



W.P(MD)No.24904 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P(MD)No.24904 of 2023

Ponnammal

... Petitioner

vs.

1. The Deputy Inspector General of Prison,
Madurai Zone, Madurai Central Prison,
Madurai – 625 001.

2.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli – 627 002.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to grant 40 days of ordinary leave without escort to petitioner's son, P.Chellappa, S/o.Bakiyam, Life Convicted Prisoner No.4539 confined in the Palayamkottai Central Prison.

For Petitioner

: Mr.R.Narayanan

For Respondents

: Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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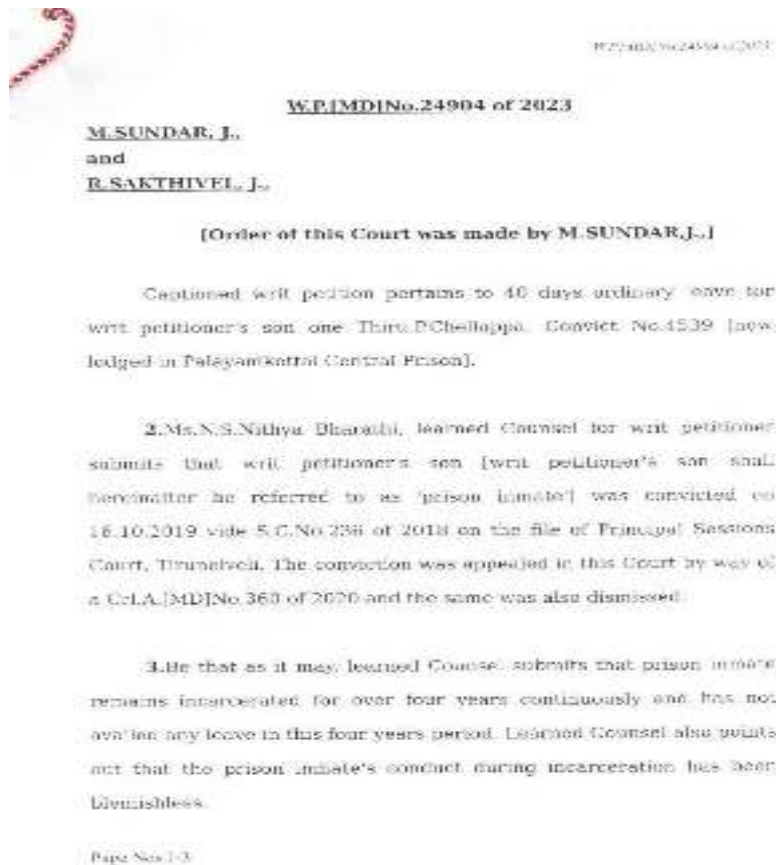


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ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity) was listed in the Admission Board on 16.10.2023 and the following proceedings/order was made:

