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W.P.No.2327 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.2327 of 2024

S. Karpagam

... Petitioner

Vs.

The State represented by its,

1. The Secretary to the Government of Tamil Nadu,
Department of Home,
Fort St. George, Chennai 600 009.
2. The Director Inspector General of Prison,
Trichy Range, Central Prison Trichy,
Trichy 620 020.
3. The Superintendent,
Central Prison Trichy, Trichy 620 020.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, directing the respondents to grant ordinary leave for 30 days without escort to the detenu, A.Sivadoss, S/o. Appadurai, aged about 53 years, Convict No.22498, detained at Central Prison, Trichy.

For Petitioner : Dr. S. Manoharan



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

ORDER

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

The petitioner, who is the wife of the convict prisoner namely A.Sivadoss, Son of Appadurai, aged about 53 years, now confined in the Central Prison, Trichy, has come forward with this writ petition to direct the respondents to grant 30 days of ordinary leave without escort to the detenu.

2. The case of the petitioner is that her husband is a life convict prisoner, bearing Convict No.22498, who was convicted for the offences under Sections 120(b)(i) and 302 IPC and sentenced to undergo life imprisonment, under Section 307 r/w 34 IPC and sentenced to undergo Rigorous Imprisonment for seven years, under Section 294(b) of IPC and sentenced to undergo simple imprisonment for one month and under Section 352 IPC and sentenced to undergo Rigorous Imprisonment for one month by the learned III Additional District and Sessions Judge (Full Additional



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Charge), Pattukottai in S.C. No.71/2014 dated 13.03.2018 and on appeal, the Hon'ble Hight Court of Madras, Madurai Bench, acquitted the detenue for the offence under Section 120-B r/w 302 IPC and confirmed the rest of the sentence and the detenu has been serving the sentence in the prison for more than three years.

2.1. The petitioner further states that she is unable to walk steadily even though she underwent surgery for her low back pain in the year 2018 and that now she is advised by the doctors to undergo another surgery. She is struggling with her health condition, with no one to support her, along with her two daughters and hence she needs her husband's presence for making financial arrangement for her treatment and for livelihood of her family. Hence, On 22.12.2023, she submitted a representation to the respondents through the registered post requesting the respondents to grant 30 days ordinary leave to her husband. Since the same has not been considered till date, she has come forward with this writ petition.

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

4. Dr. S. Manoharan, learned counsel for the petitioner submitted that



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since the detenu has served the sentence for the past three years, he is eligible for ordinary leave under Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982.

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 the above objection raised by the learned Additional Public Prosecutor, it is pertinent to mention the decision of the Coordinate Bench of this Court dated 29.09.2023, in W.P.(MD).No.6398 of 2023, in the case of ***Latha vs. Deputy Inspector General of Prison, Madurai***, wherein the respondents therein are 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 from the release. It would be



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pertinent to point out that Rule 20 (vii) of the Rules provides for grant of ordinary leave to a prisoner for "any extraordinary reason". The case of the petitioner is that she needs her husband's presence for making financial arrangement for her treatment and for livelihood of her family. We are convinced that the detenu may require atleast 21 days for arranging funds for the medical expenses of his wife. 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.

7. Though the petitioner herein sought for 30 days of Ordinary Leave, the learned Additional Public Prosecutor, on instructions, submitted that the detenu is eligible only for 21 days of Ordinary Leave.

8. In the light of the above observations and also 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 08.02.2024 till 28.02.2024, on the following conditions.

(i) the respondents are directed to grant Ordinary Leave to the detenu, A. Sivados, S/o. Appadurai, aged about 53 years, Convict No.22498, for a



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period of 21 days, without escort, commencing from 08.02.2024 to 28.02.2024.

(ii) The detenu is directed to report before the Inspector of Police, Moodukur Police Station, Pattukottai 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 3rd respondent herein, on 28.02.2024 before 05.00 p.m.

(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.

9. 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]
05.02.2024

bga

Note to office : Issue Order Copy on 06.02.2024
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Index : Yes / No

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2. The Director Inspector General of Prison,
Trichy Range, Central Prison Trichy,
Trichy 620 020.
3. The Superintendent,
Central Prison Trichy, Trichy 620 020.
4. The Public Prosecutor,
High Court, Madras.
5. The Joint Secretary,
Law and Order Department,
Secretariat, Chennai.

Copy to:-

The Inspector of Police,

Moodukur Police Station, Pattukottai District.



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