



W.P(MD)No.28265 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 01.12.2023

Coram

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

W.P(MD)No.28265 of 2023

P.Pauline

.. Petitioner

VS

1.The State of Tamil Nadu,
Represented by the Secretary
to Government,
Home (Prison – IV) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Additional Director General of Police (Prisons)/
Inspector General of Prisons,
CMDA Tower-II,
No.1 Gandhi Irwin Road,
Egmore,
Chennai-600 008.



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3.The Deputy Inspector General of
Prisons and Correctional Services,
Madurai Range,
Madurai Central Prison Campus,
Madurai-625 016.

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

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus, directing the third respondent to grant ordinary leave of 30 days without police escort to the petitioner's son Arogya Prabhu, S/o.Pannerselvam who is confined at Central Prison, Madurai for diagnosis of his ailment and for taking treatment at better health care facility by considering her representation dated 21.11.2023.

For Petitioner	:	Mr.P.Karthick
For Respondents	:	Mr.A.Thiruvadi Kumar Additional Public Prosecutor



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ORDER

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

When the matter was taken up, it came to light that leave application ie., application for 30 days ordinary leave without police escort for 'writ petitioner's son Mr.Arogya Prabhu, S/o.Pannerselvam now confined in Central Prison, Madurai' [hereinafter referred to as '*prison inmate*' for the sake of convenience] has since been rejected vide order dated 30.11.2023 bearing reference No.2325/உத.2/2023. A scanned reproduction of this 30.11.2023 order together with a communication dated 24.11.2023 from fourth respondent to petitioner and his higher authorities are as follows:



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எண்.2325/உத.2/2023

சிற்றகம் மற்றும் சீர்திருத்தப் பரீட்சைத் துறை
துணைத் தலைவர் அலுவலகம்,
மதுரை சர்க்கு, மதுரை,
நாள்:30.11.2023.

பெருநர்: மதுரை சர்க்கு - மத்திய சிறை, மதுரை - ஆயுள் தண்டனை
சிறைவாசி எண்.5845, ஆதோக்கியப் துறை, பள்ளிச்செல்வம்
என்பவருக்கு சாதாரண விடுப்பு கோரியது - விடுப்பு
பிராஸித்து - ஆலாக்கியப் துறை - தொடர்பாக.

பார்வை: மதுரை, மத்திய சிறை கண்காணிப்பாளர் கரு
எண்.18250/தகு.2/2023, நாள்.28.11.2023.

பார்வைவழி கருவும் மதுரை மத்திய சிறை கண்காணிப்பாளர் தெயற்குறிப்பு
பரிசீலிக்கப்பட்டதில், ஆயுள் தண்டனை சிறைவாசி எண்.5845, ஆதோக்கியப் துறை
பள்ளிச்செல்வம் என்பவருக்கு சாதாரண விடுப்பு வழங்குவது குறித்து பரிசீலனை செய்யப்பட்டதில்,
மேற்படி சிறைவாசிக்கு வழங்குகள் நியமனத்தில் உள்ளதால், தமிழ்நாடு தண்டனை துள்ளிணைப்பு
விதி எண்.3538/பத சாதாரண விடுப்பிற்கு தகுதி பெறுவதில்லை.

2) எனவே, மேற்படி சிறைவாசிக்கு வழங்குகள் நியமனத்தில் உள்ளதால், தமிழ்நாடு
தண்டனை துள்ளிணைப்பு விதி எண்.3538/பத சாதாரண விடுப்பிற்கு தகுதி பெறாததால்,
இச்சிறைவாசியின் சாதாரண விடுப்பு கோரிக்கை பிறாஸித்து ஆலாக்கியப்படுகிறது.


துணைத் தலைவர்,
சிற்றகம் மற்றும் சீர்திருத்தப் பரீட்சைத் துறை
பதுரை சர்க்கு, மதுரை

பெருநர்: சிறைத் துள்ளிணைப்பாளர், மத்திய சிறை, மதுரை.

நகல்: ஆயுள் தண்டனை சிறைவாசி எண்.5845,
ஆதோக்கியப் துறை, பள்ளிச்செல்வம்,
மத்திய சிறை, மதுரை.
..... (சிற்றகம் கண்காணிப்பாளர் மூலமாக)



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No.18520/ R,2/2023

Office of the Superintendent,
Central Prison, Madurai,
Dated : 24.11.2023

Sub : Department of Prisons and Correctional Services - Leave sought for Life Convict Prisoner No. 5848 Arogya Prabu son of Panneerselvam by his mother Tmt. Pauline - Intimating the details - Regarding.

Ref : Madurai K. Pudur, Tmt Pauline Petition dated 21.11.2023.

With reference to the above petition cited, the Life convict Prisoner No. 5848 Arogya Prabu son of Panneerselvam concerned in the Othakkadal Police Station Crime No. 226 of 2007. Furthermore, it was transferred to the Central Bureau of Investigation Department Crime No. RC6/S/2007/CBI/SCB Chennai under section 147, 148, 302 r/w 149, 436, r/w 149, 449 IPC Section 4 and 5 of Explosive Substances Act 1908 and Section 4 of TNPPDL Act and the same was acquitted by the Principal Sessions Judge, Madurai in Sessions Case No. 3 of 2009 on 09.12.2009. Ensuing that the trial court acquittal the Central Bureau of Investigation Department had preferred an appeal before the Hon'ble Madurai Bench of Madras High Court in Criminal Appeal (MD) No. 274 of 2011 dated : 25.03.2019. The trial court acquittal was reversed by the Hon'ble Madurai Bench of Madras High Court on 29.03.2019 and the prisoner was convicted and sentenced as under :-

