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W.P.No.14600 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

and

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.14600 of 2024

N.Jayakumar

... Petitioner

Vs.

1.The Deputy Inspector General of Prisons
Gandhi Irwin Road
Egmore, Chennai 600 008

2.The Superintendent of Prison
Central Prison-I, Puzhal
Chennai 600 066

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, directing the respondent to grant ordinary leave for 40 days for the petitioner namely Jayakumar, S/o.Narendra Kumar, aged about 46 years, Convict Prisoner, Convict No.2420, Central Prison, Puzhal.

For Petitioner	: Ms.S.Nadhiya
For Respondents	: Mr.A.Gokulakrishnan



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Additional Public Prosecutor
Assisted by Mr.C.Aravind

ORDER

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

The petitioner herein, is the convict prisoner. He was convicted for the offence under Section 376 I.P.C. and was sentenced to undergo 10 years R.I. and to pay a fine of Rs.20,000/-, in default to undergo 2 years R.I. and he further convicted under Section 302 I.P.C. and sentenced to undergo life imprisonment and to pay a fine of Rs.20,000/- in default to undergo 2 years R.I. The sentences were ordered to run consecutively, by the learned Additional Sessions Judge, Chennai in S.C.No.348 of 1998 dated 28.06.2001. Thereafter, the petitioner filed an appeal in CrI.A.No.760 of 2007 and his convictions and sentences were confirmed.

2. The learned counsel for the petitioner submitted that the petitioner had already undergone 26 years of actual imprisonment. He would further submit that the petitioner's mother aged about 71 years is suffering from health issues due to her old age and she is struggling to



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manage her day to day medical expenses. In this situation, the petitioner's mother needs the presence of her son to make such arrangements. Therefore, the petitioner has sent a representation dated 11.04.2024 to the respondents seeking 40 days ordinary leave under Tamil Nadu Suspension of Sentence Rules 1982. Since the same was not considered and rejected by the respondents, the present Writ Petition has been filed.

3. The learned Additional Public Prosecutor on instructions submitted that when the prisoner was released on emergency leave granted to him for three days on 28.07.2012, he had failed to return to the prison on 01.08.2012 and thereby absconded. In this connection, a case was registered against him in Crime No.1662 of 2012 and he was convicted by the XXII Metropolitan Magistrate Court, Saidapet and sentenced to undergo Rigorous Imprisonment for three months under Section 224 I.P.C. On this ground also, the petitioner's representation dated 11.04.2024 was not considered for the grant of ordinary leave.

4. We are not in agreement with such a submission made by the learned Additional Public Prosecutor. When a prisoner commits a prison



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offence, and is punished for an offence under Section 224 I.P.C., and thereafter, when he completes the sentence, his involvement in such offence can be quoted as an embargo only for the next five years, as per the circular of the Inspector of General of Prisons, dated 15.12.2017. The Coordinate Bench of this Court had an occasion to deal with this aspect in ***W.P.(MD).No.20720 of 2023*** dated 08.09.2023 in ***Dhanalakshmi Vs.The Principal Secretary to Government and others*** in the following manner:

*"3.1. Rule 21(d)(5) of the Tamil Nadu Suspension of Sentence Rules,1982, places an embargo for grant of ordinary leave to prisoners, who had committed a prison offence. In the case of **T.Pechiyammal Vs. The State represented by the Secretary to Government of Tamil Nadu, Home Department, Fort St.George, Chennai – 600 009 and others** passed in **W.P.(MD).No.20720 of 2023 W.P.No.23341 of 2023 vide order dated 09.08.2023**, the scope of rejecting a request for grant of ordinary leave on the ground that the prisoner is convicted for the offence under Section 224 IPC was dealt with and this Court held that when the sentence undergone by such prisoner for the offence that has already ended, the Rule cannot be quoted as an embargo for*



refusing the grant of ordinary leave. The relevant portion of the order reads as follows:

“10....

