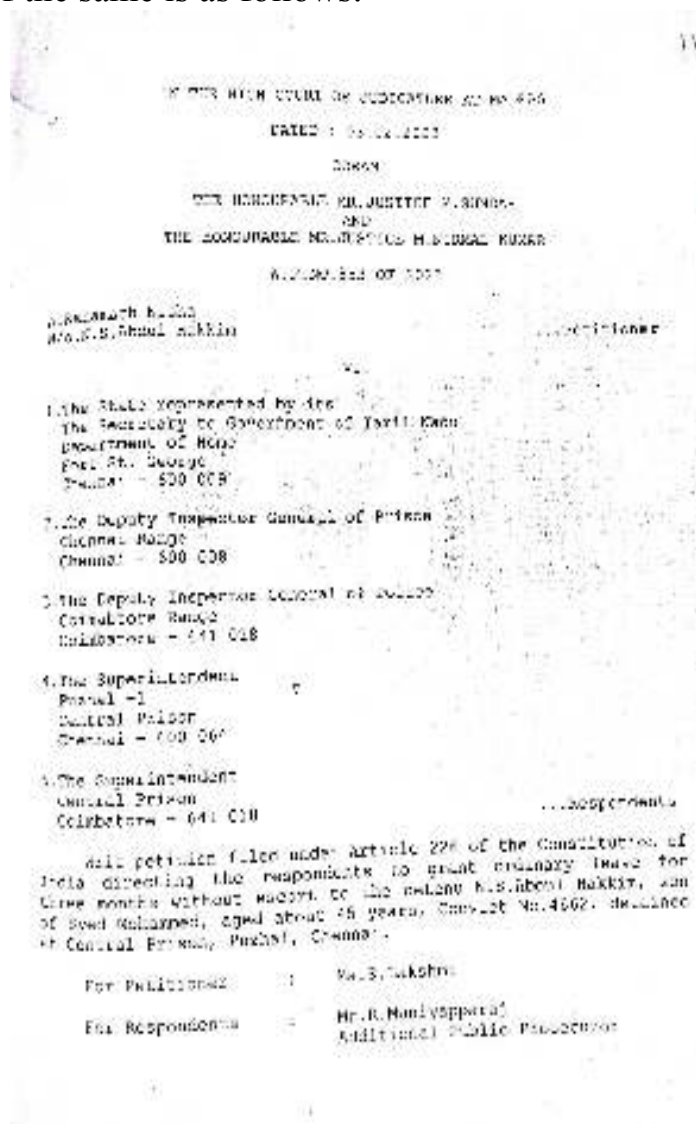
4. Leave has been sought primarily owing to acute ill-health of the convict prisoner. To be noted, in an by an order dated 03.02.2023 made in WP.No.853 of 2023, this Court had already granted 30 days leave and the



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convict prisoner is already on leave. It is further to be noted that these 30 days leave elapses today (07.03.2023).

5. We deem it appropriate to reproduce our aforementioned earlier order dated 03.02.2023 made in WP.No.853 of 2023. A scanned reproduction of the same is as follows:





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O R D E R

[Order of the Court was made by **MINISTER SOMASEKAR**.]

Read this in conjunction with and in continuation of earlier proceedings made in the previous listings on 25.01.2023 and 02.02.2023, which read as follows:

'Proceedings dated 25.01.2023

The nucleus of the captioned writ petition is leave for life convict Mr.N.S.Abdul Hakim, who is serving life sentence in Central Prison, Punal. The wife of the life convict has given a representation dated 04.01.2023 interalia highlighting the poor health of the convict prisoner. To be noted the convict prisoner has undergone a surgery interalia for Scattered Multinucleated Tumor Giant Cells in the Brain.

2.It is not necessary to dilate more on this as in response to the articulation of the above facts by Dr.S.Manoharan, learned counsel for the petitioner, Mr.R.Muniyapparaj, learned Additional Public Prosecutor submits that representation dated 04.01.2023 is under active consideration and a decision by the first respondent is in the anvil. Let the decision be taken before next listing.

3.Though obvious, it is made clear that it is open to the petitioner or any other kin/friend of the convict prisoner to move for emergency leave between now and the next listing. [if need arise]. If such emergency leave is sought for, the same shall be considered on its own merits and in accordance with law by all concerned.

4.List the captioned writ Petition on 30.01.2023.'

'Proceedings dated 02.02.2023

Read this in conjunction with and in continuation of earlier proceedings made in the listing on 25.01.2023.

