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W.P.No.1328 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

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Jeeva

...Petitioner/Wife of Detenu

VS.

1. State of Tamil Nadu,
Rep. by the Addl. Chief Secretary to Government,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner of Police,
Greater Chennai Police Commissionerate,
The Commissioner Office,
Vepery, Chennai – 600 007.

3. The Superintendent of Prison,
Central Prison,
Puzhal, Chennai – 600 066.

4. The Inspector of Police,
K-1, Sembium Police Station,
Chennai.

...Respondents

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



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grant parole to the detenu Moorthy, S/o.Arumugam, now confined in Central Prison, Puzhal, Chennai under the Tamil Nadu Act 14 of 1982 vide Detention Order passed in Memo.No.709/BCDFGISSSV/2023 dated 29.12.2023 to attend the death rituals from 22.01.2024 to 26.01.2024 to his deceased mother Mrs.A.Muthammal.

For Petitioner :: Mr.D.Kannan

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

ORDER

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

The petitioner herein is the wife of one Moorthy, who has been confined in Central Prison, Puzhal, Chennai under the provisions of Act 14 of 1982. When the detenu's mother expired on 10.01.2024, the prison authorities had granted one day temporary release to enable the petitioner's husband to perform the last rites of his mother by invoking the proviso to Section 15 of the Act 14 of 1982.

2. In the present writ petition, the petitioner seeks for temporary release of her husband viz., Moorthy, to enable him to participate in the 16th day ceremony.



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3. The learned Additional Public Prosecutor, on instructions submitted that there is no provision under the Act for granting temporary release to a detenu for participating in the ceremonies. He further submitted that under Rule 6 of the said Rules, attending the ceremonies that follows the death of the family member is not a ground provided for and therefore, the petitioner is not entitled for the relief.

4. It is no doubt true that Rule 6 does not provide for grant of emergency leave to the prisoner for the purpose of attending the ceremonies of the death of a family member. However, this Court, in several of its earlier decisions, have held that the provisions under Rule 6 is not mandatory in nature but rather directory, in view of Rule 40 which grants power to the Government for exemption of certain provisions of these rules. In this background, this Court had passed orders by invoking its extraordinary powers under Article 226 of the Constitution of India, for granting emergency leave, in cases, where the prayer sought for is one for



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granting ordinary leave.

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5. By taking into account that the petitioner's husband had to perform the last rites of his mother, we are inclined to consider the case of the petitioner favourably.

6. In the result, there shall be a direction to the 1st respondent to forthwith release the petitioner's husband viz., Moorthy, S/o.Arumugam, now confined in Central Prison, Puzhal, Chennai, temporarily on 25.01.2024 with minimum escort subject to the usual conditions that can be imposed by the 3rd respondent. The petitioner shall be released from the prison at 8.00 a.m., on 25.01.2024 and he shall return back to the prison at 6.30 p.m., on the same day. The 3rd respondent is directed to provide minimum escort to the convict from the Central Prison at the time he leaves the prison and till such time he is taken back to the prison. It is clarified that the cost involved in providing escort shall be borne by the petitioner. The writ petition stands allowed, accordingly.

(M.S.R.,J.)

(S.M.,J.)



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Index : Yes / No

Speaking / Non-Speaking Order

Neutral Citation : Yes / No

Issue order copy by 23.01.2024

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

1. The Addl. Chief Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort St. George, Chennai – 600 009.

2. The Commissioner of Police,
Greater Chennai Police Commissionerate,
The Commissioner Office,
Vepery, Chennai – 600 007.

3. The Superintendent of Prison,
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4. The Inspector of Police,
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5. The Public Prosecutor,
High Court, Madras.

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