



W.P.(MD)No.15076 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.07.2023

CORAM :

THE HONOURABLE MR JUSTICE M.S.RAMESH
AND
THE HONOURABLE MR JUSTICE M.NIRMAL KUMAR

W.P.(MD) No.15076 of 2023

AbithaBegam

.. Petitioner

vs.

1.The Deputy Inspector General of Prison
and Correctional Services,
O/o.The Deputy Inspector General of Prison
and Correctional Services,
Madura Range, Madurai Central Prison Campus,
New Jail Road, Madurai.

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

3.The Probation Officer,
O/o.The Probation Officer,
Tirunelveli District.

4.The Commissioner of Police,
O/o.The Commissioner of Police,
Tirunelveli City.

... Respondents



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PRAYER: Petition under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records of the impugned order in No.1141/U.tha.2/2023 dated 22.05.2023 issued by the first respondent and quash the same as bad in law.

For Petitioner : Mr.S.Mohamed Ali Jinnah
For respondents : Mr.A.Thiruvadi Kumar,
Additional Public Prosecutor

ORDER

[Order of the Court was made by M.S.RAMESH, J.]

The petitioner's husband, viz., Rahamathullah Khan, 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 on 20.02.2008 and 13.04.2016 respectively. When the petitioner's husband had given a representation seeking for ordinary leave on 13.01.2023, his request was rejected through the impugned order dated 22.05.2023 by the first respondent herein, predominantly on the ground that 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.



2. While the learned counsel for the petitioner would submit that the co-accused involved in the said case has been granted ordinary leave by the Hon'ble Supreme Court for a period of six months, the first respondent ought not to have rejected the petitioner's husband's request.

3. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, on instructions, submitted that as per the Commissioner's report, the petitioner's husband has met one Dasin @ Mohamad Dasin on 24.01.2023 at Palayamkottai Central Prison and since the said Dasin was a member of Al-Ummah, he should not be granted ordinary leave.

4. Under the amended Rule 22 (2) of the Tamil Nadu Suspension of Sentence Rules, 1982, a prisoner shall be entitled for ordinary leave for a maximum period of 40 days, in two spells of 20 days each, when he has been sentenced to imprisonment for a period exceeding five years. The petitioner's husband has been in prison for about 24 years and has not been granted any ordinary leave. Merely because a member of the Al-Ummah had met him in the prison, during visit, will not justify the fourth respondent



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from taking a stand that he should not be granted ordinary leave.

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5. We have also taken into account that the petitioner's husband is languishing in prison for the past 24 years and therefore, deem it fit to release him for the first spell of 20 days ordinary leave. We have also taken into account that the co-accused one A.Meharaj has been granted 20 days ordinary leave without escort by an order of this Court dated 01.12.2022 in W.P(MD)No.27228 of 2022. Another co-accused, namely, Zaheera Banu, has also been granted six months ordinary leave without escort.

6. Consequently, we are of the view that the petitioner's husband can be granted ordinary leave for a period of 20 days. However, if the petitioner's husband's movement is restricted to Tirunelveli District alone, the interest of the respondent Police would also be protected.

7. In the result, this writ petition is allowed and the impugned order of the first respondent dated 22.05.2023 is quashed and the following directions are issued:



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(i) There shall be a direction to the second respondent to grant 20 days ordinary leave to the prisoner/petitioner's husband, without escort and it is left open to the second respondent to impose any reasonable conditions;

(ii) The prisoner shall surrender before the second respondent immediately after the expiry of 20 days ordinary leave;

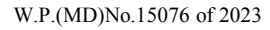
(iii) The prisoner shall not leave the boundaries of Tirunelveli District during the period of ordinary leave and shall appear before the Melappalayam Police Station, Tirunelveli daily twice, ie., at 10.00 am and 05.00 pm without fail.

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

07.07.2023

NCC : Yes/No
Index : Yes/No
Speaking/Non-speaking order

mbi/RR



1. The Deputy Inspector General of Prison
and Correctional Services,
O/o. The Deputy Inspector General of Prison
and Correctional Services,
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New Jail Road, Madurai.
2. The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.
3. The Probation Officer,
O/o. The Probation Officer,
Tirunelveli District.
4. The Commissioner of Police,
O/o. The Commissioner of Police,
Tirunelveli City.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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