



W.P(MD)No.27789 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2023

Coram

THE HON'BLE MR.JUSTICE **M.SUNDAR**
and
THE HON'BLE MR. JUSTICE **R.SAKTHIVEL**

W.P(MD)No.27789 of 2023

M.Mariaselvam

.. Petitioner

VS

- 1.The State of Tamil Nadu,
Represented by the Deputy Inspector General of Prison,
Madurai Zone (Central Prison),
Madurai – 625 001.
- 2.The Superintendent,
Central Prison Palayamkottai,
Palayamkottai – 627 002.
- 3.The Additional Chief Secretary,
Revenue Administration,
Disaster Management,
Secretariat,
Fort St. George,
Chennai – 600 009.
- 4.The Director General of Prisons and Correctional Services,
Egmore,
Chennai – 08.



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5.The Tahsildar,
Veerakeralapudur (V.K.Pudur),
Tenkasi District.

.. Respondents

[R-3 to R-5 impleaded *suo motu* by order dated 20.12.2023
W.P(MD)No.27789 of 2023]

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus directing the respondents to release the petitioner's son, the prisoner namely Antony, S/o.Madasamy, bearing Convict No.4450 detained in Palayamkottai Central Prison by accepting his personal bond alone.

For Petitioner : Mr.R.Narayanan

For Respondent Nos.1, 2 & 4 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

For Respondent Nos.3 & 5 : Mr.M.Senthil Ayyanar
Government Advocate

ORDER

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

Captioned 'Writ Petition' [hereinafter 'WP' for the sake of brevity] has been filed in this Court on 20.11.2023 with a Mandamus prayer qua directions for release of WP petitioner's son one Thiru.Antony, S/o.Thiru.Madasamy, who is now a convict prisoner lodged in Palayamkottai Central Prison, Palayamkottai. WP petitioner's



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son 'Thiru.Antony, S/o.Thiru.Madasamy' shall hereinafter be referred to as '*said prison inmate*' for the sake of convenience and with the intention of using better / refined glossary.

2.Factual matrix in a nutshell is that said prison inmate was convicted and sentenced to life imprisonment in and by 'Judgment and sentence dated 19.07.2019 made in S.C.No.64 of 2015 on the file of learned Sessions Judge, Mahila Court, Tirunelveli' [hereinafter 'trial Court' for the sake of brevity]; that this trial Court conviction and sentence was carried in appeal to this Court vide CrI.A(MD)No.381 of 2019 and this Court in and by Judgment dated 02.08.2022 reduced the sentence to 15 years; that it is not necessary to delve further into conviction and sentence, as the matter on hand pertains to 21 days ordinary leave for said prison inmate.

3.In the case on hand, said prison inmate was granted 21 days ordinary leave with escort by the first respondent in and by an order dated 23.03.2023 bearing reference No.779/உத.2/2023 and a scanned reproduction of this order is as follows:



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மதுரை சரக சிறைகள் மற்றும் சீர்திருத்த பணிகள் துறை துணைத் தலைவரின்
செயல்முறை ஆணைகள்,
பிறப்பிப்பவர்- திரு. த.பழனி, எம்.பி.ஏ.,

எண். 79/உ.த.2/2023

நாள்.23.03.2023.

120/22/Adg
NA - Tamil Nadu
25/3/23

பொருள்:

மதுரை சரகம் - மத்திய சிறை, பாளையங்கோட்டை - ஆயுள் தண்டனை சிறைவாசி எண்.4450, அந்தோணி த/பெ. மாடசாமி என்பவருக்கு காவல்துறை வழிக்காவலுடன் 21 நாட்கள் சாதாரண விடுப்பு வழங்குதல் - ஆணையிடப்படுகிறது.

பார்வை:

1. அரசாணை எண். 1688 உள்துறை நாள் 02.07.1982.
2. அரசாணை எண். 1134, உள்துறை (5) சிறை, நாள்:27.06.89
3. அரசாணை எண். 1345, உள்துறை நாள்17.07.1989.
4. அரசாணை (நிலை) எண்.205, உள் (சிறை-5) துறை, நாள்.25.04.2022
5. பாளையங்கோட்டை, மத்திய சிறை, சிறைக் கண்காணிப்பாளரின் கடித எண்.8533/தகு.2/ 2022, நாள்.21.03.2023.

