



WEB COPY



W.P.No.8173 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.8173 of 2024

Sivagami

... Petitioner

Vs.

1.The State by:
The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Inspector General of Prisons,
Chennai Range,
Prison Head Quarters,
Whannels Road,
Egmore, Chennai – 600 008.

3.The Superintendent of Prisons,
Central Prison-1,
Puzhal, Chennai – 600 066.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of Writ of Certiorarified Mandamus, calling for



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the records in the order dated 11.03.2024 bearing No.2640/Tha.Ku.2/2024 passed by the respondent No.3 and quashing the same and directing to grant ordinary leave and release the petitioner's husband namely Raja, S/o.Muthusamy, aged about 45 years, Convict No.7753, Convict Prisoner, Central Prison, Puzhal.

For Petitioner : Mrs.S.Nadhiya

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

ORDER

M.S.RAMESH, J.
AND
SUNDER MOHAN, J.

This Writ Petition has been filed challenging the impugned order dated 11.03.2024, rejecting the representation of the petitioner, seeking ordinary leave for a period of 3 months for her husband.

2. The reason assigned in the impugned order for rejecting the petitioner's request for grant of ordinary leave to her husband is that since the convict prisoner was convicted for the offence under NDPS



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Act, he is not eligible for ordinary leave as per Rule 21(h)(3) of the Tamil Nadu Suspension of Sentence Rules, 1982, as well as Rule 32(A) of NDPS Act.

3. The learned counsel for the petitioner submitted that the petitioner is suffering from uterus disease, for which the doctor has suggested her to remove the uterus and that she needs her husband's presence to make arrangements for medical expenses, as well as to take care of her and therefore, she sought for an ordinary leave for her husband.

4. The Hon'ble Supreme Court in the case of '*Dadu Alias Tulsidas Vs. State of Maharashtra*' reported in '*(2000) 8 Supreme Court Cases 437*', held that Section 32-A of NDPS Act would not affect the powers of the authorities to grant parole. Considering the aforesaid decision, a Co-ordinate Bench of this Court in **W.P.No.22285 of 2023**, had granted leave to the convict prisoner in exercise of powers under Article 226 of the Constitution of India.



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5. The learned Additional Public Prosecutor has produced a report of the Probation Officer dated 17.04.2024, which is in favour of the convict prisoner and the Probation Officer has recommended for grant of ordinary leave to the petitioner's husband.

6. In view of the aforesaid decision of the Hon'ble Supreme Court, as well as of this Court and that the Probation Officer has positively recommended for grant of ordinary leave to the convict prisoner, we are inclined to consider the prayer sought for in this Writ Petition.

7. Accordingly, the impugned order dated 11.03.2024 passed in No.2640/Tha.Ku.2/2024 by the third respondent, is hereby quashed. Consequently there shall be a direction to the respondents herein, to grant 28 days ordinary leave **“without escort”** to the convict prisoner namely Mr.Raja, S/o.Muthusamy, aged about 45 years, Convict No.7753, commencing from 24.04.2024 to 21.05.2024, with a condition that the convict prisoner shall report before the jurisdictional Police i.e. Keelkuppam Police Station, Kallakurichi District, twice a week on



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Mondays and Thursdays at 10.30 am. After expiry of the Ordinary Leave, the convict prisoner shall surrender before the Jail Authority on 22.05.2024 before 10.00 a.m. The prisoner shall utilize the leave only for the purpose for which it has been granted and shall not indulge in any other activities.

8. With the above direction, the Writ Petition stands allowed. No costs.

[M.S.R., J]

[S.M., J]

18.04.2024

Index: Yes/No
Speaking/Non-speaking order
Internet: Yes/No

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Note: Issue Order Copy on 23.04.2024



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M.S.RAMESH, J.
and
SUNDER MOHAN, J.

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To

1.The The Secretary to Government,
Home, Prohibition and Excise Department,
Secretariat, Chennai – 600 009.

2.The Inspector General of Prisons,
Chennai Range,
Prison Head Quarters,
Whannels Road,
Egmore, Chennai – 600 008.

3.The Superintendent of Prisons,
Central Prison-1,
Puzhal, Chennai – 600 066.

4.The Public Prosecutor,
High Court, Madras.

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