



WEB COPY



W.P.No.18903 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL

W.P.No.18903 of 2023

Maheswari
W/o. Anbarasan

.. Petitioner
Wife of the detenue

Vs.

The State represented by its

1. The Secretary to Government of Tamilnadu
Department of Home
Fort St. George
Chennai – 600 009

2. The Deputy Inspector General of Prison
Vellore Range
Vellore – 632 002

3. The Superintendent
Cuddalore Central Prison
Cuddalore – 607 004

... Respondents



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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 impugned order bearing No.5854/Tha.Ku.2/2023 dated 24.04.2023 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 detenu Anbarasan, son of Raman, aged about 52 years, Convict No.15133 confined at Central Prison, Cuddalore.

For Petitioner : Dr.S.Manoharan

For Respondents : Mr.E.Raj Thilak
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. Factual matrix in a nutshell is that one 'Anbarasan, son of Raman, aged about 52 years is a lifer' [hereinafter 'convict prisoner' for the sake of convenience and clarity]; that convict prisoner was convicted and handed down *inter alia* life sentence in and by judgment dated 20.10.2004 vide S.C.No.34 of 1999 on the file of I Additional District and Sessions Judge,



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Salem for an alleged offence under Section 302 IPC; that convict prisoner remains incarcerated for over 22 years now; that convict prisoner's wife (writ petitioner before this Court in the captioned matter) has sent a representation dated 18.04.2023 seeking 40 days ordinary leave without escort on the grounds that her thatched dwelling house has been battered in rain, it needs to be repaired and (more importantly) that the convict prisoner is ill requiring physiotherapy and possible surgery (this 18.04.2023 representation sent by the convict prisoner's wife i.e., writ petitioner before us shall hereinafter be referred to as 'said representation' for the sake of convenience and clarity); that said representation was rejected in and by an 'order dated 24.04.2023 bearing reference No.5854/Tha.Ku.2/2023 made by the third respondent' [hereinafter 'impugned order' for the sake of convenience]; that assailing the impugned order and seeking leave for convict prisoner captioned writ petition has been filed in this Court on 21.06.2023.

3. Dr.S.Manoharan, learned counsel for petitioner adverting to the impugned order submits that only two provisions of 'Tamil Nadu



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Suspension of Sentence Rules, 1982' [hereinafter referred to as 'said Rules' for the sake of convenience and clarity] appear to have been cited as impediments qua grant of leave and those two rules are Rules 21(c) and 35, which read as follows:

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

(a)

(b)

(c) Prisoners where presence is considered dangerous or prejudicial to public peace and tranquility.

'35. Pending cases:- No prisoner on whom a case is pending trial shall be granted leave.'

4. Learned counsel points out that convict prisoner has gone on leave multiple times earlier and has surrendered after availing the leave without any untoward incident.

5. Issue notice.

6. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all three respondents.

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7. Considering the narrow scope of the captioned writ petition, main writ petition is taken up though the captioned matter is in the Admission Board.

8. Learned Prosecutor on instructions submits that a prison offence vide Crime No.694 of 2016 is now pending on the file of Judicial Magistrate II, Cuddalore. Learned counsel submits that conviction for which the convict prisoner is serving sentence includes conviction under Explosive Substances Act and therefore Section 21(c) is attracted.

9. We carefully considered the submissions made on both sides.

10. As regards pendency of the case i.e., alleged criminal offence, we find that the alleged occurrence is on 24.10.2016 and it is for alleged offences under Section 298 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] read with Section 42 of Prisons Act. This Bench finds that maximum punishment is one year and that the matter has been pending for nearly seven years now. Therefore,



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we find that as regards Rule 35, this is a fit case to take the exemption route by resorting to Rule 40 of said Rules. We make it clear that Rule 40 applies only to Executive Arm but it is referred to only as a buttressing factor for us to exempt as this Court is exercising constitutional powers.

11. As regards Rule 21(c), the impugned order talks about Rule 21(C). This is obviously incorrect. It should read as Rule 21(c). A convict prisoner having been convicted under Explosive Substances Act alone may not straightaway fall under Rule 21(c) as this Rule talks about prisoners whose presence is considered dangerous or prejudicial to public order and tranquility. To be noted, this position applies to the case on hand as we find that the convict prisoner has been granted leave as many as 44 times in the past (totally 192 days) and on all occasions he has availed leave and surrendered after leave period elapsed without any untoward incident. Learned Prosecutor has placed before us a tabulation in this regard and a scanned reproduction of the same is as follows:



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DETAILS OF THE LEAVE AVAILED BY THE LIFE CONVICT PRISONER
NO.15133 ANBARASAN S/O.RAMAN.

