



W.P(MD)No.25293 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.10.2023

CORAM :

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

W.P(MD)No.25293 of 2023

Annalakshmi

... Petitioner

vs.

1. The State rep. by its,
The Secretary to Government of India,
Home Department,
Fort St.George,
Chennai – 600 009.
2. The Deputy Inspector General of Police,
Central Prison, Trichy.
- 3.The Superintendent,
Central Prison, Trichy.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the rejection order in No.18769/tha ku.4/2023, dated 25.09.2023 issued by the third respondent to grant leave for 2 months without escort to the detenu, Balraj S/o.Karupaiyya, aged about 27 years, is a convict prisoner, bearing Convict No.23620 detained at Central Prison, Trichy.



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For Petitioner

: Mr.S.Manoharan

For Respondents

: Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

Captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity) has been filed in this Court on 16.10.2023 with a certiorarified mandamus prayer assailing an 'order dated 25.09.2023 bearing reference No.18769/tha ku.4/2023' made by the third respondent (hereinafter 'impugned order' for the sake of brevity, convenience and clarity). To be noted, the mandamus limb of the prayer seeks two months ordinary leave without escort for a prison inmate Thiru.Balraj S/o. Thiru.Karupaiyya, aged about 27 years (Convict No.23620 now detained in Central Prison, Trichy). It is also to be noted that prison inmate is writ petitioner's spouse.

2. Writ petitioner sent a representation dated 21.09.2023 seeking two months leave without escort for her spouse i.e., prison inmate on the ground that she is in an advanced stage of pregnancy and that the prison



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inmate has to make arrangements for the livelihood of his family owing to the economic situation and owing to petitioner struggling with her aged mother-in-law.

3. Dr.S.Manoharan, learned counsel for writ petitioner advertg to Rule 20 of 'The Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] submits that the grounds on which ordinary leave has been sought fit into Clauses (i) and (vii) of Rule 20 of said Rules but the writ petitioner's representation dated 21.09.2023 has been negatived by the third respondent in and by the impugned order by citing Rule 22 of said Rules and saying the two years imprisonment has not elapsed as the prison inmate has been sentenced for more than five years but less than fourteen years. To be precise, this is Rule 22(1)(b) of said Rules, which reads as follows:

'22. Eligibility for ordinary leave.- (1) No prisoner shall be granted ordinary leave unless he has been sentenced by a court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed.-

(a)



(b) two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years;”

4. Issue notice.

5. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepted notice for all three respondents and submitted on instructions that on the date of the impugned order i.e., 25.09.2023, the prison inmate had completed two years but he will be entitled to only twenty one days leave in the light of Rule 22(2)(a) of said Rules.

6. We carefully considered the rival submissions. We also perused the case file and the relevant provisions. We also noticed our earlier order in Selvam's case reported *vide* Neutral Citation of Madras High Court {2023:MHC:4258}, being order dated 05.09.2023 in W.P.No.27137 of 2023, we had held that constitutional powers of this Court cannot be abridged much less denuded by a Subordinate Legislation. We are interfering with the impugned order, we shall be setting aside the same and granting one month ordinary leave without escort. The reasons are as follows:



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6.1 The impugned order has been made by the third respondent but under said Rules, the authority who can grant ordinary leave is not the third respondent and it is the second respondent. To be noted, this is vide Rule 19 of said Rules. It is further to be noted that Rule 10 of said Rules provides for third respondent to deal with and grant emergency leave. In the case on hand, what is being sought is ordinary leave without escort. Therefore, the impugned order has been made by an authority who is not vested with the power to deal with the applications for ordinary leave;

6.2 In the impugned order, the reasons on which leave has been sought vide 21.09.2023 representation have not been subjected to disputation or contestation;

6.3 Even according to the impugned order, the prison inmate has not come to any adverse notice of the prison authorities;

6.4 Rule 22(2)(b) of said Rules nowhere puts a cap of twenty one days for prisoners sentenced to imprisonment for a period exceeding five years but under fourteen years and also saying that this can be only from the third to fifth year of imprisonment;



6.5 The impugned order says that as on the date of the order (25.09.2023), the prison inmate had served two years eleven months and five days but come 25.10.2023, he would have completed three years and he would become eligible even if Rule 22(2)(b) of said Rules is applied;

6.6 The reason given is very compelling in the facts and circumstances of the case considering it is an advanced stage of pregnancy and a first pregnancy qua the writ petitioner besides the manner in which the family is circumstanced. As already alluded to supra, the ground on which ordinary leave has been sought has not been disputed or subjected to contestation and they fit into Rule 20(i) as well as Rule 20(vii) of said Rules;

6.7 As already alluded to supra, this Court in Selvam's case reported *vide* Neutral Citation of Madras High Court {**2023:MHC:4258**} after respectfully following various judgments of Hon'ble Supreme Court had held that constitutional powers of this Court cannot be abridged much less denuded by a Subordinate Legislation. To be noted, said Rules is Subordinate Legislation having been made by the Executive Arm in exercise of Rule making power under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of



brevity and clarity];

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6.8 Though twenty one days leave have been sought, we shall now be granting one month leave as the common proviso to Sub Rule (2) of Rule 22 of said Rules says that maximum period in one spell can extend up to 40 days.

7. In the light of the narrative, discussion and dispositive reasoning thus far, the following order is made:

7.1 The impugned order is set aside for reasons alluded to supra;

7.2 The prison inmate, namely, Thiru.Balraj S/o. Thiru.Karupaiyya, aged 27 years (Convict No.23620), now detained in Central Prison, Trichy, is granted one month leave from 25.10.2023 to 25.11.2023. To be noted, it is one month ordinary leave without escort;

7.3 The prison inmate shall sign before jurisdictional Magistrate (Judicial Magistrate, Perambalur) every Monday



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and Friday in the forenoon;

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7.4 The prison inmate shall surrender in the office of the third respondent on the leave period elapsing by dusk i.e., (5.30 p.m.) on 25.11.2023 (Saturday);

7.5 The prison inmate shall utilize the leave only for the purpose for which it has been availed/granted and shall not be part of any other activities which is outside the realm of the grounds on which leave has been granted.

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

(M.S., J.) (R.S.V., J.)
19.10.2023

Index : No
Internet : Yes
Neutral Citation : Yes
PKN

P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Trichy.



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To

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1. The Secretary to Government of India,
Home Department,
Fort St.George,
Chennai – 600 009.
2. The Deputy Inspector General of Police,
Central Prison, Trichy.
3. The Superintendent,
Central Prison, Trichy.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

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ORDER MADE IN
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19.10.2023