



W.P.(MD).No.18533 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**

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Thangapandi

.. Petitioner

Vs.

- 1.State of Tamil Nadu represented by
The Principal Secretary,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police/
Director of Prisons and Correctional Services,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road,
Egmore,
Chennai.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road,
Madurai – 625 016.



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4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District – 625 016.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Mandamus, to direct the respondents to grant 7 days emergency leave to the petitioner in pursuance of Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982 for enabling the petitioner to undergo surgery in his right eye and to get better treatment for curing the swell in his legs on the basis of the petitioner's representation dated 24.07.2023 in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner, Thangapandi, is a life convict prisoner and detained at Central Prison, Madurai. The petitioner had sought for grant of 7 days of emergency leave through his representation dated 24.07.2023, for taking medical treatment for diabetes and blood pressure. Since the petitioner's representation was not considered within a reasonable time, this Writ Petition has been filed.



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2. The learned Additional Public Prosecutor appearing for the respondents, on instructions, submitted that a Criminal Appeal is pending before the Hon'ble Supreme Court against the sentence for which the petitioner 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 emergency 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 submission of the learned Additional Public Prosecutor cannot be accepted.

4. The petitioner, in his application, has stated that he is suffering from diabetes and and blood pressure, for which, he requires to undergo



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medical treatment, apart from undergoing surgery in his right eye and hence, he has sought for emergency leave. The reason assigned by the petitioner for granting leave is a ground permissible under Rule 6 of the Tamil Nadu Suspension of Sentence Rules, 1982, for grant of emergency leave. Thus, 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.

5. Accordingly, there shall be a direction to the fourth respondent herein to consider the petitioner's representation dated 24.07.2023 and pass appropriate orders granting emergency leave to the petitioner for a period of 7 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 fourth respondent herein immediately.



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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

To

- 1.The Principal Secretary,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St.George, Chennai – 600 009.
- 2.The Director General of Police/
Director of Prisons and Correctional Services,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road,
Egmore, Chennai.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road,
Madurai – 625 016.
- 4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District – 625 016.
- 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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29.09.2023