120/22/Adg
25/3/23

பார்வை 1 முதல் 4 வரை கண்ட அரசாணைகளில் வழங்கப்பட்ட அதிகாரத்திற்கிணங்க, வழக்கமான நிபந்தனைகளின் கீழ் பாளையங்கோட்டை மத்தியசிறையின் ஆயுள் தண்டனை சிறைவாசி எண்.4450, அந்தோணி த/பெ. மாடசாமி என்பவருக்கு காவல்துறை வழிக்காவலுடன் 21 நாட்கள் சாதாரண விடுப்பு வழங்கி ஆணையிடப்படுகிறது. இதைத் தொடர்ந்து, விதிமுறைகளின்படி தொடர் நடவடிக்கைகளையும், உரிய நடைமுறை நடவடிக்கைகளையும் மேற்கொள்ள சிறைக்கண்காணிப்பாளர் அறிவுறுத்தப்படுகிறார்.

சிறைவாசி எண். பெயர் மற்றும் தகப்பனார் பெயர்	தண்டித்த நீதிமன்றம் வழக்கு எண். தேதி மேல்முறையீடு நீதிமன்றம் வழக்கு எண்.	தண்டனை வழங்கப்பட்ட பிரிவு மற்றும் தண்டனைக் காலம்.
ஆயுள் தண்டனை சிறைவாசி எண்.4450, அந்தோணி த/பெ. மாடசாமி	திருநெல்வேலி அமர்வு நீதிபதி மகளிர் நீதிமன்றம், எஸ்.சி.எண்.64/2015, நாள்.19.07.2019	ஆலங்குளம் மகளிர் காவல்துறையுடன் குற்ற எண்.07/2015 ச/பி 6 of Protection of Children from Sexual Act-2012 இதச - ஆயுள் தண்டனை மற்றும் அபராதம் ரூ.1,00,000 க/த-03 மாதம் மெய்க்காவல் தண்டனை ச/பி 452 இதச - 7 வருடம் கடுங்காவல் தண்டனை மற்றும் அபராதம் ரூ.10,000 க/த-03 மாதம் மெய்க்காவல் தண்டனை ச/பி 363 இதச - 7 வருடம் கடுங்காவல் தண்டனை மற்றும் அபராதம் ரூ.10,000 க/த-03 மாதம் மெய்க்காவல் தண்டனை (மேற்கண்ட தண்டனைகளை ஏக காலத்தில் அனுபவிக்க ஆணையிடப்பட்டுள்ளது)

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	சென்னை உயர் நீதிமன்ற மதுரை கிளை மேல்முறையீட்டில் C.A.No.381/2019 நாள்.02.08.2022- ன்படி ச/பி 6 of Protection of Children from Sexual Act-2012 இதசவிற்கு வழங்கப்பட்ட ஆயுள் தண்டனையினை 15 வருட கடுங்காவல் தண்டனை(தண்டனை குறைப்பு ஏதும் இல்லாமல்) ஆல்லது 67 வயது வரையாவது தண்டனை அனுபவிக்க வேண்டும் என்று ஆணையிடப்பட்டுள்ளது. உச்சநீதிமன்றத்தில் மேல் முறையீடு செய்யவில்லை.
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2) இச்சிறைவாசி ரூ.500/- (ரூபாய் ஐநூறு மட்டும்)க்கு தன்னுடைய சொந்தப் பிணையப் பத்திரமும், இது தவிர ரூ.500 வீதம் இரு நபர்களிடம் பிணையப்பத்திரமும் தாக்கல் செய்ய வேண்டும்.

3) விடுப்பில் தங்கப் போகும் இடத்திற்கு அருகிலுள்ள காவல் நிலையத்தில் தினம் ஒரு முறை ஆஜராகி கைபொப்பமிட வேண்டும்.

