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W.P.No.3789 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

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Suraj Raj

...Petitioner/son of the detenu

VS.

The State represented by its,
1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St.George,
Chennai-600 009.

2.The Deputy Inspector of General of Prison,
Trichy Range,
Trichy Central Prison,
Trichy-620 020.

3.The Superintendent,
Trichy Central Prison,
Trichy-620 020.

...Respondents



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Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.106/Mu.Vu./2024, dated 31.01.2024, passed by the second respondent and quash the same and consequently, direct the respondents to grant ordinary leave for 30 days without escort to the detenue, Indirajith, S/o.Ramalingam, aged about 56 years, Convict No.21390, confined at Central Prison, Trichy.

For Petitioner : Dr.S.Manoharan

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.**)

On the ground that the present petitioner's father is required for arranging funds to pay educational fees, a representation was given to the respondents seeking for grant of ordinary leave, which was rejected on the ground that a Special Leave Petition in (CrI.)No.492 of 2022 is pending before the Hon'ble Supreme Court as against the judgment and conviction of the petitioner's father



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by placing reliance on Rule 2 (4) of the Tamil Nadu Suspension of Sentence Rules.

2.Learned Additional Public Prosecutor produced a copy of the Probationary Officer's Report dated 23.02.2024, which recommends for release of the petitioner's father on Ordinary Leave. However, as against the judgment of conviction and sentence passed by the trial Court, the petitioner's father preferred an appeal in (Crl.)No.492 of 2022, which is pending before the Hon'ble Supreme Court and therefore, the respondents 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. The learned Additional Public Prosecutor also submitted that the petitioner's father is otherwise eligible for 28 days of ordinary leave.

3. We have given careful consideration to the submissions made on either sides. The reason assigned by the petitioner for grant of Ordinary Leave to the his father is that his presence required for arranging funds for meeting educational expenses. Rule 20 of Tamil Nadu Suspension of Sentence Rules, 1982 provides grounds for grant of Ordinary Leave to the prisoner and one such



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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 father for grant of Ordinary Leave.

4. 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.

5. 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.



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6. 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 father viz., Indirajith, S/o.Ramalingam, aged about 56 years, on Ordinary Leave for a period of 28 days, without escort, on the following conditions.

(i) Respondents are directed to release the Convict Prisoner viz., Indirajith, S/o.Ramalingam, aged about 56 years, on Ordinary Leave for a period of 28 days i.e., from 08.03.2024 to 05.04.2024.

(ii) The Convict Prisoner shall be released on 08.03.2024 at 10.00 am and surrender before the Superintendent of Prison, Trichy Central Prison, Trichy-620 020, on 05.04.2024 at 05.30 p.m.

(iii) The Convict Prisoner is directed to report before the Kumbakonam West Police Station Thanjavur District, twice a week i.e., on every Monday and Thursday at 10.30 a.m, during the period of leave.

(iv) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.



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7. With the above directions, the writ petition stands allowed.

(M.S.R.,J.) (S.M.,J.)
05.03.2024

Anu

Index:yes/no

Internet:yes/no

Note: Issue Order copy on 06 .03.2024

To

1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St.George,
Chennai-600 009.

2.The Deputy Inspector of General of Prison,
Trichy Range,
Trichy Central Prison,
Trichy-620 020.

3.The Superintendent,
Trichy Central Prison,
Trichy-620 020.

4.The Public Prosecutor
Madras High Court.



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SUNDER MOHAN, J

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