



W.P.NO.19415 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

**DATED : 03.07.2023**

CORAM

**THE HONOURABLE MR.JUSTICE M.SUNDAR  
AND  
THE HONOURABLE MR.JUSTICE R.SAKTHIVEL**

**W.P.NO.19415 OF 2023**

Sarojini

.. 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 General of Prison  
Vellore Zone, Thorappadi,  
Vellore.

3.The Superintendent  
Cuddalore Central Prison  
Cuddalore.

.. Respondents

**PRAYER:** Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.4513/Tha.Ku.2/2023, dated



W.P.NO.19415 OF 2023

15.03.2023, passed by the 3<sup>rd</sup> respondent and quash the same and consequently direct the respondents to grant ordinary leave for 40 days without escort to the detenu Harikaran, S/o. Natarajan, aged about 42 years bearing Convict No.14895 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.]**

Captioned writ petition has been filed in this Court on 26.06.2023 assailing an 'order dated 15.03.2023 bearing Reference No.4513/Tha.Ku.2/2023 made by the third respondent' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity] in and by which the writ petitioner's representation dated 10.03.2023 seeking 40 days ordinary leave for his son was negatived.

2. To be noted, writ petitioner's son is a Convict Prisoner (Convict No.14895) having been handed down life sentence in and by judgment dated 19.04.2004 made in S.C.No.87 of 2003 on the file of



W.P.NO.19415 OF 2023

Additional District Sessions Court, Fast Track Court – I, Chennai for alleged offences under Section 302 read with 109, 365 read with 109, 387, 347 read with 109, 364 read with 109 of 'Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of brevity, convenience and clarity]. To be noted, a regular Criminal Appeal filed against the conviction and sentence was dismissed by this Court vide order dated 06.10.2008 in CrI.A.No.685 of 2005.

3. Dr.S.Manoharan, learned counsel on record for the petitioner submits that the petitioner is very ill; she is 83 years old; she had a fall and it is necessary that her son (Convict Prisoner) attends to her.

4. Issue notice.

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



W.P.NO.19415 OF 2023

6. Learned Prosecutor submits that the impugned order has been made owing to Rule 22(3) of the 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience]. Learned Prosecutor submitted that the Convict Prisoner was granted 40 days ordinary leave on 13.08.2022 and he returned on 23.09.2022. It was further submitted that one year had not elapsed and that is the reason why the impugned order has been made citing Rule 22(3) of the said Rules.

7. Owing to the limited scope and narrow compass on which captioned matter turns main writ petition was taken up with the consent of both sides. We carefully considered the submissions made on both sides.

8. Owing to the facts and circumstances of the case, we find that the ground on which 40 days ordinary leave has been sought is compelling and more importantly, the Convict Prisoner who has been incarcerated for more than 22 years now, has already been granted leave as many as 46 times in the past totalling 283 days and all 46 occasions have been passed without any untoward incident i.e., the Convict Prisoner has



W.P.NO.19415 OF 2023

returned / surrendered without anything unpleasant while on leave and the details of leave availed by the Convict Prisoner thus far as placed before us is as follows:



W.P.NO.19415 OF 2023

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DETAILS OF THE LEAVE AVAILED BY THE LIFE CONVICT PRISONER  
NO.14895 HARIHARAN & HARI S/O. NATRAJAN.

| SJ NO | FROM       | TO         | DURATION | REASON                                                               | ESCORT/FREE           | EMERGENCY/ORDINARY/COURT LEAVE |
|-------|------------|------------|----------|----------------------------------------------------------------------|-----------------------|--------------------------------|
| 01    | 04.07.2009 | 04.07.2009 | 01       | To see his ailing Mother                                             | With Police Escort    | Emergency Leave                |
| 02    | 16.12.2010 | 23.12.2010 | 06       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 03    | 04.06.2011 | 11.06.2011 | 06       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 04    | 07.09.2011 | 11.09.2011 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 05    | 10.11.2011 | 14.11.2011 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 06    | 30.12.2011 | 03.01.2012 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 07    | 16.03.2012 | 23.03.2012 | 06       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 08    | 01.06.2012 | 05.06.2012 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 09    | 06.08.2012 | 10.08.2012 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 10    | 25.01.2013 | 01.02.2013 | 06       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 11    | 12.05.2014 | 19.05.2014 | 06       | To see his ailing Mother                                             | Without Police Escort | Ordinary Leave                 |
| 12    | 17.07.2014 | 21.07.2014 | 03       | To see his ailing Mother                                             | Without Police Escort | Emergency Leave                |
| 13    | 30.09.2014 | 04.10.2014 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 14    | 24.12.2014 | 28.12.2014 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 15    | 04.06.2015 | 11.06.2015 | 06       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 16    | 31.08.2015 | 04.09.2015 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 17    | 26.12.2015 | 30.12.2015 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 18    | 30.01.2016 | 06.02.2016 | 06       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 19    | 26.04.2016 | 30.04.2016 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 20    | 25.07.2016 | 29.07.2016 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 21    | 04.10.2016 | 08.10.2016 | 03       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 22    | 30.01.2017 | 06.02.2017 | 06       | To see his ailing mother                                             | Without Police Escort | Emergency Leave                |
| 23    | 14.03.2017 | 14.04.2017 | 30       | UO of Prisons Vellore Range order No:1633/CA 2016, dated: 02/02/2017 | Without Police Escort | Ordinary Leave                 |



