



W.P.(MD)No.27419 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.11.2023

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CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.27419 of 2023

Marudambal

: Petitioner

Vs.

- 1.The State of Tamil Nadu represented by,
The Principal Secretary,
Home, Prohibition and Excise Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Police /
Director General of Prisons and Correctional Services,
C.M.D.A. Towers II,
No.1, Gandhi Irvin Road,
Egmore,
Chennai.
- 3.The Deputy Inspector General of Prisons,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road,
Madurai – 625 016.



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4.The Superintendent of Prison,
Madurai Central Prison,
Madurai District – 625 016.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents to grant 40 days ordinary leave without escort to the petitioner's husband by name Kumar @ Palanikumar son of Samayamuthu aged about 53 years, confining at Madurai Central Prison to make arrangements for the petitioner's daughter marriage, to admit the petitioner's son in an institution for pursue his higher education and to admit the petitioner in a private hospital for undergoing better treatment in accordance with law within the time stipulated by this Court.

For Petitioner : Mr.S.Ramesh Kumar

For Respondents : Mr.A.Thiruvadi Kumar

Additional Public Prosecutor

O R D E R

[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 prayer for 40 days ordinary leave without escort for WP petitioner's spouse one Kumar @ Palanikumar son of Samayamuthu aged 53 years now confined in



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Madurai Central Prison. 'Thiru.Kumar @ Palanikumar' shall hereinafter be referred to as 'said prison inmate' for the sake of convenience and clarity.

2.Mr.S.Ramesh Kumar, learned Counsel for WP petitioner adverting to a representation dated 15.11.2023 submits that 40 days ordinary leave without escort has been sought on the ground that:

- a) WP petitioner's daughter's marriage has to be arranged;
- b) WP petitioner's son wants to pursue higher education and arrangements have to be made for the same;
- c) Petitioner requires admission in a private hospital for better treatment.

3.Issue notice.

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

5.Learned Prosecutor submits on instructions that said prison inmate is serving sentence for over 17 years now. Learned Prosecutor points out that conviction and sentence is vide S.C. No.264 of 2005 on the file of Additional District and Sessions Judge



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Fast Track Court No.III, Coimbatore for offences punishable under Sections 458, 395 and 396 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity].

6.Learned Prosecutor submits that as regards aforementioned 15.11.2023 representation, Rule 21(b) of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of brevity] is an impediment.

7.Owing to the narrow scope of captioned WP, with the consent of both sides main writ petition was taken up for hearing.

8.We find that the grounds or reasons for which ordinary leave has been sought have not been subjected to any disputation or contestation but it is only Rule 21(b) impediment. As regards Rule 21(b), this Court has already made it clear that it cannot be an impediment vide **Akram Khan's** case [**Akram Khan Vs. The State of Tamil Nadu** in **W.P.No.21242 of 2023** dated **19.07.2023**]. Relevant paragraphs in **Akram Khan's** case are paragraphs 9 and 10 which read as follows:

'9. We carefully considered the submissions made on either side and we are inclined to set aside the impugned order and grant 21 days ordinary leave without escort to the writ petitioner and the reasons are as follows:



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i) As rightly pointed out by the learned counsel for writ petitioner, the writ petitioner has gone on leave on as many as seven earlier occasions, thrice with police escort and on four occasions without police escort and on all those occasions writ petitioner has returned and surrendered on expiry of the leave period and nothing untoward has happened. In this regard, a tabulation has been placed before us by the Prosecutor regarding earlier occasions of leave and a scanned reproduction of the same is as follows:

As would be evident from the tabulation placed before us, convict prisoner (out of seven earlier occasions) has gone on leave without police escort in the last four occasions, there has been no untoward incident and therefore, we are inclined to grant 21 days leave without escort this time albeit with a condition to report in jurisdictional police station daily;

ii) In response to our query as to whether there is any prison offence qua the writ petitioner, learned Prosecutor submits, on instructions, that there is no prison offence and the conduct of the convict prisoner in the prison has been blemishless;

iii) The objective behind Rule 21(b) of said Rules which was made more than 4 decades ago appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc.,;

