



W.P.(MD).No.10857 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.08.2023

DELIVERED ON: 29.09.2023

CORAM

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

W.P.(MD).No.10857 of 2023

and

W.M.P.(MD).No.9517 of 2023

Sowmya Sudha

.. Petitioner

Vs.

1.The State of Tamil Nadu

Represented by its Secretary to Government,
Home Department,
Secretariat,
Chennai – 600 009.

2.The Deputy Inspector General,

Prisons and Reformatory Department,
Trichy Circle,
Trichy.

3.The Superintendent of Police,

Thanjavur District.

4.The Superintendent,

Central Prison,
Tiruchirappalli.

.. Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 2nd respondent in his proceedings No.106/192/2023 dated 20.04.2023 and quash the same and consequently directed respondents to grant parole to the petitioner's husband namely Indrajithu son of Ramalingam aged about 55 years prisoner No.21390 is life convict prisoner who now is confined at Central Prison, Trichy for a period of one month .

For Petitioner : Mr.C.Ezhilarasu

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner's husband, Indrajithu, is a life convict prisoner (CP.No.21390) and detained at Central Prison, Trichy. When the petitioner had made an application on 08.04.2023 seeking for grant of ordinary leave for her husband, her request was rejected through the impugned order dated 20.04.2023. The rejection order is put under challenge in the present Writ Petition.



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2. Two reasons have been assigned by the second respondent while rejecting the petitioner's request for grant of ordinary leave for her husband.

Firstly, that some harm could be caused to him from the victim's family members in the case, for which he has been incarcerated and secondly, that earlier when he had come out on parole, he was implicated in a criminal case under the influence of alcohol and therefore, his case was not recommended for grant of ordinary leave.

3. Insofar as the first reason assigned in the impugned order is concerned, we are not in agreement with the same. If a prisoner is released on leave, some harm would be caused to him by the family members of the victim, can be cited as a reason in all cases of the prisoners, when there is an affected party involved. In the case of ***Velayutham Vs. The State and another passed in W.P.(MD).No.21987 of 2023 dated 19.09.2023***, we had considered this ground in the following manner:

“4. In the impugned order, reliance has been placed on the report of the Probation Officer and the jurisdictional police. On perusal of the original file produced by the learned Additional Public Prosecutor, the Probation Officer has made a reference to



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the observations of the jurisdictional Police stating that there is a likelihood of danger to the life of the petitioner's son, if he is released on ordinary leave, since he has murdered his own wife. A mere apprehension that there could be some danger to a life convict prisoner, if he is released on ordinary leave, will not be sufficient, unless such a statement is substantiated with other statements and evidences. It is needless to point out that in all cases where a conviction of life imprisonment is granted for a prisoner involved in an offence under Section 302 IPC, such a vague statement can always be made for rejecting the request for grant of ordinary leave. In this background, we are of the view that if the petitioner's son is imposed with a condition to report before the jurisdictional Police at least twice in a day during the entire course of his leave period, the ends of justice could be secured."

Thus, the first reason assigned by the second respondent in the impugned order cannot be sustained.

4. Insofar as the second reason is concerned, we find that vague averments have been made for rejecting the petitioner's request. The details as to when the petitioner was earlier sent out on parole or the details of his involvement in criminal cases, as alleged, have not been cited in the



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impugned order. Such a vague reason, without details of the specific particulars, cannot be sustained in the eye of law. On this ground also, the rejection order cannot be sustained.

5. This apart, the learned Additional Public Prosecutor appearing for the respondents submitted that a Criminal Appeal is pending before the Hon'ble Supreme Court against the sentence for which the petitioner's husband has been imprisoned and therefore, in view of Rule 35 of the Tamil Nadu Suspension of Sentence Rules, there is a bar in considering the petitioner's application for grant of ordinary leave.

6. We had, in a detailed order in the case of ***Latha Vs. The State and another, passed in W.P.(MD).No.6398 of 2023 dated 29.09.2023***, held that the pendency of an appeal before the Hon'ble Supreme Court, will not be an impediment for non-consideration of an application seeking for ordinary or emergency leave. Likewise, we had also held therein that Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, pertains only to cases of the prisoners, who are facing trial and not an appeal. Thus, the submission of the learned Additional Public Prosecutor cannot be accepted.



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7. In this background, the impugned order dated 20.04.2023 on the file of the second respondent is quashed. Consequently, there shall be a direction to the second respondent to re-consider the petitioner's application dated 08.04.2023 afresh, without reference to the pendency of her husband's criminal appeal petition before the Hon'ble Supreme Court or the order passed in W.P.No.10265 of 2021 dated 18.02.2022 (*L.Wasib Khan Vs. The State and others*) or any other similar case holding the same ratio and pass appropriate orders on its own merits and in accordance with law, within a period of four (4) weeks from the date of receipt of a copy of this order.

8. 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.)
29.09.2023

NCC : Yes / No
Index : Yes / No
Lm



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To

- 1.The Secretary to Government,
The State of Tamil Nadu,
Home Department,
Secretariat,
Chennai – 600 009.
- 2.The Deputy Inspector General,
Prisons and Reformatory Department,
Trichy Circle,
Trichy.
- 3.The Superintendent of Police,
Thanjavur District.
- 4.The Superintendent,
Central Prison,
Tiruchirappalli.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

Lm

order made in
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