



W.P(MD)No.27976 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2023

CORAM :

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

W.P(MD)No.27976 of 2023

Muthukani

... Petitioner

vs.

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

2.The Director General of Police /
Director of Prisons and Correctional Services,
C.M.D.A.Towers II,
No.1, Gandhi Irvin Road,
Elumbur, Chennai – 8.

3.The Deputy Inspector General of Prison,
Madurai Central Prison Campus,
Madurai Range, Madurai.

4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondent Nos.3 and 4 to grant 21 days ordinary leave to the petitioners Mother-in-law by



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name Selvi Wife of Mariyappan, aged about 77 years, confining at Special Central Prison for Women, Madurai as life convict to repair their home and to take steps to share their family property to petitioner's daughters in pursuance of Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982 or on the basis of the G.O.Ms.No. 205, Home (Prison V) Department, dated 25.04.2022 in accordance with law.

For Petitioner : Mr.R.Alagumani

For Respondents : Mr.S.Ravi,
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 21.11.2023 with a mandamus prayer.

2. Short facts are that Writ Petitioner's mother-in-law is a life convict having been convicted vide judgment and sentence dated 27.11.2019 in S.C.No.254 of 2017 on the file II Additional District Sessions Judge, Thoothukudi District; that the sentence is life sentence; that the judgment of conviction and sentence was carried in an appeal vide CrI.A(MD)No.74 of 2020 and the same came to be dismissed by a Hon'ble Division Bench of this Court on 28.09.2022; that this dismissal



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has become final and Writ Petitioner's mother-in-law now remains incarcerated; that Writ Petitioner sent a representation dated 08.11.2023 [representation sent to the respondents in the captioned WP] seeking 21 days ordinary leave without escort for her mother-in-law ['Writ Petitioner's mother-in-law' shall hereinafter be referred to as 'prison inmate' for the sake of convenience and clarity] on two grounds ie., repairing the homestead and partitioning family property; that 08.11.2023 representation was unattended necessitating the filing of captioned WP with a mandamus prayer, is learned counsel for Writ Petitioner's say.

3. Issue notice to respondents.

4. Mr.S.Ravi, learned Additional Public Prosecutor accepts notice for all four respondents.

5. Learned Additional Public Prosecutor, on instructions, submits that the only impediment for acceding to the request of 21 days ordinary leave without escort is Rule 22(1)(c) of 'The Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which says that a prison inmate should have



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completed three years of imprisonment for being granted ordinary leave [to be noted, three years of imprisonment in cases of prisoners sentenced to 14 years or life imprisonment].

6. This Court carefully considered the rival submissions and this Court is of the considered view that request for 21 days ordinary leave deserves to be acceded to and the reasons are as follows:

(a) prison inmate is 77 years old, according to Writ Petitioner but learned Additional Public Prosecutor submits that as per prison records, she is 69 years old, in any event she is either a septuagenarian or is in the verge of becoming a septuagenarian;

(b) the reasons ie., grounds on which ordinary leave is sought ie., repairing of homestead and partitioning family property have not been subjected to any disputation or contestation;

(c) prison inmate has not come to any adverse notice of the prison authorities ie., there is no prison



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offence. After dismissal of Criminal Appeal, prison inmate, who was on bail, voluntarily surrendered without making herself scarce;

(d) prison inmate's son one Murugesan is also a co-prison inmate having been convicted in the same case, Thiru.Murugesan has gone on leave and returned promptly without violating conditions.

(e) This Court has repeatedly held that said Rules being a piece of Subordinate Legislation made by Executive Arm 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] cannot abridge much less denude the constitutional powers of this Court and therefore, Rule 22(1)(c) of the said Rules cannot come in the way of exercise of constitutional powers of this Court.



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(f) as a corollary to the proceedings, this Court has repeatedly held that said Rules is only a codified guidelines for the authorities and has been made without legislative drill. This is an another facet of the reasoning based on *K.A.Najeeb* principle [*Union of India Vs. K.A.Najeeb reported in 2021 3 SCC 713*] rendered by Hon'ble Supreme Court that Constitutional powers cannot be constricted or restricted by statute much less subordinate legislation made by Executive Arm in exercise of constitutional powers.

7. Before we write the operative portion of the order, we deem it appropriate to make it clear that this is a one off case and therefore, the same will not serve as a precedent in all similar matters. This is a one off case *inter alia* considering the advanced age of prison inmate. To be noted, we have already captured the factual position that prison inmate is either a septuagenarian or is in the verge of becoming a septuagenarian.

8. This Court in exercise of its constitutional powers grants 21 days ordinary leave without escort to prison inmate Selvi, wife of



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Mariyappan, aged 69 years according to prison records, convict No.243 now lodged in Special Central Prison for Women, Madurai, subject to the following conditions:

(i) prison inmate shall stay in writ petitioner's residence in Madhavan Nagar East Street, Ayyanadaippu, Korampallam, Thoothukudi District;

(ii) Prison inmate shall sign in the forenoon every Monday and Friday before learned Judicial Magistrate I, Thoothukudi;

(iii) 21 days ordinary leave without escort for the prison inmate shall be from 01.12.2023 to 21.12.2023. This means that the prison inmate shall surrender in the office of the fourth respondent on 22.12.2023.

(iv) As regards the condition to sign before learned Judicial Magistrate I, Thoothukudi on every Monday and Friday, the same will not be applicable for 01.12.2023 and 22.12.2023, as former is the first date on which prison



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inmate shall be let out at 10.30 a.m. in the morning and the later will be the date on which the prison inmate shall be surrendering in the office of the fourth respondent.

(iv) The prison inmate shall not proceed or partake in any activity other than that is required for the two grounds on which leave has been sought.

9. To be noted, captioned main WP was taken up and heard out in the Admission Board itself with the consent of both sides owing to the narrow compass on which the matter turns.

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

(M.S., J.) (R.S.V., J.)
28.11.2023

Index : Yes

Neutral Citation : Yes

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Post Script: (i) Upload forthwith

(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified 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

- 1.The Secretary to Government,
Home Department (Prison),
Government of Tamil Nadu,
Secretariat,
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- 2.The Director General of Police /
Director of Prisons and Correctional Services,
C.M.D.A.Towers II,
No.1, Gandhi Irvin Road,
Elumbur, Chennai – 8.
- 3.The Deputy Inspector General of Prison,
Madurai Central Prison Campus,
Madurai Range,
Madurai.
- 4.The Superintendent of Prison,
Palayamkottai Central Prison,
Tirunelveli District.
- 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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DATED : 28.11.2023