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W.P.No.12930 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P.No.12930 of 2023

and

W.M.P.No.12712 of 2023

Sarvath Jahan
W/o.Saleem Basha

.. Petitioner

Vs.

1. The Director General of Prisons
Prison Department
Gandhi Irwin Road
Egmore, Chennai-600 008.

2. The Superintendent of Prison
Central Prison
Vellore.

3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of Certiorarified Mandamus to call for the
records pertaining to the order dated 18.04.2023 made in

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Mu.Mu.No.45378/CN2/2022 on the file of the Director General of Prisons, Prison Department, Gandhi Irwin Road, Egmore, Chennai-600 008, the 1st respondent herein and quash the same and direct the 1st respondent to keep the petitioner's son at Central Prison, Puzhal, Chennai till the completion of his sentence.

For Petitioner	:	Mr.R.Rajarathinam Senior counsel for Mr.R.Sidharth
For Respondents	:	Mr.R.Muniyapparaj Additional Public Prosecutor assisted by Mr.M.Sylvester John, Advocate

ORDER

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

This order will now dispose of the captioned writ petition and captioned 'Writ Miscellaneous Petition' [WMP].

2. Captioned writ petition has been filed by mother of convict prisoner Mr.S.Sathiq Basha, son of Mr.Saleem Basha, convict prisoner No.3315, now lodged in Central Prison, Puzhal-I, Chennai-600 001. Central theme of the captioned writ petition is, convict prisoner sought for



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transfer from Vellore Central Prison to Puzhal Central Prison-I, the same was negatived in and by an order dated 29.03.2022 made by the second respondent, the same came to be challenged in this Court by way of W.P.No.32676 of 2022 and Hon'ble predecessor Bench in and by order dated 20.12.2022 *inter alia* while sustaining the 29.03.2022 order directed the first respondent to consider the request of the convict prisoner in the light of Rule 568 of 'Tamil Nadu Prison Rules 1983' [hereinafter 'said Rules' for the sake of convenience and clarity], this exercise was carried out and answered in favour of convict prisoner i.e., convict prisoner was transferred from Vellore Central Prison to Central Prison, Puzhal, Chennai as sought for, for a period of three months. We are informed that this three months period is operating now but will elapse on 05.05.2023. Be that as it may, under such circumstances, another representation dated 06.03.2023 was sent by the petitioner with a similar plea and the same was rejected in and by an order dated 18.04.2023 bearing reference Mu.Mu.No.45378/CN2/2022 on the file of the first respondent [hereinafter 'impugned order' for the sake of convenience and clarity] and assailing the impugned order captioned writ petition has been filed.



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3.Mr.R.Rajarathinam, learned Senior counsel instructed by

Mr.R.Sidharth, learned counsel on record for the petitioner is before us.

Learned Senior counsel, advertng to impugned order submits that there is a report from jurisdictional Probation Officer dated 27.03.2023 bearing reference Pa.Vi.No.84/2023. Aforementioned report is in favour of transfer as sought for by the convict prisoner but the same has not been considered by the first respondent while making the impugned order.

4. Issue notice.

5. Mr.R.Muniyapparaj, learned State Additional Public Prosecutor, assisted by Mr.M.Sylvester John, learned counsel accepts notice for all the three respondents.

6. As the matter turns on a very narrow compass, we deem it appropriate to take up the main writ petition for final disposal with the consent of both sides and this is more so, as we are propose to pass an order without expressing any opinion on the merits of the impugned order.

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7. We carefully perused the impugned order as well as report of the jurisdictional probation officer dated 27.03.2023. We find that the report (dated 27.03.2023) of the jurisdictional probation officer has not been adverted to in the impugned order. Law is well settled that the impugned order cannot be improved or improvised by filing a counter affidavit. Therefore, the impugned order has to stand or fall on its own merits. As the impugned order has not adverted to the report referred to supra, we are of the view that this is a fit case to set aside the impugned order on that short point and send the matter back to the first respondent to redo the exercise albeit taking into account the aforementioned report. We have also noticed that Hon'ble predecessor Bench has suggested temporary transfer for three months *inter alia* by way of legal drill under Rule 568 of said Rules about which there is allusion supra.

8. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

(a) Impugned order dated 18.04.2023 bearing reference Mu.Mu.No.45378/CN2/2022 made by first respondent is set



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aside;

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(b) Impugned order is set aside solely on the ground that report of jurisdictional probation officer dated 27.03.2023 has not been taken into account while making the impugned order;

(c) As a corollary to the previous limb, we make it clear that we are not expressing any opinion on the merits qua impugned order, all questions are left open for *de-novo* exercise and that setting aside the same is only for redoing the exercise by taking into account the report of the jurisdictional probation officer dated 27.03.2023;

(d) This Bench directs the first respondent to redo the entire exercise by taking into account the aforementioned report of the jurisdictional probation officer dated 27.03.2023 and make an order afresh qua request of convict prisoner for permanent transfer from Vellore Central Prison to Central



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Prison, Puzhal, Chennai;

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(e) As the convict prisoner is now lodged in Central Prison, Puzhal pursuant to earlier directive of Hon'ble predecessor Bench, we direct the convict prisoner to continue to remain incarcerated in Central Prison, Puzhal, Chennai till the aforementioned *de-novo* exercise is completed and for a fortnight thereafter;

(f) Aforementioned *de-novo* exercise shall be completed as expeditiously as the business of the first respondent would permit but in any event on or before 15.06.2023. This means that the convict prisoner will continue to remain lodged in Central Prison, Puzhal, Chennai till 29.06.2023 and this is to facilitate the convict prisoner to assail the order to be made *de-novo* if the same is not to the satisfaction or not in favour of the convict prisoner;



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9. Captioned Writ Petition is disposed of in the aforesaid manner with the aforesaid directives. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(M.S.,J.)

(M.N.K.,J.)

27.04.2023

Index : Yes

Speaking

Neutral Citation : Yes

mk

To

1. The Director General of Prisons
Prison Department
Gandhi Irwin Road
Egmore, Chennai-600 008.
2. The Superintendent of Prison
Central Prison
Vellore.
3. The Superintendent of Prison
Central Prison, Puzhal
Chennai.
4. The Public Prosecutor
High Court, Madras.

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

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