4) குறிப்பிட்ட விடுப்புக்காலம் முடிந்து பாளையங்கோட்டை மத்திய சிறைக்கு மீள் திரும்பிட வேண்டும் என்று நிபந்தனைகள் விதிக்கப்படுகின்றன.

துணைத் தலைவர்,
சிறைகள் மற்றும் சீர்திருத்த பணிகள் துறை
மதுரை சரகம், மதுரை -16

பெறுநர்
சிறைக் கண்காணிப்பாளர், மத்திய சிறை, பாளையங்கோட்டை
நகல்- நன்னடத்தை அலுவலர், தென்காசி.

நகல்- அரசுச் செயலாளர், உள்(சிறை- 2) துறை, சென்னை 9.
(தகவலுக்காக சமர்ப்பிக்கப்படுகிறது)

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4.The aforementioned order came to be made by the first respondent pending W.P(MD)No.6156 of 2023 filed by the same WP petitioner seeking a Mandamus qua 40 days ordinary leave without escort for said prison inmate. On noticing the aforementioned 23.03.2023 order, Hon'ble Coordinate Predecessor Division Bench in and by order dated 27.03.2023 in W.P(MD)No.6156 of 2023 confirmed 21 days ordinary leave granted by first respondent but modified only one condition. While first respondent granted 21 days ordinary leave '*with escort*' it was modified as '*without escort*' by Hon'ble Coordinate Predecessor Division Bench. The other conditions imposed by first respondent in and by 23.03.2023 order were not disturbed. Therefore said prison inmate had to execute own bond for Rs.500/- and produce two sureties for likesum of Rs.500/- each. The problem now is with regard to two sureties for Rs.500/- each. Before proceeding further in this regard, we need to extract and reproduce Rules 25 and 26 of '*Tamil Nadu Suspension of Sentence Rules, 1982*' [hereinafter '*said Rules*' for the sake of brevity and convenience] which read as follows:



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25.General conditions governing for grant of emergency and ordinary leave.-

The following conditions shall, invariably, be laid down while granting leave in addition to such other conditions, if any, specified by the Government, Inspector-General of Prisons or [the Deputy Inspector-General of Prisons] or the Superintendent of Prisons, as the case may be, as may be deemed necessary:-

(i) that the prisoner shall execute a surety bond in Form II for rupees five hundred with two sureties for a like sum each:

(ii) that he shall report at the Police station daily once;

(iii) that the prisoner shall reside at the place specified by the Superintendent of Prisons or the [Deputy Inspector-General of Prisons] or the Government, as the case may be, and shall not go beyond the limits of that place;

(iv) that the prisoner shall be of good behaviour and shall not commit any offence during his leave;

(v) that the prisoner shall not associate with bad characters or lead a dissolute life;

(vi) that the prisoner shall be liable to be recalled immediately to prison in case he violates any of the conditions;

(vii) that the prisoner shall surrender himself to the Superintendent of the Prison on expiry of leave granted or on recall; and

[(viii) that in case of female pregnant prisoners, for having delivery outside the prison, she shall reside at the place of delivery proposed by her.]

26.Execution of bonds.- The surety bond of the sureties shall be executed before a Tahsildar who may send the same to the Superintendent of the Prison duly attested and affixing his office seal. The surety bond of the prisoner shall be executed before the Superintendent of the Prison who may duly attest and affix his office seal.'



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5.The manner in which problem in execution of bonds by sureties manifested and presented itself has been articulated in paragraph 9 of the support affidavit of the captioned WP and the same reads as as follows:

'9.I submit that thereafter the second respondent insisted the prisoner to execute bond with two sureties who has to execute the surety bond before the jurisdictional Tahsildar ie., Tahsildar, Veerakeralapudur (V.K.Pudur), Tenkasi District. The said Tahsildar insisted to produce immovable property documents of two sureties each for issuing surety bond. I submit that I am very poor and aged women. I have no properties. My relatives and friends are also not having immovable properties. No one is coming for our aid.'

6.In the light of aforementioned Rule 25 of said Rules, it has become necessary to set out Form II of said Rules captioned '*SURETY BOND*' and the same is as follows:

'FORM II.
SURETY BOND.
(See rule 25)

(i) Form of bond to be obtained from a prisoner to be released on leave.

