



W.P.(MD)No.30277 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 20.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.(MD)No.30277 of 2023

Murugan

: Petitioner

Vs.

1.The State of Tamil Nadu,

Rep. by its Additional Chief Secretary,

Home Department (Prisons),

Secretariat, Chennai.

2.The Deputy Inspector General of Prison,

Madurai Zone,

Madurai Central Prison,

Madurai – 625 016.

3.The Superintendent of Prison,

Central Prison,

Palayamkottai,

Tirunelveli – 627 002.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, directing the respondents



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to grant extension of ordinary leave for one month without escort to the life convict prisoner namely, Ashok @ Ashok Kutty S/o.Kottaisamy aged 38 years, Life Convict No.2567, detained at Central Prison, Palayamkottai.

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' [hereinafter 'WP' for the sake of brevity] has been filed with a prayer for extension of ordinary leave without escort for WP petitioner's brother-in-law one Ashok @ Ashok Kutty, son of Kottaisamy, aged 38 years [Life Convict No.2567] now lodged in Central Prison, Palayamkottai, Tirunelveli. 'Thiru.Ashok @ Ashok Kutty' will from hereon be referred to as 'said prison inmate' for the sake of convenience and with the intention of using better / refined glossary.

2.Sister of said prison inmate one Saraswathi approached this Court earlier with a prayer for 15 days emergency leave without escort vide W.P.(MD)No.27339 of 2023 and the same was



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disposed of by this Bench in and by order dated 15.11.2023, which reads as follows:

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W.P.(MD)No.27339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2023

CORAM :

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

W.P.(MD)No.27339 of 2023

Saraswathi ... Petitioner

vs.

1.The State of Tamil Nadu,
Represented by its Additional Chief Secretary,
Home Department (Prisons),
Secretariat, Chennai.

2.The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai.

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

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents to grant emergency leave for 15 days without escort to the life convict prisoner namely, Ashok @ Ashok Kutty, S/o.Kottalsamy aged 38 years, Life Convict No.2567, detained at Central Prison, Palayamkottai.

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For Petitioner : Mr.R.Narayanan

For Respondents : Mr.A.Thiruvadikumar
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 15.11.2023.

