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WP.No.23341 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2023

CORAM
THE HONOURABLE Mr.JUSTICE M.SUNDAR
and
THE HONOURABLE Mr.JUSTICE R.SAKTHIVEL
W.P.No.23341 of 2023

T.Pechiyammal

.. Petitioner

Vs.

The State represented by its

1. The Secretary to Government of Tamil Nadu

Home Department

Fort St.George

Chennai – 600 009

2. The Deputy Inspector General of Police

Trichy Range

Trichy – 620 023

3. The Superintendent

Trichy Central Prison

Trichy – 620 020

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus certiorarified mandamus to call for the records pertaining to the impugned order No.2656/Mon.Vu/2023 dated 13.07.2023 issued by the second respondent and quash the same and consequently direct the respondents to grant leave for 40 days without escort to the detenu Sudalaimuthu, son of Nallaperumal, aged about 45 years, convict No.12000, confined at Central Prison, Trichy.

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For Petitioner : Dr.S.Manoharan

For Respondents : Mr.E.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.

2. Captioned writ petition has been filed by sister of a Life Convict by name Sudalaimuthu, son of Nallaperumal, he having been convicted and handed down life imprisonment sentence in and by judgment/conviction dated 28.03.2023 made in S.C.No.288 of 2002 on the file of Additional District and Sessions Judge-cum-Judicial Magistrate, Tuticorin for alleged offences under Section 302 read with Section 34 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity].

3. Aforementioned 'Sudalaimuthu, son of Nallaperumal' (petitioner's brother) shall hereinafter be referred to as 'Life Convict' for the sake of convenience and clarity. Life convict is now lodged in Trichy Central Prison (Convict No.12000).



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4. Life Convict sought 40 days ordinary leave without escort on four grounds and they are as follows:

- a) to repair his homestead (dwelling house which has got dilapidated);
- b) life convict's sister is unwell/indisposed;
- c) life convict has to return the loan he had obtained for conducting the Sessions case in which he was convicted; and
- d) life convict is ailing having served 23 years of sentence now in prison.

5. The aforementioned request of the life convict was negated by the second respondent in and by an 'order dated 13.07.2023 bearing reference No.2656/192/2023' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity].

6. Dr.S.Manoharan, learned counsel for the petitioner adverting to impugned order submitted that it has been made solely on the basis of Rule 21(i) of "Tamil Nadu Suspension of Sentence Rules, 1982" [hereinafter 'said



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Rules' for the sake of convenience and clarity] which reads as follows:

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'21.Non-eligibility for ordinary leave.-The following categories of prisoners shall not be eligible for ordinary leave:-

(a)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) Prisoners who may not report back to the prison after the completion of the leave period.

(j)

(k)'

7. Learned counsel submitted that earlier episode referred to in the impugned order was way back in 2010, cooling period is five years and that has also elapsed in 2015.

8. Learned Prosecutor submitted to the contrary and pointed out that Rule 21(i) of said Rules comes in the way and therefore, the impugned order



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has been made by the second respondent. It was further submitted by learned Prosecutor that the impugned order deserves to be sustained.

9. Owing to the narrow scope of the captioned writ petition, though the captioned writ petition is in the Admission Board, with the consent of both sides, main writ petition is taken up and heard out.

10. After hearing both sides, this Court is of the considered view that the impugned order deserves to be set aside and life convict deserves to be granted ordinary leave without escort. The discussion and dispositive reasoning i.e., reasons are as follows:

i) As already alluded to supra, the impugned order has been made solely on the basis of Rule 21(i) of said Rules. To be noted, Rule 21(i) of said Rules has already been extracted and set out supra. A careful reading of Rule 21(i) makes it clear that it talks about cases where it is verily believed that the prisoner may not report back to the prison after completion of the leave period. The plain language of sub-rule (i) of Rule 21 of said Rules is very clear that it is futuristic. Therefore, Rule 21(i) cannot be applied



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for an episode that happened in the past that more than a decade ago as in the case on hand. This Court has no difficulty in saying that Rule 21(i) will not apply to a case where a prisoner had in the past not returned back to the prison after completion of a leave period. To add with specificity to what is being articulated here, we make it clear that Rule 21(i) can be invoked when the Authority dealing with the leave application of a prisoner is of the considered view that if leave is granted, the prisoner may not return after the completion of the leave period;

ii) As a corollary to the previous discussion and dispositive reasoning, a careful perusal of the impugned order makes it clear that it proceeds solely on the basis of an episode which happened in 2010 for which a case was registered. To put it differently or in other words, the impugned order does not say that the convict prisoner is not likely to return if his prayer for 40 days ordinary leave without escort is acceded to. This by itself leaves the impugned order vitiated and leaves it liable to be quashed by us in this certiorari legal drill;



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iii) Be that as it may, we also notice that the life convict

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has been granted leave on as many as 17 occasions in all (thus far) in the 23 years of sentence. To be noted, of these 17 occasions, on 12 occasions emergency leave was granted by the Executive Arm, on one occasion ordinary leave was granted by the Executive Arm and on four occasions, ordinary leave was granted by other Hon'ble Division Benches of this Court. The details of the 17 occasions in the form of a tabulation as placed before us is as follows:



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...orders as detailed below.

