



WEB COPY



W.P.No.622 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.622 of 2024

R.Varadharaju

...Petitioner

VS.

- 1.The State Rep by its,
The Home Secretary, Prison Department (IV),
St.George Fort, Secretariat, Chennai-600 0009.
- 2.The Deputy Inspector General of Prison,
Coimbatore Range, Coimbatore-641 018.
3. The Superintendent of Prison,
Central Prison at Salem,
Hasthampatty, Salem-636 007.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the respondents to grant 28 days leave without escort to the Convict Prisoner/brother of the petitioner viz., Krishnamoorthy, S/o late Ramasamy in pursuance of the Petitioner's representation dated 18.11.2023.

For Petitioner : Mr.M.Mohamed Saifulla



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For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

On the ground that the petitioner's brother viz., Krishnamoorthy/Convict Prisoner, S/o late Ramasamy, requires to assist his mother, who is suffering from oral cancer and also for making arrangements for livelihood of his family and for the settlement of life after release, he had made a request to the respondents for grant of Ordinary Leave through a representation dated 18.11.2023. Since the representation was not considered in reasonable time, the present writ petition is filed.

2. The learned counsel for the petitioner submits that the prisoner's mother is affected by oral cancer and the family members intend to partition the family properties among themselves and therefore, grant of Ordinary Leave to the petitioner herein is crucial.

3. Learned Additional Public Prosecutor produced a copy of the



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Probationary Officer's Report dated 17.01.2024 which recommends for release of the petitioner's brother on Ordinary Leave. Learned Additional Public Prosecutor also submitted that as against the judgment of conviction and sentence passed by the trial Court, the petitioner's brother preferred an appeal in C.A.No.445 of 2019, which is pending before this Court and therefore, they are not in a position to grant Ordinary leave in view of an embargo under Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982.

4. We have given careful consideration to the submissions made by either side. The reason assigned by the petitioner for grant of Ordinary Leave to the petitioner's brother is that his mother is suffering from Cancer and they intend to partition the family properties. Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982 provides grounds for grant of Ordinary Leave to the prisoner and one such ground is to enable the prisoner to make arrangements for the livelihood of the family and for the settlement of life after release which includes settling family disputes like partition etc.,. The Probation Officer has also favourably recommended the case of the petitioner's brother for grant of Ordinary Leave. So also, the concerned Jurisdictional police through his Report dated 17.01.2024. While that being so, we do not find any impediment to the



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respondents to consider the petitioner's request for grant of such Ordinary Leave to the petitioner's brother.

5. Insofar as the objection raised by the learned Additional Public Prosecutor that since an appeal against the judgment of the conviction and sentence is pending before this Court which has an embargo is concerned, a co-ordinate Bench of this Court, in which, one of us is a party, in the case of ***Latha vs State represented by Deputy Inspector General of Prisons and another in W.P.(MD)No.6398 of 2023 dated 29.09.2023*** had already taken a view that pendency of an appeal before the appellate Court will not be an embargo for consideration of any request for grant of Ordinary Leave.

6. In view of the ratio laid down in ***Latha's case***, we do not find any justification on the part of the respondents to raise the pendency of an appeal as an embargo.

7. In the light of the above observations and findings, there shall a direction to the respondents 2 and 3 to forthwith release the petitioner's brother viz., Krishnamoorthy/Life convict on Ordinary Leave, without escort for a period



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of twenty one days between 22.01.2024 and 5.00 p.m of 11.02.2024. During the period of such Ordinary Leave, Krishnamoorthy/Life convict shall report before the Station House Officer, Tiruchengode Town Police Station, Namakkal, daily at 10.30 a.m. On completion of leave, Krishnamoorthy/Life convict shall surrender before the fourth respondent.

The writ petition is ordered accordingly, No costs.

(M.S.R.,J.) (S.M.,J.)
18.01.2024

sr

Index:yes/no

Internet:yes/no

Note: Issue Order copy today

To

- 1.The Home Secretary, Prison Department (IV),
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- 2.The Deputy Inspector General of Prison,
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