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W.P.No.34442 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S.RAMESH

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.No.34442 of 2023

Mohamed Kaasim

... Petitioner

Vs.

The State represented by its,

1. The Secretary to Government of TamilNadu,
Home Department,
(Prison Branch -IV),
Chennai 600 009.
2. The Deputy Inspector General of Prison,
Chennai Range,
Egmore,
Chennai 600 008.
3. The Superintendent,
Puzhal-I, Central Prison,
Chennai 600 066.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India



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praying for the issuance of a Writ of Mandamus directing the respondents to grant ordinary leave for 30 days without escort to petitioner son, the detainee, Noorul Ameen S/o. Mohammed Kasim, aged about 27 years, Convict No.7875, confined at Central Prison, Puzhal 1.

For Petitioner : Dr.S.Manoharan
For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

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

By stating that the petitioner was diagnosed with coronary artery disease and he had underwent bypass surgery in the year 2015 and now that the Doctors have advised for surgery, the petitioner seeks for grant of ordinary leave for his son, who is now confined in Central Prison, Puzhal I as a life convict.

2. The learned Additional Public Prosecutor placed reliance on



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Rule 21(h) (3) of the Tamil Nadu Suspension of Sentence Rule, 1982, and submitted that there is a bar for grant of ordinary leave for a prisoner, who has been convicted under NDPS Act.

3. This court in several of its decisions, had held that Section 32-A of NDPS Act will not stand in the way of the authorities to exercise their powers for grant of ordinary leave and accordingly, exercised its power under Article 226 of the Constitution of India and granted ordinary leave to such life convicts. One such case is ***Anees Unnisha vs. The Secretary to Government, Department of Law, Courts and Prisons, Secretariat, Chennai*** in WP.No.22285 of 2023, dated 17.10.2023. The relevant portion of the order reads as follows:

"3. Though the representation of the petitioner was rejected by city Rule 21(h)(3) of Tamil Nadu Suspension of Sentence Rules, 1982, which states that any person convicted under NDPS Act is not eligible for grant of ordinary leave, Section 32-A of NDPS Act does not stand in the way of the authorities to exercise their power to grant parole. However, in exercise of power under Article 226 of the Constitution of India and keeping in line with the decision of Hon'ble Supreme Court in



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Dadu alias Tulsidas Vs. State of Maharashtra reported in (2000) 8 SCC 437, this Court is inclined to grant leave for a period of one month to the convict prisoner as this Court is convinced with the reasons stated by the petitioner in the affidavit filed in support of the petition."

4. In line with the earlier decision of this Court, the objections raised on behalf of the respondents herein cannot be sustained and hence we are inclined to accept the reasoning stated by the petitioner seeking for grant of ordinary leave for his son, in exercise of powers conferred under Article 226 of the Constitution of India.

5. It is pertinent to point out here that the report of the Probation Officer in Pa.Vee.No.137/2023, dated 28.12.2023 is also in favour of the petitioner's son for grant of ordinary leave. Accordingly, we grant ordinary leave for 21 days to the convict prisoner without escort subject to the usual conditions that can be imposed by the respondents and this Writ Petition is ordered on the following terms:

i) the convict prisoner shall be released from the prison at 10.00 a.m. on 30.01.2023 and he shall return back to the



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prison at 6.00 pm. on 20.02.2023.

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ii) During the aforesaid leave period, the convict prisoner shall report before Ilaiyagudi Police Station, Sivaigangai District twice a week i.e. on every Monday and Thursday at 10.30 a.m.

6. With the above directions, the Writ Petition is allowed. No costs.

[M.S.R., J] [S.M., J]
23.01.2024

Note: I.T. on 24.01.2024

pvs

Internet : Yes

Index : Yes

Neutral Citation : Yes

To

1. The Secretary to Government of TamilNadu,
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(Prison Branch -IV),
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2. The Deputy Inspector General of Prison,
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Egmore, Chennai 600 008.
3. The Superintendent,
Puzhal-I, Central Prison,
Chennai 600 066.
4. The Public Prosecutor,
High Court, Madras.



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and
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