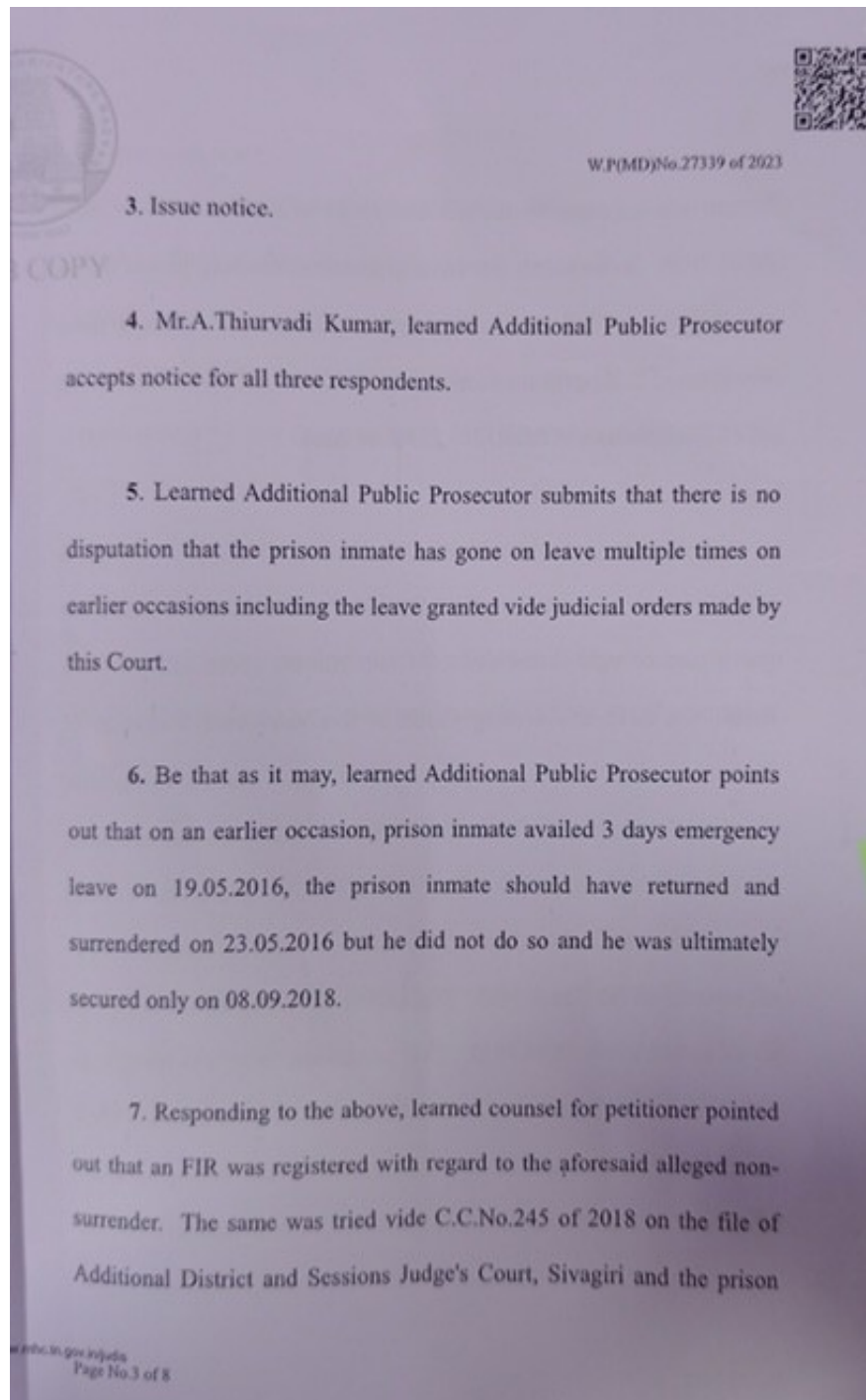
2. Short facts are that Writ Petitioner's brother one Ashok @ Ashok Katty, son of Kottaisamy is now a prison inmate serving life sentence in Palayamkottai Central Prison [Life Convict No.2567]; that the petitioner is very unwell, down with respiratory ailment and is hospitalised; that the prison inmate has to attend to the Writ Petitioner and make necessary arrangements for continuing medical treatment in the hospital; that a representation was sent on 02.11.2023 by the Writ Petitioner seeking 40 days ordinary leave or 15 days emergency leave without escort on this ground; that the medical condition of the Writ Petitioner had taken a downturn necessitating the filing of the captioned Writ Petition urgently and move the same by way of emergent motion, is learned counsel's say.



