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W.P.No.27803 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.27803 of 2023

Mani @ Manikandan .. Petitioner

v.

1. The Chief Superintendent of Prisons
No.1, Mathur Road, Kalapet
Puducherry 605 014

2. The Superintendent of Prisons
No.1, Mathur Road, Kalapet
Puducherry 605 014

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order of the 1st respondent dated 18.04.2023 and consequently direct the respondents to grant emergency leave of 15 days to the petitioner thereby permit him to augment the treatment for his toddler son Master Adityavarman aged about 2 year 6 months and to facilitate the reconstruction surgery to fix his son's right UL brachial plexus injury.

For Petitioner	::	Mr.M.Govindaraju
For Respondents	::	Mr.K.S.Mohandass
		Public Prosecutor (Puducherry)



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ORDER

(Order of the Court was made by S.S.SUNDAR,J.)

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This writ petition is filed challenging the order of first respondent dated 18.04.2023, rejecting the emergency leave application submitted by the petitioner to permit him to augment the treatment for his son by name Master Adityavarman.

2. The petitioner's son by name Master Adityavarman is just 2 years, 6 months old and the petitioner's son was earlier admitted in the hospital after being diagnosed for right infantile upper brachial plexus injury, that warranted a surgery and a procedure was done about one year back. As per the discharge summary, the petitioner's son was discharged advising medication. Earlier, the petitioner approached this Court for similar leave and that was granted to him considering the nature of injury suffered by the petitioner's son and the requirement of physical presence of the petitioner, as a father, to mobilize funds and to take care of his son and the wife of the petitioner during the medical procedure. This Court earlier, by order dated 02.06.2022 in W.P.No.13887 of 2022, granted six days emergency leave to



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the petitioner with minimum escort subject to usual conditions from 10.00 a.m., on 07.06.2022 to 7.00 p.m., on 14.06.2022. Again the petitioner, for the purpose of going to the office of the Sub Registrar for registration of document, was granted leave for a period of five days in terms of Rule 823 of the Puducherry Prison Rules, 2021 from 26.08.2022 to 30.08.2022.

3. However, the petition is opposed by the respondents' counsel on the ground that as per Rule 845 of the Puducherry Prison Rules, 2021, no prisoner on whom a case is pending trial shall be granted leave. In the counter affidavit, a list of 20 cases is given. Though majority of the cases have been disposed of either by convicting or by acquitting the petitioner, few cases are still pending. It is stated by the respondents that three cases are pending in Crime No.101/2017 [Odiansalai Police Station, Puducherry], Crime No.185/2021 [Mudaliyarpur Police Station, Puducherry] and Crime No.876/2020 [Kottakuppam Police Station, Tamil Nadu]. Except referring to the Rule which prohibits grant of leave, no other reasons are cited for denial of grant of leave to the detenu. When the detenu is facing trial in other criminal cases, the objection is not on any other tenable reasons



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preventing us from exercising our prerogative power but by citing Rule 845.

Despite citing the same Rule earlier, this Court granted leave. It is seen that the detenu was granted leave earlier on two occasions and he has complied with the conditions. Absolutely, there is no remarks which would expect this Court to mind while granting leave in this occasion. Though there was life threat to the detenu earlier, nothing untoward was reported.

4. Despite similar objections were raised by the respondents earlier, this Court considered the objection and granted leave in exercise of its prerogative while exercising power under Article 226 of the Constitution of India. This Court, considering the peculiar facts and circumstances of the case, is inclined to grant five days emergency leave to the petitioner with minimum escort subject to the usual conditions that can be imposed by the second respondent. The petitioner shall be released from the prison at 10.00 a.m., on 09.10.2023 and he shall return back to the prison at 7.00 p.m., on 13.10.2023. The second respondent is directed to provide minimum escort to the convict from the Central Prison at the time he leaves the prison and till such time he is taken back to the prison. It is clarified that the cost involved



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in providing escort shall be borne by the petitioner. The writ petition stands disposed of.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

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Issue copy on 04.10.2023

ss/AP

To

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High Court, Madras



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