



W.P.(MD).No.20398 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 18.08.2023

CORAM

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

W.P.(MD).No.20398 of 2023
and W.MP.(MD)Nos.16838 and 16839 of 2023

A.K.Jayaraman

.. Petitioner

Vs.

The Superintendent,
Trichy Central Prison,
Trichy.

.. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records relating to the impugned proceedings in No.23386/Tha.Ku 4/2023, dated 18.08.2023 and consequently direct the respondent to release the petitioner's son Subbramanian @ S.K.Subbu confined in respondent jail in respect of Crime No.7 of 2006, on the file of the respondent police station, on parole for 3 days to attend the funeral and other ceremonies of petitioner's son J.Suresh Babu Advocate.



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For Petitioner : Mr.M.Jerin Mathew
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The request of the petitioner herein seeking for grant of emergency leave for the convict Subbramanian @ S.K.Subbu on the ground that he requires to attend the funeral of his son, has been rejected through the impugned order dated 18.08.2023, predominantly, on the ground that there are two pending cases against him in C.C.No.28 of 2013, before the Judicial Magistrate No.6, Trichy and that the person, who expired is not his blood relative. The prisoner Subbramanian @ S.K.Subbu has been convicted under judgment passed in CrI.R.C.(MD)Nos.283 and 311 of 2018 etc., for the offence under Section 420 IPC for a period of two years.

2. It is the case of the petitioner that the prisoner is his brother. Since the petitioner's son had expired on 17.08.2023, his brother who is confined in Central Prison, Trichy is required to do certain rituals for the funeral and



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therefore, seeks for grant of emergency leave. The first reasons cited by the respondents in the impugned order quoting two pending cases as a bar cannot be an impediment under Rule 6 of 'Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter referred to as 'Rules'), since there is no such bar therein. Insofar as the second reason assigned that the petitioner's son, who had expired, is not the blood relative concerned. It is no doubt true that Rule 6 does not provide for grant of emergency leave to a prisoner, who is not a blood relative of the deceased person. However, we had in earlier decisions, held that the provision under Rule 6 is not mandatory in view of Rule 40 of the Rules which grants powers to the Government for exemption of certain or all the provisions of the Rules. In this regard, we are of the view that the petitioner's request can be considered by invoking power under Article 226 of the Constitution of India.

3. Accordingly, the impugned order dated 18.08.2023, on the file of the respondent is quashed. Consequently, there shall be a direction to the Superintendent of Prison, Central Prison, Trichy to forthwith pass orders granting emergency leave with the reasonable conditions as stipulated under



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Rule 25 of the Rules and ensure that the convict Subbramanian @ Subbu is released forthwith for one day, in order to enable him to attend the funerals.

The prisoner shall report before the Superintendent of Prison, Trichy before 6.00 p.m., on 19.08.2023.

4. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

(M.S.R.,J.) (M.N.K.,J.)
18.08.2023

NCC : Yes / No
Index : Yes / No
Lm

Note: Issue order copy today (18.08.2023)



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- To
- 1.The Superintendent,
Trichy Central Prison,
Trichy.
 - 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.

vsm

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