



WP(MD)No.20940 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.09.2023

CORAM

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

**WP.(MD)No.20940 of 2023
and WMP(MD) No.17343 of 2023**

Syed Ali Fathima

.. Petitioner

Vs.

1.The Deputy Inspector General of Prison,
O/o.The Deputy Inspector General of Prison,
and Correctional Services,
Madurai Range, Madurai Central Prison campus,
New Jail Road, Madurai.

2.The Superintendent of Prison,
Central Jail, Palayamkottai
Tirunelveli District

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus to set aside the impugned order passed by the respondent No.2 in No.3633/Ta.Ku.2/2023 dated 11.07.2023 and further direct the respondent No.2 to grant ordinary leave for period of 20 days without escort to the petitioner husband namely Sheik



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ZinthaMathar, S/o.PulavarMaideen, CP No.7370 who is life convicted in a murder case and languishing in Central Jail, Palayamkottai, Tirunelveli District.

For Petitioner : Mr.S.Mohamed Ali Jinna

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner's request for grant of ordinary leave for her husband came to be rejected by the respondents stating that since he was released on ordinary leave only on 24.01.2023 and he had reported back before the prison authorities on 02.02.2023, he would be entitled for next spell of ordinary leave only from 03.02.2024. This rejection order dated 11.07.2023 is put under challenge in the present writ petition.

2. The earlier spell of grant of 10 days of ordinary leave was pursuant to the orders of this Court dated 25.11.2022 in WP(MD) No.26555 of 2022.

The said order reads as follows:

“8. In the result, the impugned proceedings dated



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07.11.2022 issued by the second respondent is hereby set aside. There shall be a direction to the third respondent to grant ordinary leave to the detenu for a period of ten days. It will be left open to the third respondent to impose necessary conditions as per law.”

3. Since the said order was passed by this Court in exercise of its powers under Article 226 of the Constitution of India, the prison authorities ought to have granted ten days ordinary leave from 25.11.2022 itself. However, the respondents in their counter affidavit have taken a stand that when prisoners are granted ordinary leave by the Government/Deputy Inspector General of Prisons, the prisoners have to execute the surety bonds before the Tahsildar as per Rule 26 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as 'the Rules'). Since the delay has occurred for execution of the bond before the Tahsildar, the petitioner's husband was released on ordinary leave only from 24.01.2023 and thereafter he had reported back to the prison on 02.02.2023 only. We are not in agreement with the said submission made by the respondents.



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4. The delay in execution of sureties/bond, which has occurred owing to the inaction on the part of the authorities to obtain the surety bond in time, cannot be put against the prisoner particularly when the order for grant of ordinary leave has been made by this Court in exercise of its powers under Article 226 of the Constitution of India. We are of the view that the petitioner ought to have granted ordinary leave on 25.11.2022 itself and thus, the 10 days leave ought to have expired on 05.12.2023. In view of Rule 22(3) of the Rules, the petitioner's husband would be eligible to claim for ordinary leave for the next spell on completion of one eyar of imprisonment from the date on which the earlier spell of ordinary leave expired. In this case, such a last date should be taken to be as 05.12.2022 and therefore, the petitioner would be entitled to claim for the next spell of ordinary leave from 06.12.2023.

5. Thus, the reason assigned by the respondents insofar as fixing the crucial date for claim of next spell of ordinary leave as 03.02.2024 alone is set aside. Accordingly, the petitioner is granted liberty to make an appropriate application seeking for grant of ordinary leave after 05.12.2023.



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Consequently connected Miscellaneous Petition is closed.

(M.S.R.,J.) (M.N.K.,J.)
20.09.2023

NCC :Yes / No

Internet : Yes

RR

To

- 1.The Deputy Inspector General of Prison,
O/o.The Deputy Inspector General of Prison,
and Correctional Services,
Madurai Range, Madurai Central Prison campus,
New Jail Road, Madurai.
- 2.The Superintendent of Prison,
Central Jail, Palayamkottai
Tirunelveli District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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

RR

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