



W.P.No.23110 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.09.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P.No.23110 of 2023

Shamma

.. Petitioner

VS

The State rep. By its

1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai – 9.

2.The Additional Director General of Prison,
Coimbatore Range,
Coimbatore – 641 018.

3.The Superintendent,
Central Prison,
Coimbatore – 641 018.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to direct the respondents to extend the ordinary leave for two weeks without escort to the detenu Aslam, S/o.Jainulapudin, aged about 49 years, Life Convict No.18819, detained at Central Prison, Coimbatore.

For Petitioner : Dr.S.Manoharan

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 with a mandamus prayer for extension of ordinary leave for writ petitioner's spouse Thiru.Aslam, S/o.Jainulapudin, aged 49 years (Life Convict No.18819) now detained in Central Prison, Coimbatore.

3. To be noted, writ petitioner's spouse 'Thiru.Aslam' (hereinafter 'said convict prisoner' for the sake of convenience and clarity) is serving sentence and was granted leave in and by an order dated 23.06.2023 in W.P.No.7167 of 2023 by this Bench and this order reads as follows:

'This order will now dispose of captioned writ petition.

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 08.03.2023 and 27.04.2023 which read as follows:

'08.03.2023

Captioned writ petition has been filed with a prayer assailing an order dated 10.02.2023 bearing reference No.544/Tha.Ku.3/2023 made by third respondent [hereinafter 'impugned order' for the



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sake of convenience and clarity] which has rejected a representation dated 24.01.2023 seeking 40 days leave for a convict prisoner Mr.Asiam (convict No.18819 now detained in Central Prison, Coimbatore).

2. The impugned order proceeds on the basis that the trial in another case namely, C.C.No.7 of 2014 is underway and therefore, Rule 35 of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] does not permit grant of leave. Assailing this impugned order, learned counsel for petitioner submits that the convict prisoner has already served 25 years and therefore is entitled to leave inter alia under Rule 22 of said Rules.

3. Mr.R.Muniyapparaj, learned Additional Public Prosecutor who accepted notice for all the three respondents requested for some time to get instructions, file counter affidavit if necessary and bring it on Board. Request acceded to. List three weeks hence. List on 29.03.2023. '

'27.04.2023

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 08.03.2023, which reads as follows:

'Captioned writ petition has been filed with a prayer assailing an order dated 10.02.2023 bearing reference No.544/Tha.Ku.3/2023 made by third respondent [hereinafter 'impugned order' for the sake of convenience and clarity] which has rejected a representation dated 24.01.2023 seeking 40 days leave for a convict prisoner Mr.Asiam (convict No.18819 now detained in Central Prison, Coimbatore).

2. The impugned order proceeds on the basis that the trial in another case namely, C.C.No.7 of 2014 is underway and



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therefore, Rule 35 of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] does not permit grant of leave. Assailing this impugned order, learned counsel for petitioner submits that the convict prisoner has already served 25 years and therefore is entitled to leave inter alia under Rule 22 of said Rules.

3. Mr.R.Muniyapparaj, learned Additional Public Prosecutor who accepted notice for all the three respondents requested for some time to get instructions, file counter affidavit if necessary and bring it on Board. Request acceded to. List three weeks hence. List on 29.03.2023.'

2. The aforementioned proceedings captures the sum and substance of the matter. Today, counter affidavit filed by the State is before us. Learned Prosecutor pressed into service an order dated 29.09.2021 made in W.P.No.17011 of 2021 in K.Pournami's case [K.Pournami Vs. State of Tamil Nadu and Ors] regarding scope of Rule 832 of 'Tamil Nadu Prison Rules 1983' [hereinafter 'said Rules' for the sake of convenience and clarity] as well as Rule 35 of said Rules.

3. Learned Prosecutor further pressed into service a Judgement of Hon'ble Full Bench of this Court in Yesu's case [The State, represented by the Home Secretary Vs. Yesu @ Velaiyan reported in 2013 (5) CTC 353] and order of Hon'ble Supreme Court dated 01.10.2022 made in Criminal Appeal No.866 of 2000 in Manokaran's case [Manokaran Vs. State of Tamil Nadu].

4. Learned counsel for the petitioner submitted to the contrary and drew our attention to an order dated 10.01.2019 made in Crl.M.P.No.163 of 2019 by this Court to demonstrate that an undertaking that the convict prisoner would appear



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before the trial Court in the said Criminal case would suffice.

