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W.P.No.17211 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN

THILAKAVADI

W.P.No.17211 of 2023

Sangeetha
W/o.Yesudoss

.. Petitioner

Vs.

The State represented by its

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

2. The Deputy Inspector of General or Prison
Coimbatore Zone, Central Prison
Coimbatore.

3. The Superintendent
Coimbatore Central Prison
Coimbatore.

.. 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

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records pertaining to the impugned order bearing No.9798/Tha.Ku.3/2023 dated 18.05.2023 passed by the 3rd respondent and quash the same and consequently direct the respondents to grant ordinary leave for 28 days without escort to the detenu, Yesudoss, S/o.Paulraj, aged about 30 years bearing Convict No.19233 at Central Prison, Coimbatore.

For Petitioner : Dr.S.Manoharan
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.,]

Captioned writ petition has been filed with a prayer assailing an 'order dated 18.05.2023 bearing reference No.9798/Tha.Ku.3/2023 made by third respondent' [hereinafter 'impugned order' for the sake of convenience and clarity] by which 09.05.2023 application made by the petitioner seeking 28 days ordinary leave for her spouse Mr.Yesudoss, son of Paulraj, aged 30 years, who is a convict prisoner (Convict Prisoner No.19233) now lodged in Central Prison, Coimbatore has been negated.



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2. Dr.S.Manoharan, learned counsel on record for petitioner advertng to impugned order submitted that petitioner's application for ordinary leave has been negatived on one solitary ground and that one solitary ground is Rule 21(b) of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity]. Learned counsel submitted that there is a provision to exempt a convict prisoner from all or any of the provisions of said Rules vide Rule 40 of said Rules and this is a fit case in which exemption route should have been taken owing to blemishless prison conduct of convict prisoner. To be noted, Rules 21(b) and 40 of said Rules read as follows:

Rule 21(b)

'21. Non-eligibility for ordinary leave- The following categories of prisoners shall not be eligible for ordinary leave : -

(a)

(b) Prisoners sentenced under Sections 392 to 402 of Indian Penal Code (Central Act 45 of 1860);'

Rule 40

'40. Power to exempt- The Government may exempt any person from all or any of the provisions of these Rules.'

3. Issue notice.



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4. Mr.R.Muniyapparaj, learned Additional Public Prosecutor (assisted by learned counsel Mr.Sylvester John) accepted notice for all the three respondents.

5. Owing to the narrow compass of the captioned matter, main writ petition was taken up with consent of both sides.

6. Learned Prosecutor, on instructions submitted that only impediment in acceding to leave application qua convict prisoner is aforementioned Rule 21(b) of said Rules. This means that absent Rule 21(b) of said Rules, the request for leave qua convict prisoner would have been acceded to.

7. Before we proceed further, we find that said Rules have been made by Executive arm of State by exercise of powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity]. A careful perusal of Section 432(5) of Cr.PC brings to light that it talks about appropriate Government giving 'Directions'. To be noted, such directions can be given either by way of general rules or by way of special orders. It is also to be noted that such directions are qua suspension of sentences and conditions related thereto. Therefore two pure



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and pristine legal questions (a) whether Section 432(5) of Cr.PC can be construed as Rule making power i.e., Rule making power conferring / delegating subordinate legislation powers on the Government and (b) whether placing a bar as regards Sections 392 to 402 convictions alone (Sections 392 to 402 broadly stated with Robbery and pertain to Dacoity) and it is not clear as to why Robbery and Dacoity alone have been placed in a different footing for creating a bar as regards grant of ordinary leave. *Prima facie*, it appears to be law and order issues that prevailed more than four decades ago but the scenario has changed drastically which means this provision may have become anachronistic. However considering the trajectory the matter has taken, we leave these two questions open for being considered in another matter where such an issue arises, for abundant specificity, we make it clear that we are not expressing any view or opinion on these two pure and pristine questions of law in this order but we shall be embarking upon a legal drill in this regard in another matter in the days to come.



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8. Reverting to the case on hand, from the narrative thus far it is clear that absent Rule 21(b) bar, convict prisoner would have been granted ordinary leave that was sought for. This Bench is also informed, on instructions that conduct of convict prisoner in the prison has been blemishless and it has been good. This Bench also notices that as of 08.06.2023, convict prisoner has served sentence for 7 years 5 months and 8 days, having gone on leave for only one day to attend his father's funeral. As regards legal aspect of the matter, Rule 40 of said Rules vests the Government with powers to exempt any person from any or all of the provisions of said Rules, when the executive arm itself has been vested powers to exempt any person from all or any of the provisions of said Rules, it is more than obvious that there can be no bar qua grant of leave by this Court which is exercising constitutional powers i.e., when it comes to exempting a person from all or any of the provisions of said Rules. In this view of the matter and in the light of narrative thus far, we deem it appropriate to exempt the convict prisoner from Rule 21(b) of said Rules in the case on hand but we hasten to add that this will not serve as a across the Board precedent and put in a caveat that cases of this nature have to be dealt



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with on case to case basis depending on factual matrix of each case.

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9. In the light of the narrative thus far, convict prisoner i.e., Mr.Yesudoss, son of Paulraj, aged about 30 years, (Convict Prisoner No.19233) now lodged in Central Prison, Coimbatore is granted 15 days ordinary leave with escort. We also make it clear that we have said with escort as this is the first time the convict prisoner is being granted leave and therefore, next time if a similar occasion arises whether the convict prisoner will go on leave with or without escort will depend on the conduct of convict prisoner in the ensuing leave. 15 days leave shall be from 13.06.2023 to 27.06.2023. On 27.06.2023, convict prisoner shall surrender to Prison authorities before dusk i.e., by half past five (5.30 p.m.).

Captioned Writ Petition disposed of in the aforesaid manner with the aforementioned observations and directives. There shall be no order as to costs.

(M.S.,J.)

(K.G.T.,J.)

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Index : Yes / No

Speaking / Non-speaking

Neutral Citation : Yes / No

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and
K.GOVINDARAJAN THILAKAVADI, J.,

mk

To

1. The Secretary to Government of Tamil Nadu
Home Department
Fort St.George
Chennai-600 009.
2. The Deputy Inspector of General or Prison
Coimbatore Zone, Central Prison
Coimbatore.
3. The Superintendent
Coimbatore Central Prison
Coimbatore.
4. The Public Prosecutor
High Court, Madras.

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