



W.P.No.24197 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.24197 of 2023

and

W.M.P.No.23649 of 2023

in

W.P.No.24197 of 2023

Suganthi Suresh
D/o.Monokaran

.. Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by its Secretary to Government
Home [Prison IV] Department
Fort St.George, Chennai-9.

2. The Additional Director General of Prisons
Thalamuthu Natarajan Maaligai
2nd Floor, Gandhi Irwin Road
Egmore, Chennai-8.

3. The Superintendent of Police
Central Prison
Vellore District, Vellore.

..Respondents



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Petition filed under Article 226 of the Constitution of India praying writ of Mandamus to call for the entire records pertain to order of 3rd respondent dated 02.08.2023 made in En.13041/Thagu.3/2023 and quash the same as illegal and further direct the respondent to grant 90 days leave without escort to the petitioner's father Mr.V.Monokaran (Convict No.4389) detained in Central Prison, Vellore.

For Petitioner : Mr.A.Gouthaman
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' ['WP'] and 'Writ Miscellaneous Petition' ['WMP'].

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the listing on 17.08.2023 which reads as follows:

'In the captioned writ petition, petitioner sought for 90 days leave without escort for her father Thiru.V.Manokaran, son of Vallarasu, who is a convict prisoner (Convict Prisoner No.4389) now, lodged in Central Prison, Vellore.

2. Mr.A.Gouthaman, learned counsel on record for petitioner submits that petitioner sent a representation dated



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25.07.2023 seeking 90 days leave without escort primarily citing ill health of her father but the representation has been rejected in and by an 'order dated 02.08.2023 bearing reference No.13041/tha.ku.3/2023 made by third respondent' [hereinafter 'impugned order' for the sake of convenience and clarity].

3. Assailing the impugned order, learned counsel submitted that even according to impugned order, ill health of petitioner's father is not subjected to disputation but leave plea has been negatived.

4. Issue notice.

5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all three respondents.

6. Learned Prosecutor, on instructions submits that convict prisoner is even now undergoing treatment in a hospital as inpatient. Learned Prosecutor requests for a short accommodation to file a counter affidavit (if any) and also to produce records pertaining to the matter.

7. List after a fortnight. List on 01.09.2023.'

3. Aforementioned proceedings shall be read as an integral part and parcel of this order. This also means that short forms, short references and abbreviations used in the aforementioned proceedings shall continue to be used in the instant final order for the sake of convenience and clarity.

4. Mr.A.Gouthaman, learned counsel for petitioner, adverting to impugned order, reiterates that ill-health of writ petitioner's father has not been subjected to disputation or contestation. This position is correct and



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6. This takes us to the impugned order. A careful perusal of impugned order brings to light that it refers to Rule 13 of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] captioned 'Maximum period of emergency leave' which talks about maximum period of 15 days in a year to be spread over four spells i.e., 6 days in one spell and three days each in remaining three spells. Representation of writ petitioner dated 25.07.2023 does not seek emergency leave but it only seeks leave on the ground of ill-health of convict prisoner which is not subjected to disputation.

7. On the contrary, medical report placed by State brings to light that convict prisoner is bedridden, not mobile and needs help even to answer Nature's call. This means that 25.07.2023 representation of writ petitioner can be treated as a plea of ordinary leave. If it is ordinary leave, 15 days cap does not apply but Rule 22(1)(a) of said Rules is an impediment is learned Prosecutor's say. To be noted, Rule 22(1)(a) of said Rules reads as follows:

'22. Eligibility for ordinary leave : (1) No prisoner shall be granted ordinary leave unless he has been sentenced by a Court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to



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which the executive power of the Union Government extends and he has completed.

(a) one year of imprisonment in cases of prisoners sentenced to imprisonment for a period not exceeding five years;

8. We carefully considered Rule 22(1)(a) of said Rules. Rule 22(1)(a) of said Rules deals with cases where sentence not exceeding five years is imposed. This is, no doubt a case where imprisonment is not exceeding five years but what has been imposed is one year sentence and therefore, to read one year imprisonment cases also within the sweep of Rule 22(1)(a) of said Rules would lead to a situation where convict prisoner sentenced to imprisonment of one year and less than one year would not be entitled to leave at all. This, in our considered view, would leave to an illogical reading of Rule 22(1)(a) of said Rules. Therefore, we are of the view that in the cases where sentence itself is one year or less than one year, Rule 22(1)(a) of said Rules cannot be treated as an impediment and leave plea has to be dealt with on a case to case basis. In the case on hand, there is no disputation or contestation that convict prisoner is very seriously ill as he is immobile and needs help even to attend Nature's call. In this peculiar facts and circumstances of the case, making it clear that other than interpretation



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of Rule 22(1)(a) of said Rules, this case will not serve as a precedent for grant of leave in all cases (each plea has to be dealt with on a case to case basis) we make the following order:

(a) Impugned order dated 25.07.2023 bearing reference No.13041/Thagu.3/2023 made by third respondent is set aside;

(b) As the plea is now treated as ordinary leave, Rule 13 of said Rules will not apply;

(c) Convict Prisoner Thiru.V.Manokaran (Convict No.4389) (writ petitioner's father) is granted leave from 19.09.2023 10.30 a.m. to 01.11.2023 5.30 p.m.;

(d) The jurisdictional Probation Officer shall visit the convict prisoner, if necessary with a local Government Doctor from jurisdictional Primary Health Centre and submit a report which shall be filed in this Court by learned Prosecutor when the captioned matter is listed post disposal under the cause list caption 'FOR REPORT';

(e) In the case on hand, considering the peculiar facts and circumstances of the case, as it is not disputed that convict



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prisoner is not in a position to comply with any condition such as reporting before jurisdictional Magistrate or jurisdictional police station, we are not imposing any condition but we make it clear that convict prisoner shall stay in writ petitioner's residence at No.100/C Kazhanikattu Street, Chockalingam Nagar, Karukampathur, Vellore-632 013 and shall leave that address only for medical treatment as and when it becomes necessary. In other words, leave shall be utilized only for the purpose for which it has been granted and not for any other purpose.

Captioned WP and captioned WMP are disposed of in the aforesaid manner with the aforementioned directives and observations. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

14.09.2023

Index : Yes

Speaking

Neutral Citation : Yes

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Note: Upload forthwith

P.S.: Though captioned writ petition is disposed of, Registry to list the captioned writ petition under the cause list caption 'FOR REPORT' on 03.11.2023.

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To
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2. The Additional Director General of Prisons
Thalamuthu Natarajan Maaligai
2nd Floor, Gandhi Irwin Road
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3. The Superintendent of Police
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Vellore District, Vellore.
4. The Public Prosecutor
High Court, Madras.



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

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