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W.P(MD)No.28643 of 20.



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2023

CORAM :

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

W.P(MD)No.28643 of 2023

Pavithra

... Petitioner

vs.

1. The State represented by its
The Secretary to the Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai - 600 009.

2. The Deputy Inspector General of Prison,
Trichy Range,
Trichy - 620 020.

3. The Superintendent,
Central Prison,
Trichy-620 020.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.106/Mu.U/2023, dated 09.11.2023, passed by the 2nd respondent and quash the same and consequently direct the respondents to grant ordinary leave for 40 days without escort to the detenu Balamurugan S/o. Pakkirisamy, aged about 47 years, Convict No.23087, now confined at Central Prison, Trichy.



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For Petitioner : Dr.S.Manoharan
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

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 01.12.2023.

2. Factual matrix in a nutshell is that WP petitioner's spouse one Balamurugan [Convict No.23087], son of Thiru.Pakkirisamy, is a life convict [hereinafter 'said prison inmate' for the sake of convenience and use of better glossary], now lodged in Central Prison, Trichy; that WP petitioner sent a representation dated 26.10.2023 to the respondents seeking 40 days ordinary leave without escort for the said prison inmate; that this representation was rejected in and by an order dated 09.11.2023 bearing reference No. 106/192/2023 made by the 2nd respondent [hereinafter 'impugned order' for the sake of convenience]; that assailing the impugned order and seeking grant of ordinary leave, captioned WP has been filed.

3. Dr.S.Manoharan, learned counsel for WP petitioner is before us on a 'Video Conferencing' [hereinafter 'VC' for the sake of brevity] platform. To be noted, this is a hybrid hearing.



4. Learned counsel for WP petitioner reiterated the aforesaid facts and submitted that the impugned order has been made solely on the ground that said prison inmate has not completed three years of sentence, he having been convicted for over 14 years.

5. Learned counsel also submitted that the matter is directly / squarely covered by Bhuvaneswari's case reported in 2023:MHC:3983 [Neutral Citation of Madras High Court].

6. Issue notice.

7. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepts notice for all three respondents.

8. Learned Prosecutor citing Rule 22(1)(c) of 'the Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] submits that this rule is the only impediment. This means that the grounds on which ordinary leave has been sought, are not subjected to disputation or contestation. To be noted, a careful perusal of 26.10.2023 representation sent by the petitioner brings to light that ordinary leave has been sought on the ground that the prison inmate has an eye



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ailment and it is necessary to give good treatment and attention by putting him under the management of an Ophthalmologist. Besides this, WP petitioner is struggling with three children and arrangements have to be made for their livelihood i.e., for the livelihood of prison inmate's family.

9. Be that it may, as regards Rule 22(1)(c) of said Rules, there is no disputation or contestation before us that the captioned matter is directly / squarely covered by Bhuvaneswari's case and a scanned reproduction of the order made in Bhuvaneswari's case is as follows:





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W.P.No.23926 of 2023

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Respondents

Petition filed under Article 226 of the Constitution of India praying writ of mandamus directing the respondents to direct the respondents to grant parole for petitioner's husband by names S. Dhanapal (Convict No. 23926) S/o Chellaiyan, aged about 60 years, who is now under incarceration at Central prison Coimbatore for a period of 2 months for taking medical treatment based on petitioner's representation dated 25.05.2023.

For Petitioner	:	Mr.B.Shruthan
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

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

This order will now dispose of the captioned writ petition.

2. Factual matrix in a nutshell is that petitioner's spouse Mr.S.Dhanapal son of Mr.Chellaiyan is a convict prisoner (Convict No.23926) now lodged in Central Prison, Coimbatore; that petitioner's spouse shall hereinafter be referred to as 'said convict prisoner' for the sake of convenience and clarity; that said convict prisoner was convicted and imposed 7 years sentence vide CrI.A.No.105 of 2019 on the file of III

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Additional District and Sessions Court, Salem; that petitioner sent a representation on 25.05.2023 requesting for 30 days ordinary leave saying that said convict prisoner is suffering from heart disease, Type 2 Diabetes and has a raw wound is in his right foot; that a medical opinion from a private hospital has been obtained which is to the effect that said convict prisoner has to take treatment for three months failing which health issues may worsen; that captioned writ petition has been filed in this Court on 29.08.2023 with a mandamus prayer qua grant of leave for said convict prisoner.

3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents and submits, on instructions, that 25.03.2023 representation of petitioner has been rejected in and by an order dated 09.06.2023 hearing reference No.11109/ha.ku.3/2023 made by third respondent [hereinafter 'impugned order' for the sake of convenience].

