



W.P.No.24998 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.24998 of 2023

Pushpalatha
W/o.Ramesh

.. Petitioner

Vs.

1. The State Rep. by its
The Home Secretary to Government
Home Department - Prison IV,
Secretariat, Chennai-600 009.
2. The Director General of Prisons
No.02, Whannels Road, Egmore
Chennai-600 008.
3. The Superintendent of Prison
Central Prison at Puzhal
Thiruvallur District - 600 066.

..Respondents

Petition filed under Article 226 of the Constitution of India praying writ of Certiorarified Mandamus to quash the Impugned Order in No. 2844/ Tha Ku.2/2023 dated 26.07.2023 passed by the 3rd respondent and directing

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the 3rd respondent to release the petitioner / convict Mr. Ramesh S/o.Arumugam (CT. No. 2844) on leave for a period of 28 days without escort.

For Petitioner : Mr.M.Mohamed Saifulla
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' [hereinafter 'WP' for the sake of convenience, clarity and brevity].

2. Short facts [shorn of elaboration] are that writ petitioner's spouse one Mr.Ramesh, son of Mr.Arumugam is a lifer i.e., life convict (CT.No.2844) now lodged in Central Prison-I, Puzhal, Chennai - 600 066; that writ petitioner in and by a representation dated 11.07.2023 sought 28 days ordinary leave for her spouse [writ petitioner's spouse shall hereinafter be referred to as 'convict prisoner' for the sake of convenience and clarity] on the ground that daughter of writ petitioner and convict prisoner has finished 12th standard in school and has got admission in B.Com course in a



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private college and that needful needs to be done regarding admission of daughter of writ petitioner and convict prisoner; that this 11.07.2023 representation of writ petitioner came to be rejected by third respondent in and by an 'order dated 26.07.2023 bearing reference No.2844/tha.ku.2/2023' [hereinafter 'impugned order' for the sake of convenience and clarity]; that assailing impugned order [certiorari limb] and seeking 28 days ordinary leave without escort for convict prisoner [mandamus limb], captioned WP has been filed in this Court on 21.08.2023.

3. Mr.M.Mohamed Saifulla, learned counsel on record for writ petitioner, advertng to the aforementioned impugned order and 11.07.2023 representation reiterated the narrative supra and pointed out that the reason for seeking leave has not been subjected to disputation but impugned order has been made solely owing to Rule 22(3) of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity].

4. Issue notice.

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WEB COPY 5. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all three respondents and submits on instructions, that convict prisoner was last granted 28 days ordinary leave without escort for the period from 01.09.2022 to 30.09.2022 and one year after availing this last spell has not elapsed and therefore, impugned order has been made by third respondent placing reliance on Rule 22(3) of said Rules which reads as follows:

'22. Eligibility for ordinary leave:

(1)

(a) to (c)

(2)

(a) to (c)

(3) The prisoner shall be granted the second or subsequent spell of ordinary leave not exceeding the period mentioned in sub rule (2) above, after the completion of one year of imprisonment from the date on which he returns from the last ordinary leave.'

6. After considering the case file and submissions made by both sides, this Court is of the view that the impugned order deserves to be interfered with and writ petitioner is entitled to have 28 days ordinary leave without



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escort. The reasons are as follows:

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(i) The scheme of said Rules makes it clear that it provides for two kinds of leave (vide Rule 5 of said Rules) namely, Emergency Leave and Ordinary Leave. Grounds on which emergency leave can be sought are set out in Rule 6 of said Rules and authority, who is vested with powers to grant emergency leave is Superintendent of Prison (third respondent in this case). As regards ordinary leave, the grounds on which ordinary leave can be sought have been adumbrated in Rule 20 of said Rules (to be noted, grounds of non-eligibility for ordinary leave have also been adumbrated in Rule 21 of said Rules) but the authority to grant ordinary leave has been vested with Deputy Inspector-General of Prisons. In the case on hand, vide 11.07.2023 representation, writ petitioner has sought for ordinary leave and therefore, the same should have been dealt with only by the jurisdictional Deputy Inspector-General of Prison and not by third respondent i.e., Superintendent of Prison. Therefore, the impugned order has been made by the



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authority which lacks inherent jurisdiction vide said Rules. On this short point, impugned order is set aside;

(ii) The above takes us to mandamus limb of the prayer.

As regards mandamus limb, as rightly pointed out by learned counsel for writ petitioner, the reason or ground (daughter's education) on which ordinary leave has been sought has not been subjected to disputation. To be noted, Rule 20(ii) of said Rules provides for ordinary leave on this ground. The only impediment therefore, is Rule 22(3) of said Rules alluded to supra. As regards this Rule 22(3) of said Rules also, one year cooling period between two spells of ordinary leave will also elapse in three weeks from today i.e., by 30.09.2023. In any event, said Rules being subordinate legislation made by Executive Arm in 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] cannot abridge the Constitutional powers of this Court. Therefore, exercising our Constitutional powers and considering that it is



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daughter's education under Rule 20(ii) of said Rules, we find, this is a fit case to accede to the request by exempting this case from Rule 22(3) of said Rules. To be noted, this exemption is not vide Rule 40 of said Rules which is the preserve of Executive Arm, this exemption is being granted by exercise of Constitutional powers of this Court.

7. In the light of the narrative thus far, the following order is made:

(i) Impugned order dated dated 26.07.2023 bearing reference No.2844/tha.ku.2/2023 made by third respondent is set aside;

(ii) Writ petitioner's spouse Mr.Ramesh, son of Mr.Arumugam (CT.No.2844) now lodged in Central Prison-I, Puzhal, Chennai - 600 066 is granted 28 days ordinary leave from 12.09.2023 10.30 a.m. to 09.10.2023 5.30 p.m.;

(ii) Convict Prisoner shall surrender before third respondent by dusk i.e., by 5.30 p.m. on 09.10.2023;

(iv) Aforementioned ordinary leave is granted without



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escort as there is no disputation that convict prisoner has gone on ordinary leave multiple times without escort in the past and nothing untoward has happened;

(v) Convict prisoner shall go before jurisdictional police station i.e., T-7 Tank Factory Police Station, Avadi and sign in appropriate register by half past ten everyday;

(vi) Convict prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities;

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

(M.S.,J.)

(R.S.V.,J.)

08.09.2023

Index : Yes/No
Speaking/Non-speaking
Neutral Citation : Yes

Note: Upload forthwith

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To

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4. The Public Prosecutor
High Court, Madras.



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

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