iv) To put it in a nutshell, the offence of robbery and decoity have been put in one basket under Rule 21(b) of said Rules. In the case on hand, as the convict prisoner has gone on leave on as many as seven earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave, we find that this is a fit case to relax the rigour of Rule 21(b) of said Rules;

v) In continuation of the earlier reason, we make it clear that we are exercising constitutional power



and therefore said Rules being a set of Rules made by the Executive in exercise of Rule /special orders making powers under Section 432(5) of -The Code of Criminal Procedure, 1973 (2 of 1974)- [hereinafter -Cr.P.C- for the sake of brevity and clarity] will not be complete fetters qua this Constitutional Court, it is always open to this Court to relax such Rules in suitable cases and this is one such case;

vi) We also find that at least two of the three grounds on which ordinary leave has been sought are compelling and those are, making arrangements for medical treatment for his ailing mother and making arrangements for higher education of his daughter who has completed Diploma in Pharmacy;

vii) This Court also notices that punishment for decoity under Section 395 of IPC can extend upto imprisonment for life or rigorous imprisonment for a term which may extend upto 10 years and there is no minimum sentence but the trial Court has awarded 5 years sentence (even in the five years sentence 135 days set off has been given) and we have taken this factor also into consideration;

viii) The writ petitioner remains incarcerated from 02.10.2021.

10. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

i) Impugned order dated 06.07.2023 bearing reference No.8562/j/F/2/2023 made by the second respondent is set aside;

ii) The writ petitioner i.e., convict prisoner (Convict No.8562) now lodged in Central Prison, Puzhal, Chennai ? 600 066 is given 21 days ordinary leave without escort from 24.07.2023 to 13.08.2023;

iii) The convict prisoner while on leave shall sign before P~1 Pulianthope Police Station every day at 10.30am. 24.07.2023 and 13.08.2023 being the first and



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last day of the 21 days leave, the convict prisoner need not sign before the P~1 Pulianthope Police Station.

iv) The convict prisoner shall surrender before second respondent / in the office of the second respondent on 13.08.2023 by dusk i.e., by 05.30 p.m;'

9.As regards aforementioned 15.11.2023 representation, we deem it appropriate to extract and reproduce the same as follows:

From

Marudambal (F. 51/2023),
W/o. Kumar (S. Palankaman),
No.37, W.M.S. Colony,
Nuthupatti,
Palanganthodam,
Madurai District.

To

1. The Principal Secretary,
Home, Prohibition and Excise Department,
State of Tamil Nadu,
Fort St. George,
Chennai-600 009.
2. The Director General of Police/Director of Prisons and Correctional Services,
C.M.D.A. Towers II,
No.1, Gandhi Jayaroad,
Egmore,
Chennai.
3. The Deputy Inspector General of Prisons,
Madurai Range,
Madurai Central Prison Camps,
New Jail Road,
Madurai-625 016.
4. The Superintendent of Prisons,
Madurai Central Prison,
Madurai District-625 016.

Respected Sir/Madam,

I am residing in the above mentioned address along with my daughter and son. I am functioning a private nursery school in Madurai. My husband is confining as life convict prisoner in Madurai Central Prison.



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In the year 2004, Tirupur Rural Police Officials registered FIR against my husband and 5 others in Crime no.478 of 2004 under Sections 458, 395 and 396 of the Indian Penal Code 1860. That on 31.03.2006, the Hon'ble Additional District & Sessions Judge Fast Track Court No.III Coimbatore completed trial in S.C.No.264 of 2005 and found my husband guilty for the offences punishable under Sections 458, 395 and 396 of the Indian Penal Code 1860 and sentenced to undergo life imprisonment.

By challenging the said conviction, my husband filed criminal appeal before the Hon'ble Madras High Court in CrI.A.No.256 of 2007 and the same was dismissed on 07.11.2008. Thereby, the sentence and conviction imposed by the Hon'ble Additional District & Sessions Judge Fast Track Court No.III Coimbatore completed trial in S.C.No.264 of 2005 dated 31.03.2006 was confirmed.

My daughter Anjana completed B.A., (Sociology with CA) and pursuing second year L.L.B., in the Government Law College, Madurai. Presently, we have decided to make marriage arrangements for my daughter. At this time, I am expecting my husband to be with us for making necessary arrangements for my daughter's marriage.