U/s 149 IPC	Rigorous Imprisonment for two years with fine Rs.2000/- i/d Simple Imprisonment for 3 months
U/s 449 IPC	Rigorous Imprisonment for Five years with fine Rs.5000/- i/d Simple Imprisonment for 5 months



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U/s 436 r/w 149 IPC	Rigorous Imprisonment for 5 Five years with fine Rs.5000/- I/d Simple Imprisonment for 5 months
U/s 4 of Explosive Substance Act read with 34 IPC	Rigorous Imprisonment for Five years with fine Rs.5000/- I/d Simple Imprisonment for 5 months
U/s 5 of Explosive Substance Act read with 34 IPC	Rigorous Imprisonment for Five years with fine Rs.5000/- I/d Simple Imprisonment for 5 months
U/s 4 of TNPPDL Act read with 34 IPC	Rigorous Imprisonment for Five years with fine Rs.5000/- I/d Simple imprisonment for 5 months
U/s 302 r/w 149 IPC (3 Counts)	Life Imprisonment with fine Rs.10,000/- I/d Simple Imprisonment for 1 year (for each Counts) (Total fine Amount is Rs. 57000/- not paid)

2. In continuation of the above, this convict preferred an appeal before the Hon'ble Supreme Court of India against the above sentences which is still pending before the apex court.

3. And also the following cases are pending against the above said life convict prisoner No. 5848 Arogya Prabu son of Panneerselvam:-

Sl No.	Police Station/Crime No./SC No.	Under Section	Court Name
1.	Madurai CBCID PS Crime No. 11/2015 & SC No. 562/2018	U/s 147, 148, 341, 342, 212, 216, 302, 120(b) 109 r/w 149, 34 IPC	IV Additional District Sessions Judge, Madurai.
2.	K.Pudur PS Cr. No.1017/2015, SC No. 456/2016	U/s 341, 294(b) 307 r/w 120 (b) 506(II) & 109 IPC	IV Additional District Sessions Judge, Madurai.



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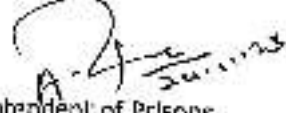
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4. At this juncture, Mother of the Life Convict Prisoner No. 5848 Arogya Prabu son Panneerselvam namely Pauline preferred an application cited in the reference, to the Superintendent of Prisons, Central Prison, Madurai seeking a period of 30 days Ordinary leave for her son for taking treatment of stomach pain of convict himself.

5. In pursuance of the above, the application was discreetly considered that the Life Convict Prisoner is not entitled to avail the ordinary leave after having the pending cases as mentioned above, as per the section 35 of Tamil Nadu Suspension of Sentence Rules, 1982.

6. Hence, it is informed that there is no provision to grant ordinary leave to the above said convicted prisoner as per the Tamil Nadu Suspension of Sentence Rules, 1982.


Superintendent of Prisons,
Central Prison, Madurai.

To,

Tmt. Pauline,
W/o Panneerselvam,
134, Karpagam Nagar,
7th Street, K.Pudur,
Madurai-7.(By Registered Post with Acknowledgement due)

Copy to:-

Life Convict Prisoner No. 5848 Arogya Prabu,
Central Prison, Madurai.

Copy Submitted:-

1.The Director General of Police/
Director General of Prisons and
Correctional Services,
Egmore, Chennai.

2. The Deputy Inspector General of Prisons and
Correctional Services,
Madurai Range, Madurai.



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2.Faced with the above situation, learned counsel sought leave of this Court to withdraw captioned 'Writ Petition' [hereinafter 'WP' for the sake of convenience and clarity] but made a plea to preserve all the rights and contentions to the petitioner and/or anyone concerned for the prison inmate to challenge the aforementioned order dated 30.11.2023 rejecting leave application. Learned counsel has made an endorsement in the case file and a scanned reproduction of the same is as follows:

My representation was considered and here I may be permitted to withdraw this writ petition, with liberty to ~~file~~ challenge the Order issued by 3rd 4th Respon

[Signature]
01/12/2023
Counsel for Petitioner

3.In the light of narrative thus far, captioned WP is disposed of as closed/withdrawn albeit preserving all the rights and contentions of writ petitioner and/or anyone concerned for prison inmate to assail the aforementioned order in a manner known to law. If the aforementioned order is assailed, the Court concerned shall consider the



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same on its own merits and in accordance with law untrammelled by

closure/withdrawal of captioned WP, as captioned WP has been filed

with a Mandamus prayer and rejection order has since been passed.

There shall be no order as to costs.

[M.S.,J.] [R.S.V.,J.]
01.12.2023

Index : Yes/No

Neutral Citation : Yes/No

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To

- 1.The Secretary to Government,
Home (Prison – IV) Department,
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Chennai-600 009.
- 2.The Additional Director General of Police (Prisons)/
Inspector General of Prisons,
CMDA Tower-II,
No.1 Gandhi Irwin Road,
Egmore,
Chennai-600 008.
- 3.The Deputy Inspector General of
Prisons and Correctional Services,
Madurai Range,
Madurai Central Prison Campus,
Madurai-625 016.
- 4.The Superintendent of Prison,
Central Prison,
Madurai.
- 5.The Inspector of Police,
Periyakulam Police Station,
Theni District.



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

ps

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01.12.2023