



W.P.No.34362 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.34362 of 2023

Tmt.Padmavathi

...Petitioner

vs.

- 1.The Chief Secretary,
Secretariat,
Union Territory of Puducherry,
Puducherry.
- 2.The Director General of Police,
Puducherry.
- 3.The Inspector General of Prison,
Central Prison, Kalapattu,
Puducherry-605 014.
4. The Chief Superintendent of Prison,
Central Prison, Kalapattu,
Puducherry-605 014.



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5. The Superintendent of Prison,
Central Prison, Kalapattu,
Puducherry-605 014.

6. The Inspector of Police,
Odiansalai Police Station,
Puducherry,
Cr.No.104 of 1998.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus directing the respondents to grant 30 days Ordinary Leave to the petitioner's husband Mani @ Manikandan (Male/43 years) (Prisoner No.4954), who is confined in Central Prison, Kalapattu, Puducherry based upon the application of the petitioner dated 06.11.2023 to attend and make financial arrangements for the treatment of his minor son Adithya Varma (aged 3 years) who is critically suffering from fits and paralysis and renovation of house which is in dilapidated condition.

For Petitioner : Mr.S.Doraisamy
Senior Counsel for
Mr.V.Elangovan

For Respondents : Mr.K.S.Mohandass
Additional Public Prosecutor(Pondy.)
Assisted by
Ms.Dhanalachumy



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ORDER

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

On the ground that the petitioner's son Minor Adithya Varma, aged about 3 ½ years, is suffering from Febrile Seizures ADHD, she seeks for grant of leave for her husband, who is a life prisoner and confined in Central Prison, Kalapattu, Puducherry.

2. The learned Additional Public Prosecutor (Puducherry) submitted that there are several cases pending against the petitioner's husband and in view of Rule 845 of Puducherry Prison Rules, 2021, the petitioner's husband is not entitled for grant of leave. However, the learned Additional Public Prosecutor has also produced the Health Status Report of the petitioner's son Minor Adithya Varma, which evidences that the child is a known case of Febrile Seizures ADHD with 3rd episode of seizure.

3. On an earlier occasion, when the prisoner himself approached this



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Court, seeking for Emergency Leave for the medical reason of his son, a similar objection was raised by the learned Additional Public Prosecutor quoting Rule 845 of Puducherry Prison Rules, 2021 as Bar. A co-ordinate Bench of this Court had overruled the objection and granted Emergency Leave to the petitioner's husband, through the order dated 03.10.2023 in W.P.No.27803 of 2023, in the following manner:-

“3. However, the petition is opposed by the respondents' counsel on the ground that as per Rule 845 of the Puducherry Prison Rules, 2021, no prisoner on whom a case is pending trial shall be granted leave. In the counter affidavit, a list of 20 cases is given. Though majority of the cases have been disposed of either by convicting or by acquitting the petitioner, few cases are still pending. It is stated by the respondents that three cases are pending in Crime No.101/2017 (Odiansalai Police Station, Puducherry), Crime No.185/2021 (Mudaliyarpur Police Station, Puducherry) and Crime No.876/1010 (Kottakuppam Police Station, Tamil Nadu). Except referring to the Rule which prohibits grant of leave, no other reasons are cited for denial of grant of leave to the detenu.



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When the detenu is facing trial in other criminal cases, the objection is not on any other tenable reasons preventing us from exercising our prerogative power but by citing Rule 845. Despite citing the same Rule earlier, this Court granted leave. It is seen that the detenu was granted leave earlier on two occasions and he has complied with the conditions. Absolutely, there is no remarks which would expect this Court to mind while granting leave in this occasion. Though there was life threat to the detenu earlier, nothing untoward was reported.

4. Despite similar objections were raised by the respondents earlier, this Court considered the objection and granted leave in exercise of its prerogative while exercising power under Article 226 of the Constitution of India. This Court, considering the peculiar facts and circumstances of the case, is inclined to grant five days emergency leave to the petitioner with minimum escort subject to the usual conditions that can be imposed by the second respondent. The petitioner shall be released from the prison at 10.00 a.m., on 09.10.2023 and he shall



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return back to the prison at 7.00 p.m., on 13.10.2023.

The second respondent is directed to provide minimum escort to the convict from the Central Prison at the time he leaves the prison and till such time he is taken back to the prison. It is clarified that the cost involved in providing escort shall be borne by the petitioner. The writ petition stands disposed of.”

4. The aforesaid extract is self explanatory. Since we are convinced that the petitioner's son Adithya Varma is under medical ailment, the presence of her husband may be necessary.

5. In this background, we invoke the powers under Article 226 of the Constitution of India to entertain the pleas sought for by the petitioner and grant Emergency Leave to her husband Mani @ Manikandan, 43 years bearing Prisoner No.4954, confined at Central Prison, Kalapattu, Puducherry for a period of 10 days with minimum escort, on the following conditions.

(i) Respondents are directed to release the Convict Prisoner Mani @ Manikandan, aged about 43 years, bearing Prisoner No.4954, confined at Central Prison, Kalapattu, Puducherry, on Emergency Leave for a period of 10 days i.e.,



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from 01.02.2024 to 10.02.2024.

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(ii) The Convict Prisoner shall be released on 01.02.2024 at 10.00am and surrender before the Superintendent of Prisons, Central Prison, Kalapattu, Puducherry, on 10.02.2024 at 05.00 p.m.

(iii) 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.

6. With the above directions, the writ petition stands partly allowed. No costs.

(M.S.R.,J.) (S.M.,J.)
29.01.2024

sr

Index:yes

Internet:yes

Note: Issue Order copy today

To

1. The Chief Secretary,
Secretariat,
Union Territory of Puducherry,
Puducherry.



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2. The Director General of Police,
Puducherry.

3. The Inspector General of Prison,
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4. The Chief Superintendent of Prison,
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5. The Superintendent of Prison,
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Puducherry-605 014.

6. The Inspector of Police,
Odiansalai Police Station,
Puducherry,

7. The Public Prosecutor,
Pondicherry



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