



W.P.No.33103 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2023

CORAM :

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

W.P.No.33103 of 2023

R.Saraswathy

...Petitioner

VS.

The Superintendent of Prison,
Salem Central Prison,
Hasthampatti, Salem – 636 007.

...Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorified Mandamus, to call for the records in pertaining with the impugned order in No.20307/Tha.Ku.3/2023, dated 29.09.2023 and quash the same consequently directing the respondent to grant 40 days leave without escort to the convict/husband of the petitioner namely D.Radha Krishnan S/o. Duraisamy, Life Convict Prisoner, (CT No – 0631) aged about 49 years, now confined in Salem Central Prison.



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For Petitioner :: Mr.M.Mohamed Saifulla
For Respondent :: Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.C.Aravind

ORDER

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

This Writ Petition has been filed to direct the respondent to grant leave for 40 days without escort to the Convict Prison namely, D.Radha Krishnan S/o. Duraisamy, aged about 49 years, bearing Convict No.0631, confined at Salem Central Prison.

2. The petitioner is the wife of the Convict Prisoner. The Convict Prisoner is undergoing life imprisonment for the offences under Sections 341 and 302 of the Indian Penal Code. The appeal preferred by the accused in CrI.A.No.635 of 2015 was dismissed and the Special Leave Petition/SLP.No.(CrI.)No.7140 of 2017 also ended with the same fate, subsequently in 2017. It is now admitted that the petitioner's husband is in jail for more than 7 years. It appears that due to health issues faced by the petitioner's husband, he obtained leave earlier from this Court for a period of



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20 days from 07.07.2023 to 27.07.2023, without escort by an order dated 23.06.2023.

3. The petitioner submitted a representation for grant of similar leave on account of performing her daughter's marriage and for mobilising funds for her treatment. The said representation was rejected by the respondent by an order dated 29.09.2023, only on the ground that there are other cases pending against the Convict Prisoner and that as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, the Convict Prisoner was not eligible for grant of ordinary leave.

4. Mr.E.Raj Thilak, the learned Additional Public Prosecutor, submitted that since they had no power to grant ordinary leave as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, they rejected the request on that ground and hence did not obtain any report from the Probation Officer. Hence, this Court directed the respondent to get the report from the Probation Officer. The Probation Officer had submitted report before this Court, wherein ordinary leave to the Convict Prisoner was



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recommended as the reasons stated in the representation were true.

However, the recommendation was to grant leave with escort to the Convict Prisoner.

5. The learned counsel for the petitioner submitted that there is no adverse remarks when the Convict Prisoner was granted ordinary leave without escort earlier as per the directions of this Court and therefore, this Court may consider the grant of ordinary leave to the Convict Prisoner without escort, having regard to the economic condition of the petitioner.

6. From the report of the Probation Officer this Court finds that there is no threat assessment. The learned Additional Public Prosecutor also submitted that there is no risk factor for granting leave without escort.

7. Considering the economic situation of the petitioner and the fact that the Convict Prisoner is in jail for more than seven years; that there were no issues when the Convict Prisoner was granted leave without escort on earlier occasions, this Court is inclined to allow this writ petition and grant



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leave to the petitioner's husband/Convict Prisoner i.e.,

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D.Radha Krishnan S/o. Duraisamy, aged about 49 years, bearing Convict No.0631, confined at Salem Central Prison, for a period of 28 days without escort, on the following conditions.

(i) Respondent is directed to release the Convict Prisoner viz., D.Radha Krishnan S/o. Duraisamy, aged about 49 years, bearing Convict No.0631, confined at Salem Central Prison, on Ordinary Leave for a period of 28 days i.e., from 28.12.2023 to 24.01.2024.

(ii) The Convict Prisoner shall be released on 28.12.2023 at 10.00 am and he shall surrender before the Superintendent of Prison, Central Prison Salem, on 24.01.2024 at 05.00 p.m.

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



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(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.

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

List the writ petition on 25.01.2024, 'For Reporting Compliance'.

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

(S.M.,J.)

14.12.2023

Note to Registry:

1. Issue order copy by 21.12.2023.
 2. Upload the order copy forthwith.
- dk

To

1. The Superintendent of Prison,
Salem Central Prison,
Hasthampatti,
Salem – 636 007.

2. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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AND

SUNDER MOHAN,J.

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