



W.P(MD)No.27397 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.11.2023

CORAM :

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

W.P(MD)No.27397 of 2023

N.Ramajeyam

... Petitioner

vs.

1.The Secretary to Government,
Home Department (Prison),
Government of Tamil Nadu,
Secretariat,
St. George Fort,
Chennai – 9.

2.The Additional Director General of Police (Prisons)/
The Inspector General of Police,
Office of ADGP (Prisons)/ I.G. of Prisons,
Thalamuthu Natarajar Maaligai,
Egmore, Chennai – 8.

3.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to grant 20 days emergency leave without escort to the petitioner's brother namely Arun Kumar, S/o.Late Natarajan a life convict prisoner (life convict no. 6065) now confined at Central Prison, Madurai for the purpose of



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solemnize his sister's marriage from 17.11.2023 to 07.12.2023 by considering the petitioner's representation dated 07.11.2023.

For Petitioner : Mr.S.Srikanth

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

Captioned 'Writ Petition' ['WP' for the sake of brevity] has been filed in this Court on 15.11.2023 with a mandamus prayer which pertains to 20 days emergency leave without escort to the writ petitioner's brother one Arunkumar, son of Late Natarajan, who is a prison inmate now lodged in Central Prison, Madurai [life convict No. 6065]. 'Thiru Arunkumar' shall hereinafter be referred to as 'said prison inmate' for the sake of convenience. Suffice to say that prison inmate was convicted and handed down life imprisonment for offences under Sections 120B r/w 302 IPC by Principal Sessions Judge's Court, Ramanathapuram vide S.C.No.5 of 2019 [judgment and sentence dated 22.09.2021]. It is also to be noted that this conviction and sentence has been carried in an appeal to this Court vide Crl.A.(MD)No.425 of 2021 and the same is pending.



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2. Writ Petitioner has sent a representation dated 07.11.2023 to the three respondents in the captioned matter seeking 21 days leave [17.11.2023 to 07.12.2023] for said prison inmate on the ground that marriage has been fixed for his sister [prison inmate's sister too] and that the marriage scheduled to take place on 23.11.2023. A reading of this 07.11.2023 representation brings to light that the grounds on which leave has been sought is that said prison inmate's presence is necessary for making arrangements for his sister's marriage. To be noted, parents of the prison inmate are no more and the sister of prison inmate, who is to be married is a full sister ie., blood sister.

3. Mr.S.Srikanth, learned counsel for Writ Petitioner who is before us reiterated the aforementioned facts and submitted that the aforementioned 07.11.2023 representation remains unattended and that has necessitated the filing of the captioned Writ Petition considering that arrangements for prison inmate's full sister marriage have to be done and that the marriage itself scheduled to be held on 23.11.2023.

4. Issue notice. Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepts notice for all the three respondents.



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5. Considering the nature of the matter and the narrow compass in which it turns with the consent of both sides, main Writ Petition was taken up and heard out.

6. In response to the plea of the petitioner, learned Additional Public Prosecutor, on instructions, submitted that there is only one impediment for acceding to the leave request and that impediment is Rule 22(1)(c) of 'Tamil Nadu Suspension of Sentence Rules, 1982' ['said Rules' for the sake of brevity]. Owing to this Rule, said prison inmate having been convicted and handed down life imprisonment sentence has to complete three years of imprisonment.

7. Before we proceed further, it is necessary to notice that in aforementioned 07.11.2023 representation, there is no mention about emergency leave or ordinary leave, it merely seeks 21 days leave but the prayer in the Writ Petition talks about emergency leave. On a careful perusal of said Rules we find that the ground on which leave has been sought by the prison inmate snugly fits into Rule 20(iv) of said Rules, which reads as follows:

'20.Grounds for the grant of ordinary leave.- The grounds for the grant of ordinary leave to a prisoner shall be -



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(i)

(ii)

(iii)

(iv) *to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sisters, as the case may be, of the prisoner;'*

8. Therefore, considering the ground on which leave has been sought and the 07.11.2023 representation, we construe the plea as one for ordinary leave on the ground set out in Rule 20(iv) of said Rules, which has been extracted and reproduced supra.