W.P.NO.19415 OF 2023

WEB COPY

|    |            |            |          |                                                                                                               |                       |                 |
|----|------------|------------|----------|---------------------------------------------------------------------------------------------------------------|-----------------------|-----------------|
| 24 | 03.07.2017 | 07.07.2017 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 25 | 24.08.2017 | 28.08.2017 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Ordinary Leave  |
| 26 | 19.12.2017 | 23.12.2017 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 27 | 19.05.2018 | 25.05.2018 | 06       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 28 | 04.08.2018 | 08.08.2018 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 29 | 28.10.2018 | 30.10.2018 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 30 | 27.12.2018 | 31.12.2018 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 31 | 02.02.2019 | 09.02.2019 | 06       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 32 | 23.04.2019 | 27.04.2019 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 33 | 02.07.2019 | 06.07.2019 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 34 | 17.09.2019 | 21.09.2019 | 03       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 35 | 15.11.2019 | 06.12.2019 | 03 weeks | Hon,ble High Court of Madras in HCP No:2348/2019 dated 13.10.2019                                             | Without Police Escort | CourtLeave      |
| 36 | 20.01.2020 | 27.01.2020 | 06       | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 37 | 02.12.2020 | 23.12.2020 | 22 days  | Hon,ble High Court of Madras in HCP No:2077/2020 dated 27.11.2020                                             | Without Police Escort | CourtLeave      |
| 38 | 23.12.2020 | 30.12.2020 | 7 days   | Leave Extension as per Hon,ble High Court of Madras in CMP No:8506/2020, in HCP No:2077/2020 dated 22.12.2020 | Without Police Escort | CourtLeave      |
| 39 | 30.01.2021 | 06.02.2021 | 6 days   | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |
| 40 | 27.08.2021 | 31.08.2021 | 3 days   | To see his ailing mother                                                                                      | Without Police Escort | Emergency Leave |



W.P.NO.19415 OF 2023

WEB COPY

|       |            |            |          |                          |                       |                 |
|-------|------------|------------|----------|--------------------------|-----------------------|-----------------|
| 41    | 21.12.2021 | 25.12.2021 | 3 days   | To see his ailing mother | Without Police Escort | Emergency Leave |
| 42    | 19.03.2022 | 26.03.2022 | 6 days   | To see his ailing mother | Without Police Escort | Emergency Leave |
| 43    | 31.05.2022 | 04.06.2022 | 3 days   | To see his ailing mother | Without Police Escort | Emergency Leave |
| 44    | 13.08.2022 | 23.09.2022 | 40 days  | --                       | Without Police Escort | Ordinary Leave  |
| 45    | 29.11.2022 | 03.12.2022 | 3 days   | To see his ailing mother | Without Police Escort | Emergency Leave |
| 46    | 16.02.2023 | 25.02.2023 | 6 days   | To see his ailing mother | Without Police Escort | Emergency Leave |
| TOTAL |            |            | 283 days |                          |                       |                 |

*[Signature]*  
Superintendent of Prisons,  
Central Prison, Cuddalore.

*[Signature]*  
20/12/2022



W.P.NO.19415 OF 2023

9. In the light of the narrative thus far, we are of the view that this is a fit case wherein the respondents should have taken Rule 40 route of the said Rules. To be noted, Rule 40 of the said Rules makes it clear that the Executive Arm itself has ample and adequate powers to exempt any one from any or all the provisions of said Rules.

10. In the light of the narrative, discussion and dispositive reasoning thus far we make the following order:

(i) impugned order is set aside on the ground that this is a fit case in which Rule 40 of said Rules ought to have been resorted to;

(ii) convict prisoner (Convict No.14895) is granted 21 days ordinary leave without escort. To be noted, 21 days ordinary leave shall be from 05.07.2023 to 25.07.2023;

(iii) convict prisoner shall sign in the jurisdictional Police Station, F-2 Egmore Police Station, Chennai every Monday at 10.30 am;



W.P.NO.19415 OF 2023

(iv) the convict prisoner shall surrender in Central Prison, Cuddalore by dusk at 05.30 pm on 25.07.2023.

11. Captioned writ petition is disposed of with the aforesaid directives. There shall be no order as to costs.

12. Though captioned writ petition is disposed of, list the matter in the cause list under the cause list caption 'FOR REPORT' on 07.08.2023.

(M.S., J.)

(R.S.V., J.)

03.07.2023

Index : Yes

Speaking

Neutral Citation : Yes

**Upload forthwith**

**Issue order by 04.07.2023 lunchtime**

TK



W.P.NO.19415 OF 2023

WEB COPY

To

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



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W.P.NO.19415 OF 2023

**M.SUNDAR, J.**  
**AND**  
**R.SAKTHIVEL, J.**

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**W.P.NO.19415 OF 2023**

**03.07.2023**