



W.P.(MD).No.20779 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 07.09.2023

CORAM

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

W.P.(MD).No.20779 of 2023

Arun

.. Petitioner

Vs.

1.The Principal Secretary to Government,
Home, Prohibition and Excise (Prison – IV),
Fort St.George,
Chennai – 600 009.

2.The Inspector General of Prisons,
O/o.Prison Department Headquarters,
Whannels Road,
Egmore,
Chennai – 600 008.

3.The Deputy Inspector General of Prisons,
Trichy Range,
Race Course Road,
Trichy – 620 023.

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

.. Respondents



W.P.(MD).No.20779 of 2023

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 4th respondent vide his proceedings in Moo.Mu.No.15329/ThaKu4/2023, dated 08.08.2023 and quash the same as illegal and consequent direction may be issued to the respondents to grant 40 days ordinary leave to the petitioner's brother within stipulated time.

For Petitioner : Mr.C.Karthikeyan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the cousin brother of one Murugan, who is a life convict (Life Convict No.17351). On the ground that the convict's mother is a chronic peptic ulcer patient and that there is no other family member to take care of her, the petitioner seeks for grant of 40 days of ordinary leave for his brother.



W.P.(MD).No.20779 of 2023

2. The petitioner's request in this regard came to be rejected through the impugned order dated 08.08.2023, predominantly on two grounds. Firstly, it is stated that the convict was involved in an offence under Section 224 IPC while he was on leave in the year 2002 and was also convicted and sentenced to undergo two years rigorous imprisonment for commission of the said offence in C.C.No.765 of 2003 vide judgment dated 11.08.2006. Secondly, when the convict was released on emergency leave to see his ailing mother between 28.04.2007 and 02.05.2007, he had involved himself in a criminal case in Crime No.132/2007 for the offence under Section 302 IPC among other offences. Challenging the said order, the present Writ Petition has been filed.

3. Insofar as the first reason assigned by the respondents quoting the prisoner's involvement for an offence under Section 224 IPC is concerned, as pointed out earlier, the prisoner was convicted for the said offence and sentenced to two years of rigorous imprisonment, through a judgment passed in C.C.No.765/2003 dated 11.08.2006. Apparently, the period of punishment has already been undergone by him.



W.P.(MD).No.20779 of 2023

3.1. Rule 21(d)(5) of the Tamil Nadu Suspension of Sentence Rules, 1982, places an embargo for grant of ordinary leave to prisoners, who had committed a prison offence. In the case of ***T.Pechiyammal Vs. The State represented by the Secretary to Government of Tamil Nadu, Home Department, Fort St.George, Chennai – 600 009 and others*** passed in ***W.P.No.23341 of 2023 vide order dated 09.08.2023***, the scope of rejecting a request for grant of ordinary leave on the ground that the prisoner is convicted for the offence under Section 224 IPC was dealt with and this Court held that when the sentence undergone by such prisoner for the offence that has already ended, the Rule cannot be quoted as an embargo for refusing the grant of ordinary leave. The relevant portion of the order reads as follows:

“10....

i) As already alluded to supra, the impugned order has been made solely on the basis of Rule 21(i) of said Rules. To be noted, Rule 21(i) of said Rules has already been extracted and set out supra. A careful reading of Rule 21(i) makes it clear that it talks about cases where it is verily believed that the prisoner may not report back to the prison after completion of



the leave period. The plain language of sub-rule (i) of Rule 21 of said Rules is very clear that it is futuristic. Therefore, Rule 21(i) cannot be applied for an episode that happened in the past that more than a decade ago as in the case on hand. This Court has no difficulty in saying that Rule 21(i) will not apply to a case where a prisoner had in the past not returned back to the prison after completion of a leave period. To add with specificity to what is being articulated here, we make it clear that Rule 21(i) can be invoked when the Authority dealing with the leave application of a prisoner is of the considered view that if leave is granted, the prisoner may not return after the completion of the leave period;

ii) As a corollary to the previous discussion and dispositive reasoning, a careful perusal of the impugned order makes it clear that it proceeds solely on the basis of an episode which happened in 2010 for which a case was registered. To put it differently or in other words, the impugned order does not say that the convict prisoner is not likely to return if his prayer for 40 days ordinary leave without escort is acceded to. This by itself leaves the impugned order vitiated and leaves it liable to be quashed by us in this certiorari legal drill;

iii) Be that as it may, we also notice that the life convict has been granted leave on as many as 17 occasions in all (thus



