



W.P.No.27197 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.27197 OF 2023

S.Thangam

.. Petitioner

VS.

1.The State represented by its
Home Secretary
Home Department
Secretariat, Fort St. George,
Chennai.

2.The Additional Director General of Police
Whannels Road,
Egmore, Chennai – 600 008.

3.The Additional Director General of Police
Vellore Saragam,
Thorapadi,
Vellore – 2.

4.The Superintendent
Central Prison
Cuddalore District.

.. Respondents



W.P.No.27197 of 2023

PRAAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order No.14310/Tha.Ku.2/2023 dated 18.08.2023, issued by the 4th respondent and quash the same and consequently direct the respondents to grant parole for 40 days without escort to petitioner's son named Manikandan @ Kalaimani son of Subash (Convict Prisoner No.14935) aged 40 years, now confined in Central Prison, Cuddalore.

For Petitioner : Mr.B.Gopalakrishnan
for Mr.K.Amirthalingam

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 presented in this Court on 11.09.2023 with a Certiorarified Mandamus prayer.

2.Short facts (shorn of particulars not imperative for appreciating this order) are that the writ petitioner's son Thiru. Manikandan @ Kalaimani is a prison inmate; that the 'writ petitioner's son' (hereinafter be referred to as 'prison inmate' for the sake of convenience and clarity) is now confined in Central Prison, Cuddalore and his prison inmate number is



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C.T.No.14935; that the prison inmate was convicted and sentenced vide order dated 22.04.2013 in S.C.No.51 of 2011 on the file of Sessions Judge, Mahila Court, Cuddalore and has remained incarcerated for over nine years now; that leave has been sought *inter alia* on the ground that there are two young daughters whose education has to be taken care of and that the writ petitioner herself who is taking care of them is unwell; that the central theme of captioned writ petition is request for 40 days Ordinary Leave without escort that was negatived by the fourth respondent vide order dated 18.08.2023 in reference No.14310/Tha.Ku.2/2023 and challenging the same the captioned writ petition has been filed.

3.Adverting to the case file, Mr.B.Gopalakrishnan, learned counsel representing the counsel on record for the writ petitioner reiterated the grounds on which leave has been sought. Learned counsel pointed out that:

(a)the reasons have not been subjected to
disputation or contestation;



(b)that the prison inmate has gone on leave on multiple occasions earlier and nothing untoward had happened;

(c)that the prison inmate has remained incarcerated for nearly ten years now;

4.Issue notice.

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

6.Learned Prosecutor referred to an 'order dated 18.08.2023 bearing reference No.14310/Tha.Ku.2/2023' [hereinafter 'impugned order' for the sake of convenience and clarity] and submitted that the leave plea qua prison inmate came to be rejected by the fourth respondent essentially owing to clause (b) of Rule 21 of 'The Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which reads as follows:



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'21.Non-eligibility for ordinary leave. - The following categories of prisoners shall not be eligible for ordinary leave:-

(a)...

(b)Prisoners sentenced under sections 392 to 402 of the Indian Penal Code (Central Act 45 of 1860);

(c)...

(d)...

(1)...

(2)...

(3)...

(4)...

(5)...

(6)...

(7)...

(e)...

(f)...

(g)...'



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7. After hearing both sides, we find that the only impediment in the case on hand is Rule 21(b) of said Rules. We had an occasion to deal with Rule 21(b) of said Rules in **Mr. Akram Khan's case** vide order dated 19.07.2023 made in W.P.No.21242 of 2023 and a scanned reproduction of the same is as follows:



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W.P.No.21242 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.21242 of 2023

Mr.Akram Khan

.. Petitioner

Vs.

1. The State Rep. By its
The Deputy Inspector General of Prison
Office of Deputy Inspector General of Police
Chennai Range, Egnore – 600 008

2. The Superintendent of Prison
Central Prison at Puzhal I
Thiruvallur District – 600 066

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus to call for the records pertaining to the impugned order in No.8562/த.த.2 /2023 dated 06.07.2023 passed by the second respondent and quash the same and consequently direct the respondents to grant 21 days ordinary leave without escort to the petitioner, namely Mr.Akram Khan, son of Ayub Khan, who is confined in Central Prison, Puzhal I, Chennai.

For Petitioner

Mr.M.Mohamed Saifulla

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For Respondents

: Mr.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by MSUNDAR, J.,]

This order will now dispose of the captioned 'Writ Petition' [WP] for the sake of brevity, convenience and clarity].

2. The writ petitioner is a convict prisoner now lodged in Central Prison Puzhal I, Chennai – 600 066 having been convicted and sentenced by XV Additional City Civil Court, Chennai vide S.C.No.613 of 2005.

3. The writ petitioner gave a 'representation dated 15.05.2023 to the first respondent' [hereinafter 'said representation' for the sake of convenience and clarity] seeking 21 days ordinary leave on three grounds and they are

a) arrange for treatment of his ailing mother;

b) make arrangement for his daughter's further education

(this Court is informed in the hearing that petitioner's daughter has completed D.Pharm i.e., Diploma in Pharmacy and wants to pursue higher studies) and

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c) maintenance and repair work in his dwelling house.

