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W.P.No.5983 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.5983 of 2024

V.Suseela

...Petitioner/Wife of the Detenu

vs.

The State represented by its,

1.The Secretary to Government of Tamil Nadu,
Home Department,
Chennai – 600 009.

2.The Deputy Inspector General of Prison,
Trichy Range,
Vellore - 632 002.

3.The Superintendent,
Cuddalore Central Prison,
Cuddalore – 607 003

...Respondents

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.2060/Tha.Ku.2/2024, dated 07.02.2024, passed by the third respondent and quash the same and



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consecutively, direct the respondents to grant ordinary leave for 30 days without escort to the Venkatesan S/o.Govinda Padayachi, aged about 58 years, life Convict No.17001, detained at Central Prison, Cuddalore.

For Petitioner : Ms.K.Akshaya

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 presence of the petitioner's husband/convict prisoner is required for arranging funds for her medical treatment and to support her for repairing the hut in which the petitioner is living, a representation was given to the respondents seeking for grant of ordinary leave, which was rejected on the ground that a Special Leave Petition is pending before the Hon'ble Supreme Court as against the judgment and conviction of the petitioner's husband 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 11.03.2024, which recommends for release



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of the petitioner's husband on Ordinary Leave with escort. However, as against the judgment of conviction and sentence passed by the trial Court, the petitioner's husband preferred an appeal in SLP (Crl) No.000123/2023, 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.

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 her husband is that his presence is required to arrange funds for her medical treatment and to repair their hut which is in a dilapidated condition. 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 husband for grant of Ordinary Leave with escort.



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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.

6. Further, though the Probation Officer has recommended for grant of ordinary leave with escort, we are of the view if the prisoner is directed to report before the jurisdiction of police at least twice in a week, the ends of justice may be secured.



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7. In view of the above findings, the impugned order bearing No.2060/Tha.Ku/2/2024, dated 07.02.2024 passed by the third respondent, is hereby set aside and this writ petition stands allowed. Consequently, the petitioner's husband/Convict Prisoner namely Venkatesan, S/o.Govinda Padayachi, aged about 58 years, Ct.No.17001, confined at Central Prison, Cuddalore, is granted ordinary leave for a period of 15 days, without escort on the following conditions:

(i) Respondents are directed to release the Convict Prisoner viz., Venkatesan, S/o.Govinda Padayachi, aged about 58 years, on Ordinary Leave for a period of 15 days i.e., from 26.04.2024 to 10.05.2024.

(ii) The Convict Prisoner shall be released on 26.04.2024 at 10.00 am and surrender before the Superintendent of Prison, Central Prison Cuddalore, on 10.05.2024 at 05.30 p.m.

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



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(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.

(M.S.R.,J.) (S.M.,J.)
22.04.2024

dk

Index:yes/no

Internet:yes/no

Note to Registry:

1. Issue Order copy by 25.04.2024
2. Upload the order copy forthwith.

To

- 1.The Secretary to Government of Tamil Nadu,
Home Department,
Chennai – 600 009.
- 2.The Deputy Inspector General of Prison,
Trichy Range,
Vellore - 632 002.
- 3.The Superintendent,
Cuddalore Central Prison,
Cuddalore – 607 003
- 4.The Public Prosecutor
Madras High Court.



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SUNDER MOHAN, J

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