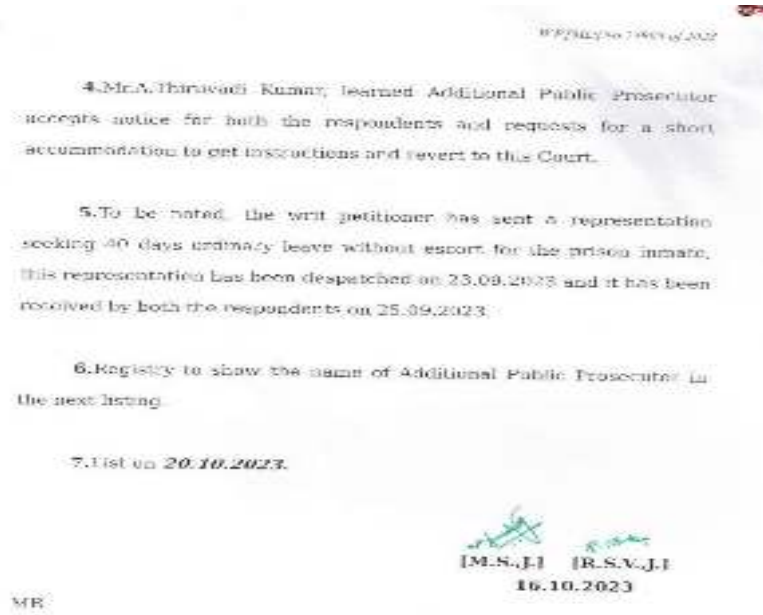




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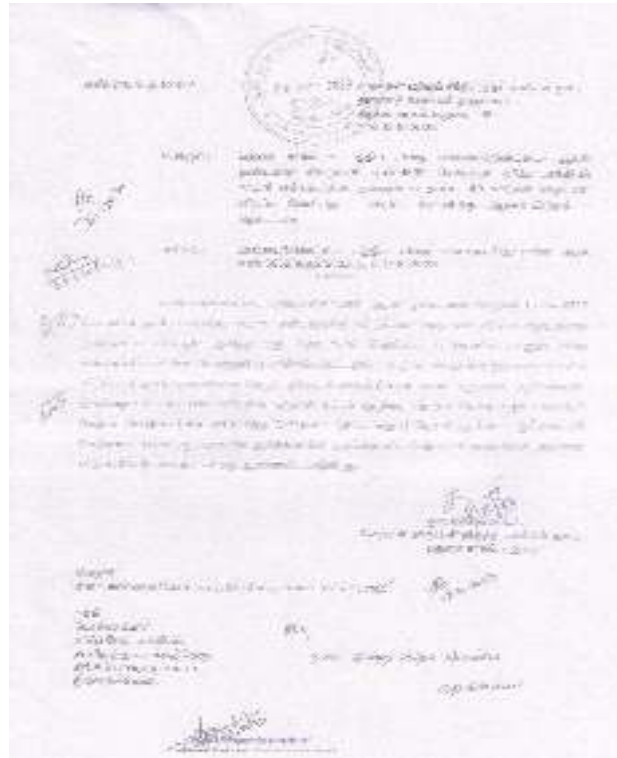
2. The aforementioned order captures the crux and gravamen of the issue in a nutshell and therefore we are not setting out the same again. Suffice to superadd that the ground on which ordinary leave without escort has been sought is that the writ petitioner (convict prisoner's mother), who is aged 85 years old, is ailing, very ill, in the evening of her life, does not have anyone else to attend to her owing to which there is need to make arrangements for her livelihood.

3. The main writ petition is one for mandamus qua grant of leave but today, learned Prosecutor submits that the request for leave has since been rejected vide 'order dated 18.10.2023 bearing reference No.



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2115/c/j/1/2022' (hereinafter 'impugned order' for the sake of brevity, convenience and clarity) made by the first respondent and a scanned reproduction of the same is as follows:



4. Mr.RNarayanan, learned counsel for writ petitioner and Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor for the respondents are before us.

5. After hearing both sides and after perusing the records that were placed before us, we are of the view that this is a fit case to interfere qua



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the impugned order though the prayer is only for mandamus. This Bench makes it clear that this is a one off measure and therefore such an approach will not serve as a precedent in all cases but will be one that has to be tested and applied on a case-to-case basis. Suffice to say, in the facts and circumstances of the case, we are taking this approach, we are taking up the main writ petition with the consent of both sides. This Court is of the considered view that the impugned order deserves to be interfered with and the convict prisoner is entitled to leave. The reasons i.e., dispositive reasoning is as follows:

5.1 Captioned writ petition was filed in this Court on 11.10.2023, it was in the Admission Board on 16.10.2023, then the aforementioned proceedings/orders were made by this Court but the impugned order has been made on the teeth of our earlier proceedings, pending captioned writ petition on 18.10.2023. We see this as an effort to neutralize the proceedings, therefore, this is one of the reasons for taking the one off approach of embarking upon a certiorari legal drill in a mandamus plea by amplifying the prayer;



5.2 As regards the merits of the matter, the files contain report of the Probation Officer as well as report of the local police. Both the reports do not dispute or contest the grounds on which leave has been sought;

5.3 The Probation Officer's report recommends grant of leave to the convict prisoner;

5.4 As regards the police report, it merely says that certain persons with criminal antecedents in places in and around the writ petitioner's residence know the convict prisoner and the convict prisoner is likely to come in contact with them. This report lacks specificity. We see this report in the light of the fact that this is a lone case in which the convict prisoner has been convicted. There has not been any other case (either pending or convicted) not even acquitted for that matter;



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5.5 The aforementioned Probation Officer's report enures to the benefit of the writ petitioner in his campaign for ordinary leave without escort;

5.6 The writ petitioner has remained incarcerated for four years on the trot without a break;

5.7 The grounds on which ordinary leave has been sought snugly fit into Clauses (i) and (vii) of Rule 20 of 'The Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity];

5.8 The victim's family is not anywhere near the vicinity of where the writ petitioner is to reside is what we are informed without any disputation or contestation in this regard. It is to be noted that the writ petitioner herein would be residing in Singamparai, Mukoodal, Tirunelveli District.



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6. In the light of the narrative thus far, we grant one month ordinary leave without escort to the Convict Prisoner namely, Thiru.P.Chellappa, son of Thiru.Bakiyam, aged 62 years (Convict No. 4539), now detained in Central Prison, Palayamkottai, on the condition that the convict prisoner shall sign before jurisdictional Magistrate (we are informed that jurisdictional Magistrate is Judicial Magistrate, Cheranmahadevi) everyday. The period of leave shall be from 09.11.2023 to 09.12.2023. The convict prisoner shall surrender in the office of the second respondent on the leave period elapsing by dusk i.e., (5.30 p.m.) on 09.12.2023 (Saturday).

7. Captioned WP is disposed of in the aforesaid manner. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
03.11.2023

Index : No
Internet : Yes
Neutral Citation : Yes
PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Palayamkottai. All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.



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To



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1. The Deputy Inspector General of Prison,
Madurai Zone, Madurai Central Prison,
Madurai – 625 001.
2. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli – 627 002.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Joint Secretary to Government,
Public (Law and Order) Department,
Secretariat, Chennai.



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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

PKN

ORDER MADE IN
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03.11.2023