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W.P.No.26034 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.09.2023

CORAM

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

W.P.No.26034 of 2023

Arputha Jothi

.. Petitioner

Vs

1.The State Rep. By its
The Home Secretary to Government,
Prison Department, Secretariat, Chennai – 09.

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 for issuance of a writ of certiorarified mandamus to call for the records in relating to the impugned order in No.8047/Tha.Ku.2/2023 dated 21.08.2023 passed by the 3rd respondent quash the same and consequently direct the 3rd respondent to grant 21 days leave without escort to the convict / Petitioner's husband, namely, M.Karmegam, S/o.Muthu Subramanian (CT No.2434).



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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.,**]

Captioned writ petition has been filed with a certiorarified mandamus prayer inter-alia assailing an 'order dated 21.08.2023 bearing reference No.8047/Tha.Ku.2/2023 made by the third respondent' (hereinafter 'impugned order' for the sake of convenience and clarity) negating/rejecting petitioner's representation dated 03.08.2023 seeking 21 days ordinary leave for her spouse Thiru.M.Karmegam, son of Thiru.Muthu Subramanian (Convict No.2434) now lodged in Central Prison, Puzhal - I, Chennai – 600 066. To be noted, the mandamus limb of the prayer is to grant 21 days ordinary leave without escort to the writ petitioner's spouse.

2. Adverting to the impugned order, Mr.M.Mohamed Saifulla, learned counsel for writ petitioner pointed out that only impediment as set out by the third respondent in the impugned order is Rule 22(3) of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said



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Rules' for the sake of convenience and clarity] which says that there should be a one year cooling period as between two spells of ordinary leave. To be noted, in the case on hand, the last spell of 21 days ordinary leave availed by the convict prisoner is from 21.12.2022 to 12.01.2023.

3. Learned counsel submitted that 21 days ordinary leave has been sought on three grounds (to be noted, learned counsel adverted to 03.08.2023 representation made by petitioner) and the three grounds are (a)make arrangements for livelihood of convict prisoner's family; (b)make arrangements for the marriage of writ petitioner and convict prisoner's daughter; and (c) to aid medical treatment for ailing writ petitioner. Learned counsel submitted that these three reasons fit into sub-clauses (i), (iv) and (viii) respectively of Rule 20 of said Rules and there is no disputation qua these reasons in the impugned order is learned counsel's further say.

4. Issue notice.

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



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

7. After careful consideration of Prosecutor's submission that Rule 22 (3) of said Rules provides for a threshold barrier i.e., one year cooling period between two spells of ordinary leave, we came to the conclusion that the impugned order deserves to be dislodged in the certiorari legal drill on hand and the mandamus prayer deserves to be acceded to. The discussion and dispositive reasoning i.e., reasons are as follows:

7.1 As regards ordinary leave, the authority who is vested with the power to issue orders is the Deputy Inspector General of Prisons. This is vide Rule 19 of said Rules. Proviso to Rule 19 makes it clear that exemption (if that be so) from any of the conditions of said Rules can be made by the Government and the matter has to be sent to the Government in such cases. When the rule position is such, the third respondent who is vested with power to grant emergency leave under Rule 6 of said Rules has passed the impugned order qua ordinary leave and therefore the impugned order has been made by the third



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respondent who lacks sub matter jurisdiction. To be noted, there are two kinds of leave namely emergency leave and ordinary leave and this classification is vide Rule 5 of said Rules;

7.2 As a corollary to the previous reason, we make it clear that in cases of this nature i.e., while dealing with ordinary leave application, the Superintendent of Prison concerned should forward the matter to the jurisdictional Deputy Inspector General of Prisons. That has not been done in the case on hand;

7.3 As regards the mandamus limb of the prayer, we find that the convict prisoner has thus far been granted 51 days leave (30 days emergency leave and 21 days ordinary leave). When convict prisoner has availed emergency and ordinary leave, nothing untoward has happened. As already alluded to supra, the last spell of ordinary leave was from 21.12.2022 to 12.01.2023 (without escort) but on condition that the convict prisoner should sign in the register at jurisdictional police station everyday and nothing untoward had happened when convict prisoner availed this earlier leave;

7.4 The reasons i.e., three reasons adumbrated supra fit into



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sub-clauses (i), (iv) and (vii) of Rule 20 of said Rules which is an adumbration of grounds for grant of ordinary leave. To be noted, the reasons remain undisputed and besides being compelling enough for taking the exemption route.

7.5 We make it clear that the exemption route is taken by exercise of our constitutional powers and not by taking the Rule 40 route which is the preserve of the Executive Arm. Leave is akin to bail (though not exactly the same) and therefore we draw inspiration from ***Vernon Vs. State of Maharashtra and another*** reported in **2023 SCC OnLine SC 885** wherein Hon'ble Supreme Court held that a bail restriction clause cannot take away or abridge constitutional powers particularly those touching upon Article 21. In the case on hand, said Rules are not statutory in every sense of the term as it is subordinate legislation which was not subjected to debate in the legislature.

8. Ergo, 21 days ordinary leave granted to the convict prisoner (without escort) is on the following terms:

8.1 It will be 21 days from 11.09.2023 (Monday 10.30 a.m.) to 01.10.2023 (5.30 p.m.);



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8.2 While on leave the convict prisoner should go before the jurisdictional police station (we are informed that the jurisdictional police station is R7 K.K.Nagar Police Station, Chennai) and sign in the register thereat at half past 10 every day;

8.3 While on leave, the convict prisoner shall utilise the leave only qua the grounds on which leave has been sought/granted and shall not use the leave for any other purpose or indulge in any other activities;

8.4 With regard to the condition of going over to the jurisdictional police station and signing in the register therein the convict prisoner need not comply with this condition on 11.09.2023 and 01.10.2023 being the first and last days of 21 days leave;

8.5 The convict prisoner shall stay at his residence as given in the short cause title viz., Door No.378, 30th



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*Street, K.K.Nagar, Chennai – 600 078 and shall not leave
the jurisdiction of Chennai City Police Commissionerate;*

*8.6 On 01.10.2023 convict prisoner shall surrender
in the office of the third respondent by dusk i.e., by 05.30
p.m.*

9. Captioned writ petition is disposed of in the aforesaid manner
with the aforementioned directives/conditions. There shall be no order
as to costs.

(M.S.,J.) (R.S.V.,J.)
05.09.2023

Index : Yes/No

Neutral Citation : Yes/No

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

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To

1. The Home Secretary to Government,
Prison Department, Secretariat, Chennai – 09.

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2.The Director General of Prisons
No.02, Whannels Road, Egmore,
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3.The Superintendent of Prison,
Central Prison at Puzhal,
Thiruvallur District – 600 066.

4.The Inspector of Police,
R7, K.K.Nagar Police Station,
Chennai.

5.The Public Prosecutor,
High Court, Madras.



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

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