



W.P.No.21242 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.21242 of 2023

Mr.Akram Khan

.. Petitioner/

Vs.

1. The State Rep. By its
The Deputy Inspector General of Prison
Office of Deputy Inspector General of Police
Chennai Range, Egmore – 600 008

2. The Superintendent of Prison
Central Prison at Puzhal I
Thiruvallur District – 600 066

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to call for the records pertaining to the impugned order in No.8562/த.சூ.2 /2023 dated 06.07.2023 passed by the second respondent and quash the same and consequently direct the respondents to grant 21 days ordinary leave without escort to the petitioner, namely Mr.Akram Khan, son of Ayub Khan, who is confined in Central Prison, Puzhal I, Chennai.

For Petitioner : Mr.M.Mohamed Saifulla

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For Respondents : MrE.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' ['WP' for the sake of brevity, convenience and clarity].

2. The writ petitioner is a convict prisoner now lodged in Central Prison Puzhal I, Chenani – 600 066 having been convicted and sentenced by XV Additional City Civil Court, Chennai vide S.C.No.613 of 2005.

3. The writ petitioner gave a 'representation dated 15.05.2023 to the first respondent' [hereinafter 'said representation' for the sake of convenience and clarity] seeking 21 days ordinary leave on three grounds and they are

a) arrange for treatment of his ailing mother;

b) make arrangement for his daughter's further education
(this Court is informed in the hearing that petitioner's daughter has completed D.Pharm i.e., Diploma in Pharmacy and wants to pursue higher studies] and



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c) maintenance and repair work in his dwelling house.

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4. Aforementioned said representation has been negated by the second respondent in and by an 'order dated 06.07.2023 bearing reference No.8562/த.சூ.2/2023' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity]. Captioned writ petition has been filed assailing the impugned order.

5. Mr.Mohamed Saifulla, learned counsel on record for the writ petitioner advertng to the impugned order submits that the only ground on which petitioner's said representation has been negated is Rule 21(b) of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity]. To be noted, the impugned order refers only to Rule 21 but a perusal of paragraph 2 thereat makes it clear that reference is to clause (b) of Rule 21 of said Rules. Learned counsel submits that the conduct of the convict prisoner in the prison has been blemishless, he has gone on leave (emergency leave) in as many as seven earlier occasions and has returned without any untoward incident and therefore Rule 21(b) of said Rules really cannot be an impediment.



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6. *Prima facie* case made out. Issue notice.

7. Owing to the limited scope of the captioned writ petition, the main writ petition was taken up and heard out in the admission board itself.

8. Mr.E.Raj Thilak, learned Additional Public Prosecutor accepts notice for both the respondents and submits on instructions that Rule 21(b) makes it clear that a convict prisoner who was sentenced under Sections 392 to 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] falls under the category of prisoners who are not eligible for ordinary leave vide Rule 21(b) of said Rules. In the case on hand, there is no disputation or contestation that the sentence qua convict prisoner is under Section 395 IPC.

9. We carefully considered the submissions made on either side and we are inclined to set aside the impugned order and grant 21 days ordinary leave without escort to the writ petitioner and the reasons are as follows:

i) As rightly pointed out by the learned counsel for writ



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petitioner, the writ petitioner has gone on leave on as many as seven earlier occasions, thrice with police escort and on four occasions without police escort and on all those occasions writ petitioner has returned and surrendered on expiry of the leave period and nothing untoward has happened. In this regard, a tabulation has been placed before us by the Prosecutor regarding earlier occasions of leave and a scanned reproduction of the same is as follows:

Annexure 6

Details of Prison Orders sanctioned by the prison authorities:

Details of leave sanctioned by the prisoner:

S.No	Leave type	From	To	No. of days	Security from leave
1	Emergency leave	30.01.2022	30.01.2022	1	With Police escort
2	Emergency leave	12.07.2022	16.07.2022	4	With Police escort
3	Emergency leave	25.10.2022	29.10.2022	4	Without Police escort
4	Emergency leave	17.12.2022	23.12.2022	6	Without Police escort
5	Emergency leave	01.01.2023	15.01.2023	14	Without Police escort
6	Emergency leave	21.04.2023	28.04.2023	8	Without Police escort
7		28.06.2023	01.07.2023	3	Without Police escort
				Total:	36 days

Superintendent of Prisons
Central Prison - L. P. Nagar



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As would be evident from the tabulation placed before us, convict prisoner (out of seven earlier occasions) has gone on leave without police escort in the last four occasions, there has been no untoward incident and therefore, we are inclined to grant 21 days leave without escort this time albeit with a condition to report in jurisdictional police station daily;

ii) In response to our query as to whether there is any prison offence qua the writ petitioner, learned Prosecutor submits, on instructions, that there is no prison offence and the conduct of the convict prisoner in the prison has been blemishless;

iii) The objective behind Rule 21(b) of said Rules which was made more than 4 decades ago appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc.,;

iv) To put it in a nutshell, the offence of robbery and decoity have been put in one basket under Rule 21(b) of said Rules. In the case on hand, as the convict prisoner has gone on



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leave on as many as seven earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave, we find that this is a fit case to relax the rigour of Rule 21(b) of said Rules;

v) In continuation of the earlier reason, we make it clear that we are exercising constitutional power and therefore said Rules being a set of Rules made by the Executive in exercise of Rule /special orders making powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] will not be complete fetters qua this Constitutional Court, it is always open to this Court to relax such Rules in suitable cases and this is one such case;

vi) We also find that at least two of the three grounds on which ordinary leave has been sought are compelling and those are, making arrangements for medical treatment for his ailing mother and making arrangements for higher education of his daughter who has completed Diploma in Pharmacy;



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vii)This Court also notices that punishment for decoity under Section 395 of IPC can extend upto imprisonment for life or rigorous imprisonment for a term which may extend upto 10 years and there is no minimum sentence but the trial Court has awarded 5 years sentence (even in the five years sentence 135 days set off has been given) and we have taken this factor also into consideration;

viii)The writ petitioner remains incarcerated from 02.10.2021.

10. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

i) Impugned order dated 06.07.2023 bearing reference No.8562/த.சூ.2/2023 made by the second respondent is set aside;

ii) The writ petitioner i.e., convict prisoner (Convict No.8562) now lodged in Central Prison, Puzhal, Chennai – 600 066 is given 21 days ordinary leave without escort from 24.07.2023 to 13.08.2023;



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iii) The convict prisoner while on leave shall sign before

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24.07.2023 and 13.08.2023 being the first and last day of the 21 days leave, the convict prisoner need not sign before the P-1 Pulianthope Police Station.

iv) The convict prisoner shall surrender before second respondent / in the office of the second respondent on 13.08.2023 by dusk i.e., by 05.30 p.m;

Captioned writ petition disposed of in the aforesaid manner albeit with the aforesaid directives.

(M.S.,J.) (R.S.V.,J.)
19.07.2023

Index : Yes/No
Neutral Citation : Yes / No
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P.S: Though captioned writ petition has been disposed of, the Registry shall list the matter under the cause list caption 'FOR REPORT' on 18.08.2023



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To

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1. The Deputy Inspector General of Prison
Office of Deputy Inspector General of Police
Chennai Range, Egmore – 600 008
2. The Superintendent of Prison
Central Prison at Puzhal I
Thiruvallur District – 600 066
3. The Public Prosecutor
Madras High Court, Chennai



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

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