



WP(MD)No.29929 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.29929 of 2023

Mahalakshmi

: Petitioner

Vs.

1.The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai – 625 001.

2.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli – 627 002.

: Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the respondents to grant ordinary or emergency leave for 30 days without escort to the petitioner's husband, the convict prisoner, namely Sathish (a) Sadhasivaperumal, aged 42 years, Convict No.3367, presently detained at Central Prison, Palayamkottai, based on petitioner's representation dated 28.11.2023.



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For Petitioner : Mr.R.Narayanan

For Respondents : Mr.A.Thiruvadi Kumar,
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 12.12.2023.

2. Factual matrix in a nutshell is that WP petitioner's spouse one Thiru.Sathish @ Sadhasivaperumal, aged 42 years is a convict prisoner (convict No.3367) now serving 10 years sentence in Palayamkottai Central Prison, Tirunelveli – 627 002; that WP petitioner's spouse shall hereinafter be referred to as 'said prison inmate' for the sake of convenience and with the intention of using better refined / glossary; that WP petitioner has sent a representation dated 25.11.2023 (mailed on 28.11.2023) seeking one month leave for the said prison inmate; that the ground on which leave is sought is that WP petitioner is having respiratory distress requiring medical attention and that said prison inmate has to make arrangements for livelihood of his



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family and for settlement of life after release; that this 25.11.2023 representation (mailed on 28.11.2023) shall hereinafter be referred to as 'said representation' for the sake of convenience and clarity; that said representation is lying unattended is the case of WP petitioner.

3. In the Admission Board hearing today, Mr.R.Narayanan, learned counsel on record for WP petitioner reiterated the aforesaid facts and added that on an earlier occasion, leave application *qua* said prison inmate was negatived and the WP petitioner assailed the order of Deputy Inspector General of Prison, Madurai Central Prison, Madurai negating leave in and by W.P.(MD)No.18413 of 2023 and after full contest, Hon'ble predecessor Co-ordinate Division Bench granted 10 days leave in and by an order dated 31.07.2023. It was submitted that this 10 days leave granted by Hon'ble Co-ordinate Division Bench was ordinary leave without escort and that said prison inmate returned and surrendered on 11.08.2023 in the office of the second respondent and nothing untoward had happened during 10 days ordinary leave.



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4. Learned counsel submits that the aforementioned grounds continued to exist and it would be of immense help if leave is granted.

5. Issue notice.

6. Mr.A.Thiruvadi Kumar, learned Additional Public Prosecutor accepted notice for both the respondents and submitted on instructions that the said prison inmate has availed ordinary leave only in August of 2023. However, the said prison inmate has now been granted three days emergency leave vide order dated 16.12.2023 made by the second respondent but he is unable to come out owing to the cyclonic conditions and inundation.

7. We carefully considered the rival submissions and we find that it is a fit case to grant three weeks ordinary leave. The reasons are as follows:

i) Hon'ble predecessor Co-ordinate Division Bench had found it appropriate to grant 10 days ordinary leave without escort on selfsame grounds;



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ii) on 10 days elapsing, said prison inmate has returned and surrendered on 11.08.2023;

iii) during 10 days ordinary leave without escort, nothing untoward had happened;

iv) that the facts and circumstances are compelling as medical certificate dated 17.10.2023 *qua* WP petitioner has not been subjected to any disputation or contestation;

v) while we grant leave, we take into account the present cyclonic conditions, inclement weather and possible inundation and therefore, the leave period would be for three weeks from 27.12.2023;

vi) the grounds on which leave has been sought snugly fits into Clauses (i) and (vii) of Rule 20 of 'Tamil Nadu Suspension of Sentence Rules, 1982' (hereinafter 'said Rules' for the sake of convenience and clarity); and



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vii) we are inclined to grant ordinary leave without escort as said prison inmate had gone on leave earlier without escort, nothing untoward happened and said prison inmate had returned and surrendered without any untoward incident.

8. In the light of the narrative, discussion and dispositive reasoning, the following order is made:

i) said prison inmate i.e., Thiru.Sathish @ Sadhasivaperumal, aged 42 years (Convict No.3367) now lodged in Central Prison, Palayamkottai is granted three weeks ordinary leave without escort from 27.12.2023 (10.30 a.m.) to 17.01.2024;

ii) said prison inmate shall surrender on 18.01.2024 in the office of the second respondent by dusk ie., by 5.30 p.m.;



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iii) said prison inmate shall sign in the Forenoon on every Monday and Friday in the trial Court [Sessions Court, Mahalir Neethimandram, (Fast Track Mahila Court), Thoothukudi];

iv) if the given Monday or Friday becomes a Court holiday, he shall sign on the next working day; and

v) said prison inmate shall not utilise the leave for any reason other than the ground on which leave has been granted. In other words, said prison inmate shall not partake in any other activities not connected with the ground on which leave has been granted;

9. To be noted, captioned WP was taken up with the consent of both sides in the Admission Board itself owing to the limited scope of the captioned WP. It is also made clear that the leave granted is owing to the peculiar facts and circumstances of the case on hand and it will not serve as a precedent in all other cases. In other words, granting leave in a mandamus prayer in the writ petition has to be decided on a case to case basis.



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10. Captioned Writ Petition is disposed of in the aforesaid manner.

There shall be no order as to costs.

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

18.12.2023

Neutral Citation : Yes

Index : Yes

vsm

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

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- 2.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli – 627 002.
- 3.The Sessions Court,
Mahalir Neethimandram (Fast Track Mahila Court)
Thoothukudi.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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