2. Today, Ms.S.Lakshmi, learned counsel for writ petitioner and Mr.R.Muniyapparaj, learned State Additional Public Prosecutor for all the respondents are before us.

3.Adverting to earlier proceedings dated 25.01.2023, both sides submit that six days emergency leave was granted to the convict prisoner. As regards the leave application, learned State Additional Public Prosecutor submits that the process of taking a decision on the application is all but over and he will be able to report on the same tomorrow. Request for listing tomorrow acceded to.

List tomorrow i.e., 03.02.2023.'



2. The petitioner, wife of the Convict K.S. Abdul Jakkim, sent a representation to the Prison authorities seeking three months ordinary leave without escort for continuing his medical treatment. Earlier, the convict got a history of brain hyperactivity in the left frontal lobe and temporal lobe and is medically suffering with brain ailments.

3. The petitioner was informed that petitioner's husband recently became unconscious and he was taken to Stanley Hospital by prison authorities where he was advised for general check up. The doctors therein had referred the convict for MRI scan and found that there is a possibility of brain tumour Grade IV stage called Glioblastoma and advised for biopsy. Thereafter, the convict underwent biopsy on 28.12.2022.

4. In support of her contention, the petitioner has produced the medical records dated 12.12.2022 and 28.12.2022. Scanned reproduction of the reports are as follows:

PARANORMAL MEDICAL SERVICES CORPORATION LIMITED
DEPARTMENT OF RADIATION PHYSICS
GOVERNMENT STANLEY MEDICAL COLLEGE & HOSPITAL, CHENNAI-600 001

DATE OF EXAMINATION	12.12.2022	EXAMINER	DR. S. S. SIVAKUMAR
REF. NO.	12.12.2022	REF. FROM	STANLEY HOSPITAL

PATIENT'S NAME: K.S. ABDUL JAKKIM
AGE: 45
SEX: Male
DATE OF BIRTH: 12.12.2022

CLINICAL HISTORY:
The patient is a male, 45 years of age, who is a convict in Stanley Hospital. He is suffering from brain hyperactivity in the left frontal lobe and temporal lobe. He is medically suffering with brain ailments. He is unconscious and has been taken to Stanley Hospital for general check up. The doctors therein had referred him for MRI scan and found that there is a possibility of brain tumour Grade IV stage called Glioblastoma and advised for biopsy. He underwent biopsy on 28.12.2022.

EXAMINATION:
The patient was examined on 12.12.2022. The examination was performed by Dr. S. S. Sivakumar. The patient was found to be unconscious and had no response to stimuli. The patient's vital signs were stable. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal.

RESULTS:
The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal.

CONCLUSION:
The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal. The patient's brain activity was found to be abnormal.

RECOMMENDATIONS:
The patient should be kept under close observation. The patient should be kept under close observation. The patient should be kept under close observation. The patient should be kept under close observation. The patient should be kept under close observation.

Signature of Examiner: Dr. S. S. Sivakumar
Signature of Referring Doctor: Dr. S. S. Sivakumar



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TAMILNADU MEDICAL SERVICES CORPORATION LIMITED
DEPARTMENT OF RADIO DIAGNOSIS
GOVERNMENT STANLEY MEDICAL COLLEGE & HOSPITAL, CHENNAI-600001.

NAME: HAKRIM	AGE/SEX: 45M	DATE: 28.12.2022
REF: SMC	PROF:	CT NO: 35342
CONTACT NO:	WARD:	

Clinical history: LEFT RTP CRANIOTOMY WITH EXCISION OF SOL. History

MULTISLICE - CT - BRAIN

Protocol: Axial plain CT scan of the brain done in 6 mm thickness with 3 mm reconstructions.

Observation:

Post operative craniotomy defect noted in left frontoparietal and temporal bone with brain inside.

Hypodensity with surrounding rimlike hemorrhage and air pockets noted in left frontal lobe surrounding adema causing mass effect over adjacent brain parenchyma.

Midline shift of 7mm to right.

Sulcal and gyral pattern appears normal.

Basal ganglia, internal capsule and thalamus appear normal.

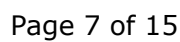
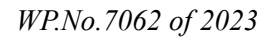
Brain stem and cerebellum appear normal.

Sellar, suprasellar and parasellar regions appear normal.

Visualized cervical bones do not reveal any focal lytic or sclerotic foci.

