



W.M.P.No.31976 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.M.P.No.31976 of 2023
in W.P.No.32354 of 2023

Shakila Banu

...Petitioner / Sister of the detenue

VS.

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

2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai-600 008.

3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore - 641 018.

...Respondents



W.M.P.No.31976 of 2023

Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, seeking to grant interim bail until disposal of the WP.No.31976 of 2023 pending before this Court, to the brother of the petitioner/ convict, Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682), aged about 46 years, confined in Central Prison Coimbatore.

For Petitioner : Mr.Mohamed Saifulla

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor
Assisted by Mr.C.Aravind

ORDER

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

This Writ Miscellaneous Petition has been filed to release the detenue, Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682), aged about 46 years, confined in Central Prison Coimbatore, on interim bail until the disposal of the Writ Petition.

2.The grievance of the detenue in the main Writ Petition is that though he was entitled to be released prematurely, his request has not been acted



W.M.P.No.31976 of 2023

upon, and hence the main Writ Petition has been filed. The present application is one seeking for an interim bail.

3. Heard the learned counsel for the petitioner and Mr.E.Raj Thilak, the learned Additional Public Prosecutor for the respondents.

4. The learned Additional Public Prosecutor, on instructions, submitted that the request of the detainee has already been rejected by the Government. However, at present, the Government has decided to re-examine the request and place it before the competent committee for reconsideration. He also submitted that he has also preferred an appeal before the Supreme Court as against the order of conviction, which is pending.

5. In view of the pendency of the appeal before the Supreme Court, granting of interim bail may not be appropriate. However, it has been brought to our notice that some of the co-accused involved in the subject case were already granted interim bail. Now that we are aware that the



W.M.P.No.31976 of 2023

appeal is pending, we deem it appropriate to modify the prayer sought for in the present application to one of granting ordinary leave, in exercise of our powers under Article 226 of the Constitution of India.

6. Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 prescribes the eligibility for the grant of ordinary leave. As per Sub Rule 22 (2) of the Tamil Nadu Suspension of Sentence Rules, life convicts who have been sentenced for over and above 14 years would be entitled to a maximum of 40 days of ordinary leave in one spell or in two spells of any duration. In the case on hand, the petitioner has been convicted and has been undergoing a sentence for more than 20 years.

7. Likewise, Rule 20 Sub Rule 1 (i) of the Tamil Nadu Suspension of Sentence Rules provides for the grant of ordinary leave to a prisoner for making arrangements for the livelihood of his/her family for the settlement of life from the release. We are of the view that the petitioner would be entitled for grant of such ordinary relief under this provision.



W.M.P.No.31976 of 2023

WEB COPY

8. Therefore, in exercise of our powers, we are inclined to allow this Writ Miscellaneous Petition and permit the petitioner's brother / convict prisoner i.e., Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682), aged about 46 years, confined in Central Prison, Coimbatore, to avail ordinary leave for a period of 40 days without escort, on the following conditions.

(i) Respondents are directed to release the Convict Prisoner viz., Mohamed Rafiq, S/o.Mohamed Sali (CT No.10682), aged about 46 years, confined in Central Prison Coimbatore, on Ordinary Leave for a period of 40 days i.e., from 13.01.2024 to 21.02.2024.

(ii) The Convict Prisoner shall be released on 13.01.2024 at 10.00 am and surrender before the Superintendent of Prisons, Central Prison, Coimbatore, on 21.02.2024 at 05.00 p.m.

(iii) The Convict Prisoner is directed to report before the Pothanur Police Station, Coimbatore, twice a week i.e., on every Monday and Thursday at 05.00 pm, during the period of leave.



W.M.P.No.31976 of 2023

(iv) During the period of leave, the Probation Officer shall furnish a report touching upon the conduct of the detenue whilst he was on leave.

(v) 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.

9. With the above directions, the Writ Miscellaneous Petition stands allowed.

List the main Writ Petition on 20.02.2024.

(M.S.R.,J.) (S.M.,J.)
11.01.2024
(2/4)

Note to Registry:

1. Issue order copy by 12.01.2024.
 2. Upload the order copy forthwith.
- Anu



W.M.P.No.31976 of 2023

WEB COPY

To

1.The Home Secretary,
Prison Department (IV), St.George Fort,
Secretariat, Chennai - 600 009.

2.The Director General of Prison,
Office of Director General of Prison,
Gandhi Irwin Road, CMDA Building,
Chennai-600 008.

3.The Superintendent of Prison,
Office of the Superintendent of Prison,
Central Prison at Coimbatore,
Coimbatore - 641 018.

4.The Inspector of Police,
Pothanur Police Station,
Coimbatore.

5. The Public Prosecutor,
High Court, Madras.



WEB COPY



W.M.P.No.31976 of 2023

M.S.RAMESH, J
and

SUNDER MOHAN, J

Anu

W.M.P.No.31976 of 2023
in W.P.No.32354 of 2023

11.01.2024

(2/4)