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W.P.(MD)No.16775 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2023

CORAM:

**THE HONOURABLE MR.JUSTICE M.S.RAMESH
and
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR**

W.P.(MD)No.16775 of 2023

Subbiah, S/o.Muthusamy

... Petitioner

vs.

The Superintendent of Prison,
Central Prison,
Trichy – 620 020.

... Respondent

Prayer :- Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondent to grant emergency leave to the petitioner's son Senthil Murugan, S/o.Subbiah, Convict No. 16321, by considering the representation of the petitioner, dated 10.07.2023.

For Petitioner : Mr.C.Karthikeyan

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

ORDER

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

The petitioner, who is the father of the life convict namely, Senthil Murugan [Convict No.16321], now confined at Central Prison, Trichy, has filed this Petition



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seeking to grant emergency leave to his son, by considering his representation dated 10.07.2023.

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2. According to the petitioner, his younger son/brother of the life convict had expired on 03.07.2023 and the petitioner's son/life convict was granted emergency leave to attend the last rites of his younger brother. It is claimed by the petitioner that his elder son/life convict lit the funeral pyre of his younger son and performed the last rites on the date of cremation. The post cremation ceremony is scheduled to be held on 12.07.2023 [tomorrow], for which, the petitioner has filed the present petition, seeking emergency leave to his elder son/life convict for one day.

3. The learned Additional Public Prosecutor for the respondent submitted that as per Rule 13 of the Tamil Nadu Suspension of Sentence Rules, 1982 [hereinafter referred to as "the Rules"], the prisoner would be entitled to emergency leave for a maximum period of 15 days in a year to be spread over four spells namely, 6 + 3 + 3 + 3 days. The petitioner's elder son/life convict having availed all the 15 days for this year, he would not be entitled for any further leave.

4. We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.



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5. Though Rule 13 of the Rules provides for a maximum period of 15 days emergency leave in a year, Rule 34 of the Rules empowers the Government to extend the emergency leave. Likewise, Rule 40 of the Rules also empowers the Government to exempt any person from all or any of the provisions of the said Rules.

6. In normal situation, this Court would have directed the Government to invoke Rule 34 or 40 of the Rules for the purpose of granting an extra leave over and above 15 days in a year. However, since the post cremation ceremony is scheduled to be held on 12.07.2023 [tomorrow], we deem it fit to invoke our powers under Article 226 of the Constitution of India for the purpose of granting one day emergency leave to the petitioner's elder son/life convict. Such decision is being taken by taking note of the fact that the petitioner's elder son/life convict had lit the funeral pyre of his younger brother and his presence may be required for the post cremation ceremony to be conducted on 12.07.2023 [tomorrow].

7. In this background, there shall be a direction to the respondent herein to grant one day emergency leave to the petitioner's elder son/life convict namely, Senthil Murugan, Convict No.16321, on condition that the petitioner's elder son/life convict would execute a bond on the following conditions:-

- (i) that he will submit himself to being escorted by the Police and he also agree to abide by their instructions;



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(ii) that during the period of his emergency leave for (1) one day, he will agree to be under Police surveillance;

(iii) that he will report at the specified Police Station, if so ordered [Perambalur Police Station];

(iv) that he will agree to the period of his absence from the prison being treated as suspension of sentences;

(v) that he will reside at the Place specified by the Superintendent of Prison or the Inspector General of Prisons or the Government, as the case may be, and will not go beyond the limits of the place;

(vi) that he will be of good behavior and will not commit any offence during his leave;

(vii) that he will not associate with bad character, or lead a dissolute life;

(viii) that he will surrender himself to the Superintendent of Prison on expiry of leave or on recall and notwithstanding the expiry of the period of leave and return on **12.07.2023 at 05.00 p.m.**;

(ix) In case of breach of any of the above conditions on his part, he bind himself to forfeit the Government of Tamil Nadu sum of Rs.500/- [Rupees Five Hundred only] and to render himself liable to be brought back to the Prison from which, he was released.

8.It is made clear that the respondent shall grant emergency leave to the

petitioner's elder son/life convict [Convict No.16321] for one day and release him

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on or before 06.00 p.m. by today. The petitioner's elder son/life convict shall return back to the respondent prison on 12.07.2023 [tomorrow] at 05.00 p.m.

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9.The Writ Petition stands disposed of accordingly. No costs.

NCC : Yes

Index : Yes

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Note:- Issue order copy today.

[M.S.R., J.]

[M.N.K., J.]

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To

1.The Superintendent of Prison,
Central Prison,
Trichy – 620 020.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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ORDER MADE IN
W.P.(MD)No.16775 of 2023

DATED : 11.07.2023