



W.P.No.24902 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.24902 of 2023

Sathyakala

.. Petitioner/
Sister of the detenu

Vs.

1. The State Rep. By its
The Deputy Inspector General of Prison
Coimbatore Zone
Coimbatore – 641 018

2. The Superintendent
Coimbatore Central Prison
Coimbatore – 641 018

... Respondents

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 bearing No.15623/Tha.Ku.3/2023, dated 01.08.2023 passed by the second respondent and quash the same and consecutively direct the respondents to grant ordinary leave for 21 days without escort to the detenu Navaneethakrishnan, son of Rathinasami, aged about 35 years, bearing Convict No16412 at Central Prison, Coimbatore.

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For Petitioner : Ms.S.Lakshmi
for Mr.P.Bakkiyaraj

For Respondents : MrE.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.Factual matrix in the captioned writ petition is that writ petitioner's brother one Thiru.Navaneethakrishnan, son of Thiru. Rathinasami is a life convict (Convict No.16412) and he is now lodged in Central Prison, Coimbatore; that convict prisoner was convicted vide judgment dated 19.02.2013 in S.C.No.103 of 2012 on the file of 'II Additional District and Sessions Judge, Tiruppur' [hereinafter 'trial Court' for the sake of convenience and clarity]; that as regards the sentence, life imprisonment and fine of Rs.1500/- with six months simple imprisonment in the event of default to pay fine for Section 302 IPC charge and 10 years rigorous imprisonment and fine of Rs.1500/- with six months simple imprisonment as default clause qua fine for Section 392 IPC charge is the sentence; that



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the conviction and sentence were assailed by way of an appeal in

Crl.A.No.257 of 2013 and the appeal was dismissed on 01.06.2015

confirming the conviction and sentence; that the convict prisoner has now served 7 years, 4 months and 13 days as of 22.08.2023; that the convict prisoner has not sought for either emergency leave or ordinary leave until this day; that writ petitioner (convict prisoner's sister) sent a representation dated 25.07.2023 seeking 21 days ordinary leave for the convict prisoner primarily on the ground that convict prisoner's mother has undergone a surgery, she is unwell and is therefore unable to go over to the prison and see her son owing to ill-health; that convict prisoner's mother wants to spend some time with her son saying she is in the evening of her life; that convict prisoner's mother also wants to partition some immovable properties in the presence of her children (including convict prisoner); that this 25.07.2023 representation given by the writ petitioner seeking 21 days ordinary leave was negatived vide an 'order dated 01.08.2023 bearing reference No.15623/தகு.3/2023 made by the second respondent' [hereinafter 'impugned order' for the sake of brevity, convenience and clarity]; that the impugned order has been made primarily owing to Rule



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21(b) of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which says that convict prisoners sentenced under Sections 392 to 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] are not eligible for ordinary leave; that assailing the impugned order, captioned writ petition has been filed in this Court on 16.08.2023.

3. Ms.S.Lakshmi, learned counsel representing the counsel on record for writ petitioner, in her campaign against the impugned order, adverting to 25.07.2023 representation given by the convict prisoner's sister (writ petitioner) reiterated the contents of the same (captured supra in factual matrix narrative) and submitted that other than Rule 21(b) of said Rules, there is no other impediment for grant of leave. Learned counsel also emphasized the undisputed obtaining position that the convict prisoner has already served over seven years of sentence.

4. Issue notice.

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



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6. Owing to the limited scope of the captioned writ petition, with the consent of both sides, main writ petition was taken up and heard out though the captioned writ petition is listed in the Admission Board today.

7. Learned Prosecutor on instructions submitted that Rule 21(b) of said Rules comes into play as one of the charges for which 10 years rigorous imprisonment was handed down to the convict prisoner is for an offence under Section 392 IPC. Learned Prosecutor also pointed out that the conviction and sentence was carried to this Court by way of an appeal vide Crl.A.No.257 of 2013 and this Court vide order dated 01.06.2015 dismissed the appeal confirming the conviction and sentence.

8. We carefully considered the submissions made on both sides. This Bench is inclined to interfere with the impugned order and accede to the writ petitioner's request for 21 days ordinary leave for the convict prisoner and the reasons are as follows:

i) In similar circumstances in the case of *Thiru.Akram Khan* vide order dated 19.07.2023 made in W.P.No.21242 of 2023 this Court dealt with Rule 21(b) of said Rules and the most relevant paragraphs are sub-paragraphs (iii) to (v) of Paragraph 9,



which read as follows:

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'iii) The objective behind Rule 21(b) of said Rules which was made more than 4 decades ago appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc.,;

iv) To put it in a nutshell, the offence of robbery and decoity have been put in one basket under Rule 21(b) of said Rules. In the case on hand, as the convict prisoner has gone on leave on as many as seven earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave, we find that this is a fit case to relax the rigour of Rule 21(b) of said Rules;

v) In continuation of the earlier reason, we make it clear that we are exercising constitutional power and therefore said Rules being a set of Rules made by the Executive in exercise of Rule /special orders making powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] will not be complete fetters qua this Constitutional Court, it is always open to this Court to relax such Rules in suitable cases and this is one such case;'



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Owing to the factual matrix, the aforementioned view taken by this Court qua Rule 21(b) of said Rules applies in all fours to the case on hand.

ii) The convict prisoner has served 7 years, 4 months and 13 days sentence and the sentence as regards Section 392 IPC is 10 years. To be noted, sentence qua Section 302 IPC and 392 IPC are running concurrently and therefore, the convict prisoner has served nearly 75% of the sentence qua Section 392 IPC which is in the sweep of Rule 21(b) of said Rules.

iii) The convict prisoner has not availed either ordinary leave or emergency leave thus far;

iv) There is no prison offence against the convict prisoner;

v) The grounds on which ordinary leave have been sought for the convict prisoner (by the writ petitioner vide representation dated 25.07.2023) have not been subjected to disputation or contestation in the impugned order. The impugned order merely refers to Rule 21(b) of said Rules and says that the request for ordinary leave cannot be acceded to



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owing to Rule 21(b) of said Rules;

vi) In the light of the view taken by this Court *inter alia* in *Akram Khan's* case (supra) on Rule 21(b) we find that this impediment will not come in the way for this Court which is exercising constitutional powers;

vii) Said Rules are a set of Rules made under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity]. Section 432(5) of Cr.P.C can be construed as a Rule making power conferring / delegating subordinate legislation powers on the Government and whether placing a bar as regards Sections 392 to 402 IPC convictions alone can be put in a different footing was adverted to and left open by this Court in another order being *Sangeetha's* case vide order dated 09.06.2023 in W.P.No.17211 of 2023. Most relevant portion in *Sangeetha's* case is contained in Paragraph 7 and the same reads as follows:

'7. Before we proceed further, we find that said Rules have been made by Executive arm of State by exercise of powers under Section 432(5) of 'The Code



of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity]. A careful perusal of Section 432(5) of Cr.PC brings to light that it talks about appropriate Government giving 'Directions'. To be noted, such directions can be given either by way of general rules or by way of special orders. It is also to be noted that such directions are qua suspension of sentences and conditions related thereto. Therefore two pure and pristine legal questions (a) whether Section 432(5) of Cr.PC can be construed as Rule making power i.e., Rule making power conferring / delegating subordinate legislation powers on the Government and (b) whether placing a bar as regards Sections 392 to 402 convictions alone (Sections 392 to 402 broadly stated with Robbery and pertain to Dacoity) and it is not clear as to why Robbery and Dacoity alone have been placed in a different footing for creating a bar as regards grant of ordinary leave. Prima facie, it appears to be law and order issues that prevailed more than four decades ago but the scenario has changed drastically which means this provision may have become anachronistic. However considering the trajectory the matter has taken, we leave these two questions open for being



considered in another matter where such an issue arises, for abundant specificity, we make it clear that we are not expressing any view or opinion on these two pure and pristine questions of law in this order but we shall be embarking upon a legal drill in this regard in another matter in the days to come.'

As subordinate legislation cannot abridge constitutional powers as repeatedly held by Hon'ble Supreme Court, we continue to leave open the aforementioned question in *Sangeetha's* case and dispose of the captioned matter.

9. This Court having made an adumbration of the reasons i.e., dispositive reasoning for interfering with the impugned order, the following order is made:

a) impugned order dated 01.08.2023 bearing reference No.15623/தஞ.3/2023 made by the second respondent is set aside;

b) the convict prisoner is granted 21 days ordinary leave with escort (to be noted, we say 'with escort' as this is the first time convict prisoner is going on leave) . We make it clear that



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strength of the escort will be at the discretion of the respondents

depending on the threat perception;

c) 21 days ordinary leave will be from 28.08.2023

(Monday) 10.30 AM to 18.09.2023 (Monday) 05.30 PM ;

d) The convict prisoner shall surrender in the office of the second respondent on 18.09.2023 (Monday) by dusk i.e., by 05.30PM.

Captioned writ petition disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
23.08.2023

Index : Yes
Neutral Citation : Yes
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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

gpa

To

1. The Deputy Inspector General of Prison
Coimbatore Zone
Coimbatore – 641 018
2. The Superintendent
Coimbatore Central Prison
Coimbatore – 641 018
3. The Public Prosecutor
Madras High Court, Chennai

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