



WEB COPY



W.P.No.27504 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.27504 of 2023

S.Karumeniammal
Wife of Sankarapandi

..

Petitioner
Mother of the detenu

Vs.

The State represented by its

1. The Secretary to Government of Tamil Nadu
Home Department
Fort St.George
Chennai – 600 009

2. The Deputy Inspector General of Police
Madurai Range
Madurai – 625 001

3. The Superintendent
Central Prison
Palayamkottai – 627 007

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of mandamus directing the respondents to extend the leave for 30 days without escort from 18.09.2023 to the detenu Palani, son

Page Nos.1/15



W.P.No.27504 of 2023

of Sankarapandi, aged about 47 years, the Convict No.4296, detained at Central Prison, Palayamkottai.

For Petitioner : Dr.S.Manoharan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

Captioned writ petition pertains to extension of ordinary leave for a convict prisoner Thiru.Palani [Convict No.4296], son of Thiru.Sankarapandi on the ground that he continues to be unwell, requires further medical treatment and needs to be under the management of an Endovascular Surgeon.

2. Dr.S.Manoharan, learned counsel for writ petitioner drew our attention to our earlier order dated 16.08.2023 made in W.P.No.24012 of 2023, which reads as follows:

'This order will now dispose of the captioned writ petition.

2. Factual matrix in a nutshell is that petitioner's son Thiru.Palani, son of Thiru. Sankarapandi, is a life convict (Convict No.4296) now lodged in Central Prison, Palayamkottai having been



W.P.No.27504 of 2023

convicted and sentenced vide S.C.No.61 of 1999 in Crime No.150 of 1996 on the file of II Additional District and Sessions Judge's Court, Tirunelveli; that the writ petitioner's request for 28 days ordinary leave was negatived in and by an 'order signed by the third respondent on 10.03.2023 bearing reference No.1323/jF/2/2023' [hereinafter 'impugned order' for the sake of convenience and clarity]; that captioned writ petition has been filed in this Court on 09.08.2023 assailing the impugned order and seeking 28 days ordinary leave for the convict prisoner i.e., petitioner's son.

3. Dr.S.Manoharan, learned counsel adverting to the impugned order submitted that only ground on which impugned order has been made is Rule 22 of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] and G.O.No.205 dated 25.04.2022 i.e., the ground that one year has not elapsed since 20 days ordinary leave was last availed by the convict prisoner [21.09.2023 at 10.30 am to 10.10.2023 at 05.30 pm].

4. Issue notice.

5. Mr.E.Raj Thilak, accepted notice for all three respondents and submitted on instructions that Rule 22 of said Rules captioned 'Eligibility for ordinary leave' and more particularly sub-rule (3) thereat says that a prisoner shall be granted a second or subsequent spell of ordinary leave after completion of one year of imprisonment from the date on which he returned from the last ordinary leave.



W.P.No.27504 of 2023

Adverting to this sub-rule (3) of Rule 22 (to be noted, only Rule 22 has been mentioned in the impugned order but learned Prosecutor drew our attention to sub-rule (3) thereat), it was submitted that convict prisoner returned on 10.10.2022 at 05.30pm (after availing leave on the last occasion) and therefore, one year therefrom will elapse only after 1 ½ months from today.

6. In response to the aforementioned submission, learned counsel for writ petitioner submitted by way of reply that the aforementioned earlier spell of 20 days was not granted by the Executive arm i.e., prison authorities but was granted by a Hon'ble Division Bench in the Madurai Bench of Madras High Court vide order dated 16.09.2022 made in W.P (MD) No.5749 of 2022.

7. The aforementioned order has not been annexed in the typed-set of papers. Therefore, this Court ferreted out the same from the official website and a scanned reproduction of the same is as follows:



WEB COPY



WEB COPY



W.P.No.27504 of 2023



W.P.(MD)No 5749 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2022

CORAM

The Honourable Mrs. Justice **J.NISHA BANU**
and
The Honourable Mr. Justice **N.ANAND VENKATESH**

W.P.(MD)No 5749 of 2022

S Karumuriannimal

... Petitioner

Vs

The State represented by its

1. The Deputy Inspector General of Prison,
Madurai Range,
Madurai.

2. The Superintendent
Central Prison
Palayamkottai 627 007.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order No.371/Vu.Tha2/2022 dated 01.02.2022 issued by the 1st respondent and quash the same and consequently direct the respondents to grant leave for one month without escort to the detenu Palani, S/o Sankarapandi, aged about 47 years, life convict prisoner, bearing convict No 4296 detained at Central Prison, Palayamkottai.