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5. Placing reliance on aforementioned case laws, the bone of contention now as projected before us i.e., whether powers of this Court have been curtailed by Rules 35 and 832 of said Rules. We are of the view that only Executive powers can be circumscribed and not the constitutional powers of this Court.

6. Be that as it may, learned Prosecutor wants us to examine the nature of pending case. Considering the paucity of time and considering that there is only one more day before this Court breaks up for summer recess, we deem it appropriate to list this matter after summer vacation.

List on 12.06.2023.'

3. To be noted, there were some other listings in between aforementioned two listings as well as post 27.04.2023 but they were not productive hearings and it is not imperative for appreciating this order.

4. When the matter was listed during summer recess, a petition for emergency leave was presented on 08.05.2023 and Vacation Court was moved vide W.M.P. No.14582 of 2023. Honourable Vacation Bench closed the writ miscellaneous petition in and by an order dated 10.05.2023 directing the third respondent who is the appropriate authority to consider the application. This Bench is now informed that the third respondent considered the application and rejected the request for emergency leave in and by an order dated 30.05.2023. This is captured only for completing the narrative of facts but otherwise this episode/exercise pales into insignificance.

5. In the hearing today, Dr.S.Manoharan, learned counsel for petitioner and Mr.E.Raj Thilak, learned State Additional Public Prosecutor for all three respondents were before us and after hearing both sides and after perusing the case file and connected records, we are inclined to grant 22 days



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ordinary leave without escort to the convict prisoner.
The reasons are as follows:

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5.1 The only reason cited in the impugned order for rejection of leave is Rule 35 of 'Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter 'said Rules' for the sake of convenience and clarity), which says that leave cannot be granted to a prisoner against whom a case is pending. In the case on hand, one case i.e., C.C. No.7 of 2014 on the file of Special Court for Bomb Blast Cases, Poonamallee, Chennai is pending. Be that as it may, this Rule 35 is also subject to Rule 40 of said Rules, which vests with the executive arm the power to exempt any person from all or some of the provisions of said Rules. This Court exercising constitutional power will have no impediment in exempting a person from this Rule and therefore Rule 35 will not come in the way;

5.2 The impugned order dated 10.02.2023 is set aside as Rule 35 of said Rules is the only impediment cited in the impugned order;

5.3 The convict prisoner has been granted ordinary leave multiple times in the past. This has been captured in the counter affidavit of the State by way of a tabulation and the same reads as follows:

S.No.	Leave Details	From	To	Total Days
1	Hon'ble High Court of Judicature at Madras, HCP No.263/18 dated 10.01.19	12.01.2019	31.01.2019	20 days (with escort)
2	Hon'ble High Court of Judicature at Madras, HCP No.1482/19 dated 26.07.19	30.07.19	08.08.19	10 days (with escort)
3	Hon'ble High Court of Judicature at Madras, HCP No.2089/19 dated 01.10.19 & 14.10.19	05.10.19	18.10.19	14 days (with escort)



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S.No.	Leave Details	From	To	Total Days
4	Hon'ble High Court of Judicature at Madras, HCP No.1362/20 dated 23.09.20	24.09.20	15.10.20	21 days (with escort)
5	Hon'ble High Court of Judicature at Madras, HCP No.2314/20 dated 21.12.20	22.12.20	29.12.20	6 days (with escort)
6	Hon'ble High Court of Judicature at Madras, HCP No.13773/22 dated 02.06.22	07.06.22	13.06.22	6 days (with escort)

5.4 The abovementioned tabulation will show that the convict prisoner has been granted leave ranging from 6 days to 21 days all by orders of this Honourable Court;

5.5 This Court is informed without any disputation or contestation that in all the aforementioned occasions nothing untoward had happened and the convict has availed leave;

5.6 As regards Yesu's case [The State, represented by the Home Secretary Vs. Yesu @ Velayan reported in 2013 (5) CTC 353], in the light of Rule 40 of said Rules, it really does not come to the aid of the prosecution. As regards Manokaran's case [Manokaran Vs. State of Tamil Nadu], we respectfully perused the orders of Honourable Supreme Court dated 01.10.2022 in Crl. A. No.866 of 2000 and find that it is a regular criminal appeal and therefore does not of any relevance to the case on hand which deals with leave. To be noted, the prosecution relying on these two cases has been captured in paragraph 3 of the earlier proceedings dated 27.04.2023 which has been extracted and reproduced supra;



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5.7 As regards one other case law i.e., K.Pournami's case [K.Pournami Vs. State of Tamil Nadu and Ors] which has been captured in paragraph 2 of the earlier proceedings dated 27.04.2023 the same deals with the use of the expression parole and therefore it really does not come to the aid of the prosecution in the case on hand;