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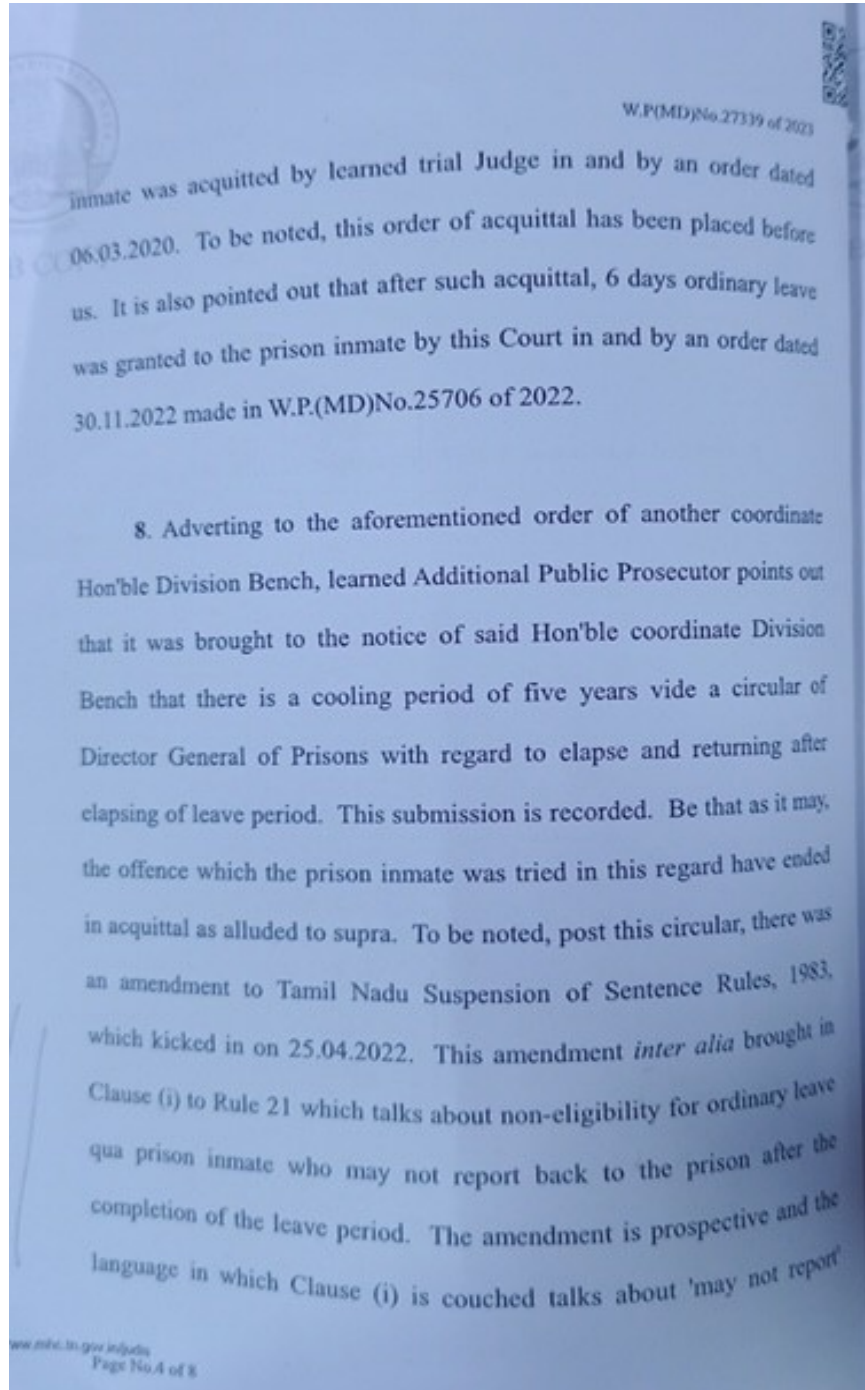