Sl. No.	FROM	TO	DURATION	REASON	ESCORT/FREE	EMERGENCY/ORDINARY/COURT LEAVE
01	18.07.2010	18.07.2010	01	To see his ailing wife	With Escort	Emergency Leave
02	02.09.2010	06.09.2010	05	To see his ailing wife	Without Police Escort	Emergency Leave
03	16.10.2010	20.10.2010	05	To see his ailing wife	Without Police Escort	Emergency Leave
04	15.01.2010	22.01.2010	08	To see his ailing wife	Without Police Escort	Emergency Leave
05	24.05.2010	09.06.2010	08	To see his ailing wife	Without Police Escort	Emergency Leave
06	04.11.2010	06.11.2010	03	To see his ailing wife	Without Police Escort	Emergency Leave
07	23.01.2011	27.01.2011	05	To see his ailing wife	Without Police Escort	Emergency Leave
08	27.05.2011	31.05.2011	05	To see his ailing wife	Without Police Escort	Emergency Leave
09	23.09.2011	27.09.2011	05	To see his ailing wife	Without Police Escort	Emergency Leave
10	20.01.2012	27.01.2012	08	To see his ailing wife	Without Police Escort	Emergency Leave
11	20.05.2012	25.05.2012	06	To see his ailing wife	Without Police Escort	Emergency Leave
12	13.11.2012	14.11.2012	02	To see his ailing wife	Without Police Escort	Emergency Leave
13	31.01.2013	07.02.2013	06	To see his ailing wife	Without Police Escort	Emergency Leave
14	31.05.2013	04.06.2013	04	To see his ailing wife	Without Police Escort	Emergency Leave
15	31.12.2013	04.01.2014	05	To see his ailing wife	Without Police Escort	Emergency Leave
16	13.01.2014	20.01.2014	08	To see his ailing wife	Without Police Escort	Emergency Leave
17	22.05.2014	25.05.2014	04	To see his ailing wife	Without Police Escort	Emergency Leave
18	25.09.2014	01.10.2014	07	To see his ailing wife	Without Police Escort	Emergency Leave
19	21.10.2014	25.10.2014	05	To see his ailing wife	Without Police Escort	Emergency Leave
20	22.01.2015	29.01.2015	08	To see his ailing wife	Without Police Escort	Emergency Leave
21	14.05.2015	18.05.2015	05	To see his ailing wife	Without Police Escort	Emergency Leave
22	15.09.2015	19.09.2015	05	To see his ailing wife	Without Police Escort	Emergency Leave
23	09.11.2015	13.11.2015	05	To see his ailing wife	Without Police Escort	Emergency Leave
24	22.01.2016	28.01.2016	07	To see his ailing wife	Without Police Escort	Emergency Leave
25	20.05.2016	24.05.2016	05	To see his ailing wife	Without Police Escort	Emergency Leave



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26	20.08.2016	24.08.2016	03	To see his ailing wife	Without Police Escort	Emergency Leave
27	24.03.2017	31.03.2017	06	To see his ailing wife	Without Police Escort	Emergency Leave
28	19.01.2018	26.01.2018	06	To see his ailing wife	Without Police Escort	Emergency Leave
29	14.05.2018	18.05.2018	03	To see his ailing wife	Without Police Escort	Emergency Leave
30	10.08.2018	14.08.2018	03	To see his ailing wife	Without Police Escort	Emergency Leave
31	06.12.2018	10.12.2018	03	To see his ailing wife	Without Police Escort	Emergency Leave
32	04.02.2019	11.02.2019	06	To see his ailing wife	Without Police Escort	Emergency Leave
33	15.05.2019	20.05.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
34	25.07.2019	29.07.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
35	26.10.2019	30.10.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
36	06.01.2020	20.01.2020	15	Hon'ble High Court of Madras in HCP No:2513/2019 dated 03.01.2020	Without Police Escort	Court Leave
37	19.09.2020	26.09.2020	06	To see his ailing wife	Without Police Escort	Emergency Leave
38	20.11.2020	04.12.2020	15	Hon'ble High Court of Madras HCP No. 2085/2020, dated: 19.11.2020	Without Police Escort	Court Leave
39	20.01.2021	27.01.2021	06	To see his ailing wife	Without Police Escort	Emergency Leave
40	20.07.2021	24.07.2021	03	To see his ailing wife	Without Police Escort	Emergency Leave
41	02.11.2021	06.11.2021	03	To see his ailing wife	Without Police Escort	Emergency Leave
42	23.02.2022	02.03.2022	06	To see his ailing wife	Without Police Escort	Emergency Leave
43	05.07.2022	09.07.2022	03	To see his ailing wife	Without Police Escort	Emergency Leave
44	22.10.2022	26.10.2022	03	To see his ailing wife	Without Police Escort	Emergency Leave
TOTAL			192			

Superintendent of Prisons,
Central Prison, Cuddalore.

26/11/2023

16/6/23

26/6/23



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12. In the aforesaid view of the matter, we find that this is again a fit case to exempt the convict prisoner from Rule 21(c) of said Rules. To be noted, this exemption is on a demurrer as we have taken this view that on facts and circumstances of the case on hand Rule 21(c) is inapplicable. The convict prisoner may not fall under Rule 21(c) provision merely he was convicted for an offence *inter alia* under Explosive Substances Act. As both points that have been put against the convict prisoner and both points on which the rejection of leave application is predicated pales into insignificance, we deem it appropriate to set aside the impugned order and grant leave. The following order is made:

i) The convict prisoner is granted 40 days ordinary leave without escort (40 days from 01.07.2023 to 09.08.2023);

ii) The convict prisoner shall surrender before the third respondent i.e., The Superintendent, Cuddalore Central Prison, Cuddalore by dusk on 09.08.2023 i.e., by 05.30 p.m;

(iii) The convict prisoner shall sign before the Judicial Magistrate i.e., Judicial Magistrate, Mettupalayam on every Monday and Friday at 10.30 a.m;



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iv) If the convict prisoner on medical advice has to take treatment as an inpatient in a hospital, he is entitled to do so in a hospital within Coimbatore District;

v) If the convict prisoner is taking treatment as an inpatient, it is open to the convict prisoner to file a petition under Section 317 Cr.P.C before the jurisdictional Magistrate and the jurisdictional Magistrate shall consider the same on its own merits and in accordance with law untrammelled by this order.

Captioned writ petition disposed of with the aforesaid directives.

(M.S.,J.)

(R.S.V.,J.)

27.06.2023

gpa



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To

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1. The Secretary to Government of Tamilnadu
Department of Home
Fort St. George
Chennai – 600 009
2. The Deputy Inspector General of Prison
Vellore Range
Vellore – 632 002
3. The Superintendent
Cuddalore Central Prison
Cuddalore – 607 004
4. The Public Prosecutor
Madras High Court, Chennai



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

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