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W.P.No.39276 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2024

CORAM:

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN**

W.P.No.39276 of 2024

Aruldoss

... Petitioner

Vs.

The Superintendent of Prison,
Central Prison – 2,
Puzhal,
Chennai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the respondent to grant 6 days emergency leave for the petitioner's son namely Sathish, S/o.Aruldoss, aged about 24 years, remand prisoner, Central Prison – 2, Puzhal.

For Petitioner : Mrs.S.Nadhiya

For Respondents : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

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

The Writ Petition has been instituted by the petitioner/father of the remand prisoner namely Sathish, aged about 24 years. The remand prisoner was arrested by G5 Otteri Police Station in Crime No.79 of 2019 for the offence under Section 380 & 457 of IPC and was remanded to judicial custody. The remand prisoner is presently lodged at Central Prison - 2, Puzhal, Chennai.

2. The Prison Authority received an information that the mother of the remand prisoner died on 19.12.2024. Immediately an application was made by providing information to the Jail Authority to grant bail to the remand prisoner to attend the funeral ceremony of his mother. The remand prisoner being the only son has to perform the funeral rites of his mother. Under these circumstances, the present Writ Petition has been filed.

3. Admittedly, the detenu is the remand prisoner. There is no provision under the Suspension of Sentence Rules, 1982, to grant leave to



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the remand prisoner by the Jail Authorities. In such circumstances, the aggrieved person has to file a bail application before the Court concerned for grant of interim bail or otherwise. Only on securing an interim bail, the remand prisoner will be released for the purpose of attending the funeral ceremony.

4. The mitigating circumstances put forth before this Court raises a serious concern about the plight of the remand prisoner at the time of the death of their blood relatives, more specifically, mother or father.

5. In the present case, the remand prisoner being the only son has to perform the last rites of his mother, which is not only a religious right but also a birth right and therefore, the said right is to be preserved under the Constitution of India.

6. The Prison Authorities contended that there is no provision under the Suspension of Sentence Rules to grant leave to the remand prisoner and he has to approach the concerned Court for grant of bail.



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7. A serious question arises that, if death occurs during holidays or the prisoner is not in a position to approach the lawyers and Courts immediately by keeping the dead body in the home, what would be the solution or redressal of grievance to such remand prisoners?

8. The learned Single Judge of the Madurai Bench of the Madras High Court passed an order in CrI.O.P.(MD).No.2228 of 2024 dated 11.02.2024 considering the similar issue and made an observation as follows:-

“12. Article 25 of the Constitution can be invoked by any person. It makes no distinction between citizen and non-citizen, subject to restrictions set out in the Article. There cannot be any distinction between free persons and prisoners either. Prisoners including under-trials can invoke this right under Article 25 of the Constitution. Right to participate in the funeral ceremony of the parent/spouse/child will fall within the sweep of the right under Article 25. Of course, this cannot be an absolute right. The Court will uphold this right subject to the prevailing situation. Unless there are



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exceptional circumstances, this right will not be denied by the Court. In this case, there are no such special circumstances warranting denial of the right.”

9. We are of the considered opinion that the Government of Tamil Nadu has to consider the complex circumstances arising to the remand prisoners at the time of the death of their blood relative, more specifically, father and mother and suitable guidelines are to be issued to grant a minimum of 1 day temporary release, enabling the remand prisoner to perform his/her blood relative's last rite.

10. The Government has passed an order in G.O.(Ms).No.30, Home, Prohibition and Excise (XVI) Department, dated 19.08.2021 and granted temporary release to detenues who are all suffering preventive detentions under Act 14 of 1982. Such a procedure may be adopted for all the remand prisoners by granting temporary release, enabling such remand prisoners to attend and perform the last rites or participate in the funeral events.



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11. In such circumstances, the remand prisoner shall be temporarily released on execution of his own bond and the Jail Authority or the Government in the event of passing an order, need not impose any other condition which may not be capable of performing by the remand prisoners during such emergent circumstances.

12. In view of the above facts and circumstances, we have taken note of the mitigating factors arose on account of the death of the mother of the remand prisoner and we are inclined to pass the following order:-

- a) The remand prisoner namely Sathish, aged about 24 years, S/o.Aruldoss, is granted interim bail for 24 hours from the date and time of his release from prison.
- b) The remand prisoner is directed to execute his own bond for a sum of Rs.5,000/- to the satisfaction of the Superintendent of Prison, Central Prison – 2, Puzhal, Chennai. On executing such bond, the Superintendent of Prison is directed to release the remand prisoner namely Sathish, aged about 24 years, S/o.Aruldoss, on custodial interim bail, with escort, by following the usual procedures, enabling him to attend the funeral ceremony of his mother.



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c) The remand prisoner shall be released from the Prison today i.e. on 19.12.2024 at 2.00 P.M. and he shall surrender before the Jail authority on 20.12.2024 at 5.30 P.M.

13. Accordingly, the Writ Petition stands disposed of. No costs.

(S.M.S, J.)

(M.J.R, J.)

19.12.2024

Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

Sni

Note: 1) Issue order copy today.

2) Registry is directed to communicate the order through email.

To

1.The The Superintendent of Prison,
Central Prison – 2,
Puzhal,
Chennai.

2.The Public Prosecutor,
High Court of Madras,
Chennai.



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S.M.SUBRAMANIAM, J.
and
M.JOTHIRAMAN, J.

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