



W.P.(MD).No.10212 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 25.07.2023

CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.P.(MD).No.10212 of 2023

and

W.M.P.(MD).No.9057 of 2023

A.Meharaj

.. Petitioner

Vs.

1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison,
Peththaniapuram,
Arapalayam,
Madurai District.

2.The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the respondent No.1 in No.534/c.j.2/2023 dated 23.04.2023 and quash the same as illegal and consequently directing the respondents to grant ordinary leave for the period of 20 days to the petitioner's husband namely Siddhique ali @ Sulthan (Aged 45), son of



W.P.(MD).No.10212 of 2023

Dheen who is a life convict in a murder case and languishing jail in Palayamkottai Central Prison for the period of 23 years without granting privilege and the Tamil Nadu Sentence Suspension Rules.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner's husband, namely, Siddhique ali @ Sulthan, is a life convict and undergoing life sentence, pursuant to the judgment passed by the Sessions Court in S.C.No.140 of 2000, dated 07.10.2003. The further appeals before this Court as well as the Hon'ble Supreme Court came to be dismissed. When the petitioner had given a representation seeking for ordinary leave for her husband on 21.02.2023, her request was rejected through the impugned order, dated 23.04.2023, by the first respondent herein, predominantly on the ground that the Probation Officer and the Commissioner of Police, Tirunelveli had not recommended the case of the prisoner for grant of leave. Challenging the same, the present Writ Petition has been filed.



W.P.(MD).No.10212 of 2023

2. The learned counsel for the petitioner submitted that the mother of the petitioner's husband is a cardiac patient and she is seriously ill. Therefore, the petitioner's husband is in dire need of ordinary leave for a period of 20 days.

3. The learned Additional Public Prosecutor appearing for the respondents, on instructions, submitted that in view of the adverse remarks of the Commissioner of Police, dated 16.04.2023 and the consequential Probation Officer's report dated 21.04.2023, it would not be appropriate for the respondents to grant ordinary leave to the petitioner's husband. He also submitted that the petitioner's husband is otherwise entitled for ordinary leave of 20 days.

4. Before addressing the procedures adopted by the respondents in rejecting the petitioner's request, it would be appropriate to mention here that the co-convict of the petitioner's husband, namely, Rahamathullah Khan and the petitioner's husband himself had earlier been granted ordinary leaves. As a matter of fact, in the case of ***Zaheera Banu Vs. The State represented by the Secretary to Government of Tamil Nadu and others in***



W.P.(MD).No.10212 of 2023

Special Leave Petition (Criminal) Diary No.35463/2022 dated 21.03.2023,

the co-convict/petitioner therein had been granted ordinary leave for six months through orders passed by the Hon'ble Supreme Court of India.

5. In this background, we have gone through the orders of the Commissioner of Police dated 16.04.2023, as well as the Probation Officer's report dated 21.04.2023. We are not in agreement with the procedures adopted by the Commissioner of Police, as well as the Probation Officer, in giving their adverse remarks with regard to the petitioner's request for leave.

6. Rule 24 of the Tamil Nadu Suspension of Sentence Rules, 1982 prescribes the procedure of processing the petition seeking for ordinary leave under Rule 22. As per Rule 24, the petitions submitted to the Deputy Inspector General of Prisons or to the Superintendent of Prisons mandatorily requires to be referred to the concerned Probation Officer seeking for his report on the advisability of granting ordinary leave to the prisoner. On such reference, the concerned Probation Officer is mandated to enquire into the request and send his report to the Deputy Inspector General of Prisons or to Superintendent of Prison in Form I. In case, the Probation



W.P.(MD).No.10212 of 2023

Officer is of the view that the release of the prisoner on leave may result in breach of peace, it would be open to him to consult the local jurisdictional Sub Inspector of Police and obtain his view in this regard, solely with a view to avoid any breach of peace. In cases where there is no likelihood of breach of peace, the Probation Officer is required to send his report to the Deputy Inspector General of Prisons or Superintendent of Prison without consultation with the local Police.