WEB COPY



W.P.(MD).No.20779 of 2023

far) in the 23 years of sentence. To be noted, of these 17 occasions, on 12 occasions emergency leave was granted by the Executive Arm, on one occasion ordinary leave was granted by the Executive Arm and on four occasions, ordinary leave was granted by other Hon'ble Division Benches of this Court.”

3.2. This apart, we are of the view that when the prisoner has already been punished for an offence under Section 224 IPC, refusing to grant leave on this ground may amount to double jeopardy, which is impermissible in law. At this juncture, the learned Additional Public Prosecutor appearing for the respondents brought to our notice about the Circular of the Inspector General of Prisons dated 15.12.2017, which directs the prison authorities not to grant any sort of leave to the prisoners, who were absent on leave previously and are facing/faced cases under Section 224 IPC in the past five years preceding the date of commencement of leave. A bare reading of the Circular would relate only to cases where the prisoner had faced a case under Section 224 IPC in the past five years. Admittedly, the sentence imposed on the prisoner was in the year 2006 and since five years have



W.P.(MD).No.20779 of 2023

lapsed, the Circular cannot be put against the prisoner. On these grounds, the first reason assigned by the respondents for rejecting the petitioner's request, cannot be sustained.

4. Insofar as the prisoner's involvement in a subsequent case in S.C. No.3/2008 is concerned, the learned counsel for the petitioner produced a copy of the judgment passed in S.C.No.3/2008 dated 19.05.2015, which evidences the acquittal of the prisoner for his involvement in the said case. Thus, having been acquitted in the said case, the same cannot be quoted as a reason for refusal of ordinary leave.

5. This apart, it is also brought to our notice that the present impugned order has been passed by the Superintendent of Prison, Central Prison, Trichy. Rule 19 of the Tamil Nadu Suspension of Sentence Rules, 1982, provides that the Deputy Inspector General of Prisons is the competent authority to issue an order of release of prisoners on ordinary leave. The proviso to the said Rule states that when an exemption from any of the conditions in these Rules in favour of a prisoner is necessary, it is the



W.P.(MD).No.20779 of 2023

Government, which would be the authority to consider such cases. Thus, Rule 19 does not authorise the Superintendent of Prisons to deal with any application seeking for grant of ordinary leave and therefore, the impugned order is also liable to be set aside on the ground of lack of jurisdiction.

6. For all the foregoing reasons, the impugned order dated 08.08.2023 on the file of the fourth respondent is set aside. Consequently, we hereby declare that the petitioner's brother would be entitled for grant of ordinary leave for a period of 40 days. In this regard, the Deputy Inspector General of Prisons/third respondent herein shall pass appropriate orders granting ordinary leave to the petitioner's brother, namely, Murugan (Life Convict No.17351), for a period of 40 days, without escort, with reasonable restrictions, which shall also include the condition for the prisoner to report before the Inspector of Police, Kuthalam Police Station, Nagapattinam District twice daily at 10.00 AM and 6.00 PM, for the entire period of the ordinary leave. Such orders shall be passed at least within a period of two (2) days from the date of receipt of a copy of this order.



W.P.(MD).No.20779 of 2023

7. Accordingly, this Writ Petition stands allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
07.09.2023

NCC : Yes / No
Index : Yes / No
Lm

To

1.The Principal Secretary to Government,
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2.The Inspector General of Prisons,
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5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Page 9 of 10



WEB COPY



W.P.(MD).No.20779 of 2023

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

Lm

W.P.(MD).No.20779 of 2023

07.09.2023