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5. Considering the facts, circumstances of the case and taking into account the fact that the ground on which leave has been sought has not been subjected to disputation or contestation, we shall be embarking upon a legal drill of testing the impugned order though the main prayer is for Mandamus.

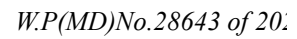
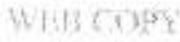
6. Considering the limited scope of case on hand, main writ petition was taken up with the consent of both sides though the matter is in the Admission Board.

7. We examined the impugned order and we find that the only reason for rejection of leave plea is Rule 22(1)(b) of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which says that two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years is imperative for grant of ordinary leave.

8. A scanned reproduction of impugned order is as follows:

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WEB COPY 9. Learned Prosecutor, adverting to the impugned order submits that Rule 22(1)(b) of said Rules is the lone impediment and therefore, leave plea has been rejected.

10. After carefully considering the submission of both sides and examining the case file, we deem it appropriate to grant 30 days leave to said convict prisoner and reasons are as follows:

(i) The ground on which leave has been sought i.e., medical ailment has not been subjected to disputation or contestation;

(ii) Incarceration of said convict prisoner thus far has been uneventful / blemishless;

(iii) As regards Rule 22(1)(b) of said Rules, it is a piece of subordinate legislation made by Executive in exercise of Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and constitutional powers of this Court cannot be constricted or stifled by such subordinate legislation. This means that Rule 22(1)(b) of said Rules is not an impediment as regards this Court granting

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leave.

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WEB COPY 11. We have perused the conviction, sentence and we find that case on hand would be an appropriate case to say that said convict prisoner will be given ordinary leave without escort but with a condition that said convict prisoner shall sign everyday in the forenoon session before jurisdictional Magistrate namely, Judicial Magistrate No.I, Attur and shall utilize the leave period only for the ground on which leave has been sought.

12. 30 days leave will be from 04.09.2023 at 10.30 a.m. to 03.10.2023 at 5.30 p.m. On 30 days elapsing, said convict prisoner shall surrender in the office of third respondent i.e., by dusk (5.30 p.m) on 03.10.2023.

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

(M.S.,J.) (R.S.V.,J.)
01.09.2023

Index : Yes
Speaking
Neutral Citation : Yes

P.S.: Though captioned writ petition is disposed of. Registry to list the

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10. In the light of the narrative thus far, as there is no dispute about the grounds on which leave has been sought, as the said prison inmate does not come to adverse notice of the prison authorities and as there is no dispute that the captioned matter is directly covered by Bhuvaneswari's case principle, we make the following order:

(a) Impugned order i.e., order bearing reference No.106/Mu.U/2023, dated 09.11.2023, passed by the 2nd respondent, is set aside by applying Bhuvaneswari's case principle;

(b) The said prison inmate namely, Thiru.Balamurugan, son of Thiru.Pakkirisamy, aged about 47 years, Convict No.23087, now confined at Central Prison, Trichy, is granted 21 days ordinary leave without escort;

(c) The said prison inmate shall sign every day in the Forenoon before the Jurisdictional Magistrate [we are informed that the prison inmate will be staying at No.65, Kollukaadu Bus Stop, Rajamadam Post, Tanjore], and that the



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Jurisdictional Magistrate is Judicial Magistrate,
Pattukottai.

(d) 21 days ordinary leave will be from
08.12.2023[Friday] at 10.30 a.m to 28.12.2023.

(e) The said prison inmate shall surrender in
the office of the 3rd respondent on
29.12.2023[Friday] by dusk i.e., 05.30 p.m.

(f) The aforementioned condition of signing
before the Judicial Magistrate every day in the
Forenoon will not apply to 08.12.2023[Friday] and
29.12.2023[Friday] as it would be the date of
release and date of surrender.

(g) The said prison inmate shall not partake
in any activities which are not concerned with the
grounds on which leave is granted.

(h) As a corollary to preceding point, it is
made clear that said prison inmate shall avail 21
days ordinary leave without escort only for the
purpose for which it is granted.



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11. Captioned WP is disposed of in the aforesaid manner with the aforesaid directive and observations. There shall be no order as to costs.

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(M.S., J.) (R.S.V., J.)
06.12.2023

Index : Yes / No
Neutral Citation : Yes / No
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P.S: Upload forthwith. 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.

To

1. The Secretary to the Government of Tamil Nadu,
State of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai - 600 009.

2. The Deputy Inspector General of Prison,
Trichy Range,
Trichy - 620 020.

3. The Superintendent,
Central Prison,
Trichy-620 020.

4. The Judicial Magistrate,
Pattukottai.



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

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ORDER MADE IN
W.P(MD)No.28643 of 2023
DATED : 06.12.2023