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W.P.No.9295 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.9295 of 2024
and W.M.P.No.10316 of 2024

M.H.Vahitha Banu

...Petitioner/wife of the detenue

vs.

1.The Director General of Police & I.G of Prisons,
Gandhi Irwin Road,
Egmore,
Chennai-600 008.

2.The Additional Director General of Prisons,
Chennai Range,
Chennai.

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

...Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorarified Mandamus, to call for the
records in the order dated 22.03.2024 bearing No.8088/tha.ku.2/2024



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passed by the third respondent and quash the same, and direct to grant 28 days ordinary leave and release the petitioner's husband namely Zakir Hussain, S/o.Husul Abdul Khadhar, aged 55 years, Convict No.2436, Convict Prisoner, Central Prison-1, Puzhal, Chennai-66.

For Petitioner : Ms.S.Nadhiya

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.**)

This writ petition has been filed to call for records in the order dated 22.03.2024, bearing No.8088/tha.ku.2/2024, passed by the third respondent and quash the same, and direct the respondents to grant 28 days ordinary leave and release the petitioner's husband namely Zakir Hussain, S/o.Husul Abdul Khadhar, aged 55 years, Convict No.2436, Convict Prisoner, Central Prison-1, Puzhal, Chennai-66.

2. Stating that the presence of the petitioner's husband is required for making financial arrangements for the education of her last son who is



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pursuing B.Com at Porur, Chennai, a representation was made by the petitioner herein seeking for grant of ordinary leave. Through the impugned order dated 22.03.2024, her representation was rejected stating that the jurisdictional police has not recommended the petitioner's case favourably.

3. The learned Additional Public Prosecutor has produced a copy of the report of the jurisdictional police dated 30.01.2024, in which, he has ratified that the petitioner's son is pursuing an undergraduate course. The only reason assigned therein for not recommending the petitioner's case is that there is a possibility of harm being caused to the prisoner from the victim's family.

4. In the said report, the Inspector of Police has also mentioned that the petitioner's husband was earlier granted ordinary leave on one occasion with escort and four occasions without escort. It has also been stated by the learned Additional Public Prosecutor that all these earlier leave were granted by the jail authorities themselves and no untoward incidents were reported while the petitioner's husband was on leave. He further stated that



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the petitioner's husband would otherwise be eligible for 28 days of ordinary leave.

5. Heard the learned counsel on either side and perused the documents.

6. Though the jurisdictional police have not recommended for grant of leave, we do not endorse the reasoning adopted by them. When the Police themselves have stated that when the prisoner had earlier come out on leave on five occasions, no untoward event had happened. If that be so, we are unable to comprehend as to how suddenly the Police have jumped to such a conclusion, more particularly when no specific statement has been made with regard to any development after the prisoner had come out on bail, which may cause harm to him from the victim's family.

7. Since the Police themselves have admitted that the prisoner's son is pursuing Under Graduation course at Chennai and the reason for which the petitioner seeks for grant of leave, is for making financial arrangements for



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the education of her son, we are constrained to invoke our powers under Article 226 of the Constitution of India for considering the petitioner's request for grant of leave.

8. Accordingly, the convict prisoner viz., Zakir Hussain, S/o.Husul Abdul Khadhar, aged 55 years, is hereby granted ordinary leave for a period of 28 days, without escort, commencing from 01.05.2024 on the following conditions.

(i) Respondents are directed to release the Convict Prisoner viz., Zakir Hussain, S/o.Husul Abdul Khadhar, aged 55 years, on Ordinary Leave for a period of 28 days i.e., from 01.05.2024 to 28.05.2024.

(ii) The Convict Prisoner shall be released on 01.05.2024 at 10.00 am and surrender before the Superintendent of Prison, Central Prison-1, Puzhal, Chennai, on 28.05.2024 at 05.30 p.m.

(iii) The Convict Prisoner is directed to report before the Inspector of Police, P-2, Melapalayam Police Station, Tirunelveli, twice a week i.e., on every Monday and



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Thursday at 05.00 pm, 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.

9. With the above directions, the proceedings of the third respondent pertaining to the order made in No.8088/tha.ku.2/2024, dated 22.03.2024 is quashed and the writ petition stands allowed. Consequently, the connected miscellaneous petition is closed.

(M.S.R.,J.) (S.M.,J.)
26.04.2024

Note to Registry:

- 1.Issue order copy by 30.04.2024.**
 - 2.Upload the order copy forthwith.**
- Anu



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To

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2.The Additional Director General of Prisons,
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Chennai.

3.The Superintendent of Prison,
Central Prison-1,
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4.The Inspector of Police,
P-2, Melapalayam Police Station,
Tirunelveli.

5.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J

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