6. In the light of the discussion and dispositive reasoning that has been set out supra, we make the following order:

6.1 22 days leave for the period from 29.06.2023 to 20.07.2023 (without escort) is granted to the convict prisoner Thiru.Aslam, S/o.Thiru.Jainulapudin, aged about 49 years, Life Convict No.18819, now lodged in Central Prison, Coimbatore;

6.2 The convict prisoner shall surrender to the prison authority i.e., Central Prison, Coimbatore on 20.07.2023 in the evening before dusk i.e., by 05.30 p.m.;

6.3 The convict prisoner shall present himself every day of leave and sign in a suitable register in the jurisdictional police station i.e., Marakadai Police Station, Coimbatore at half past ten in the morning;

7. As regards the hearing of the case in C.C.No.7 of 2014, on 28.06.2023, the Trial Court is requested to give the next listing date well after 20.07.2023 so as to enable the convict prisoner to avail 22 days leave which has been granted by this Court.

8. As on earlier occasions which are mentioned in the order, the convict prisoner has been granted leave with escort and there was nothing untoward, we deem it appropriate to put a condition of reporting before the jurisdictional police station and granting leave without escort on this occasion.

9. Captioned writ petition is disposed of with



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the aforesaid directives.

10. Though the captioned writ petition stands disposed of by this order, list the matter under the cause list caption 'FOR REPORTING COMPLIANCE' on 24.07.2023.'

4. The aforementioned order shall now be read as an integral part and parcel of this order. The aforementioned order dated 23.06.2023 captures all essentials i.e., facts that are imperative for appreciating this order and therefore we are not setting out the same again in this order and burdening this order with those details.

5. Suffice to say that the leave was thereafter extended by way of an order dated 20.07.2023 in W.P. No.21464 of 2023.

6. When the captioned writ petition for further extension of leave came up in the first listing on 07.08.2023 this Bench made the following proceedings:

'The convict prisoner is already on leave and he has been granted leave by this Court vide order dated 23.06.2023 in W.P.No.7267 of 2023 followed by order dated 20.07.2023 in W.P.No.21464 of 2023.

2. Learned counsel for petitioner submits that convict prisoner is to surrender today but his tooth implant procedure is not yet over [sutures have to be removed and implant has to be made is learned counsel's say].



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3. Issue notice.

4. Mr. E. Raj Thilak, learned Additional Public Prosecutor accepts notice for all the respondents and learned Prosecutor submits that if the convict prisoner surrenders today, the respondents will produce the convict prisoner before the prison doctor and also before any referral doctor as it is the dental procedure and produce the medical report in this Court.

5. Let the convict prisoner surrender today. Let the third respondent produce the convict prisoner before prison doctor and get a medical certificate (if necessary from a dental surgeon if referred by the prison doctor) and let the medical report be placed before us.

List on 18.08.2023.'

7. Pursuant to the aforementioned proceedings today, Mr. E. Raj Thilak, learned State Additional Public Prosecutor has placed before us the report of the Medical Officer, Central Prison, Coimbatore and a scanned reproduction of the same is as follows:



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Report of Medical Officer, Central Prison, Coimbatore.

From :-

The Senior Assistant Surgeon,
Central Prison Dispensary,
Coimbatore.

To :-

The Superintendent of Prisons,
Central Prison,
Coimbatore-18.

Sub : Dental treatment status - HSCT No. 18819 Tada Aslam @ Aslam S/o
Jainulabdeen - Reg.

Respected Madam:-

Convict Prisoner 18819 Aslam @ Tada Aslam S/o Jainulabdeen is suffering from missing teeth. He is unable to chew food completely due to few missing teeth.

During his previous parole, he had started initial steps of " PERMANENT DENTAL IMPLANT SURGERY " .

Upon Verification of available records provided, he need further surgical treatment and follow up at his private dental clinic. He wish to continue treatment with the same surgeon.

Thanking you,

Place : Central Prison, Coimbatore.
Date : 14 .08. 2023.

M/S
15.08.23
Senior Assistant Surgeon,
Central Prison Dispensary,
Coimbatore-18.

