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W.P.No.32630 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.12.2023

CORAM :

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

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Kashthuri

...Petitioner

VS.

The State represented by its,
1. The Secretary to the Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.

2. The Deputy Inspector General of Prison,
Coimbatore Range,
Coimbatore – 641 018.

3. The Superintendent,
Central Prison,
Coimbatore – 641 018.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, to call for the
records pertaining to the impugned order bearing No.20575/Tha.3/2023



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dated 31.10.2023, passed by the 3rd respondent and quash the same and consequently direct the 1st and 2nd respondents to grant ordinary leave for 30 days without escort to the detenu, Elavarasan, S/o.Kolappandiponnusamy aged about 30 years, bearing Convict No.22835 confined at Central Prison, Coimbatore.

For Petitioner :: Mr.P.Bakiyaraj

For Respondents :: Mr.E.Raj Thilak
Additional Public Prosecutor

Assisted by Mr.C.Aravind

ORDER

(Order of the Court was made by SUNDER MOHAN,J.)

This writ petition has been filed to direct the respondents to grant ordinary leave for 30 days without escort to the detenu, Elavarasan, S/o.Kolappandiponnusamy aged about 30 years, bearing Convict No.22835 confined at Central Prison, Coimbatore.

2. The petitioner is the wife of the convict prisoner who has been convicted for the offences under Section 366(A) of IPC and Section 5(1)r/w



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6 of POCSO Act, and undergoing imprisonment from 09.12.2020.

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3. The petitioner has sought for leave on the ground that she is living with a five year old daughter and she is unable to make both ends meet because of the continuous detention of her husband/convict prisoner and leave would be helpful to make arrangement for her livelihood.

4. The respondents have rejected the request of the petitioner for the ordinary leave on the ground that an appeal is pending before this Court in CrI.A.No.23 of 2021.

5. The learned Additional Public Prosecutor submitted that the Probation Officer has not recommended for the release of the convict prisoner on leave since, it is likely to create a law and order problem.

6. Heard the learned counsel on either side and perused the documents.



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7. We find that though the respondents may not have the power to release the convict prisoner on ordinary leave, due to the pendency of the appeal, this Court can grant ordinary leave to the convict prisoner, if he is otherwise entitled to. We also find from the report of the Probation Officer that the reason for not recommending the petitioner's case is that there is likely to be a law and order issue. We don't find any reason in the report given by the Probation Officer to arrive at such a conclusion. The report is very vague. The learned Additional Public Prosecutor is unable to point out how there could be a law and order issue, considering the nature of offences committed by the convict prisoner. Further, the convict prisoner is in custody nearly for three years.

8. Therefore, in exercise of our powers, we are inclined to allow this writ petition and permit the petitioner's husband / convict prisoner i.e., Elavarasan, S/o.Kolappandiponnusamy aged about 30 years, bearing Convict No.22835 confined at Central Prison, Coimbatore, to avail ordinary leave for a period of 21 days without escort, on the following conditions.

(i) Respondents are directed to release the Convict



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Prisoner viz., Elavarasan, S/o.Kolappandiponnusamy aged about 30 years, bearing Convict No.22835 confined at Central Prison, Coimbatore, on Ordinary Leave for a period of 21 days i.e., from 18.12.2023 to 07.01.2024.

(ii) The Convict Prisoner shall be released on 18.12.2023 at 10.00am and surrender before the Superintendent of Prisons, Central Prison, Coimbatore, on 07.01.2024 at 05.00 p.m.

(iii) The Convict Prisoner is directed to report before the Valavandhi Nadu Police Station, Namakkal, twice a week i.e., on every Monday and Thursday at 05.00pm, during the period of leave.

(iv) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.

9. With the above directions, the writ petition stands allowed.

(S.S.S.R.,J.) (S.M.,J.)
13.12.2023

Note to Registry:

- 1.Issue order copy by 15.12.2023.
- 2.Upload the order copy forthwith.



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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To

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

2. The Deputy Inspector General of Prison,
Coimbatore Range, Coimbatore – 641 018.

3. The Superintendent,
Central Prison, Coimbatore – 641 018.

4. The Public Prosecutor,
High Court, Madras.

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