Page 1 of 7

<https://www.mhc.tn.gov.in/judis>



WEB COPY



WEB COPY



W.P.No.27504 of 2023



W.P.(MD)/No. 5749 of 2022

For Petitioner : Mr.R.Narayanan
For Respondents : Mr.A.Thiruvadukumar
Additional Public Prosecutor

ORDER

J. NISHABANU,J.
and
N. ANAND VENKATESH,J.

This writ petition has been filed challenging the impugned order dated 01.02.2022 passed by the first respondent rejecting the request made by the petitioner seeking for the ordinary leave of her son, who is undergoing life imprisonment for an offence committed under Section 302 IPC in Central Prison, Palayamkottai.

2.The case of the petitioner is that her son was convicted and sentenced to undergo life imprisonment. The petitioner is said to be 81 years old and she has some health ailments. Since the petitioner is in the evening of her life, she wants to be with her son for sometime. Hence, the petitioner made a representation to the respondents requesting for granting ordinary leave to her son. Since the same was rejected, the present writ

Page 2 of 7

<https://www.mhc.tn.gov.in/judis>



W.P.No.27504 of 2023

WEB COPY



W.P.(MD)No.5749 of 2022

petition has been filed before this Court.

WEB COPY

3.The first respondent has filed a counter affidavit. The main objection that has been stated in the counter affidavit is that the recommendation of the Superintendent of Prison and the report of the Probation Officer was considered and thereafter a decision was taken not to grant leave to the detenu. Even on an earlier occasion, a similar request was made and it was rejected and it was also confirmed by this Court in W.P. (MD) No.1667 of 2022, by order dated 21.02.2022.

4.The learned Additional Public Prosecutor submitted that the report of the Superintendent of Prisons and the Probation Officer is not in favour of the detenu. The learned Additional Public Prosecutor further submitted that the detenu was having intimacy with yet another woman and if he is let out, there is a chance of some communal tension. That apart, there was yet another murder case against the detenu. In view of the same, the learned Additional Public Prosecutor submitted that there is no ground to interfere with the impugned order passed by the first respondent.

Page 3 of 7

<https://www.mhc.tn.gov.in/judis>



W.P.No.27504 of 2023

WEB COPY



W.P.(MD)No 5749 of 2022



WEB COPY

5. In the considered view of this Court, Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as 'the Rules') deals with grounds on which ordinary leave can be granted to a prisoner. In the present case, the mother of the detenu is aged about 81 years and she is facing health related ailments. That apart, she has not met her son for more than four years and therefore, she wants to be with the detenu for sometime. This reason will fall within the scope of Rule 20 of the Rules. The detenu does not face any disqualification as provided under Rule 21 of the Rules. Insofar as the other case of murder, which was pointed by the learned Additional Public Prosecutor, the detenu has been acquitted from the said case in S.C.No.84 of 2007 through judgment dated 10.10.2014. There has been no adverse reports against the detenu and the mere apprehension that has been raised by the Superintendent of Prisons and the Probation Officer cannot be a ground to reject the request made for granting ordinary leave to the detenu. This Court is convinced with the request made by the petitioner and hence, leave can be granted to the detenu by imposing stringent conditions.

Page 1 of 7

<https://www.mhc.tn.gov.in/judis>



W.P.No.27504 of 2023

WEB COPY



W.P.(MD)No.5749 of 2022



WEB COPY

6. In view of the above discussion, the impugned order of the first respondent dated 01.02.2022 is hereby set aside. There shall be a direction to the first respondent to grant ordinary leave to the detenu for a period of 20 days, ie., from 21.09.2022 at 10.30 a.m. to 10.10.2022 upto 5.30 p.m., without escort, subject to the following conditions:

(a) The detenu shall stay at Harikesavanallur Village, Cheranmahadevi, Tirunelveli District and he shall not leave the place during the period of his stay with his mother;

(b) The detenu shall report before the Mukkoodal Police Station, Tirunelveli District, daily at 5.30 p.m. during the entire period of ordinary leave; and

(c) The detenu shall surrender before the second respondent on 10.10.2022 by 5.30 p.m.

