



W.P.(MD) No.22590 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and**

THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD) No.22590 of 2023

and

W.M.P.(MD) No.18838 of 2023

Vijay Kumar

: Petitioner

-vs-

1.The Deputy Inspector General (Prison),
Tiruchirapalli Range,
Central Prison,
Tiruchirapalli.

2.The Superintendent,
Central Prison,
Tiruchirapalli.

: Respondents

PRAYER: 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 second respondent in No.24154/TaKu.4/2023 dated 13.09.2023 and quash the same as illegal, and consequently direct the first and second respondents



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to release the petitioner's brother namely Sasikumar, S/o. (late) Konnachi aged about 35 years (C.P.No.24154) confined in Central Prison, Tiruchirappalli on Parole / emergency leave for 3 days to attend the 5th day funeral rites of the petitioner's mother scheduled on 14.09.2023 to 16.09.2023 at Mudalaipatti, Kulithalai Taluk, Karur – 639 103.

For Petitioner : Mr.AR.Jeyarhuthran

For Respondents 1& 2 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by S.S.SUNDAR, J.]

Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor, takes notice for the respondents.

2.With the consent of both sides, this writ petition is taken up for final hearing at the admission stage itself.

3.This writ petition is filed for issuance of a writ of Certiorarified, calling for the impugned order of the second respondent in No.24154/TaKu. 4/2023 dated 13.09.2023 and to quash the same as illegal, and consequently



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to direct the first and second respondents to release the petitioner's brother namely Sasikumar, S/o. (late) Konnachi aged about 35 years (C.P.No.24154) who is confined in Central Prison, Tiruchirappalli on Parole / emergency leave for 3 days to attend the 5th day funeral rites of the petitioner's mother which is scheduled to take place from 14.09.2023 to 16.09.2023 at Mudalaipatti, Kulithalai Taluk, Karur – 639 103.

4.The present writ petition has been filed by the brother of the prisoner as against the order passed by the second respondent refusing to grant leave to the prisoner to perform the religious rites in connection with his mother's death. The petitioner's brother along with seven others had been convicted and sentenced to double life imprisonment and now he is under custody in the Central Prison, Tiruchirappalli. The appeal against the said conviction is also pending. While so, the petitioner's mother by name Thavamani who was ailing from throat cancer died on 08.09.2023. Hence, the petitioner's brother was allowed to attend the funeral ceremony of his mother. However, the subsequent request of the petitioner to grant leave for his brother to perform the final rites to his mother has now been rejected on the ground that such leave for attending or to perform final rites to a dead person cannot be permitted.



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5. Learned Counsel for the petitioner states that the petitioner's brother is the elder son of his mother and therefore, he need to perform the rites to fulfill the heavenly obligations. He also relied upon a judgment of a Division Bench of this Court, wherein a similar order rejecting the leave application on similar ground was set aside and leave was granted.

6. Learned Additional Public Prosecutor appearing for the respondents objected to the same by stating that the Rule is not applicable and that the applicability of the Rule has been argued before the Coordinate Bench and orders have been reserved.

7. This Court finds that there is no serious objection except the objection with reference to the applicability of the Rule. Having regard to the facts narrated, this Court is convinced that the petitioner's brother can be granted leave to perform the final rites of his mother. Accordingly, the impugned order dated 13.09.2023 passed by the second respondent is quashed. The respondents 1 and 2 are directed to grant leave to the petitioner's brother for two days ie., 15.09.2023 and 16.09.2023, to perform the funeral rites of the petitioner's mother. The leave is confined only to two days ie., **15.09.2023 and 16.09.2023**. On these two days, the petitioner's



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brother shall report before the ***Kulithalai Police Station***, twice a day and the petitioner's brother shall report before the concerned Superintendent of Prison on ***16.09.2023 at 05.00 p.m.***

8. Accordingly, this Writ Petition is disposed of. No costs.
Consequently, the connected miscellaneous petition is closed.

[S.S.S.R., J.]

[D.B.C., J.]

14.09.2023

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

MR



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To

1.The Deputy Inspector General (Prison),
Tiruchirapalli Range,
Central Prison,
Tiruchirapalli.

2.The Superintendent,
Central Prison,
Tiruchirapalli.



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and
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