



W.P. No.15144 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.07.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P. No.15144 of 2024

Usena

...Petitioner/Mother of the Detenu

Vs.

1.The State represented by its,
The Deputy Inspector General of Prison,
Gandhi Irwin Road, Egmore,
Chennai – 600 008.

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

...Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ or direction or any other writ in nature of Writ of Mandamus, directing the respondents to grant ordinary leave for 30 days without escort to the detenu, Mohammed Irfan, S/o.Mohammed Bashir aged about 28 years, bearing Convict No.9993 confined at Central Prison, Puzhal.



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For Petitioner : Ms.S.Sadhana
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 Writ of Mandamus, directing the respondents to grant ordinary leave for 30 days without escort for petitioner's son namely Mohammed Irfan S/o.Mohammed Bashir aged about 28 years, Convict prisoner, Convict No.9993, confined at Central Prison, Puzhal.

2. Learned counsel for the petitioner submitted that the petitioner got severe chest pain, 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 03.06.2024, 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



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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 up to 14 years should complete 02 years imprisonment from the date of conviction to be eligible for ordinary 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.*



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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 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 15 days ordinary leave *“without escort”* to the convict prisoner namely Mohammed Irfan, S/o.Mohammed Bashir aged about 28 years, bearing Convict No.9993 confined at Central Prison, Puzhal, commencing from 15.07.2024 to 29.07.2024, with a condition that the convict prisoner shall report before the jurisdictional Police i.e. B1 North Beach Police Station, Chennai daily at 10.30



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a.m. After expiry of the Ordinary Leave, the convict prisoner shall surrender

before the Jail Authority on 29.07.2024 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.

(M.S.R., J.) (S.M., J.)
10.07.2024

dk

Internet : Yes

Index : Yes / No

Note : Issue order copy by 12.07.2024

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

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

3. The Public Prosecutor
High Court, Madras.



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