7. This writ petition is allowed in the above terms.

(J.N.B.,J.) (N.A.V.,J.)
16.09.2022

Index : Yes/No
Internet : Yes
RR

Page 5 of 7

<https://www.mhc.tn.gov.in/judis>

8. From the submissions made by both sides, it comes to light that convict prisoner is entitled to 28 days leave and only impediment is one year from the date on which he returned (returned after earlier



W.P.No.27504 of 2023

spell of 20 days leave) had not elapsed and hence sub-rule (3) of Rule 22 of said Rules is the only impediment. In this view of the matter, considering that one year would be elapsing in less than eight weeks from today and also taking into account the undisputed position that grounds on which leave was granted by the other Hon'ble Division Bench continues to exist / enure in favour of the convict prisoner's leave plea, we deem it appropriate to interfere with the impugned order, set aside the same and grant 28 days ordinary leave to the convict prisoner on the same conditions (with minor adaptations) on which earlier 20 days leave was granted by the other Hon'ble Division Bench.

9. In the light of the narrative, discussion and dispositive reasoning, the following order is passed:

i) impugned order signed on 10.03.2023 by the third respondent bearing reference No.1323/jF/2/2023 is set aside;

ii) 28 days ordinary leave is granted to the convict prisoner from 21.08.2023 (Monday) 10.30am to 18.09.2023 (Monday) 05.30pm;

iii) Convict prisoner shall stay at Arikesavanallur Village, Cheranmahadevi Village, Tirunelveli District and petitioner shall not move out of this jurisdiction during this period without intimating the jurisdictional police station;

iv) Convict prisoner shall go over to the jurisdictional police station i.e., Mukkoodal Police



Station, Tirunelveli District, every day at 05.30pm and sign in the Register there during the entire period of 28 days;

v) Convict prisoner need not sign i.e., adhere to the above condition on 21.08.2023 and 18.09.2023 as those are the dates on which leave will commence and end;

vi) Convict prisoner shall surrender in the office of the third respondent on 18.09.2023 (Monday) by dusk i.e., by 05.30pm;

Captioned writ petition disposed of in the aforesaid manner.'

3. Thereafter, learned counsel took us through detailed medical reports but it will suffice to say that a certificate dated 08.09.2023 issued by one medical doctor and prescription of a Endovascular Surgeon dated 07.09.2023 were produced to show that the convict prisoner needs continued medical attention and needs to be under the management of a Endovascular Surgeon *inter alia* owing to neuropathy.

4. Issue notice.

5. Mr.E.Raj Thilak, learned Additional Public Prosecutor accepts notice for all three respondents. Owing to the narrow compass on which captioned writ petition turns, with the consent of both sides, main writ



W.P.No.27504 of 2023

petition was taken up and heard out.

WEB COPY

6. It is seen that the writ petitioner is convict prisoner's mother and she is 81 years old.

7. Learned Prosecutor, responding to a query from this Bench, submitted that the convict prisoner has complied with Conditions adumbrated vide sub-paragraphs (iii) and (iv) of paragraph 9 of our aforementioned 16.08.2023 order;

8. As regards Rule 22(3) of 'Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity], the same has been dealt with in our aforementioned order and therefore, we are not embarking upon the exercise of setting out the same again. Suffice to say that the aforementioned earlier order shall be read as an integral part and parcel of this order and the principle applies.

9. In the light of the narrative, discussion and dispositive reasoning set out thus far, as the fact that convict prisoner requires further medical attention and needs to be under the management of a Endovascular Surgeon, leave already granted vide 16.08.2023 order in W.P.No.24012 of 2023 is extended upto 18.10.2023. Conditions for leave adumbrated in sub-



W.P.No.27504 of 2023

paragraphs (i) to (vi) of our aforementioned order will apply *mutatis mutandis* to the present extended period of leave also. The convict prisoner shall now surrender in the office of the third respondent on 18.10.2023 by dusk i.e., by 05.30 pm. We make it clear that if any further extension of leave is sought, the same will be considered based on the then obtaining medical condition i.e., if there is any further unfortunate downturn, as the present extension can be treated as peremptory for the present owing to the nature of medical condition projected before us.

Captioned writ petition is disposed of with the aforementioned observations and directives. There shall be no order as to costs.

(M.S.,J.)

(R.S.V.,J.)

15.09.2023

gpa

Upload forthwith

All concerned to act on this order based on upload in official website of this Court without waiting for a certified copy.



W.P.No.27504 of 2023

To

WEB COPY

1. The Secretary to Government of Tamil Nadu
Home Department
Fort St.George
Chennai – 600 009
2. The Deputy Inspector General of Police
Madurai Range
Madurai – 625 001
3. The Superintendent
Central Prison
Palayamkottai – 627 007
4. The Public Prosecutor
High Court, Madras.



WEB COPY



W.P.No.27504 of 2023

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

gpa

W.P.No.27504 of 2023

15.09.2023

Page Nos.15/15