i) As already alluded to supra, the impugned order has been made solely on the basis of Rule 21(i) of said Rules. To be noted, Rule 21(i) of said Rules has already been extracted and set out supra. A careful reading of Rule 21(i) makes it clear that it talks about cases where it is verily believed that the prisoner may not report back to the prison after completion of the leave period. The plain language of sub-rule (i) of Rule 21 of said Rules is very clear that it is futuristic. Therefore, Rule 21(i) cannot be applied for an episode that happened in the past that more than a decade ago as in the case on hand. This Court has no difficulty in saying that Rule 21(i) will not apply to a case where a prisoner had in the past not returned back to the prison after completion of a leave period. To add with W.P.(MD).No.20720 of 2023 specificity to what is being articulated here, we make it clear that Rule 21(i) can be invoked when the Authority dealing with the leave application of a prisoner is of the considered view that if leave is granted, the prisoner may not return after the completion of the leave period;

ii) As a corollary to the previous discussion and dispositive reasoning, a careful perusal of the impugned order makes it clear that it proceeds solely on the basis of an episode which happened in 2010 for which a case was registered. To put it differently or in other words, the impugned order does not say that the convict prisoner is not likely to return if his prayer for 40 days ordinary leave without escort is acceded to. This by itself leaves the impugned order vitiated and



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leaves it liable to be quashed by us in this certiorari legal drill;

iii) Be that as it may, we also notice that the life convict has been granted leave on as many as 17 occasions in all (thus far) in the 23 years of sentence. To be noted, of these 17 occasions, on 12 occasions emergency leave was granted by the Executive Arm, on one occasion ordinary leave was granted by the Executive Arm and on four occasions, ordinary leave was granted by other Hon'ble Division Benches of this Court.”

3.2. This apart, we are of the view that when the prisoner has already been punished for an offence under Section 224 IPC, refusing to grant leave on this ground may amount to double jeopardy, which is impermissible in law. At this juncture, the learned Additional Public Prosecutor appearing for the respondents brought to our notice about the Circular of the Inspector General of Prisons dated 15.12.2017, which directs the prison authorities not to grant any sort of leave to the prisoners, who were absent on leave previously and are facing/faced cases under Section 224 IPC in the past five years preceding the date of commencement of leave. A bare reading of the Circular would relate only to cases where the prisoner had faced a case under Section 224 IPC in the past five years. Admittedly, the sentence imposed on the prisoner was in the year 2009 and since five years have lapsed, the Circular



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cannot be put against the prisoner. On these grounds, the first reason assigned by the respondents for rejecting the petitioner's request, cannot be sustained

5. Thus, the objection of the learned Additional Public Prosecutor, quoting the petitioner's punishment under Section 224 I.C.P. as an embargo, is opposed to the very circular of the Inspector General of Prisons, dated 15.12.2017. As such, we are inclined to consider the prayer sought for by the petitioner in this Writ Petition on certain conditions.

6. Accordingly, the respondents herein, are directed to grant 40 days ordinary leave **“without escort”** to the petitioner / convict prisoner namely Jayakumar, S/o.Narendra Kumar, aged about 46 years, Convict Prisoner, Convict No.2420 who is confined in Central Prison, Puzhal, Chennai, commencing from 26.06.2024 to 04.08.2024. During the period of leave, the convict prisoner shall report before the jurisdictional Police viz. R5, Virugambakkam Police Station, Chennai twice a week on Tuesdays and Fridays at 10.30 am. After expiry of the Ordinary Leave,



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the convict prisoner shall surrender before the Jail Authority on 05.08.2024 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.

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

[M.S.R., J]

[S.M., J]

20.06.2024

Index: Yes/No
Neutral Citation

kas

Note: Issue Order Copy on 25.06.2024

To

1.The Deputy Inspector General of Prisons
Gandhi Irwin Road
Egmore, Chennai 600 008

2.The Superintendent of Prison
Central Prison-I, Puzhal



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Chennai 600 066

3.The Public Prosecutor
High Court of Madras
Chennai 600 104



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