WEB COPY 4. Aforementioned said representation has been negatived by the second respondent in and by an order dated 06.07.2023 bearing reference No.8562/Sp.Gy.2/2023 [hereinafter 'impugned order' for the sake of brevity, convenience and clarity]. Captioned writ petition has been filed assailing the impugned order.

5. Mr.Mohamed Saifulla, learned counsel on record for the writ petitioner adverting to the impugned order submits that the only ground on which petitioner's said representation has been negatived is Rule 21(b) of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity]. To be noted, the impugned order refers only to Rule 21 but a perusal of paragraph 2 thereof makes it clear that reference is to clause (b) of Rule 21 of said Rules. Learned counsel submits that the conduct of the convict prisoner in the prison has been blentishless, he has gone on leave (emergency leave) in as many as seven earlier occasions and has returned without any untoward incident and therefore Rule 21(b) of said Rules really cannot be an impediment.

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WP.No.21242 of 2021

6. *Prima facie* case made out. Issue notice.

7. Owing to the limited scope of the captioned writ petition, the main writ petition was taken up and heard out in the admission board itself.

8. Mr.E.Raj Thilak, learned Additional Public Prosecutor accepts notice for both the respondents and submits on instructions that Rule 21(b) makes it clear that a convict prisoner who was sentenced under Sections 392 to 402 of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] falls under the category of prisoners who are not eligible for ordinary leave vide Rule 21(b) of said Rules. In the case on hand, there is no dispute or contestation that the sentence qua convict prisoner is under Section 395 IPC.

9. We carefully considered the submissions made on either side and we are inclined to set aside the impugned order and grant 21 days ordinary leave without escort to the writ petitioner and the reasons are as follows:

i) As rightly pointed out by the learned counsel for writ

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W.P. No.27242 of 2023

petitioner, the writ petitioner has gone on leave on as many as seven earlier occasions, thrice with police escort and on four occasions without police escort and on all those occasions writ petitioner has returned and surrendered on expiry of the leave period and nothing untoward has happened. In this regard, a tabulation has been placed before us by the Prosecutor regarding earlier occasions of leave and a scanned reproduction of the same is as follows:

Table No.1

Details of Police Offences committed by the accused in prison
- 10 -

Details of leave granted to the accused:

S. No.	Leave Type	From	To	No. of days	Remarks
1	Emergency leave	10.04.2021	10.04.2021	1	With Police escort
2	Emergency leave	11.04.2021	11.04.2021	1	With Police escort
3	Emergency leave	11.04.2021	11.04.2021	1	With Police escort
4	Emergency leave	11.04.2021	11.04.2021	1	Without Police escort
5	Emergency leave	11.04.2021	11.04.2021	1	Without Police escort
6	Emergency leave	11.04.2021	11.04.2021	1	Without Police escort
7	Emergency leave	11.04.2021	11.04.2021	1	Without Police escort
Total				7	

Sub-Inspector of Prisons
Central Prison - 1, Pollal

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As would be evident from the tabulation placed before us, convict prisoner (out of seven earlier occasions) has gone on leave without police escort in the last four occasions, there has been no untoward incident and therefore, we are inclined to grant 21 days leave without escort this time albeit with a condition to report in jurisdictional police station daily;

ii) In response to our query as to whether there is any prison offence qua the writ petitioner, learned Prosecutor submits, on instructions, that there is no prison offence and the conduct of the convict prisoner in the prison has been blemishless;

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



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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;

vi) We also find that at least two of the three grounds on which ordinary leave has been sought are compelling and these are, making arrangements for medical treatment for his ailing mother and making arrangements for higher education of his daughter who has completed Diploma in Pharmacy;

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vii) This Court also notices that punishment for decoity under Section 395 of IPC can extend upto imprisonment for life or rigorous imprisonment for a term which may extend upto 10 years and there is no minimum sentence but the trial Court has awarded 5 years sentence (even in the five years sentence 135 days set off has been given) and we have taken this factor also into consideration;

viii) The writ petitioner remains incarcerated from 02.10.2021.

10. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

i) Impugned order dated 06.07.2023 bearing reference No.8562/த.ந.2/2023 made by the second respondent is set aside;

ii) The writ petitioner i.e., convict prisoner (Convict No.8562) now lodged in Central Prison, Puzhal, Chennai - 600 066 is given 21 days ordinary leave without escort from 24.07.2023 to 13.08.2023;

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iii) The convict prisoner while on leave shall sign before

P-1 Pulianthope Police Station every day at 10.30am.

24.07.2023 and 13.08.2023 being the first and last day of the 21

days leave, the convict prisoner need not sign before the P-1

Pulianthope Police Station.

iv) The convict prisoner shall surrender before second

respondent / in the office of the second respondent on

13.08.2023 by dusk i.e., by 05.30 p.m;

Captioned writ petition disposed of in the aforesaid manner albeit
with the aforesaid directives.