S.No	Leave Reason	Released Date	Returned Date	Availed Leaves
1)	Released on Emergency Leave to attend his sister marriage	15.06.2008	17.06.2008	01(with police escort)
2)	Released on Emergency Leave to see his ailing mother	17.01.2009	19.01.2009	01(with police escort)
3)	Released on Emergency Leave to see his ailing mother	21.02.2009	28.02.2009	06(without police escort)
4)	Released on Emergency Leave to see his ailing mother	29.06.2009	03.07.2009	03(without police escort)
5)	Released on Emergency Leave to see his ailing mother	02.09.2009	06.09.2009	03(without police escort)
6)	Released on Ordinary Leave (DIG of Prisons, Trichy Range, Trichy Order No.1670/CA/2010, Dated:18.05.2009)	19.04.2010	20.05.2010	30 days (without Police escort)
7)	Released on Emergency Leave to see his ailing mother	19.07.2010	26.07.2010	03(without police escort)
8)	Released on Emergency Leave to see his ailing mother	09.09.2010	13.09.2010	03 without police escort)
9)	Released on Emergency Leave to see his ailing father	30.10.2010	07.12.2010	3 days (not returned on due date i.e. 3.11.2010 Parole absent)



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10)	Released on Leave as per the order of High Court of Madras Bench of Madurai in Orl.O.P(MD).No.6311/2012 dated:10.05.2012	11.05.2012	11.05.2012	01 (with Police escort)
11)	Released on Leave as per the order of High Court of Madras Bench of Madurai in WP.(MD).No.1373/2017 dated:04.04.2017	09.05.2017	09.05.2017	01 (with Police escort)
12)	Released on Emergency Leave to see his ailing mother	25.06.2019	27.06.2019	03 (with police escort)
13)	Released on Emergency Leave to see his ailing mother	20.12.2019	22.12.2019	03 (with police escort)
14)	Released on Emergency Leave to attend his mother funeral	27.12.2019	27.12.2019	01 (with police escort)
15)	Released on Leave as per the order of High Court of Madras Bench of Madurai in WP.(MD).No.77405/2019 dated:23.01.2020	25.01.2020	29.01.2020	03 (with Police escort)
16)	Released on Emergency Leave to see his ailing sister	20.03.2021	22.03.2021	01 (with police escort)
17)	Released on Leave as per the order of High Court of Madras Bench of Madurai in WP.(MD).No.2417/2023 dated:06.03.2023	09.03.2023		10 days leave is granted without

Emergency Leave = 12
Ordinary Leave = 01
Court Leave = 04



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A careful perusal of the aforementioned tabulation and the impugned order makes it clear that earlier episode was vide Serial No.9 when the life convict was given 3 days emergency leave for seeing his ailing father and he did not return till 07.12.2010. This means that the life convict has been granted leave on as many as 8 occasions thereafter. It is also to be noted that on all these 8 occasions, the life convict has returned on completion of the leave period.

iv) Of the aforementioned eight occasions, on four occasions as alluded to supra, a coordinate Hon'ble Bench has granted leave once vide order dated 06.03.2023 in W.P.(MD) No.2417 of 2023 [10 days ordinary leave] and again vide order dated 14.03.2023 in W.P.(MD) No.2417 of 2023 when ordinary leave was extended upto 29.03.2023. To be noted, this Court is informed that the life convict has reported back after the extended period on 29.03.2023 and he now remains incarcerated.

v) It is evident from the aforementioned undisputed tabulation that after 2010 the respondent (Executive Arm) itself has granted



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leave on as many as four occasions (Serial Nos.12, 13, 14 and 16 in the tabulation). Therefore, even according to the respondents, Rule 21(i) of said Rules does not come in the way as regards the 2010 episode (Serial No.9). The respondents having understood Rule 21(i) in this manner and having granted leave on as many as four occasions post 2010 episode cannot now turn around and say that Rule 21(i) is an impediment when there are no other fresh developments or new events.

vi) We find that all the four reasons given by the life convict for seeking ordinary leave are not outside the bounds of Rule 20 of said Rules (to be noted, Rule 20 of said Rules is an adumbration of the grounds on which ordinary leave can be granted to a convict prisoner). Rule 20 (iii) provides for repairing homestead and Rule 20(vii) also provides for any other extraordinary reasons.

vii) This Court is informed that there has been no prison offence and the conduct of the life convict has been blemishless.



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11. This Court having set out narrative, discussion and dispositive reasoning, now concludes the order by making the following order:

i) Captioned writ petition is allowed and the impugned order dated 13.07.2023 bearing reference No.2656/MP2/2023 made by the second respondent is set aside. The life convict is granted leave from 14.08.2023 to 03.09.2023;

ii) Life Convict shall surrender before the third respondent / office of the third respondent on 04.09.2023 (Monday) by dusk i.e., by 05.30pm;

iii) the aforementioned leave granted to the life convict is without escort;

iv) Life convict shall report in the Thattaparai Police Station in Thuthukudi District and sign every day in the forenoon;

v) To be noted, on 04.09.2023 the life convict need not sign in the police station as he shall be surrendering before the prison authorities on the said date. Likewise, the life convict



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need not sign on 14.08.2023 as that would be the date on which

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gpa

(M.S.,J.)

(R.S.V.,J.)

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To

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1. The Secretary to Government of Tamil Nadu
Home Department
Fort St.George
Chennai – 600 009
2. The Deputy Inspector General of Police
Trichy Range
Trichy – 620 023
3. The Superintendent
Trichy Central Prison
Trichy – 620 020
4. The Public Prosecutor
High Court, Madras.



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

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