



W.P.(MD).No.20713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 25.08.2023

CORAM

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

W.P.(MD).No.20713 of 2023

S.Kanimozhi

.. Petitioner

Vs.

1.The Additional Director General of Prison,
Egmore,
Chennai – 600 008.

2.The Deputy Inspector General (Prison),
Madurai Range,
Central Prison,
Madurai.

3.The Superintendent,
Central Prison,
Madurai.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the impugned order of the 3rd respondent in No.1746/Tha.Ku.2/2023 dated 14.08.2023 and quash the same as illegal, consequently direct the 2nd and 3rd respondents to release the petitioner's brother namely Sutharson @ Vellaiah, S/o.Sivakumar aged about 24 years (C.P.No.1746) on Parole/emergency leave for 3 days to



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attend the 30th day funeral rites of the petitioner's mother schedule on 28.08.2023 at Door No.61, Housing Board Colony, Melavasal, Madurai - 625 001.

For Petitioner : Mr.M.Jegadeesh Pandian
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner's brother, namely, Sutharson @ Vellaiah (CP No.1746), S/o.Sivakumar, aged about 24 years, is confined at Madurai Central prison in connection with the conviction ordered in C.C.No.319 of 2021 dated 24.04.2023. When the convict's mother had passed away on 28.07.2023, the petitioner had sought for grant of emergency leave for her brother, which came to be rejected. Thereafter, through orders passed by this Court in W.P. (MD).No.18553 of 2023 dated 29.07.2023, emergency leave was granted to the petitioner's brother from 29.07.2023 to 30.07.2023 in order to enable him to perform the funeral rituals of his mother. The petitioner now seeks for grant of emergency leave for her brother for the 30th day death ceremony



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of their mother, for which her brother's presence is required, since he had performed the last rites. In this regard, the petitioner has given a representation to the third respondent on 10.08.2023. The petitioner's request was rejected by the third respondent through the impugned order dated 14.08.2023. Challenging the same, the present Writ Petition has been filed.

2. The petitioner's request for grant of emergency leave for her brother has been rejected by the third respondent, predominantly on the ground that there are two other cases pending against the petitioner's brother arising out of Crime No.239/2023 on the file of the Judicial Magistrate No.VI, Madurai and S.C.No.450/2022 arising out Crime No.853/2020 on the file of the 6th Additional District and Sessions Judge, Madurai and in view of Rule 35 of the Tamil Nadu Suspension and Sentence Rules, 1982 (hereinafter referred to as 'the Rules'), leave cannot be granted, when a trial is pending. The further reason assigned in the said proceedings is that the petitioner's brother's participation in their mother's 30th day death ceremony is not permissible reason for grant of emergency leave under Rule 6 of the Rules.



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3. Rule 40 of the Rules grants power to the Government to exempt all or any of the provisions of the Rules, in view of which, Rules or the provisions therein are not absolute and cannot come in the way or become an impediment for the judiciary to exercise these powers to grant leave. In the case of ***Shakila v. State of Tamil Nadu, Home Department and others (W.P.No.2761/2023 dated 10.02.2023)***, a Co-ordinate Bench had taken a such a view and had granted leave to the prisoner.

4. Thus, the reasons assigned by the third respondent by quoting either Rule 35 or Rule 6, which is not mandatory in nature but only directory, will not be an impediment for this Court to exercise its powers to grant leave. At this juncture, it is stated by the learned Additional Public Prosecutor that the pending case in Crime No.239/2023 is posted for hearing on 04.09.2023 and the case in S.C.No.450/2022 is posted for hearing on 07.09.2023. The petitioner seeks for grant of leave to her brother for attending her mother's 30th day death ceremony, which is scheduled to be held on 28.08.2023. In these circumstances, if leave is granted between 27.08.2023 and 29.08.2023 with escort, it would facilitate



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the respondents to produce him before the concerned Courts during the next hearing dates.

5. Accordingly, the impugned order dated 14.08.2023 on the file of the third respondent is hereby quashed. Consequently there shall be a direction to the third respondent herein to forthwith pass orders granting emergency leave to the petitioner's brother, namely, Sutharson @ Vellaiah (CP No.1746), S/o.Sivakumar, from 27.08.2023 at 6.00 PM to 29.08.2023 at 6.00 PM with escort. While passing such orders granting leave, the third respondent would be at liberty to impose any reasonable conditions.

6. With the above direction, the Writ Petition is allowed.

(M.S.R.,J.) (M.N.K.,J.)
25.08.2023

NCC : Yes / No
Index : Yes / No
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Note: Issue order copy by 25.08.2023.



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- 2.The Deputy Inspector General (Prison),
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- 3.The Superintendent,
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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M.S.RAMESH,J.
and
M.NIRMAL KUMAR,J.

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