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W.P.No.21478 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.10.2023

CORAM

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

W.P.No.21478 of 2023

A.Asina Banu

... Petitioner

Vs.

1.The State by the Additional Chief Secretary to Gvoernment
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009

2.The Director General of Police
Inspector General of Prisons and Correctional Service
Whannels Road
Egmore, Chennai – 600 008

3.The Superintendent of Prison,
Central Prison, Cuddalore

... Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the issuance of a Writ of Mandamus directing the
respondents to grant 28 days ordinary leave enabling the
petitioner's husband Javeed Basha, son of Saleem Basha, aged 32
years, Convict No.16457, Convict Prisoner, Central Prison,
Cuddalore.

For Petitioner : Mr.S.Senthilvel

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



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ORDER

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

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This writ petition is filed to direct the respondents to grant 28 days ordinary leave to petitioner's husband Javeed Basha, son of Saleem Basha, aged 32 years [Convict No.16457], now lodged in Central Prison, Cuddalore.

2.The petitioner's husband is a convict prisoner and is in custody for more than eight years. The petitioner states that petitioner's father-in-law passed away and due to the sudden demise of her father-in-law, her mother-in-law become very sick and she is having other health issues also. It is further stated in the petition that the petitioner is taking physiotherapy treatment for the pain in her hand and her younger son is suffering from intestinal decompression disease and he is advised to take treatment for the same. Stating that the presence of her husband is necessary to make arrangements for her son's treatment and to make some arrangements for livelihood of the family, the petitioner has filed this petition for grant of 28 days ordinary leave under the Tamil Nadu Suspension of Sentences Act, 1982.



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3. Though the petitioner's representation was not considered, it is now stated before this Court by learned Additional Public Prosecutor that such leave cannot be granted in view of Rule 21(h)(3) of Tamil Nadu Suspension of Sentence Rules, 1982, which states that any person convicted under NDPS Act is not eligible for grant of ordinary leave. The Hon'ble Supreme Court in **Dadu alias Tulsidas Vs. State of Maharashtra** reported in **(2000) 8 SCC 437** held that Section 32-A of NDPS Act does not stand in the way of the authorities to exercise their power to grant parole. It is to be noted that the petitioner was granted leave on several occasions by this Court without police escort. At least on 20 occasions, the petitioner enjoyed the benefit of leave totalling to a period of 140 days. Hence, in exercise of power under Article 226 of the Constitution of India and keeping in line with the decision of Hon'ble Supreme Court in **Dadu alias Tulsidas Vs. State of Maharashtra** case (referred supra), this Court is inclined to grant 28 days ordinary leave to the convict prisoner as this Court is convinced with the reasons stated by the petitioner in the affidavit filed in support of the petition.



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4. Accordingly, we grant 28 days ordinary leave to the convict prisoner without escort subject to the usual conditions that can be imposed by the respondents and this writ petition is ordered on the following terms:

(i) The convict shall be released from the prison at 10.00 a.m. on 06.11.2023 and he shall return back to the prison at 06.00 p.m. on 04.12.2023.

(ii) We make it clear that the day on which the convict is released from the prison and the day on which he is readmitted will have to be excluded.

(iii) During the aforesaid leave period, the convict prisoner shall report before D3 Ice House Police Station, Chennai daily at 10.30 a.m.

(S.S.S.R., J.) (S.M., J.)
30.10.2023

Index : Yes / No

Neutral Citation : Yes / No

gpa

Note: Issue copy of the order on 03.11.2023



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To

- 1.The Additional Chief Secretary to Government
Home, Prohibition and Excise Department
Secretariat, Chennai – 600 009
- 2.The Director General of Police
Inspector General of Prisons and Correctional Service
Whannels Road
Egmore, Chennai – 600 008
- 3.The Superintendent of Prison,
Central Prison, Cuddalore
- 4.The Public Prosecutor,
High Court, Madras.



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