



WEB COPY



W.P.No.19679 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.19679 of 2024

Mrs.Bharathi

...Petitioner

VS.

1.The State represented by its,
The Home Secretary (Prison Department),
St.George Fort, Chennai – 600 009.

2.The Deputy Inspector General of Prison,
Office of Deputy Inspector General of Prison,
Coimbatore Range, Coimbatore – 641 018.

3.The Superintendent of Prison,
Central Prison at Salem, Hastampatty,
Salem – 636 007.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, to direct the respondents to grant 28 days of ordinary leave without escort to the husband of the petitioner namely, Mr.Prakash @ Kozhi Prakash S/o. Sathiyamoorthi (CT No.974) by considering the petitioner's representation dated 20.06.2024.

For Petitioner : Mr.M.Mohamed Saifulla



WEB COPY



W.P.No.19679 of 2024

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

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

This writ petition has been filed to grant 28 days of ordinary leave without escort to the Convict Prisoner/husband of the petitioner, viz., Mr. Prakash @ Kozhi Prakash S/o. Sathiyamoorthi (CT No.974), now confined at Central Prison, Salem.

2. Heard the learned counsel for the petitioner and Mr.A.Gokulakrishnan learned Additional Public Prosecutor for the respondents.

3. According to the learned counsel for the petitioner, the petitioner/wife of the prisoner is residing with her children, and is suffering from various diseases and she requires medical attention and treatment. Hence, the petitioner prayed for grant of 28 days of ordinary leave, without escort to her husband/prisoner.

4. Learned Additional Public Prosecutor submitted that prisoner is facing



W.P.No.19679 of 2024

trial in S.C.No.85 of 2015 on the file of learned I Additional Sessions Judge, Salem and not eligible for grant of leave as per Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982. He further produced a copy of the Probation Officer's report dated 20.07.2024, wherein the Probation Officer has not recommended for grant of leave to the prisoner.

5.It is true that Rule 35 prohibits for grant of leave to a prisoner on whom cases are pending trial. However, this provision cannot be termed as an absolute bar or mandatory in nature, since Rule 40 empowers the Government to exempt any person from this Rule. Further, though the Probation Officer had not recommended for grant of ordinary leave, we have taken note of the fact that the prisoner has been in prison for more than seven years. In consideration of this factor, we are inclined to exercise our powers under Article 226 of the Constitution of India to grant seven (7) days of ordinary leave, ***without escort***, to the Convict Prisoner.

6. Accordingly, we permit the petitioner's husband/Convict Prisoner



W.P.No.19679 of 2024

namely Prakash @ Kozhi Prakash S/o. Sathiyamoorthi (CT No.974), now confined at Central Prison, Salem, to avail Ordinary Leave for a period of seven (7) days “**without escort**”, on the following conditions.

(i) Respondents are directed to release the Convict Prisoner viz., Prakash @ Kozhi Prakash S/o. Sathiyamoorthi, on Ordinary Leave for a period of 7 days i.e., from 05.08.2024 to 11.08.2024.

(ii) The Convict Prisoner shall be released on 05.08.2024 at 10.00 am and surrender before the Superintendent of Prison, Central Prison, Salem, on 11.08.2024 at 05.30 p.m.

(iii) The Convict Prisoner is directed to report before the Kannankurichi Police Station, Salem District, daily at 10.00 a.m., and appear before the trial Court in S.C.No.85 of 2015 on the file of the learned I Additional Sessions Judge, Salem, on all the hearing dates, during the period of leave.

(iv) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.

7. With the above directions, the writ petition stands allowed.



WEB COPY



W.P.No.19679 of 2024

(M.S.R.,J.) (S.M.,J.)
01.08.2024

dk

Index:yes/no

Internet:yes/no

Note: Issue Order copy on 02.08.2024

To

- 1.The Home Secretary (Prison Department),
St.George Fort, Chennai – 600 009.
- 2.The Deputy Inspector General of Prison,
Office of Deputy Inspector General of Prison,
Coimbatore Range, Coimbatore – 641 018.
- 3.The Superintendent of Prison,
Central Prison at Salem, Hastampatty,
Salem – 636 007.
- 4.The Public Prosecutor
Madras High Court.



WEB COPY



W.P.No.19679 of 2024

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

dk

W.P.No.19679 of 2024

01.08.2024