



W.P.(MD) No.10600 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 12.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

AND

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

W.P. (MD) No.10600 of 2023

Muthumari

... Petitioner

Vs.

- 1.The Home Secretary (Prison),
Home Department,
Secretariat,
Fort St. George,
Chennai - 9.
- 2.The Director General of Prison,
Prisons and Correctional Services,
No.1, Gandhi Irwin Salai,
Egmore, Chennai – 600 008.
- 3.Deputy Inspector General of Prisons,
Trichy Range, Trichy.
- 4.The Superintendent of Police,
Central Prison,
Trichy.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call



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for the records relating to the impugned rejection order of the 3rd respondent dated 14.09.2022 in No.1166/Mu.U/2022 and quash the same as illegal and consequently directing the Respondents to grant 40 days of Ordinary Leave to the petitioner's husband Mr.Doss @ Vattakkan @ Perumal @ Petha Perumal, now confined at Central Prison, Trichy as Life Convict C.P.No.23331.

For Petitioner : Ms.M.Baby Sudha

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by ***R.SURESH KUMAR, J.***)

The petitioner's husband is a life convict and he has been in jail continuously for four years from 2018, therefore, he is eligible to get ordinary leave within the meaning of the provisions of the Tamil Nadu Suspension of Sentence Rule, 1982, therefore, in order to avail the said ordinary leave, the petitioner has given a request to the jail authorities, which was considered and rejected through the impugned order dated 14.09.2022, passed by the third respondent.



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2. Assailing the same, Ms.M.Baby Sudha, learned counsel appearing for the petitioner would submit that, the reasons stated by the third respondent in the order impugned for refusing to give ordinary leave, for which, the petitioner's husband is eligible, may not be sustained, because atleast in two occasions earlier, by the indulgence of this Court by exercising the power to issue Writ of Habeas Corpus, the detenu had been outside of jail atleast for two weeks at different times and on both the occasions, there has been no such incident as apprehended by the third respondent in the impugned order, quoting the objection said to have been raised by the concerned police as well as the Welfare Officer.

3. However, Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, appearing for the respondents would submit that, the petitioner's husband though eligible otherwise for ordinary leave, but that is subject to Rule 21 of the said Rules 1982. He would also submit that, what are all the categories of prisoners, who shall not be eligible for ordinary leave has been mentioned in Rule 21 under which clause (c) of Rule 21 makes it clear the



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prisoners whose presence is considered dangerous or prejudicial to public peace and tranquility would not be eligible for getting ordinary leave.

4. Therefore, in this context, the report submitted by the local police states that, the presence of the detenu in his place, if he has been considered for ordinary leave, it would prejudice the public peace and the tranquility, as there may be some retaliated act on the detenu and that is the reason why by invoking the said provision viz., 21(c) of 1982 Rules, the third respondent rejected the plea of the petitioner, therefore, it is to be sustained, he contended.

5. We have considered the said rival submissions made by both sides and have perused the materials placed before this Court.

6. If that was the only reason for which the plea of the petitioner has been rejected for considering the application for ordinary leave, for which the detenu was eligible under 1982 Rules, the said reason may not hold good because earlier on two occasions one is immediately after the marriage of the detenu, the petitioner made an application by filing Habeas



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Corpus Petition to seek for release of the petitioner for a shorter period for fulfillment of conjugal rights, that was accepted by this Court and order was passed and in yet another earlier occasion such a release was made by giving ordinary leave to the detenu and in both the occasions, though he has taken the leave and had been staying in the ordinary place of residence of the detenu, i.e., the exact native place, no such incident had taken place. Therefore, the apprehension now has been made as a sole reason to reject the plea of the petitioner is not available, we feel. Therefore, we are inclined to pass the following order in this Writ Petition:-

The impugned order of the third respondent dated 14.09.2022 is set aside and there shall be a direction to the respondents to consider the plea of the petitioner afresh and accordingly, pass necessary orders granting the eligible ordinary leave to the petitioner's husband i.e., the detenu Mr.Doss @ Vattakkan @ Perumal @ Petha Perumal, who is now confined at Central Prison, Trichy as Life Convict C.P.No.23331 and accordingly, pass such orders within four weeks from the date of receipt of a copy of this order.



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7. With this directions, this Writ Petition is ordered accordingly.

However, there shall no order as to costs.

(R.S.K., J.) & (K.K.R.K, J.)

12.06.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
SJ

Note: Issue copy on 13.06.2023.

To

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