My son Arjun completed Diploma in Civil in the Tamil Nadu Polytechnic College Madurai and studying B.E., in Velammal Engineering College, Madurai. Now he wishing to pursue his higher education, therefore it is required for my husband to arrange money and getting admission in the best institution.

I am suffering from severe heart pain and cholesterol, at some instant I am facing wheezing problem. I am undergoing regular medication as outpatient and taking medicines in daily basis. While I visited my husband in Madurai Central Prison, he suggested me to undergo treatment in the private hospital once he came out in long leave.



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My husband is a B.A., graduate, he maintaining good conduct inside the prison. He has completed Diploma in Four Wheeler Mechanism and secured first class with distinction in Tamil Nadu Open University. He had also attended Counselling and Guidance Training Programme in the year 2009 conducted by Sree Saraswathi Thyagaraja College, Pollachi. My husband have availed leave and released from prison for 53 occasions, no untoward incident has happened, he returned and surrendered to prison at the right time on the leave period elapsing.

My husband has no other case, except the aforementioned case. My husband is undergoing 17 years of imprisonment. He is working in the petrol pump (Fuel Station) attached to Madurai Central Prison.

Now we decided to make arrangements for my daughter's marriage and to admit my son in an institution for pursue his higher education. I am suffering from several ailments such as heart pain, cholesterol and wheezing, I wished to undergo treatment in any of the private hospitals. For the reasons stated above, it is necessary for my husband to be with me for atleast 40 days.

I state that Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, 1982 provides Non-eligibility for ordinary leave for the prisoners sentenced under Sections 392 to 402 of the Indian Penal Code 1860. The objective behind Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, 1982 appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc., However, my husband has gone on leave on as many as 53 earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave.

The Hon'ble Madras High Court in Mr.Akram Khan Vs. The State (W.P.No.21242 of 2023) dated 19.07.2023, granted 21 days ordinary leave without



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escort to a convict prisoner sentenced for the offence under Section 395 IPC, the relevant portion reads as follow,

"9. We carefully considered the submissions made on either side and we are inclined to set aside the impugned order and grant 21 days ordinary leave without escort to the writ petitioner and the reasons are as follows:-

As would be evident from the tabulation placed before us, convict prisoner (out of seven earlier occasions) has gone on leave without police escort in the last four occasions, there has been no untoward incident and therefore, we are inclined to grant 21 days leave without escort this time albeit with a condition to report in jurisdictional police station daily;

ii) In response to our query as to whether there is any prison offence qua the writ petitioner, learned Prosecutor submits, on instructions, that there is no prison offence and the conduct of the convict prisoner in the prison has been blemishless;

iii) The objective behind Rule 21(b) of said Rules which was made more than 4 decades ago appears to be possibility of untoward incidents when the sentence is for offences such as robbery, causing hurt in committing robbery, decoity etc.,

iv) To put it in a nutshell, the offence of robbery and decoity have been put in one basket under Rule 21(b) of said Rules. In the case on hand, as the convict prisoner has gone on leave on as many as seven earlier occasions, has surrendered on expiry of leave and nothing untoward has happened when he was on leave, we find that this is a fit case to relax the rigour of Rule 21(b) of said Rules;

v) In continuation of the earlier reason, we make it clear that we are exercising constitutional power and therefore said Rules being a set of Rules made by the Executive in exercise of Rule /special orders making powers under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C']



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for the sake of brevity and clarity] will not be complete fetters qua this Constitutional Court, it is always open to this Court to relax such Rules in suitable cases and this is one such case;

vi) We also find that at least two of the three grounds on which ordinary leave has been sought are compelling and those are, making arrangements for medical treatment for his ailing mother and making arrangements for higher education of his daughter who has completed Diploma in Pharmacy;

vii) This Court also notices that punishment for dacoity under Section 395 of IPC can extend upto imprisonment for life or rigorous imprisonment for a term which may extend upto 10 years and there is no minimum sentence but the trial Court has awarded 5 years sentence (even in the five years sentence 135 days set off has been given) and we have taken this factor also into consideration;

viii) The writ petitioner remains incarcerated from 02.10.2021.