Impression:

She had also produced the photograph of her husband while taking treatment. Due to the extraordinary situation, the prison authorities granted leave from 29.01.2023 to 05.02.2023. In the meanwhile, the leave petition of the petitioner can be decided. On enquiry, the petitioner was informed that the prison authorities forwarded their recommendation to the first respondent and were awaiting orders. Scanned reproduction of the order is as follows:





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3. Mr. S. Maniapparsai, learned Additional Public Prosecutor submitted that considering the convict's previous health condition, he was granted leave for six days on 25.02.2023 and on 05.02.2023. In the meanwhile, the petitioner's representation with medical records was considered. Considering the health condition of petitioner's husband, the prison authorities forwarded a positive report, recommending the petitioner's husband to take further treatment considering the petitioner's and his health condition. The file is under consideration and to receive orders.

4. Considering the submissions, when the case was taken up on 11.03.2023, learned Additional Public Prosecutor sought for a small accommodation, since orders are yet to be passed by the court and thereafter, again when the case was taken up on 01.04.2023, learned Additional Public Prosecutor submitted the orders yet to be issued. Further submitted that the file is in circulation and he is unable to confirm about the status of the file.

5. From the medical records of the Stanley Hospital dated 12.12.2022 and 29.12.2022 and the photograph produced by the petitioner, it is seen that petitioner's husband is suffering from various illnesses and his health condition is deteriorating. He needs immediate medical care.

6. The petitioner sent representation as early as on 04.01.2023 and when the case was taken up earlier on 26.01.2023, it was assured that appropriate orders would be passed soon. Thereafter, when it was taken up on 02.02.2023, the status remains the same. This will be clear from the earlier proceedings extracted and reproduced supra.

7. Today same condition prevails. Considering the urgency and emergent situation, though 90 days leave has been sought, this Court is inclined to initially grant leave for a period of 30 days and thereafter, depending on the medical advice and doctor's recommendation, the leave can be extended. It is noted, we are informed that emergency leave granted by the authorities elapsed on 05.02.2023. 30 days leave which we are granting now is for a period from 06.02.2023 to 06.03.2023.

8. The petitioner had already been granted leave with escort. The only grievance of the petitioner is that family members are unable to freely interact and have access with the convict. It is made clear that strength of the escort would be decided by the authorities depending upon the prevailing requirement. The only relief to be given is that immediate family members shall be permitted to meet the convict without any restriction. Considering the extraordinary situation, this



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... grants exemption under extraordinary circumstances in the light of Rule 20(vii) read with Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982.

11. It is open to seek extension of leave depending on the medical requirement.

12. Learned Additional Public Prosecutor submits that the petitioner's husband is a convict, who was convicted by judgment dated 01.08.2007 in S.C.No.2 of 2000 by the Learned Additional Sessions Judge II, Coimbatore against which the petitioner filed an appeal, the appeal was dismissed by this Court and thereafter, the appeal preferred before the Apex Court in S.L.P No.1205 of 2011 is pending.

13. This Court in a similar situation by order dated 23.08.2022 in W.P.No.11939 of 2022 granted leave in a case where appeal was pending before the Apex Court and despite the objection of the Public Prosecutor that as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, the detenu is entitled to such leave. This Court had further held that the Government is empowered as per Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 and the powers of the Government cannot be curtailed and exemption can be granted under extraordinary circumstances. Relevant portion of the order is contained in paragraph 3 and 6 and the same read as follows:

"3. The Respondents, by filing a counter affidavit, opposed the grant of leave to the detenu on the ground that the detenu has not completed requisite number of years of imprisonment to avail the benefit of leave sought for by him and that the matter is pending before the Hon'ble Supreme Court and therefore he is not entitled for the leave sought for by him, as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 (in short 'the TNSS Rules, 1982').

6. A Medical report of the detenu from the Kauvery Hospital, Trichy dated 09.08.2022 has been produced before this Court and a perusal of the same would go to show that the convict is suffering from Varicose vein and he has to undergo surgery. Though the facts narrated above are not in dispute, Rule 20 (vii) of the Rules will have to be looked into in a harmonious way, which specifically contemplates a provision "any other extraordinary reasons;" to consider the grant of leave, if the Court finds justification or extraordinary reason. That apart in terms of Rule 40 of the said Rules, Government is also empowered to consider and grant exemption under extraordinary circumstances and



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the powers cannot be curtailed in the light of Rule 23 (vii) r/w Rule 40."

14. Since the petitioner husband N.S.Abdul Fakhir, son of Ayid Mahammed, Convict No. 4862 is granted 30 days leave for medical treatment from 05.02.2023 to 05.03.2023 with the same conditions imposed by the Superintendent of Central Prison - I, Puzhal, Chennai vide order dated 29.01.2023.

