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W.P.No.9856 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.9856 of 2024

Vijayalakshmi

... 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 Deputy Inspector General of Prison,
Vellore Range,
Vellore – 632 001.

3.The Superintendent,
Central Prison Vellore,
Vellore – 632 001.

... Respondents

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



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the records pertaining to the impugned order bearing No.17277/tha.ku3./2024, dated 21.3.2024, passed by the 3rd respondent and quash the same and consequently direct the 1st and 2nd respondent to grant ordinary leave for 90 days without escort to the detenu, Moganarangam, S/o.Valliyappan aged about 53 years, convict prisoner, bearing Convict 11795, confined at Central Prison, Vellore.

For Petitioner : Mr.M.Ezhilarasu

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

ORDER

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

On the ground that the petitioner requires the presence of her husband/prisoner for arranging funds for the medical treatment of his mother and further that her husband and herself will have to undergo medical examination for taking treatment to conceive a child, she sought leave for her husband. She had also given a representation on 11.03.2024 in this regard. Since the same has been rejected by the third respondent vide the impugned order, the petitioner has filed the present



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Writ Petition challenging the said order and further, seeking for grant of 90 days ordinary leave without escort for her husband.

2. We had directed the learned Additional Public Prosecutor to obtain the Probation Officer's report with regard to the claim made by the petitioner in her affidavit. Consequently, through a report dated 16.04.2024, the Probation Officer has rejected the claim of the petitioner on the ground that the prisoner's elder brother is taking care of their mother and further the petitioner has not produced any medical record to show that the Doctor has advised the petitioner and the prisoner to undergo medical check-up so that she could conceive a child.

3. The learned Additional Public Prosecutor, on instructions, submitted that the prisoner may be otherwise entitled for 40 days ordinary leave.

4. Though it is stated that the petitioner and the convict prisoner have to undergo medical treatment for conceiving a child, we are of the



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view that the request is also for the conjugal visit of the prisoner. A co-ordinate Bench of this Court in ***Mrs.Meharaj Vs. The State rep. By its Secretary to Government of Tamil Nadu*** [2018 SCC Online Mad 278] had occasion to consider whether the prisoner has a right to have conjugal visits. The relevant paragraphs of the said order are extracted below;

“...17.Conjugal visits of the spouse of the prisoners is also the right of the prisoner. This right is recognized at least in few countries of the world. When the prisons are overcrowded providing place for conjugal visits may be a problem; but the Government has to find out a solution. Today, conjugal visits are called extended family visits (or, alternatively, family reunion visits). The official reason for these extended family visits is three-fold : to maintain the relationship between the prisoner and the members of his family, to reduce recidivism, and to motivate or to provide an incentive for the good behavior;

18.Internationally, it becomes a well accepted rule that the correctional mechanism in criminal justice administration should comply with



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reformatory policies. International Covenant on Civil and Political Rights, 1966, Art. 10(3) mandates that the essential feature of correctional system should be reformation and rehabilitation of prisoners.

19. In 2015, Government of India passed legislation stating that conjugal visits are a right and therefore, it is not a privilege for married inmates. These inmates are also entitled, if they wish, to give their sperm to their spouse for artificial insemination.

20. Apart from that, even though the wife is not under incarceration, but a suffering person outside the prison on account of the marital relationship with the prisoner and her legitimate expectation to have a child cannot be declined.

Therefore, we are of the view that this also could be an extraordinary reason for grant of leave.

5. Accordingly, the impugned order dated 21.03.2024 passed by the third respondent in No.17277/tha.Ku3./2024, is hereby quashed. Consequently, there shall be a direction to the respondents to grant 21



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days ordinary leave to the convict prisoner namely Moganarangam, S/o.Valliyappan, aged about 53 years, Convict No.11795, confined at Central Prison, Vellore, “*without escort*” commencing from 22.04.2024 to 12.05.2024, with a further condition that he shall report before the jurisdictional Police i.e. Manimangalam Police Station, Kancheepuram District, twice a week on Tuesdays and Fridays at 10.30 am. After expiry of the Ordinary Leave, the convict prisoner shall surrender before the Jail Authority on 13.05.2024 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.

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

[M.S.R., J] [S.M., J]

17.04.2024

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes/No

Tsg

Note: Issue order copy on 18.04.2024



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

2.The Deputy Inspector General of Prison,
Vellore Range,
Vellore – 632 001.

3.The Superintendent,
Central Prison Vellore,
Vellore – 632 001.

4.The Public Prosecutor,
High Court, Madras.



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