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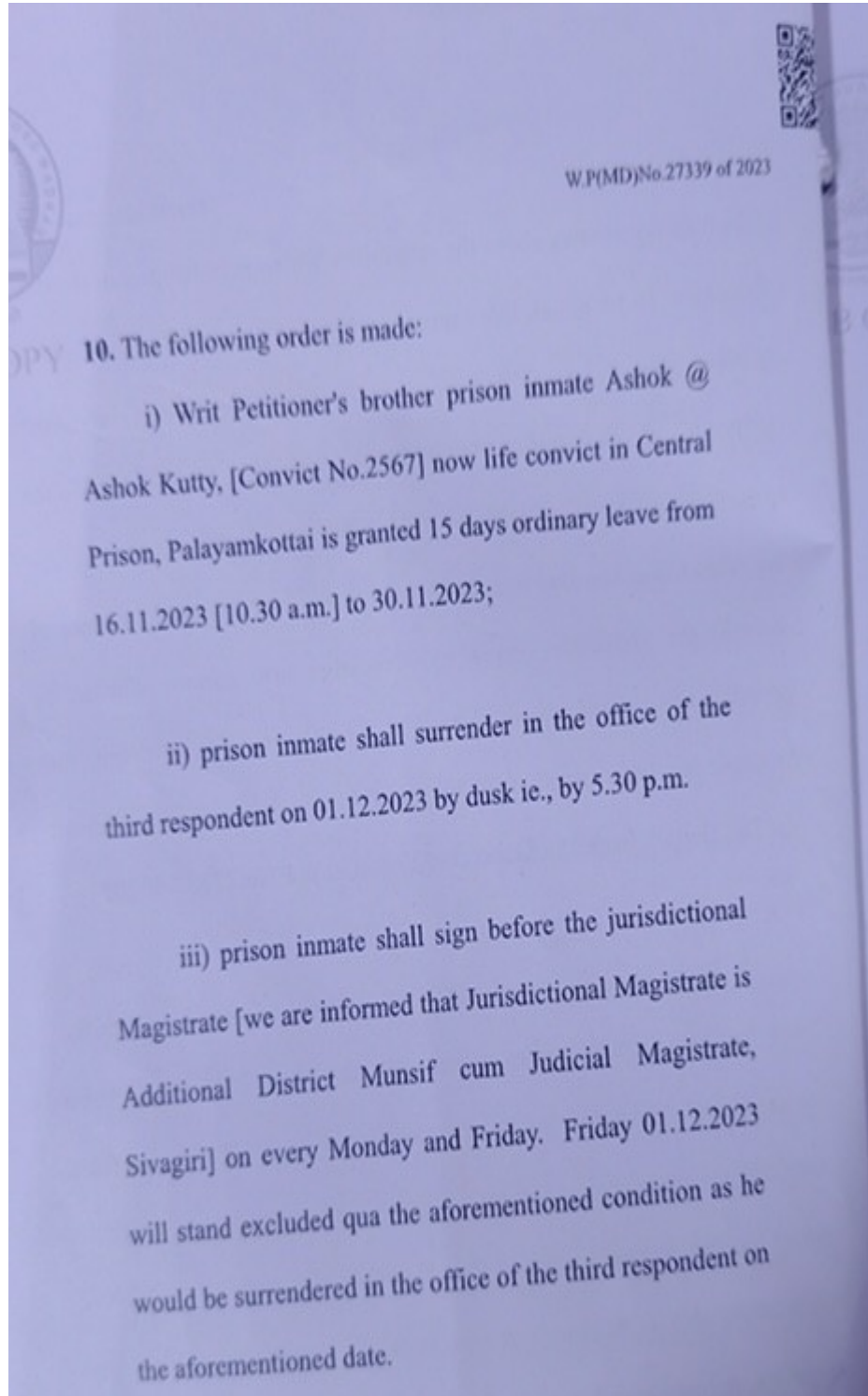
which means it talks about the possibility which may happen in the days to come. To be noted, this aspect has been considered by this Court in T.Pechiyammal's case [T.Pechiyammal Vs. The Secretary of Government of Tamil Nadu in W.P.No.23341 of 2023]. Leave has been granted to the prison inmate by this Court on 30.11.2022 after the amendment kicked in. This Court has also repeatedly held that said Rules being a piece of subordinate legislation made by Executive arm cannot denude or constrict the constitutional powers of this Court. To be noted, this principle has been propounded by this Court in Selvam's case [Selvam Vs. The Deputy Inspector General of Prison in W.P.No.27137 of 2023].

9. There is no serious disputation about the ground on which the leave has been sought, more importantly, the eligibility of the prison inmate is not doubted or subjected to contestation. Therefore, in these facts and circumstances, we deem it appropriate to grant leave though the prayer is for a mandamus. To be noted, this course is adopted considering the facts and circumstances of the case on hand and therefore, the same 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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11. Captioned main Writ Petition is disposed of with the aforesaid directions. There shall be no order as to costs.

(M.S., J.) (R.S.V., J.)
15.11.2023

Index : Yes / No
Neutral Citation : Yes / No
vsm

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(ii) All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard 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 Additional Chief Secretary,
State of Tamil Nadu,
Home Department (Prisons),
Secretariat, Chennai.
2. The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai.
3. The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli – 627 002.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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3.The aforementioned order captures all essentials that are imperative for appreciating this order and therefore, we are not delving into this aspect of the matter any further. Suffice to say that the aforementioned order shall be read as an integral part of the instant order.

4.Mr.R.Narayanan, learned Counsel on record for WP petitioner, adverting to a medical report dated 28.11.2023 submitted that sister of said prison inmate Saraswathi requires continued medical attention and arrangements have to be made for better medical care *inter alia* by alienating immovable property in which said prison inmate is a coparcener.

5.Issue notice.

