



W.P.(MD).No.12156 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.12156 of 2023

Rajambal

.. Petitioner/
Mother of the detenu

Vs.

The State represented by its

1. The Secretary,
Home, Prohibition and Excise Department,
Fort St. George,
Chennai – 600 009.

2. The Deputy Inspector General of Prison,
Trichy Zone,
Trichy.

3. The Superintendent,
Central Prison,
Trichy.

.. 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 impugned order passed by the 3rd respondent dated 09.05.2023



W.P.(MD).No.12156 of 2023

MU.No.9114/Tha.Ku.4/2023 and quash the same, consequently direct the respondents to grant emergency leave for 6 days without escort to petitioner's son, the detenu, Solai Ganesan, S/o.Solai, aged about 44 years, convict prisoner bearing Convict No.24219 detained at Central Prison, Trichy.

For Petitioner : Mr.S.Manoharan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner's son, Solai Ganesan, is a convict prisoner (CP.No.24219) and detained at Central Prison, Trichy. When the petitioner had made an application on 03.05.2023 seeking for grant of emergency leave for her son, her request was rejected through the impugned order dated 09.05.2023. The rejection order is put under challenge in the present Writ Petition.

2. The only reason assigned in the impugned order rejecting the petitioner's request for grant of emergency leave for her son is that a



W.P.(MD).No.12156 of 2023

Criminal Appeal is pending against the sentence imposed on the petitioner's son and in view of Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, there is a bar for grant of leave.

3. 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 reason assigned by the third respondent in the impugned order cannot be sustained.

4. The petitioner, in her application, has stated that she is aged about 62 years and that she is suffering from Rhenmatoid Arthritis, apart from a fracture in her right ankle, for which, she requires to undergo a surgery and hence, she has sought for emergency leave for her son. We are inclined to accept the reasons assigned by the petitioner and therefore, a direction could be issued to the respondents to grant the required emergency leave.



W.P.(MD).No.12156 of 2023

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5. Accordingly, the impugned order dated 09.05.2023 on the file of the third respondent is quashed. Consequently, there shall be a direction to the third respondent herein to pass appropriate orders granting emergency leave to the petitioner's son, namely, Solai Ganesan, (C.P.No.24219) for a period of 6 days, without escort, commencing from 09.10.2023, with reasonable restrictions, which shall also include the condition for the prisoner to report before the concerned jurisdictional Police Station twice daily at 10.00 AM and 5.00 PM, for the entire period of the emergency leave. On expiry of the leave period, the prisoner shall surrender before the third respondent herein immediately.

6. Accordingly, this Writ Petition is allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
29.09.2023

NCC : Yes / No
Index : Yes / No
Lm



W.P.(MD).No.12156 of 2023

To

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1. The Secretary,
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2. The Deputy Inspector General of Prison,
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Trichy.
3. The Superintendent,
Central Prison,
Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P.(MD).No.12156 of 2023

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

Lm

order made in
W.P.(MD).No.12156 of 2023

29.09.2023