7. In the instant case, the respondents seem to have put the cart before the horse. When the petitioner had made an application seeking for grant of ordinary leave for her husband, the Commissioner of Police has first given his adverse report on 16.04.2023. In view of this adverse report, the Probation Officer has made a reference to the same and had also given a similar report thereafter on 21.04.2023. Such a procedure adopted is totally in contravention to Rule 24. In other words, to the petitioner's request, the Deputy Inspector General of Prisons or the Superintendent of Prison ought to have referred the matter to the Probation Officer seeking for his views, who in turn, would be at liberty to take the views of the local jurisdictional Police.



W.P.(MD).No.10212 of 2023

WEB COPY

8. This apart, the views of the Commissioner of Police for either grant of ordinary leave or for enquiring into the likelihood of any breach of peace, is not contemplated either under Rule 24 or under any other Sections in the Tamil Nadu Suspension of Sentence Rules. We would hasten to add that in cases where the Probation Officer consults and seeks for the views of the local Police, it would always be open to the local Police to have a consultation or seek for the views of the Commissioner of Police through inter-departmental proceedings and thereafter, it is only the concerned jurisdictional Police who may have to render their views to the Probation Officer with regard to the likelihood of any breach of peace. In the light of the procedures contemplated, the procedure now adopted by the respondents, when in total contravention of the Rules, cannot be sustained.

9. As a matter of fact, when the wife of the co-convict, namely, Rahamathullah Khan, in the case of *Abitha Begam Vs. The Deputy Inspector General of Prison and Correctional Services and others passed in W.P.(MD).No.15076 of 2023 dated 07.07.2023*, had approached this Court seeking for grant of ordinary leave, this Court had granted ordinary leave



W.P.(MD).No.10212 of 2023

for a period of 20 days without escort with a liberty to the Superintendent of Prison to impose reasonable conditions.

10. Likewise, earlier the petitioner's husband was granted ordinary leave, through orders passed by a co-ordinate Bench of this Court in W.P.(MD).No.27228 of 2022 dated 01.12.2022, for a period of 20 days without escort, from 16.12.2022 to 04.01.2023. The petitioner herein had obtained information through RTI in Na.Ka.No.G2/10221/23/2023 dated 30.05.2023, which reveals that during the earlier ordinary leave period from 16.12.2022 to 04.01.2023, there was no law and order problem or any breach of peace due to the petitioner's husband. Even according to the learned Additional Public Prosecutor, the petitioner's husband had reported before the Melapalayam Police Station daily at 11.00 AM and 6.00 PM. In view of the same, a similar condition can also be imposed for the present spell of ordinary leave.

11. In the light of the above observations, the impugned order dated 23.04.2023 on the file of the first respondent herein is set aside. Consequently, there shall be a direction to the Superintendent of



W.P.(MD).No.10212 of 2023

Prison/second respondent herein to pass appropriate orders granting ordinary leave to the petitioner's husband, Siddhique Ali @ Sulthan (aged 45 years), who is a life convict in Central Prison, Palayamkottai, without escort, for a period of 20 days commencing from 27.07.2023. It is left open to the Superintendent of Prison/second respondent herein to impose any reasonable conditions. The petitioner's husband shall report before Melapalayam Police Station, Tirunelveli daily twice, i.e., at 11.00 AM and 6.00 PM for the entire period of ordinary leave. On expiry of the ordinary leave period, the petitioner's husband shall surrender before the Superintendent of Prison/second respondent herein immediately.

12. Accordingly, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(M.S.R.,J.) (M.N.K.,J.)
25.07.2023

NCC : Yes / No
Index : Yes / No
Lm/mbi



W.P.(MD).No.10212 of 2023

To

WEB COPY

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O/o. The Deputy Inspector General of Prison,
Peththaniapuram,
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2. The Superintendent of Prison,
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Palayamkottai,
Tirunelveli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



W.P.(MD).No.10212 of 2023

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Lm/mbi

W.P.(MD).No.10212 of 2023

25.07.2023