9. We carefully considered the submissions of both sides and we are inclined to grant leave by acceding to the prayer. The reasons are as follows:

i) the ground on which leave has been sought is not subjected to any disputation or contestation;

ii) there is no other impediment other than Rule 22(1)(c) of said Rules, which has been alluded to supra;



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iii) as regards Rule 22(1)(c) we remind ourselves of *Baskar's case [Baskar Vs. The State and two others]* being order dated 20.09.2023 made in W.P.No.27515 of 2023. To be noted, in *Baskar's case* we have adopted the view taken in *Bhuvaneswari case [Bhuvaneswari Vs. The Secretary and three others]* reported in **2023:MHC:3983** (Neutral Citation of this Court) and *Pushpalatha case [Pushpalatha Vs. The State and two others]* reported in **2023:MHC:4244** (Neutral Citation of this Court). It is further to be noted that these cases have been made by this Court by respectfully following the *Vernon case [Vernon Vs. State of Maharashtra and another]* reported in **2023 SCC OnLine SC 885 : 2023 LiveLaw (SC) 575** and *K.A.Najeeb* principle *[Union of India Vs. K.A.Najeeb reported in 2021 3 SCC 713]*. Vernon principle and K.A.Najeeb principle have been relied on to say that a statutory provision cannot constrict constitutional powers when it comes to liberty. In this regard, we deem it appropriate to extract and reproduce sub-paragraph (iii) of paragraph 8 in Baskar's case which reads as follows:



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'8.....

(i).....

(ii).....

(iii) This Court in **Bhuvaneswari** case [**Bhuvaneswari Vs. The Secretary and three others**] reported in **2023:MHC:3983** (Neutral Citation of this Court) **Pushpalatha** case [**Pushpalatha Vs. The State and two others**] reported in **2023:MHC:4244** (Neutral Citation of this Court) and in a catena of cases has repeatedly held that said Rules is a piece of Subordinate Legislation made by Executive in exercise of Rule making powers inter alia under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and therefore, such Subordinate Legislation which has not even gone through Legislative grind in the Legislature cannot in any manner abridge much less denude Constitutional powers of this Court. In this regard, though rendered in the context of Section 43D(5) proviso of Unlawful Activities (Prevention) Act, 1967, we draw inspiration from **Vernon** case [**Vernon Vs. State of Maharashtra and another** reported in **2023 SCC OnLine SC 885 : 2023 LiveLaw (SC) 575**], wherein **K.A.Najeeb** principle [**Union of India Vs. K.A.Najeeb** reported in **2021 3 SCC 713**] that a statutory provision cannot constrict constitutional powers when it comes to liberty as laid down / reiterated by Hon'ble Supreme Court. To be noted UAPA is a Statute which has gone through the law making drill whereas in the case on hand we are dealing with a piece of Subordinate Legislation made by the Executive arm. In this



view of the matter; we find that even the Executive has been vested with powers vide Rule 40 of said Rules to exempt any person from all or any of the provisions of said Rules. This only means that even this Subordinate Legislation i.e., said Rules is not non-negotiable. This is evident from the window provided vide Rule 40 of said Rules but it is not necessary for us to take Rule 40 route as we are exercising Constitutional powers cannot be abridged, much less denuded by a piece of Subordinate Legislation;.....'

(iv) To be noted, the facts of the case in **Baskar's case** are such that where 40 days ordinary leave was sought on the ground of failing health of prison inmate's mother which was negated citing Rule 22(3) of said Rules which says that one year imprisonment should have elapsed between two spells of leave. Applying **Baskar** principle which has been written by us by respectfully following **Vernon and K.A.Najeeb principles** laid down by Hon'ble Supreme Court, we find that said Rules which is a piece of Subordinate Legislation cannot in any manner abridge much less denude the constitutional powers of this Court. The sequitur means that as much as Rule 22(3) was not an impediment in **Baskar's case**, Rule 22(1) will not be an impediment in the case on hand.



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10. This Court having set out the narrative and dispositive reasoning, now makes the following order:

(i) 14 days ordinary leave without escort is granted to the said prison inmate Thiru Arunkumar, son of Late Natarajan [life convict No. 6065] now lodged in Central Prison, Madurai;

(ii) 14 days ordinary leave shall be from 18.11.2023 [10.30 a.m.] to 01.12.2023;

(iii) Said prison inmate shall sign before the jurisdictional Magistrate's Court everyday [we are informed that the Jurisdictional Magistrate is Judicial Magistrat I, Ramanathapuram];

(iv) the above condition will not apply for three days of the leave viz., 18.11.2023, 23.11.2023 and 02.12.2023;



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(v) the said prison inmate shall surrender before the office of the third respondent on 02.12.2023 [Saturday] by dusk ie., by 5.30 p.m.; and

(vi) the said prison inmate shall not utilise the leave for any purpose other than the ground on which leave has been granted.

11. Captioned Writ Petition is disposed of in the aforesaid manner with the aforementioned directives. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
17.11.2023

Index : Yes
Neutral Citation : Yes

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Note: (i) Upload forthwith

(ii) 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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 - 2.The Additional Director General of Police (Prisons)/
The Inspector of General of Police,
Office of ADGP (Prisons)/ I.G. of Prisons,
Thalamuthu Natarajar Maaligai,
Egmore, Chennai – 8.
 - 3.The Superintendent of Prison,
Central Prison,
Madurai.
 - 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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

vsm

ORDER MADE IN
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DATED : 17.11.2023