



W.P.No.10951 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.06.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.10951 of 2024

Reka

...Petitioner

Vs.

1.The State represented by its,
The Deputy Inspector of General of Prison,
Coimbatore Zone,
Coimbatore.

2.The Superintendent,
Coimbatore Central Zone,
Coimbatore.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondents to grant ordinary leave for 30 days without escort to the detenue, Moganbabu, S/o.Paneerselvam, aged about 36 years, convict prisoner, bearing Convict No.23268 at Central Prison, Coimbatore.



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For Petitioner : Mr.M.Ezhilarasu
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 petitioner requires the presence of her husband/convict prisoner for making financial arrangements for their livelihood, she sought leave for her husband. The petitioner's husband was convicted for the offence under Section 395 read with Section 398 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1000/- each and in default to undergo 3 months simple imprisonment under Section 396 IPC and sentenced to undergo imprisonment for life and to pay a fine of Rs.1000/- and in default to undergo 3 months simple imprisonment, under Section 506(ii) IPC and sentenced to undergo 2 years rigorous imprisonment and to pay a fine of Rs.500/- and in default to undergo 3 months simple imprisonment. The sentences were ordered to run concurrently by the learned 1st Additional District Judge, Coimbatore, in S.C.No.138 of 2019 on 28.09.2021. The petitioner has given a representation on 04.04.2024, seeking for ordinary leave. Since the same



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has not been considered till date, the petitioner has filed the present Writ Petition.

2. The learned counsel for the petitioner submitted that the petitioner's husband has undergone almost three years of imprisonment.

3. The learned Additional Public Prosecutor has produced the particulars of the convict prisoner, which states that since the appeal of the convict prisoner is pending before this Court, he is not eligible for grant of leave. Further, the Probation Officer, though has enquired and found that the ground on which the prisoner seeks leave is genuine, has not recommended his case by quoting Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as 'the Rules') as a bar. Since she, along with her two daughters, aged about 12 and 10 years old, are struggling for survival, the physical presence of her husband is required to make arrangements for their livelihood.

4. This is not an isolated case where the Probation Officer, who has been assigned the task of verifying the genuinity of the ground for which



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leave is sought for by a prisoner, has exceeded his powers and has not recommended the case. We deem it appropriate to remind the Probation Officers of their limited duties to be performed, when a requisition for verification is referred to them by the Deputy Inspector General of Prisons or the Superintendent of Prisons.

5. Rule 22 of the Rules provides for the eligibility condition for grant of ordinary leave, which would be the guidelines for the Deputy Inspector General of Prisons to adopt, while considering an application for ordinary leave. Similarly, when an emergency leave is sought for, the Superintendent of Prisons shall look into the eligibility criteria, as provided for under Rule 6 for such consideration.

6. A petition for grant of ordinary leave, when submitted to either the Deputy Inspector General of Prisons or the Superintendent of Prisons, requires to be referred to the Probation Officer concerned for reports on the advisability of the ordinary leave of the prisoner, as provided under Rule 24 of the Rules. When such a reference has been made, the Probation Officer is mandated to personally enquire into and send his



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report to either the Deputy Inspector General of Prisons or the Superintendent of Prisons in Form-I. While making such an enquiry, if the Probation Officer feels that grant of leave to a prisoner is likely to involve any breach of peace, he is required to obtain the views of the concerned jurisdictional Sub-Inspector of Police in the same Form. On the contrary, if the Probation Officer is of the view that there is no likelihood of breach of peace, he shall send his report directly to the Deputy Inspector General of Prisons or the Superintendent of Prisons, as the case may be, without consulting the jurisdictional Sub-Inspector of Police. This is the limited role that is to be played by the Probation Officers, when a reference has been made to them on a petition given to the Deputy Inspector General of Prisons or the Superintendent of Prisons, seeking for grant of ordinary or emergency leave. The Probation Officers do not have any authority or powers at all to comment on the eligibility of a prisoner to seek for leave and no such provision has been made under the Rules to that effect.

7. Thus, the Probation Officer, having found the reason assigned by the petitioner, seeking for grant of leave for her husband, to be genuine,



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ought to have favourably recommended the case, with or without the views of the jurisdictional Police, if necessary.

8. The other objection, which the Additional Public Prosecutor has raised, is that since an appeal against the judgment of the trial Court has been preferred by the convict prisoner and the same is pending before this Court, he is not eligible for leave.

9. Though such an objection may forbid the prison authorities from granting leave, we have taken into consideration the distressed financial status of the petitioner's family, who is a household maid maintaining two very young children and struggling for her livelihood. We have also taken into consideration the Probation Officer's remarks that the reasons assigned by the petitioner are genuine. Thus, in exercise of our powers under Article 226 of the Constitution of India, we are inclined to grant 21 days of ordinary leave to the petitioner's husband/convict prisoner.

10. Accordingly, the petitioner's husband/convict prisoner, namely Moganbabu, S/o.Paneerselvam, aged about 36 years, Convict No.23268,



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shall be granted 21 days ordinary leave “*without escort*” commencing from 20.06.2024 to 10.07.2024, with a condition that he shall report before the jurisdictional Police, i.e., Singanallur Police Station, Coimbatore, twice a week on Fridays and Tuesdays at 10.30 A.M. After expiry of the ordinary leave, the convict prisoner shall surrender before the jail authority on 11.07.2024 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.

11. With the above directions, the Writ Petition stands allowed. No costs.

[M.S.R., J] [S.M., J]
11.06.2024

Index: Yes/No
Internet: Yes/No
Speaking/Non-speaking order
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Note: Issue Order Copy on 19.06.2024



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

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To

The State represented by its,

1.The Deputy Inspector of General of Prison,
Coimbatore Zone,
Coimbatore.

2.The Superintendent,
Coimbatore Central Zone,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

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