10. In the light of the narrative, discussion and dispositive reasoning set out supra, we make the following order:

i) Impugned order dated 06.07.2023 bearing reference No.8562/J/F/2/2023 made by the second respondent is set aside;

ii) The writ petitioner i.e., convict prisoner (Convict No.8562) now lodged in Central Prison, Puzhal, Chennai – 600 066 is given 21 days ordinary leave without escort from 24.07.2023 to 13.08.2023;

iii) The convict prisoner while on leave shall sign before P-1 Pulianthope Police Station every day at 10.30am. 24.07.2023 and 13.08.2023 being the first and last day of the 21 days leave, the convict prisoner need not sign before the P-1 Pulianthope Police Station.

iv) The convict prisoner shall surrender before second respondent / in the office of the second respondent on 13.08.2023 by dusk i.e., by 05.30 p.m.;



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The Government of Tamil Nadu issued Government Order in G.O.Ms.No.205 Home (Prison V) Department dated 25.04.2022, amended to the Rule 22 of the Tamilnadu Suspension of Sentence Rules, 1982 read as,

- a) the ordinary Leave shall not exceed the period as specified below at a time, unless extended by the Government:-
- b) twenty one days from the third to fifth years of imprisonment and not exceeding twenty eight days during the rest of the term of imprisonment for the prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years.
- c) twenty one days from the fourth and fifth years of imprisonment; not exceeding twenty eight days from the sixth year of imprisonment to fourteenth year of imprisonment and not exceeding forty days during the rest of the term for prisoners sentenced to imprisonment for life and those sentenced exceeding fourteen years:

The Hon'ble Madras High Court in *Selvam Vs. The State* (W.P.No.27137 of 2023) dated 15.09.2023, granted 40 days ordinary leave to a life convict prisoner sentenced for the offence under Section 302 IPC who remained incarcerated for about 29 years to make arrangements for admission of his children and to repair his homestead. The Hon'ble Madras High Court has further observed that The Tamil Nadu Suspension of Sentence Rules, 1982 is not even as Statute, it is a Subordinate Legislation made under Rule making powers vested with the Executive under Section 432(5) of Cr.PC and this Subordinate Legislation has not gone through legislation has not gone through legislative grind of law making in the Legislature. The relevant portion reads as follow,

"We draw inspiration from Hon'ble Supreme Court, having declared that this is a fundamental proposition. Reverting to the case on hand, said Rules is not even a Statute, it is a Subordinate Legislation made under Rule making powers vested with the Executive under Section 432(5) of Cr.PC and this Subordinate Legislation has not gone through legislative grind of law making in the



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Legislature. Therefore, this piece of Subordinate Legislation is only a codified guideline for the Executive to deal with requests for leave from prisoners and it cannot abridge Constitutional powers which this Court is exercising. At the risk of repetition, we reiterate that a prisoner and his fundamental rights do not part ways at the prison gates. To put it in a nutshell, Subordinate Legislation cannot denude nay not even abridge Constitutional powers."

I sent detailed representation to The Principal Secretary Home, Prohibition and Excise Department, The Director General of Police/Director of Prisons and Correctional Services, The Deputy Inspector General of Prisons Madurai Range and The Superintendent of Prison Madurai Central Prison on 11.11.2023, requested to grant 40 days ordinary leave to my husband to make arrangements for my daughter's marriage, to admit my son in an institution for pursue his higher education and to admit me in a private hospital for undergoing better treatment. But the said representation is not considered in a positive manner.

Therefore by considering my above submissions, I request your good self to grant 40 days ordinary leave without escort to my husband by name Kumar @ Palanikumar Son of Samayamuthu aged about 53 years, confining at Madurai Central Prison to make arrangements for my daughter's marriage, to admit my son in an institution for pursue his higher education and to admit me in a private hospital for undergoing better treatment in an expedite manner.