15. On expiry of leave, the convict prisoner shall surrender before the Central Prison, Puzhal.

With the above observation, this writ petition stands disposed of. No costs. List this matter on 08.03.2023 for reporting compliance.

sd/-
Assistant Registrar (CS-III)

// True Copy //

sd/-
Sub Assistant Registrar (CS-III)

For

To

1.The Secretary to Government of Tamil Nadu
Department of Home
P.O. St. George
Chennai - 600 009

2.The Deputy Inspector General of Prisons
Chennai Range
Chennai - 600 008

3.The Deputy Inspector General of Police
Coimbatore Range
Coimbatore - 641 010

4.The Superintendent of Central Prison,
Puzhal - I
Central Prison
Chennai - 600 066

5.The Superintendent
Central Prison
Coimbatore - 641 018

6.The Public Prosecutor
High Court, Madras.



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6. Aforementioned order is telltale qua the crux and gravamen of the issue. As regards the trajectory the matter has taken post our aforementioned earlier order, we are informed that the convict prisoner who is on leave is taking treatment and is *inter alia* under the management of a Radiation Oncologist in a hospital at Coimbatore.

7. Reverting to the captioned matter, Dr.S.Manoharan, learned counsel took us through medical reports. Two of the reports dated 21.02.2023 and 27.02.2023 are of relevance. A careful perusal of reports brings to light that a Craniotomy surgery of the tumor was done in Stanley Medical College earlier and Histopathology report shows that it is a case of Gliosarcoma Grade IV. We also notice that it is clear that prognosis of tumor is poor and average survival is between 1 and 1 ½ years.

8. As the earlier surgery (Craniotomy surgery) was done in a Government Hospital namely Stanley Medical College/Hospital and as there is no disputation or contestation regarding medical reports before us, we are of the view that the convict prisoner is entitled to further leave.



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9. As regards leave, the same is governed by 'Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity]. We are conscious of the fact that vide proviso to Rule 22(2)(c), there is a cap of 40 days in one spell. However, Rule 40 of said Rules makes it clear that Government i.e., Executive arm of the State has power to exempt any person from all or any of the provisions of said Rules. Therefore, it is clear that there is no impediment in this Court exempting anyone from said Rules. The result is, applying Rule 40, we find that this is a fit case for this Court to exempt the convict prisoner in the case on hand from the rigor of proviso to Rule 22(2)(c) of said Rules and grant three months leave as sought for.

10. This takes us to the question of escort. Learned counsel for petitioner submits that it would be desirable to extend leave without escort. The reason which learned counsel for petitioner projected before us is, in the course of past 30 days, when the convict prisoner wanted to go to hospital or meet his doctor, there was delay as the escort party said it has to take permission from their higher/superior officers. Taking into account the medical condition and more particularly the prognosis of tumor which has



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been alluded to supra, we make it clear that this is a fit case to give a directive that the escort party shall ensure that there is no such delay and that the convict prisoner is able to continue his treatment without being impeded. Treatment has to be seamless. We are also informed that this is a case where the convict prisoner is not paying for the escort party and the State is absorbing the costs. In other words, we make it clear that leave will be continued with escort subject only to this directive which really tantamounts to stating the obvious or in other words, the directive is only a matter of stating the obvious.

11. Ergo, the sequitur is, the petitioner's husband Mr.N.S.Abdul Hakkim, son of Syed Mohammed, Convict No.4662 who was lodged in Central Prison, Puzhal is granted three months leave for medical treatment [from 07.03.2023 to 07.06.2023] with the same conditions imposed by Superintendent of Central Prison-I, Chennai vide order dated 29.01.2023. As regards escort party, we have already delineated that escort party shall not impede the medical treatment of the convict prisoner and that his medical treatment shall be seamless. On expiry of leave, the convict



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prisoner shall surrender before the Central Prison, Puzhal i.e., on 07.06.2023 by 5.00 p.m.

12. Captioned writ petition disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S,J.) (M.N.K.,J.)
07.03.2023

Index: Yes/No

Neutral Citation : Yes/No

kmi

P.S.: Upload forthwith

To

1. The Secretary to Government of Tamil Nadu,
Department of Home,
Fort St. George, Chennai-600 009.
2. The Deputy Inspector General of Prison,
Chennai Range, Chennai-600 008.
3. The Superintendent,
Puzhal-I, Central Prison,
Chennai-600 066.



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

kmi

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07.03.2023