Dr. R. KANAR, MBBS, PGDENT, (Dental) C.D.O.,
Regd. No. - 38881,
Senior Assistant Surgeon,
Central Prison Dispensary, Coimbatore

8. In this regard, Dr.S.Manoharan, learned counsel for writ petitioner draws our attention to the private Dental Clinic report and a scanned reproduction of the same is as follows:



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Dr. N.S. MOHAMMED SHERIFF BDS.,

Dr. N.S. MOHAMMED GHOUSE IRSHAD BDS.,

Al-Safa Dental Clinic

ROOT CANAL & IMPLANT CENTRE

அல்-சஃபா பல்மருத்துவக்குழல்

TELC Church Building, Opp.to Clock Tower, Raja Street, Town Hall, Coimbatore - 641 001.

Cell : 96774 48187

Timing : 10.00 am - 1.00 pm | 5.00 pm - 9.00 pm
Sunday on appointment

TO,

WHOMEVER IT MAY CONCERN

THIS IS TO CERTIFY MR ASLAM S/O MR JAINULABDEEN - 47YR OLD MALE RESIDING AT NO.25 THIRUMAL STREET, NH ROAD - COIMBATORE, IS SUFFERING FROM "PARTIAL EDENTULISM" (A MEDICAL CONDITION CAUSING INABILITY TO CHEW FOOD WHICH INTURN LEADING TO IMPROPER DIGESTION & MALNUTRITION).

STAGE 1 SURGERY UPON PATIENT REQUEST WE HAVE PLANNED TO DO IMPLANT SURGERY IN LEFT UPPER & RIGHT LOWER POSTERIOR TEETH REGION. A TOTAL OF FOUR IMPLANTS(DIO IMPLANT(S)) ARE TO BE PLACED FRESHAND TECHNIQUE.

MULTI STAGE DELAYED LOADING PROTOCOL WILL BE FOLLOWED FOR WHICH PATIENT IS ADVISED TO VISIT OUR CLINIC EVERY 2-3 DAYS FOR NEXT TWO WEEKS. I.e (14-07-23 to 26-07-23) FOR STAGE 1 SURGERY.

PATIENT IS ALSO ADVISED TO VISIT CLINIC FOR REVIEW & CHECK WITH X RAYS EVERY 30 DAYS ONCE PREFERABLY.

STAGE 2 SURGERY REQUIRES A TOTAL DURATION OF 20-25 DAYS, 3-4 MONTHS AFTER STAGE 1 SURGERY UNDER IDEAL CONDITIONS FOR PROSTHETIC REHABILITATION.

Dr. N.S. MOHAMMED SHERIFF
BDS., BDS., BDS., BDS., BDS.
AL-SAFI DENTAL CLINIC
No. 25, TELC CHURCH COMPLEX,
TOWNHALL, COIMBATORE-641001



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9. In addition to the narrative thus far, we are informed that the leave that has been availed by the said convict prisoner thus far has been uneventful i.e., nothing untoward had happened. Learned Prosecutor submits, on instructions, that the conditions of leave have also been duly complied by the said convict prisoner.

10. Though mandamus is qua two weeks extension of leave, considering the nature of the dental procedure which the said convict prisoner has to undergo, Dr.S.Manoharan, learned counsel for petitioner requests this Court to consider extension by four weeks. We deem it appropriate to accede to the request as the narrative and discussion thus far serve as dispositive reasoning for acceding to the prayer i.e., answering the prayer in the affirmative.

11. The 22 days leave already granted to the said convict prisoner in and by 23.06.2023 order made in W.P.No.7167 of 2023 and extended subsequently is resuscitated and now there will be a fresh spell of one month leave (without escort) from 07.09.2023 to 07.10.2023 on the conditions on which leave was granted earlier and more particularly paragraph 6 of the aforementioned order dated 23.06.2023 albeit with two changes. They are (i) vide paragraph 6.3 wherein we have stated that the said convict prisoner



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should present himself every day and sign in a suitable register in Marakadai Police Station, Coimbatore instead said convict prisoner shall now present himself on alternate days of leave and sign in a suitable register in Variety Hall Road Police Station, Coimbatore at half past ten in the morning. The convict prisoner shall now surrender before the third respondent on elapsing of one month leave i.e., on 07.10.2023 by dusk i.e., by 05.30 p.m.

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

(M.S.,J.) (R.S.V.,J.)
01.09.2023

Index : Yes/No
Neutral Citation : Yes/No
mmi

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Coimbatore.

To

- 1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George, Chennai – 9.
- 2.The Additional Director General of Prison,
Coimbatore Range,
Coimbatore – 641 018.
- 3.The Superintendent,
Central Prison,
Coimbatore – 641 018.



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4.The Inspector of Police,
Variety Hall Road Police Station,
Coimbatore.

5.The Public Prosecutor,
High Court, Madras.



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

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