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W.P.No.31009 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.31009 of 2022

&

W.M.P.Nos.30408 and 30409 of 2022

Rajeshwari

... Petitioner

Vs.

The State represented by its
The Superintendent of Police
Puzhal Central Prison – I
Puzhal – 600 006

..Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus to call for the records pertaining to the impugned order in No.5249/t.k.2/2021 dated 02.09.2021 passed by the respondent and quash the same and consequently grant one month leave to the convict, namely Mr.Rahuman, son of Jahir Hussain, aged about 35 years (C.T.No.5249) now confined in Puzhal Central Prison-I.

For Petitioner : Mr.M.Mohamed Saifulla

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

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ORDER

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

This order will now dispose of the captioned writ petition.

2. Captioned writ petition has been filed assailing an 'order dated 02.09.2021 bearing reference 5249/தஞ.2/2021 made by the respondent' [hereinafter 'impugned order' for the sake of brevity and convenience] rejecting the 'petitioner's representation dated 14.08.2021' [hereinafter 'said representation' for the sake of convenience] seeking 30 days ordinary leave for her spouse 'Thiru.Rahuman, (C.T.No.5249), son of Thiru.Jahir Hussain, who is a lifer now serving life sentence in Central Prison II, Puzhal Chennai- 600 066' [hereinafter 'convict prisoner' for the sake of convenience and clarity] having been convicted by III Additional Sessions Judge, Chennai in S.C.No.136 of 2010. To be noted, the regular criminal appeal to this Court and Special Leave Petition to Hon'ble Supreme Court against his conviction and sentence confirmed the trial Court's conviction and sentence.



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3.Reverting to the said representation, Mr.M.Mohamed Saifulla, learned counsel for petitioner submits that 30 days ordinary leave has been sought on the ground that mother of the convict prisoner (mother-in-law of the writ petitioner) is very ill, convict prisoner is the only son, he needs to attend to her and also be by her side besides making arrangements for medical attention.

4. Learned Prosecutor adverting to the impugned order submitted that other criminal cases are pending against the convict prisoner and therefore, said representation was rejected. Learned Prosecutor submitted that the rejection is owing to Rule 35 of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which says that no prisoner on whom a case is pending trial shall be granted leave.

5. We carefully considered the rival submissions and we are inclined to interfere with the impugned order and grant 30 days leave for the following reasons:

i) In the impugned order it has been mentioned that four



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cases are pending but two of those cases have admittedly ended in acquittal. To be noted, the case cited as No.1 in the impugned order ended in acquittal on 11.10.2021, case cited as No.4 in the impugned order ended in acquittal on 09.12.2022. As regards case cited as No.3 in the impugned order, the same has been transferred from III Additional Sessions Judge's Court to XX Additional City Court as S.C.No.352 of 2017 and it is next scheduled to be listed on 18.07.2023. The case cited as No.2 in the impugned order on the file of Judicial Magistrate, Thiruvottiyur is next scheduled to be listed on 07.08.2023.

ii) Learned counsel adverting to orders dated 23.12.2020 and 20.05.2021 made by two different coordinate Hon'ble Division Benches in H.C.P.No.2344 of 2020 and W.P.No.12002 of 2021 respectively and submitted that this Court has granted leave to the convict prisoner, the leave was availed and convict prisoner surrendered without any untoward incident.



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iii) We find that convict prisoner remains incarcerated for over seven years now.

iv) Convict prisoner has returned after availing leave on earlier occasions without any untoward incident.

v) The reason given is not subjected to any factual disputation i.e., the reason that the convict prisoner's mother is very ill.

vi) Rule 40 of said Rules vests the Executive arm with the power to exempt any person from any or all provisions of said Rules and we are of the considered view that this is a fit case to have taken the Section 40 exemption route in the light of reason delineated supra. However, we make it clear that we are interfering with the impugned order by exercising our constitutional powers.

6. The following order is made:



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i) The impugned order being order dated 02.09.2021 bearing reference 5249/தஞ.2/2021 is set aside;

ii) The convict prisoner Mr.Rahuman (C.T.No.5249), son of Mr.Jahir Hussain, aged 35 years now lodged in Central Prison I, Puzhal is granted 30 days ordinary leave with escort from 17.07.2023 to 16.08.2023 (both dates inclusive);

iii) Convict prisoner shall surrender in the respondent's office on 16.08.2023 by dusk i.e., by 05.30pm;

iv) Convict prisoner shall appear before the XX Additional City Court in S.C.No.352 of 2017 and before Judicial Magistrate, Thiruvottiyur in Crime No.854 of 2018 on 18.07.2023 and 07.08.2023 respectively;

v) XX Additional City Court and Judicial Magistrate, Thiruvottiyur are requested to give next dates after 17.08.2023 so that the convict prisoner can avail leave and utilize the same for the purpose for which it has been sought.



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Captioned writ petition disposed of with the aforementioned directives. Consequently, captioned writ miscellaneous petition is closed.

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

07.07.2023

Index : Yes / No

Neutral Citation : Yes / No

gpa

Note to office: Copies of this order shall be marked to XX Additional City Court, Chennai and Judicial Magistrate, Thiruvottiyur.

To

1. XX Additional City Court
Chennai
2. Judicial Magistrate,
Thiruvottiyur.
3. The Superintendent of Police
Puzhal Central Prison – I
Puzhal – 600 006
4. The Public Prosecutor
High Court, Madras.

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R.SAKTHIVEL, J.,

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