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W.P.No.561 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.561 of 2024

M. Janarthanam

... Petitioner

Vs.

1.The Inspector General of Prisons,
Vellore Range, Vellore - 2.

2.The Superintendent of Prison,
Central Prison, Vellore - 2.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for the records No.20616/ThaKu.3/2023 dated 21.12.2023 passed by respondent No.2, and quash the same and consequently direct the respondents to grant 30 days ordinary leave to the petitioner's father Mr.Mathaiyan, S/o.Govindasamy, aged 56 years, Life Convict, Ct.No.2375, Central Prison, Vellore.

For Petitioner : Mr.P.Pugalenth

For Respondents : Mr.E. Raj Thilak,
Additional Public Prosecutor
assisted by Mr.C.Aravind



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ORDER

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(Order of the Court was made by *M.S.RAMESH, J.*)

The petitioner, who is the son of the life convict namely Mr.Mathaiyan, S/o.Govindasamy, aged about 56 years, now confined in Central Prison, Vellore, has come forward with this petition, seeking for grant of 30 days ordinary leave to his father.

2. The case of the petitioner is that his father is a life convict prisoner, bearing Convict No.2375, who was convicted for the offence under Section 304(i) IPC and was sentenced to undergo 10 years rigorous imprisonment by the learned Additional Session Court, Dharmapuri District in S.C.No.13 of 2011 dated 04.07.2015. Thereafter, he preferred an appeal before this Court and his punishment was enhanced under Section 302 IPC and he was sentenced to undergo life imprisonment. The detenu has been serving the sentence in the prison for more than eight years.

3. The learned counsel for the petitioner submitted that the petitioner has agricultural land in which paddy harvest is going to start



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and for cultivation of the same, he requires his father. He further submitted that the petitioner's father has decided to settle the property in his name. Hence, he has given a representation to the respondent on 19.12.2023, requesting to grant 30 days leave to his father. Since the same was rejected through the impugned order dated 21.12.2023, stating that his father's appeal is pending before the Hon'ble Supreme Court for the reason that his father is not eligible for premature release, he has filed the present Writ Petition.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

5. The learned Additional Public Prosecutor, on instructions, submitted that since a Special Leave Petition is pending before the Hon'ble Supreme Court, leave cannot be granted under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982.

6. As regards, on the above objection raised by the learned Additional Public Prosecutor, it is pertinent to mention the decision of



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the Coordinate Bench of this Court dated 29.09.2023, passed in W.P.(MD).No.6398 of 2023, in the case of ***Latha Vs. Deputy Inspector General of Prison, Madurai***, wherein the respondents were directed to re-consider the petitioner's leave application, without reference to the pendency of the criminal appeal petition before the Hon'ble Supreme Court. Moreover, Rule 20 Sub Rule 1(i) of the Tamil Nadu Suspension of Sentence Rules, provides for the grant of ordinary leave to a prisoner for making arrangements for the livelihood of his/her family for the settlement of life after release. It would be pertinent to point out that Rule 20 (vii) of the Rules provides for grant of ordinary leave to a prisoner for "any extraordinary reason".

7. As the petitioner requires his father's presence for the settlement of property and cultivation, we are convinced that the detenu may require atleast 21 days for settling the property. In this background, we are constrained to invoke our powers under Article 226 of the Constitution of India for the purpose of granting ordinary leave.

8. Though the petitioner herein sought for 30 days of Ordinary



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Leave, the learned Additional Public Prosecutor, on instructions, submitted that the detenu is eligible only for 21 days of Ordinary Leave.

9. In the light of the above observations and also by taking into consideration that the Probation Officer's Report is in favour of the detenu, the detenu is granted ordinary leave for a period of 21 days, without escort, commencing from 09.02.2024 till 29.02.2024, on the following conditions:-

- (i) the respondents are directed to grant Ordinary Leave to the detenu, Mr.Mathaiyan, aged 56 years, S/o.Govindasamy, Ct.No.2375, for a period of 21 days, without escort, commencing from 09.02.2024 to 29.02.2024;
- (ii) The detenu is directed to report before the Inspector of Police, Kadathur Police Station, Dharmapuri District, twice in a week, i.e. Monday and Thursday at 10.30 A.M., during the period of leave;
- (iii) After expiry of the ordinary leave, the detenu shall surrender before the second respondent herein, on 29.02.2024 before 05.00 p.m;



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(iv) The detenu shall utilize the leave only for the purpose for which it has been granted and shall not indulge in any other activities.

10. With the above directions, the Writ Petition is partly allowed.

There shall be no order as to costs.

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

06.02.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Neutral Citation: Yes/No

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Note: Issue Order Copy on 08.02.2024.



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To
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1.The Inspector General of Prisons,
Vellore Range, Vellore - 2.

2.The Superintendent of Prison,
Central Prison,
Vellore - 2.

3.The Public Prosecutor,
High Court, Madras.



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and
SUNDER MOHAN, J.

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