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W.P.No.19378 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.19378 of 2023

Kalaiarasan. K

...Petitioner

vs.

1. The Additional Director General of Prisons,
Whannels Road, Egmore,
Chennai – 600 008.

2. The Superintendent of Prison
Central Prison, Vellore – 632 002.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, to direct the respondents to conditionally release Mr.Krishnan (Life Convict Prisoner No.2257), who is currently prisoned at Central Prison, Vellore for treatment at an hospital outside the prison for a period of 30 days by invoking the powers vested under Rule 636 of Tamil Nadu Prison Rules, 1983 based on the petitioner's representation dated 03.06.2023.

For Petitioner :: Mr.S.I.Sharukumar
For Respondents :: Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.C.Aravind



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ORDER

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(Order of the Court was made by S.S.SUNDAR,J.)

This writ petition has been filed to direct the respondents to conditionally release Mr.Krishnan (Life Convict Prisoner No.2257), who is currently prisoned at Central Prison Vellore, for treatment at an hospital outside the prison for a period of 30 days by invoking the powers vested under Rule 636 of Tamil Nadu Prison Rules, 1983 based on the petitioner's representation dated 03.06.2023.

2. The petitioner viz.Kalaiarasan, is the son of the life convict by name P.Krishnan (Convict Prisoner No.2257), S/o.Pachaiyappan, aged about 50 years. The case the petitioner is that his father is suffering from severe pain in his back for the past six months and that a stone with the size of 18mm is seen in his left kidney. The medical report of the petitioner's father according to the petitioner suggested that in the left kidney, there is a calculus measuring 17.5 x 9 mm; and that the existence of the said stone caused severe pain.



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3. The learned counsel for the petitioner submitted that the petitioner himself is a student of medical college and according to him, the doctors advised his father to undergo a surgical procedure as soon as possible to remove this stone. The report obtained from the Government Hospital, Vellore is produced by the petitioner before this Court. The petitioner has also produced before this Court, the letter from a private hospital about the nature of treatment that is suggested to the petitioner's father and their willingness to treat him. Therefore, the learned counsel for the petitioner prayed for grant of ordinary leave to the petitioner's father/convict prisoner.

4. The learned Additional Public Prosecutor opposed to the grant of leave to the convict prisoner and produced before this Court a communication dated 31.03.2023, wherein the representation of the petitioner seeking leave for the purpose of undergoing treatment to his father, was rejected by the 2nd respondent, on the ground that since his father was convicted for the offence under Section 394 IPC, he is not entitled to ordinary leave as per Rule 21 (b) of Tamil Nadu Prison Manual-Volume III. Further, the convict prisoner is also not entitled to emergency leave since



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there is no life threatening disease and therefore, the petitioner's representation was rejected.

5. This Court can exercise its prerogative power in the matter of granting ordinary leave having regard to the peculiar facts in any case. In this case, this Court is convinced that the size of the stone in the left kidney of the petitioner's father requires immediate medical attention to save the life of petitioner's father/convict. However, though the communication received from the institution suggested that the petitioner's father would be under treatment for a period of 30 days, this Court having regard to the advancement in technology finds that it would be appropriate and proper to permit the petitioner's father/convict prisoner to avail leave for a period of 14 days without escort, on the following conditions.

(i) Respondents are directed to release the Convict Prisoner viz., P.Krishnan (Convict Prisoner No.2257), S/o.Pachiayappan, aged about 50 years, now confined at Central Prison, Vellore, on Ordinary Leave for a period of 15 days i.e., from 10.11.2023 to 24.11.2023.



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(ii) The Convict Prisoner shall be released on 10.11.2023 at 10.00am and he shall be brought back to the Central Prison, Vellore, on 24.11.2023 at 05.00 p.m.

(iii) Considering the reasons stated in the affidavit, this Court is inclined to grant Ordinary Leave without escort with a further condition that the Probation officer shall visit the Convict Prisoner at any time in the Hospital, where the convict prisoner intends to undergo the surgery and file a report.

(iv) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.

(v) The petitioner shall produce the proof to the respondents, for the treatment given to the convict prisoner.

(S.S.S.R.,J.) (S.M.,J.)
31.10.2023

Note to Registry:

1.Issue order copy by 07.11.2023.



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2.Upload the order copy forthwith.
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S.S.SUNDAR,J.
AND
SUNDER MOHAN,J.

ars/dk

To

1. The Additional Director General of Prisons,
Whannels Road, Egmore,
Chennai – 600 008.
2. The Superintendent of Prison
Central Prison, Vellore – 632 002.
3. The Public Prosecutor
High Court, Madras

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