



W.P.NO.19595 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.19595 OF 2023

Kalarani

.. Petitioner

Vs.

1.The Deputy Inspector General of Police
Vellore Range, Vellore.

2.The Superintendent of Prison
Central Prison
Cuddalore.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the respondents to consider the representation of the petitioner dated 15.06.2023 and to grant one month leave to the petitioner's husband namely, Apple (a) Sivaraman S/o.Jeganathan, aged about 44 years, Ct.No.14615, now confined in the Central Prison, Cuddalore.

For Petitioner : Ms.S.Nadhiya

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

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

Captioned writ petition has been filed in this Court on 26.06.2023 and the nucleus of the captioned writ petition is a 'representation dated 15.06.2023' [hereinafter 'said representation' for the sake of brevity, convenience and clarity] sent by the writ petitioner to the respondents.

2. Factual matrix in a nut shell is that the writ petitioner's spouse one Apple (a) Sivaraman is serving sentence having been convicted by Principal Sessions Court, Cuddalore Division, Cuddalore, in S.C.No.80 of 2012 vide conviction / sentence dated 27.06.2013 for alleged offences under Sections 302, 392 read with 397 of 'Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of brevity, convenience and clarity].

3. Ms.S.Nadhiya, learned counsel for the writ petitioner submits that the writ petitioner's husband [hereinafter 'convict prisoner' for the sake of convenience] has been incarcerated for more than 11 years, thus



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far he has been given emergency leave more than 15 times and on all occasions leave has been availed without any untoward incident.

4. Adverting to the said representation, learned counsel for petitioner submitted that ordinary leave has now been sought under Rule 20(ii) of the 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience] which reads as follows:

'20. Grounds for the grant of ordinary leave. -...

(i)...

(ii) to make arrangements for the admission of the children in the school or college;

(iii)...'

5. Issue notice.

6. Mr.E.Raj Thilak, learned Additional Public Prosecutor accepts notice for both respondents. Learned Prosecutor on instructions submitted that said representation has since been rejected in and by 'order



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dated 21.06.2023 bearing Reference No.10311/த.கு.2/2023 made by the second respondent' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

7. Though the captioned writ petition is for a mandamus, considering the facts and circumstances of the case and the nature of the matter, we deem it appropriate to test the impugned order. Owing to the limited legal perimeter within which writ petition on hand turns perambulates, main writ petition was taken up with the consent of both sides.

8. A careful perusal of the impugned order makes it clear that Rule 21(b) of the said Rules is the sole ground on which leave has been negatived. To be noted, Rule 21(b) of the said Rules reads as follows:

'21.Non-eligibility for ordinary leave.-...

(a)...

(b)Prisoners sentenced under sections 392 to 402 of the Indian Penal Code (Central Act 45 of 1860).

(c)...'



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9. Be that as it may, as already alluded to supra, leave has been sought under Rule 20(ii) of the said Rules i.e., for making arrangements for admission of children in school. The convict prisoner has on an earlier occasion been granted leave by another coordinate Hon'ble Bench of this Court in and by order dated 19.11.2019 made in HCP No.2403 of 2019.

10. This Court is informed that the convict prisoner has been granted leave multiple times between 2017 and 2023. The table in this regard reads as follows:



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DETAILS OF THE LEAVE AVAILABLE BY THE LIFE CONVICT PRISONER,
NO.14615 APPLE @ SIVARAMAN S/O. JEGANATHAN.

SL. NO	FROM	TO	DURATION	REASON	ESCORT/ FULL	EMERGENCY/ ORDINARY/ COURT LEAVE
01	21.01.2017	21.01.2017	01	To see his ailing mother	With Police Escort	Emergency Leave
02	10.09.2017	10.09.2017	01	To see his ailing mother	With Police Escort	Emergency Leave
03	11.11.2017	11.11.2017	01	To see his ailing mother	With Police Escort	Emergency Leave
04	27.01.2018	27.01.2018	01	To see his ailing mother	With Police Escort	Emergency Leave
05	07.08.2018	11.08.2018	03	To attend his mother's funeral	Without Police Escort	Emergency Leave
06	17.08.2018	21.08.2018	03	To see his ailing wife	Without Police Escort	Emergency Leave
07	14.01.2019	21.01.2019	06	To see his ailing wife	Without Police Escort	Emergency Leave
08	16.05.2019	20.05.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
09	09.09.2019	13.09.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
10	02.10.2019	05.10.2019	03	To see his ailing wife	Without Police Escort	Emergency Leave
11	21.11.2019	12.12.2019	02 weeks	Hon'ble High Court of Madras in HCP No:2403/2019, dated 19.11.2019	With Police Escort	Court Leave
12	23.11.2020	30.11.2020	06	To see his ailing wife	Without Police Escort	Emergency Leave
13	13.01.2021	20.01.2021	06	To see his ailing wife	Without Police Escort	Emergency Leave
14	28.02.2021	02.03.2021	03	To see his ailing wife	Without Police Escort	Emergency Leave
15	10.08.2021	14.08.2021	03	To see his ailing wife	Without Police Escort	Emergency Leave
16	07.11.2021	06.11.2021	03	To see his ailing wife	Without Police Escort	Emergency Leave
17	07.06.2022	14.06.2022	06	To see his ailing wife	Without Police Escort	Emergency Leave
18	16.09.2022	20.09.2022	03	To see his ailing wife	Without Police Escort	Emergency Leave
19	22.10.2022	26.10.2022	03	To see his ailing wife	Without Police Escort	Emergency Leave
20	14.01.2023	21.01.2023	06	To see his ailing wife	Without Police Escort	Emergency Leave
TOTAL			05 days			

Superintendent of Prisons,
Central Prison, Cuddalore.

30/1/2023



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11. Adverting to the aforementioned table, learned counsel points out that after mid 2018, the convict prisoner has been given leave without escort.

12. We are of the considered view that this is a fit case in which the executive arm 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 has ample and adequate powers to exempt any one from any or all the provisions of said Rules.

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

(i) Impugned order dated 21.06.2023 is set aside;

(ii) Convict prisoner (Convict No.14615) is granted 30 days ordinary leave without escort. To be noted, 30 days ordinary leave shall be from 05.07.2023 to 04.08.2023 (both days inclusive);



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(iii) Convict prisoner shall sign before the jurisdictional Police Station (Panruti Police Station) every Monday at 10.30 am;

(iv) The Convict prisoner shall surrender before the Superintendent, Central Prison, Cuddalore by dusk i.e., by 05.30 pm on 04.08.2023.

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

15. 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



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- To
- 1.The Deputy Inspector General of Police
Vellore Range, Vellore.
 - 2.The Superintendent of Prison
Central Prison, Cuddalore.
 - 3.The Public Prosecutor
High Court, Madras.



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AND
R.SAKTHIVEL, J.

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