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W.P.No.23319 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.23319 of 2024

Keerthna

... Petitioner

Vs.

1.The Deputy Inspector General of Prisoner,
Prison Head Quarters,
Egmore, Chennai.

2.The Superintendent of Prison,
Central Prison for Women,
Puzhal,
Chennai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondents to grant leave for further 21 days to the petitioner Mother namely Krishnaveni wife of Murugesan aged about 50 years, based on the representation of the petitioner dated 05.08.2024.



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For Petitioner : Mr.M.Madhankumar

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The Writ of Mandamus instituted seeking direction to the respondents to grant leave for further 21 days to the petitioner's mother Krishnaveni wife of Murugesan aged about 50 years / convict prisoner.

2. The application submitted by the petitioner on 05.08.2024, since not considered, the writ petition came to be instituted.

3. The learned counsel for the petitioner would submit that the petitioner is the daughter of the convict prisoner and is going to undergo surgery for renal dysfunction. To that effect the petitioner has furnished doctor certificate.

4. Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing on



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behalf of the respondents would oppose by stating that the mother of the petitioner / convict prisoner had already underwent imprisonment for a period of 2 Years, 11 Months and 26 Days. The convict had already availed the benefit of Ordinary Leave for 21 days from 22.07.2024 to 11.08.2024 pursuant to the orders of this Court dated 16.07.2024 in W.P.No.16579 of 2024. Thus, the present writ petition is to be rejected.

5. The learned Additional Public Prosecutor mainly contended that a Criminal Appeal in CrI.A.No.437 of 2021 is pending before the High Court of Madras. During the pendency of the appeal, leave application cannot be considered by the Executives, since in the case of *Manokaran vs. State of Tamil Nadu*¹, the Hon'ble Supreme Court had raised doubt about the powers conferred on the authorities to grant leave to the convict prisoner during the pendency of appeal under the Tamil Nadu Suspension of Sentence Rules, 1982 [hereinafter referred as “TNSS Rules, 1982”].

6. The TNSS Rules, 1982 was issued in G.O.Ms.No.1668, Home dated 2nd July, 1982 in exercise of the powers conferred under Sub Section (5) of Section 432 of Code of Criminal Procedure, 1973. The said Rule is

¹ [CrI.A.No.866 of 2000]



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applicable to the convict prisoners.

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7. Rule 2(4) defines “Sentence” means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate of more sentence than one. Sentence in default of fine shall not be taken into consideration while fixing eligibility for being released on leave. Rule 3 speaks about “Leave is not a right”. Rule 5 provides “Kinds of Leave” i.e., emergency leave and ordinary leave. Rule 6 denotes “Grounds for grant of emergency leave”. Rule 10 contemplates “Authority who may grant emergency leave”.

8. The entire reading of the Rules aforesaid would indicate that it speaks about grant of leave to the convict prisoner and the said object is more amplified in Rule 35, where no prisoner on whom a case is pending trial shall be granted leave. Rule 35 speaks about pending cases and not about pending appeals. Further, the provision states that during pendency of trial, the prisoner is not eligible for grant of leave. Thus, it speaks about under trial prisoners and not about convict prisoners. An under trial prisoner is not entitled to submit an application under the provisions of the TNSS Rules, 1982.



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9. Rule 22 stipulates “Eligibility for ordinary leave”. Sub Rule (1) to Rule 22 states that “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. The period of actual imprisonment shall be counted from the date of admission to prison as convict.

10. Rule 22 also in unambiguous terms enumerates that a prisoner must be sentenced by a Court of Law. Thus, a convict prisoner alone is eligible to submit an application to the competent authority seeking the benefit of ordinary leave or emergency leave under the TNSS Rules, 1982.



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The pending cases referred in Rule 35 would indicate only the pending trial cases and about under trial prisoners. However, pendency of an appeal before the Appellate Court is not a bar for submitting an application seeking leave under the said Rules.

11. The authorities competent are empowered to consider leave application even during the pendency of the appeal. Each and every such application need not be kept pending unnecessarily or those convict prisoners need to be driven to the High Court for filing a writ petitions seeking ordinary or emergency leave as the case may be.

12. Thus, we have no hesitation in forming an opinion that the provisions of the TNSS Rules, 1982 would be applicable to the convict prisoners and their eligibility for grant of ordinary or emergency leave is to be considered by scrupulously following the eligibility as contemplated under the said Rules by the Executive Authorities. Pending trial alone is a bar under Rule 35 and pendency of an appeal is not a bar to consider the application, if any submitted under the said Rules. The application submitted under the TNSS Rules, 1982 has no implication with reference to the petition



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filed seeking suspension of sentence under Section 389(1) of Criminal Procedure Code. Both are distinguishable and need not be mixed up for the purpose of considering the application submitted under the TNSS Rules, 1982.

13. In the present case, admittedly, the application is submitted under the TNSS Rules, 1982. The learned Additional Public Prosecutor would object only on the ground that the convict has already availed leave from 22.07.2024 to 11.08.2024. However, the learned counsel for the petitioner would submit that the petitioner, who is the daughter of the convict prisoner is going to undergo renal surgery and therefore, the presence of the convict, who is her mother is required.

14. Considering the nature of reasons furnished in the application we are inclined to permit the petitioner's mother / convict prisoner i.e., Krishnaveni wife of Murugesan aged about 50 years, confined at Central Prison for Women, Puzhal, to avail Ordinary Leave for further period of twenty one (21) days without escort, on the following conditions:

(1) The respondents are directed to release the Convict Prisoner viz.,



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Krishnaveni wife of Murugesan aged about 50 years, confined at Central Prison for Women, Puzhal, on Ordinary Leave for a period of twenty one (21) days without escort i.e., from 24.08.2024 to 13.09.2024.

- (2) The Convict Prisoner shall be released on 24.08.2024 at 10.00 A.M. and surrender before the Superintendent of Prisons, Central Prison for Women, Puzhal, on 13.09.2024 at 05.00 P.M.
- (3) The Convict Prisoner is directed to report before the Inspector of Police, Pulianthope Police Station P1, Chennai once in a week i.e., on every Friday at 05.00 P.M, during the period of leave.
- (4) During the leave period, the Convict Prisoner shall abide by all the conditions prescribed in the Jail Manual.
- (5) 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.

15. However, while considering the extraordinary circumstances and the relationship between the petitioner and the convict prisoner, this court is inclined to grant the aforesaid relief.



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16. With the above directions, this Writ Petition stands disposed of.

No costs.

[S.M.S., J.] [R.S.V., J.]
19.08.2024

Jeni

Index : Yes

Neutral Citation : Yes / No

Speaking order / Non-speaking order

To

1.The Deputy Inspector General of Prisoner,
Prison Head Quarters,
Egmore, Chennai.

2.The Superintendent of Prison,
Central Prison for Women,
Puzhal,
Chennai.

3.The Public Prosecutor,
High Court, Madras.



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and
R.SAKTHIVEL, J.

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