(M.S.,J.)

(R.S.V.,J.)

19.07.2023

Index : Yes/No

Neutral Citation : Yes / No

gpa

P.S: Though captioned writ petition has been disposed of, the Registry
shall list the matter under the cause list caption 'FOR REPORT' on
18.08.2023

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WEB COPY The Deputy Inspector General of Prison
Office of Deputy Inspector General of Police
Chennai Range, Egmore – 600 008

2. The Superintendent of Prison
Central Prison at Puzhal I
Thiruvallur District – 600 066

3. The Public Prosecutor
Madras High Court, Chennai

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M.SUNDAR J.
and
R.SAKTHIVEL J.

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19.07.2023

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8.The aforementioned ***Akram Khan's case*** order was written as

Rule 21(b) of said Rules which was made more than four decades ago was made in a different social context i.e., different social setting and the same has now become anachronistic. Besides ***Akram Khan case***, we have also held in ***Selvam case*** vide order dated 15.09.2023 made in W.P.No.27137 of 2023 that the said Rules is a piece of 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] and therefore, a piece of Subordinate Legislation which has not been put through the law making grind i.e., Legislative drill in the Legislature can hardly constrict, construct or abridge, much less denude the Constitutional powers of this Court.

9.On carefully considering the facts and circumstances of the case on hand, 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., the ground on which leave has been sought is there are two young daughters whose education has to be taken care of and



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that the writ petitioner herself who is now taking care of them all by herself is unwell has not been subjected to any disputation or contestation.

10. Convict prisoner has gone on leave on earlier occasions and the details of which are as follows:

Total days of leave availed (including the leave granted by the High Court)	Emergency Leave		2 days
	Ordinary leave		Nil
	Court leave		58 days
	Total		58 days
Details of Emergency leave availed			1) Released on Emergency leave 01 day with Police Escort to see his ailing Daughter Dhanlakshmi on 28.11.2021. 2) Released on Emergency leave 01 day with Police Escort to see his ailing Daughter Dhanlakshmi on 05.06.2022.
Details of earlier Court orders regarding leave to the prisoner	From	To	Order Details
	08.03.2019	15.03.2019	HCP No: 327/2019 dated: 05.03.2019
	(With Police Escort)		
	05.07.2019	19.07.2019	HCP No:1269/2019, dated: 02.07.2019
	(With Police Escort)		(With Police Escort)
	11.02.2020	24.02.2020	HCP No: 2887/2019, dated: 03.02.2020
	(With Police Escort)		(With Police Escort)
	08.08.2020	28.08.2020	HCP No: 1304/2020, dated: 07.08.2020



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The aforementioned occasions have been incident free i.e., nothing untoward had happened and the convict prisoner has returned and surrendered on the leave period elapsing.

11.The reason given which has been alluded to supra is compelling (considering the facts and circumstances of the case on hand) and in any event, even vide said Rules which we have held to be a codified guideline for the Executive to deal with the requests for leave from prison inmates, cannot abridge much less denude Constitutional powers which this Court is exercising. The reasons are good enough nay (compelling considering the facts and circumstances of the case on hand) for grant of leave vide sub Rules (i) and (vii) of Rule 20 of said Rules.

12.In the light of the narrative, discussion and dispositive reasoning articulated thus far, the following order is made:

- (i) The impugned order i.e., order dated 18.08.2023 bearing reference No.14310/Tha.Ku.2/2023 made by the fourth respondent is set aside;



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(ii) Writ petitioner's son Thiru. Manikandan @ Kalaimani (Prison inmate No.14935) Son of Thiru. Subash, now lodged in Central Prison, Cuddalore is granted Ordinary Leave from 10.30 a.m., on 20.09.2023 to 05.30 p.m., on 10.10.2023 without escort;

(iii) Convict prisoner while on leave shall sign before jurisdictional Magistrate i.e., Judicial Magistrate – I, Viruthachalam everyday at 10.30 a.m.;

(iv) Convict Prisoner shall surrender before the fourth respondent by dusk i.e., by 5.30 p.m. on 10.10.2023;

(v) Convict prisoner shall utilize the leave only for the purpose which it has been granted i.e., education of his children and shall not take part in any other activities.



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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 (hard 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.)

15.09.2023

Index : Yes

Neutral Citation : Yes

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Note : Upload forthwith

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P.S-I: Though the captioned writ petition is disposed of, Registry shall list the captioned writ petition under the cause list caption 'FOR REPORTING COMPLIANCE' on 20.10.2023.



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To

- 1.The Home Secretary
Home Department
Secretariat, Fort St. George,
Chennai.
- 2.The Additional Director General of Police
Whannels Road,
Egmore, Chennai – 600 008.
- 3.The Additional Director General of Police
Vellore Saragam,
Thorapadi,
Vellore – 2.
- 4.The Superintendent
Central Prison
Cuddalore District.
- 5.The Public Prosecutor
High Court, Madras.



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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

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