Whereas I (name), son of inhabitant of (place) have been ordered to be released by the Government of Tamil Nadu on leave on condition of my entering into a bond to observe the conditions specified hereafter, I hereby bind myself as follows:



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(2) that I will accept and fulfil the conditions specified below till the date of expiry of my leave period sanctioned in G.O.R. No..... dated or for the subsequent extended period, if any,

(i)

(ii)

(iii)

in case of breach of any of the above conditions on my part, I hereby bind myself and my properties mentioned below to forfeit to the Government of Tamil Nadu the sum, of Rs..... (Rupees) and I also further agree that the Government of Tamil Nadu may collect the said amount from me either by proceedings against my under-mentioned properties or my other properties as if the said amount were an arrear of land revenue or by otherwise proceeding against me legally and to render myself liable to be rearrested to undergo the unexpired portion of sentence of imprisonment on the date of release.

Particulars of Properties

(Here enter the particulars of properties)

Signed by Thiru..... dated this dayof.....20

Witnesses:

(1)

(2)

(ii) Form of bond to be obtained from sureties for prisoner to be released on leave.

Whereas we {Name} (first surety) son of (second surety) son of inhabitant of (place) jointly and severally declare ourselves and each of us sureties for Convict number (name) imprisonment for in the (name of prison) (prison) and who is to be sent on leave as per G.O.R. No..... Home, dated or for the subsequent extended period, if any, we hereby bind ourselves as follows, that we shall see that the above prisoner fulfil all the conditions specified in the bond executed by him. In case of breach of any of the conditions on the part of the above prisoner we



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hereby bind ourselves and out of properties mentioned below to forfeit to the Government of Tamil Nadu the sum of Rs..... (Rupees)
and we also agree that the Government may collect the said amount from us either by proceedings against the under-mentioned properties or out of other properties as if the said amount were an arrear of land revenue, or by otherwise proceeding against us legally.

Particulars of properties.

(Here enter the particulars of properties)

Dated this day of20

Signature of the Sureties.

Witnesses.-

1.

2.

Executed before me.

Designation : Seal :

Signature of the Tahsildar

-----'

7.The problem in a nutshell is, jurisdictional Tahsildar is insisting that the persons giving surety should produce immovable property documents. In other words, persons producing surety should own immovable properties. This appears to be owing to the expression 'under-mentioned properties or out of other properties as if the amount were an arrear of land revenue' occurring in (ii) of Form II supra.

8.Issue notice.



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9.Mr.A.Thiruvadikumar, learned State Additional Public Prosecutor accepted notice for both respondents and very fairly submitted that Form II supra relatable to Rule 25 of said Rules talks only about under-mentioned properties and it does not talk about immovable properties. Learned Prosecutor submitted that proceeding against the properties would arise only if the said prison inmate in this case or for that matter any prisoner in any other case jumps bail.

10.We are informed by learned counsel for WP petitioner Mr.R.Narayanan and other learned members of the Bar that as a matter of routine Tahsildars, before whom bonds have to be executed vide Rule 26 of said Rules, are insisting that sureties should produce documents or certificate from revenue authorities to show that they own immovable properties.

11.This in our considered opinion (viewed in the light of fair submission made by learned State Additional Public Prosecutor) is plainly incorrect.



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12.Before proceeding further, we deem it appropriate to

WEB COPY *suo motu* implead the following three respondents:

*'1.The Additional Chief Secretary,
Revenue Administration,
Disaster Management,
Secretariat,
Fort St. George,
Chennai – 600 009.*

*2.The Director General of Prisons
and Correctional Services,
Egmore,
Chennai – 08.*

*3.The Tahsildar,
Veerakeralapudur (V.K.Pudur),
Tenkasi District.'*

13.Aforementioned three are now impleaded as respondents 3, 4 and 5 respectively. Registry to carry out necessary and consequential amendments before uploading and before furnishing certified copies of instant order.

