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W.P.No.18574 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 23.07.2024

PRONOUNCED ON : 25.07.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

W.P.No.18574 of 2024

Vijayakumar

...Petitioner/Convict Prisoner

vs.

1.The Deputy Inspector General of Prison,
Chennai Range,
Prison Head Quarters,
Whannels Road, Egmore,
Chennai – 600 008.

2. The Superintendent of Prisons,
Central Prison – 1,
Puzhal, Chennai – 600 066.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the respondents to grant ordinary leave for 28 days without escort to the petitioner namely Vijaya Kumar S/o. Mookaliyathevar, aged 50 years, Convict Prisoner, Convict No.10421, Central Prison, Puzhal.



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W.P.No.18574 of 2024

For Petitioner :: Ms.S.Nadhiya

For Respondents :: Mr.A.Gokula Krishnan
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

The prayer in the present writ petition is for grant of ordinary leave for 28 days for the petitioner/convict prisoner, who has been convicted and sentenced for the offences under the NDPS Act and confined at Central Prison, Puzhal, Chennai.

2. The petitioner is convicted in two cases under the NDPS Act. In C.C.No.192 of 2015, he was convicted by the Special Court under EC and NDPS Act, Madurai on 28.11.2023 and sentenced to undergo 10 years of imprisonment and to pay a fine of Rs.1,00,000/-. In C.C.No.39 of 2020, he was convicted by the Special Court under EC and NDPS Act, Chennai on 09.05.2024 and sentenced to undergo 12 years of imprisonment.

3. The learned counsel for the petitioner submitted that the petitioner has been in prison for the past five years and to make financial arrangements



W.P.No.18574 of 2024

for his daughter's educational expenses and also for the medical expenses of his mother, he had sent a representation dated 08.06.2024 to the respondents, for a grant of 28 days of leave without escort.

4. The learned Additional Public Prosecutor produced the copy of the Probation Officer's report dated 19.07.2024, wherein he has not recommended the grant of leave to the convict prisoner. He further raised an objection, saying that the petitioner/convict prisoner would not be eligible for leave as he had not completed the minimum period of two years that qualifies him for ordinary leave, as per Rule 22 (1) (b) of the Tamil Nadu Suspension of Sentence Rules, 1982.

5. Heard the learned counsel for the petitioner/convict prisoner and the learned Additional Public Prosecutor appearing for the respondents/State.

6. The petitioner/convict prisoner was sentenced to 10 years imprisonment in one case and 12 years imprisonment in another case and therefore, he ought to have completed incarceration of two years as a convict



W.P.No.18574 of 2024

prisoner for being eligible for ordinary leave. The explanation to Rule 22

(1) of the Tamil Nadu Suspension of Sentence Rules, 1982, makes this

position very clear. The said rule and explanation read as follows:

"22. Eligibility for ordinary leave.- (1) No prisoner shall be granted ordinary leave unless he has been sentenced by a court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed.-

(a) one year of imprisonment in cases of prisoners sentenced to imprisonment for a period not exceeding five years;

(b) two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years;

(c) three years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding fourteen years and for life.

Explanation.- The period of actual imprisonment shall be counted from the date of admission to prison as convict.

7. We find that the petitioner was convicted on 28.11.2023 and therefore, he was in prison for more than seven months as a convict prisoner. Hence, if the literal meaning of the provisions is adopted/applied, the prisoner would be ineligible for leave until he completes two years as a convict prisoner. Factually, he has been in continuous detention for a period



W.P.No.18574 of 2024

of two years and eight months, including his detention during the trial.

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8. Rule 40 of the above mentioned Rules empowers the State Government to exempt the prisoner from all or any of the provisions of these rules. We are of the view that Rule 40 of the above mentioned Rules can be invoked by the authorities in cases where the minimum period prescribed in Rule 22 (1) of the Tamil Nadu Suspension of Sentence Rules, 1982, is served by the prisoner, continuously from the date of arrest till he makes a request for leave. For instance, if a prisoner was arrested during the investigation on 01.01.2022, not released on bail during trial and convicted on 01.01.2023 and sentenced to 10 years of rigorous imprisonment and makes an application for leave on 01.02.2024, he would be entitled to seek leave on the ground that he had suffered two years of imprisonment and the authorities would be well within their powers to invoke Rule 40, for granting leave to such prisoners. However, if there is a break and during the remand period the prisoner is in custody for two years and thereafter released on bail before his conviction, then he would not be entitled to the benefit that we had referred to above.



W.P.No.18574 of 2024

9. In any case, in exercise of our powers under Article 226 of the Constitution of India, we would have granted leave, since the petitioner/convict prisoner has been in continuous detention for more than two years and eight months, though, he had been in prison as a convict prisoner, only for seven months.

10. However, in the instant case, the Probation Officer, has not recommended the grant of leave to the petitioner/convict prisoner and hence, we are not exercising our powers under Article 226 of the Constitution of India, to grant leave.

11. In the result, this Writ Petition stands dismissed. It is open to the petitioner/convict prisoner to make a fresh application for leave as and when the need arises.

(M.S.R.,J.)

(S.M.,J.)

25.07.2024

ars

Index : Yes / No

Speaking / Non-Speaking Order



W.P.No.18574 of 2024

Neutral Citation : Yes / No

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To

1.The Deputy Inspector General of Prison,
Chennai Range,
Prison Head Quarters,
Whannels Road, Egmore,
Chennai – 600 008.

2. The Superintendent of Prisons,
Central Prison – 1,
Puzhal, Chennai – 600 066

3. The Public Prosecutor,
High Court, Madras.



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W.P.No.18574 of 2024

M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

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Pre-delivery order in
W.P.No.18574 of 2024

25.07.2024