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W.P.No.14618 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.14618 of 2024

F.Surheka

... 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 of General of Prison
Chennai Range, Egmore
Chennai 600 008

3.The Superintendent
Puzhal, Central Prison (1)
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 respondents



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to grant ordinary leave for 30 days without escort to the detenu, Warren Craig Ghani, S/o. Francis Stanley Ghani, aged about 24 years, Convict No.9746, detained at Central Prison, Chennai.

For Petitioner : Mr.S.Manoharan
For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

This Writ Petition has been filed for the issuance of a direction, directing the respondents to grant ordinary leave for 30 days without escort to the detenu, Viz. Warren Craig Ghani, S/o. Francis Stanley Ghani, aged about 24 years, Convict No.9746, detained at Central Prison, Chennai.

2. Learned counsel for the petitioner submitted that the petitioner in recent times is facing health complications like giddiness, tiredness and restrictions of movements. She is also facing difficulty in standing



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and sitting continuously. She has also developed urinary infection and uterus problem, for which her doctor advised for surgery. Hence, she has sought for an ordinary leave for her son.

3. The learned Additional Public Prosecutor submitted a Probation Officer's report 04.06.2024, in which it is stated that the prisoner is convicted under NDPS Act, for smuggling commercial quantity of Narcotic and Psychotropic Substances and hence he is not eligible for ordinary leave as per Rule 21(h)(3) of Tamil Nadu Suspension of Sentence 1982 as amended in G.O.(Ms)No.205 Home (Prison-V) Department dated 25.04.2022. It is also stated by the Probation Officer that as per 32(A) of NDPS Act, 1985, the prisoners convicted under NDPS Act are not eligible for any suspension, remission or commutation of sentence. The report further states that as per Rule 22(b) of Tamilnadu Suspension of Sentence Rules 1982 as amended in G.O.(Ms).No.205, Home (Prison-V) Department, dated 25.04.2022, the prisoners who are sentenced to above 05 years upto 14 years should complete 02 years imprisonment from the date of conviction to be eligible for ordinary



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leave. Since the above mentioned prisoner has not completed 02 years, he is not eligible for ordinary leave at this point of time.

4.This Court cannot find fault with the reasons assigned by the Probation Officer in his report. At the same time, the Probation Officer has also recommended for his leave and stated that the reasons assigned by the petitioner in her representation are genuine.

5. 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.

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



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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, this Courts deems it fit to consider the representation of the petitioner and consequently, there shall be a direction to the respondents herein, to grant 28 days ordinary leave “*without escort*” to the convict prisoner namely Warren Craig Ghani, S/o.Francis Stanley Ghani, aged about 24 years, Convict No.9746, commencing from 26.06.2024 to 23.07.2024, with a condition that the convict prisoner shall report before the jurisdictional Police i.e. Kannathur Police Station, Chennai, daily at 10.30 a.m. After expiry of the Ordinary Leave, the convict prisoner shall surrender before the Jail Authority on 24.07.2024 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.

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

[M.S.R., J]

[S.M., J]

20.06.2024

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Note: Issue order copy on 25.06.2024



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

kas

To

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

2.The Deputy Inspector of General of Prison
Chennai Range, Egmore
Chennai 600 008

3.The Superintendent
Puzhal, Central Prison (1)
Chennai – 600 066

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

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20.06.2024