Thank You

Your's Truly,

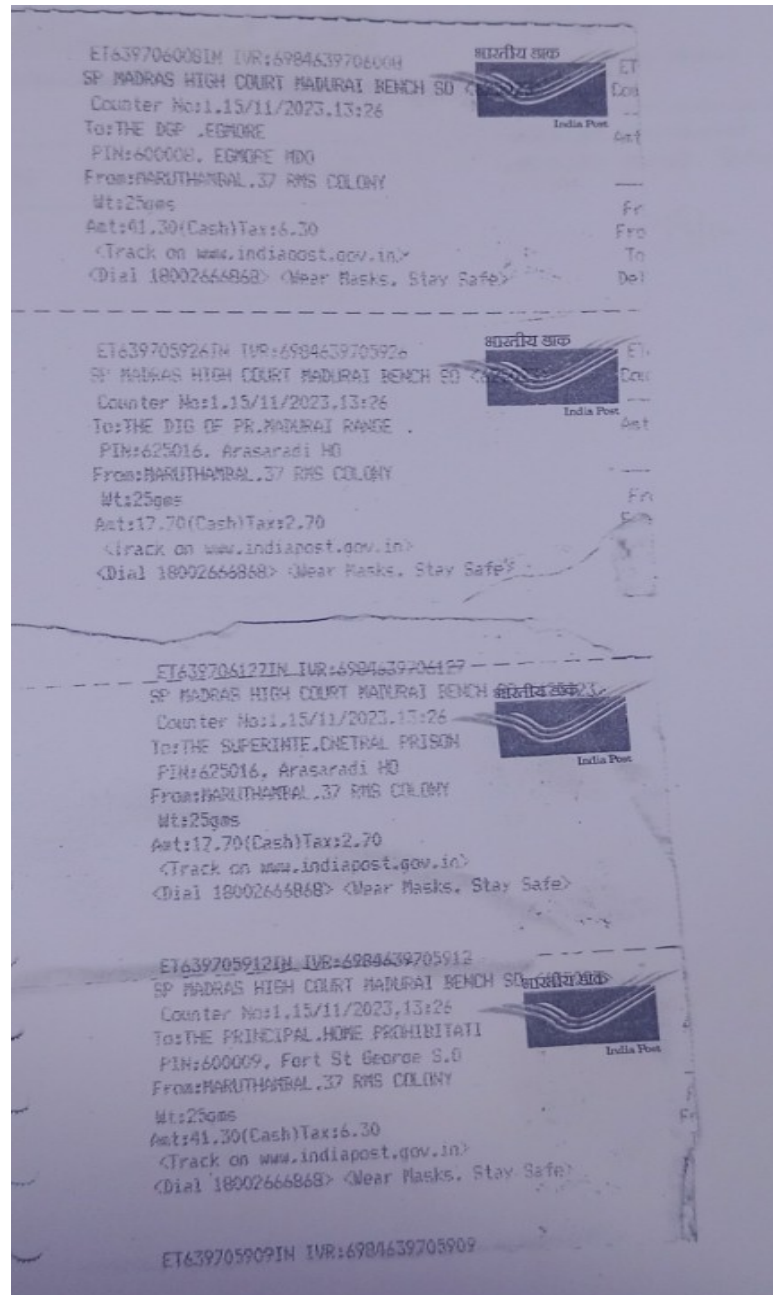
15.11.2023



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10. We dispose of the captioned WP by directing the second respondent to consider the aforementioned representation on its own merits and in accordance with law and pass orders as expeditiously as the business of second respondent would permit



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but within three [3] weeks from today ie., by **11.12.2023**. This Court deems it appropriate to make it clear that 'in accordance with law' necessarily means that in accordance with law laid down by this Bench in **Akram Khan's** case. Therefore, the second respondent shall consider the said representation keeping in mind the **Akram Khan's** principle.

11.The outcome ie., the proceedings deciding the said representation shall be communicated to the WP petitioner and the prison inmate as expeditiously as possible but in any event within five working days from the date of the conclusion of the proceedings.

12.Captioned writ petition is disposed of in the aforesaid manner with the aforesaid directives. There shall be no order as to costs.

[M.S.,J.] & [R.S.V.,J.]
20.11.2023

Neutral Citation : Yes/No

Index : Yes/No

Internet : Yes/No

MR



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To

1. The Principal Secretary,
State of Tamil Nadu,
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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

MR

ORDER MADE IN
W.P.(MD)No.27419 of 2023

20.11.2023