14.Mr.M.Senthil Ayyanar, learned Government Advocate accepted notice for respondents 3 and 5 and Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepted notice for fourth respondent.



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15. In the case on hand, we direct fifth respondent to accept sureties without insisting on certificates or documents to demonstrate ownership of immovable properties by sureties and by merely accepting a deposit of Rs.500/- to be kept in the miscellaneous account for being appropriated if the need arises ie., if said prison inmate jumps bail. We also make it clear that this directive will apply across the Board in all cases, where Rules 25, 26 and Form II captioned 'Surety Bond' of said Rules come into play. The reasons are as follows:

(a) It is common knowledge that no immovable property may be available for 500 INR (Indian Rupee).

(b) The above means that property ie., under-mentioned properties or out of other properties as if said amount were an arrear of land revenue occurring in Form ie., Form II certainly does not refer to immovable property.



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(c) a phrase or expression occurring in a Form under a Rule which in turn is a rule forming part of a piece of subordinate legislation made by the executive cannot control the language of the Rule.

(d) Said Rules itself is a piece of subordinate legislation having been made by the executive in exercise of rule making power *inter alia* under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'CrPC' for the sake of brevity and clarity], it has not gone through legislative grind. In any event, Form cannot control the language of Rules.

(e) Many prisoners languishing in the prisons may not find sureties who are landed gentries.

(f) It is clearly far fetched and clearly impracticable to insist that surety for all prison inmate across the board should be a landed gentry.



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(g) Rs.500/- is the prescription qua Rule 25 read with

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Form II and the bond has to be executed before jurisdictional revenue Tahsildar vide Rule 26 of said Rules. Therefore, our directive to accept a deposit of Rs.500/- and keep it under miscellaneous head account for being appropriated if the prisoner jumps bail ensures that the interest of the State as regards grant of leave or grant of bail for prison inmates is also adequately taken care of. In saying that it will suffice if the revenue Tahsildar accepts the deposit, we also draw inspiration from Section 445 of Cr.P.C which reads as follows:

'445. Deposit instead of recognizance.—When any person is required by any Court or officer to execute a bond with or without sureties, such Court or officer may, except in the case of a bond for good behaviour, permit him to deposit a sum of money or Government promissory notes to such amount as the Court or officer may fix in lieu of executing such bond.

State Amendment - [West Bengal]. - In its application to the State of West Bengal in section 445,-

(a) the words “with or without sureties” shall be omitted;

(b) for the word “permit”, substitute “direct”.- West Bengal Act 24 of 2003, Section 3.'

This means that the deposit can be either by way of sum of money or Government promissory note.



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(h) We make it clear that as regards generic directive, we are only dealing with bond, be it for bail, suspension of sentence or for any other purpose including personal bond or bond to be executed by a surety.

16.In the light of the narrative thus far, we deem it appropriate to direct respondents 3 and 4 to circulate it to all the revenue officials / revenue staff and prison officials / prison staff respectively so that the order which we have made is implemented in letter and spirit across the board. To conclude, we make it clear that revenue Tahsildars, who are acting pursuant to Rule 26 of said Rules and taking bond under Form II vide Rule 25 of said Rules, shall not insist on ownership of immovable properties or shall not insist on immovable properties in any manner qua sureties.



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17. With the aforesaid observation and directive, captioned
WP is disposed of in the aforementioned manner.

[M.S.,J.] [R.S.V.,J.]
20.12.2023

Index : Yes

Neutral Citation : Yes

ps

Post Script: (i) Upload forthwith.

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To

- 1.The Deputy Inspector General of Prison,
Madurai Zone (Central Prison),
Madurai – 625 001.
- 2.The Superintendent,
Central Prison Palayamkottai,
Palayamkottai – 627 002.
- 3.The Additional Chief Secretary,
Revenue Administration,
Disaster Management,
Secretariat,
Fort St. George,
Chennai – 600 009.
- 4.The Director General of Prisons and Correctional Services,
Egmore,
Chennai – 08.
- 5.The Tahsildar,
Veerakeralapudur (V.K.Pudur),
Tenkasi District.



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W.P(MD)No.27789 of 2023

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

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20.12.2023