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W.P.No.27166 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2023

CORAM

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

W.P.NO.27166 OF 2023

R.Sathya Priya

.. Petitioner

VS.

1.The Director General (Prison)
Additional General Director Office
Gandhi Irwin Salai, CMDA Building,
2nd Kopuram, Egmore,
Chennai – 600 008.

2.Prison Superintendent
Central Prison
Coimbatore – 641 018.

.. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India
praying Writ of Mandamus directing the second respondent herein to grant
one month leave without police escort to my husband Ramkumar son of

1/14



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Nagaraj Prisoner No.LCT No.18505 who is undergoing imprisonment in the second respondent prison pursuant to the representation dated 24.07.2023.

For Petitioner : Mr.T.Muruganantham
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] which has been presented in this Court on 31.08.2023 with a mandamus prayer qua a 'representation dated 24.07.2023 given by the writ petitioner' (hereinafter 'said representation' for the sake of convenience and brevity).

2.Short facts (shorn of particulars that are not imperative for appreciating this order) are that the writ petitioner's spouse one Thiru. Ram Kumar, son of Thiru. Nagaraj, aged 32 years is a Convict Prisoner (LCT No.18505); that the convict prisoner is now lodged in Central Prison,



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Coimbatore; that the convict prisoner's spouse (writ petitioner) sent the said representation seeking one month leave on the ground that the convict prisoner's mother is seriously ill; that the said representation is remaining unattended and this has necessitated the presentation of captioned writ petition in this Court on 31.08.2023 is learned counsel's say.

3.Today, Mr.T.Muruganantham, learned counsel on record for the writ petitioner advertng to the case file reiterated the aforementioned submission and emphasised that the convict prisoner has remained incarcerated for nine years now and he has gone on leave and returned to prison on earlier occasions without anything untoward happening.

4.Issue notice.

5.Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for all respondents. Learned Prosecutor on instructions submits that the said representation has since been disposed of by the third respondent in and by an 'order dated 04.08.2023 bearing reference



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No.15292/tha.ku.3/2023' (hereinafter 'impugned order' for the sake of convenience and clarity).

6.Owing to the narrow compass of which the captioned matter turns, with the consent of both sides, main writ petition was taken up and heard out.

7.Considering the facts and circumstances of the case, making an exception as a one off case, though the prayer is one of mandamus qua the said representation, the impugned order is being tested with a further caveat that such a course would not be a routine and would be a call to be taken on a case to case basis.

8.Learned Prosecutor submitted that only the ground on which the impugned order has been made is that two cases are pending against the convict prisoner and the details in this regard have been captured in paragraph 3 of the impugned order. A scanned reproduction of the impugned order is as follows:



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9.To be noted, two cases pending qua the convict prisoner are not prison offences.

10.We find after perusing the impugned order and after hearing both sides that we are of the view that this is a case where the impugned order is liable to be interfered with and the convict prisoner deserves to be granted Emergency Leave for a fortnight. The reasons are as follows:

(i)There are two kinds of Leave Rule vide Rule 5 of 'The Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] i.e., Emergency Leave and Ordinary Leave. Serious illness of mother is a ground for Emergency Leave vide Rule 6 of the said Rules;

(ii)In the impugned order, other than the pendency of two cases, the reason i.e., the ground on which leave has been sought (serious illness of



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mother) has not been subjected to any dispute or contestation;

(iii) This Court has held vide order dated 15.09.2023 in W.P.No.27137 of 2023 that the said Rules is a piece of Subordinate Legislation made by Executive Arm in exercise of rule making powers vide Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and therefore, a piece of Subordinate Legislation which has not gone through legislative grind i.e., law making drill in the Legislature can hardly constrict or abridge much less denude Constitutional powers of this Court we hasten to add that said Rules is a codified guideline for the prison authorities / Executive and therefore when leave is granted by prison Superintendent, DIG or Executive (Government) said Rules will apply and rigour of the same will operate.



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(iv) On carefully considering the facts and circumstances, we find that the convict prisoner's conduct inside the prison is blemishless and he has not come to the adverse notice of the prison authorities. The reason i.e., serious illness of mother is compelling enough to accede to the prayer;

(v) The convict prisoner last went on leave only in 2021 i.e., from 16.04.2021 to 21.04.2021;

(vi) Convict prisoner has been in prison for nine years now;

(vii) Convict prisoner has gone on leave on earlier occasions and in all occasions no untoward incident had happened and the convict prisoner has returned and surrendered on the leave period elapsing;



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(viii)The details of leave on earlier occasions is

as follows:

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Total days of leave availed (including the leave granted by the High Court)	Emergency Leave	1) 7 days (day only) with Police Escort 2) 6 days with Police Escort from 16/04/2021 to 21/04/2021 as per the order of Superintendent of Prisons
	Ordinary leave	Nil
	Other leave	Nil
	Total	06 days
Details of last leave availed	Emergency leave	16.04.2021 to 21.04.2021 (6 days with Police Escort)

11.We noticed that one of the two cases pending against the convict prisoner is S.C.No.278 of 2010 on the file of III Additional District Judge, Coimbatore and it is next listed on 25.09.2023 for evidence. On that day, the escort party shall ensure that the convict prisoner attends the court hearing. We request the learned III Additional District Judge, Coimbatore to ensure that the next hearing date in S.C.No.278 of 2010 is well after 05.10.2023 so that the convict prisoner is able to utilise the leave for the purpose qua the ground on which it has been availed.

12.In the light of the dispositive reasoning set out supra, the following order is made:



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(i) The impugned order i.e., order dated 04.08.2023 bearing reference No.15292/Tha.Ku.3/2023 made by the second respondent is set aside;

(ii) Writ petitioner's spouse Thiru. Ram Kumar (LCT No.18505) (convict prisoner) Son of Thiru. Nagaraj, now lodged in Central Prison, Coimbatore is granted 15 days Emergency Leave from 10.30 a.m., on 20.09.2023 to 05.30 p.m., on 05.10.2023 with escort;

(iii) The strength of the escort shall be decided by the jurisdictional police based on the ground situation;

(iv) Leave being granted with escort shall not be construed as convict prisoner being under house arrest;

(v) Convict prisoner shall utilise the leave only qua the ground on which it has been granted i.e., on the ground that his mother is seriously ill and convict prisoner shall not take part in any other activities;



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(vi) Convict Prisoner shall surrender before the second respondent by dusk i.e., by 5.30 p.m. on 05.10.2023.

13.All concerned shall comply with this order on the same being uploaded in the official website of this Court without insisting on certified copies. To be noted, the uploaded versions are water marked and QR coded.

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

(M.S., J.)

(R.S.V., J.)

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Index : Yes

Neutral Citation : Yes

Speaking

Note : Upload forthwith

TK

P.S-I: Though the captioned writ petition is disposed of, Registry shall list the captioned writ petition under the cause list caption 'FOR REPORT' on 13.10.2023.

PS-II: A copy of this order shall be marked to the learned III Additional District Judge, Coimbatore.



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To

- 1.The Director General (Prison)
Additional General Director Office
Gandhi Irwin Salai, CMDA Building,
2nd Kopuram, Egmore,
Chennai – 600 008.
- 2.Prison Superintendent
Central Prison
Coimbatore – 641 018.
- 3.The III Additional District Judge
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- 4.The Public Prosecutor
High Court, Madras.



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