6.Mr.A.Thiruvadi Kumar, learned State Additional Public Prosecutor accepted notice for all respondents and submitted on instructions that there are three impediments and they are:

a) Rule 21(b) of 'The Tamil Nadu Suspension of Sentence Rules, 1982' [hereinafter 'said Rules' for the sake of convenience] which talks



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about the non-eligibility for prisoners sentenced under Sections 392 to 402 of 'the Indian Penal Code, 1860 (Act 45 of 1860)' [hereinafter 'IPC' for the sake of brevity];

b) Amended Rule 21(i) talks about the prisoners who may not report back to the prison after completion of the leave period;

c) Rule 22(3) which says that a subsequent spell of ordinary leave can be granted only after a cooling period of one year.

7. Given the facts and circumstances of the case, having perused the case file and having given our careful consideration *qua* the submissions made by learned Counsel for WP petitioner, we are convinced that this is a fit case to grant three [3] weeks ordinary leave without escort and the reasons are as follows:

i) As regards Rule 21(b) of said Rules, the same is governed by **Akram Khan's** case ie., ratio/principle laid down by this Court vide order dated **19.07.2023** made in **W.P.No.21242 of 2023 (Akram Khan Vs. The State of Tamil Nadu)** and **Sathyakala's** case reported in Neutral Citation ie.,



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Neutral Citation of this Court [Madras High Court] being **2023:MHC:3911 (Sathyakala Vs. The State of Tamil Nadu)**. Suffice to say that in **Akram Khan's** case this Court held that Rule 21(b) can be relaxed when this Court exercises constitutional power that allows the writ petitioner to clear first hurdle;

ii) As regards Rule 21(i) ie., the point that the prisoner may not report back, we are of the view that the argument is a non-starter. The reason is vide our aforementioned 15.11.2023 order, this Bench granted 15 days ordinary leave from 16.11.2023[10.30 a.m.] to 30.11.2023, with a directive that said prison inmate should surrender by dusk ie., by 05.30 p.m. There is no dispute or contestation before us that said prison inmate surrendered and the 15 days passed without any untoward incident. This by itself completely neutralizes the Rule 21(i) argument and therefore, WP petitioner clears the second hurdle also;

iii) This takes us to the third hurdle ie., the third barrier in equestrian terms in this legal drill. The third point raised by the Prosecutor is on Rule 22(3). This Court in **W.P.No.27515 of 2023** dated



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20.09.2023, Baskar's case (*Baskar Vs. The State of Tamil Nadu*) held that Rule 22(3) will not be an impediment when Constitutional powers are being exercised.

8.We put it to the learned Counsel for WP petitioner as to what kind of assistance that the said prison inmate can give his sister, considering even according to the WP petitioner that she has been diagnosed with acute Tuberculosis and respiratory deceases.

9.Learned Counsel submitted that the prognosis is to the effect that she is moving to the second stage and needs more advance and intensive medical care. The said prison inmate would be able to make arrangements to alienate the family property [as already alluded to supra, said prison inmate is a coparcener] so that funds can be raised for treatment of sister of said prison inmate. Learned Counsel submits on instructions that all arrangements have been made for the sale and all that remains is that the said prison inmate should come out, initiate, crystallize and finalise the sale consideration and complete the transaction. It is in this context that we grant leave rather than the medical ground of the said prison inmate's sister. We make this fact clear



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owing to the facts and circumstances of the case. We also make the following order:

1) Writ Petitioner's brother-in-law Ashok @ Ashok Kutty, son of Kottaisamy, Convict No.2567, now lodged in Palayamkottai Central Prison is granted three [3] weeks ordinary leave without escort from **31.12.2023 [Sunday] 10.30 a.m. to 21.01.2024 [Sunday];**

2) Said prison inmate shall surrender in the office of the third respondent on 22.01.2024 by dusk ie., by 05.30 p.m.;

3) Said prison inmate shall sign before the jurisdictional Magistrate [we are informed that Additional District Munsif cum Judicial Magistrate, Sivagiri] every Monday and Friday. Monday 22.01.2024 is exempt from this condition as that is the day on which the said prison inmate will be surrendering in the office of the third respondent;

4) Said prison inmate shall not partake in any activity which is not connected with the ground on which leave is granted, more



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particularly the purpose which has been captured with specificity supra in our order.

10. Captioned Writ Petition is disposed of with the aforesaid directives. There shall be no order as to costs.

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

20.12.2023

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

MR

ORDER MADE IN
W.P.(MD)No.30277 of 2023

20.12.2023