



W.P.(MD).No.1242 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 11.03.2024

CORAM

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
AND
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

W.P.(MD).No.1242 of 2024

Uma

.. Petitioner

Vs.

1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison
and Correctional Services,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road,
Madurai.

2.The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records of the impugned order passed by the Respondent No.2 in எண்.2420/உ.த.2/2023 dated 24.12.2023 and quash the same and further the Respondent Nos.1 and 2 to grant leave for the period of 40 days without escort to the petitioner's



W.P.(MD).No.1242 of 2024

brother namely Mayandi who is life convict prisoner in a murder case and languishing in Palayamkottai Central Jail for the period of 8 years.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.S.Ravi
Additional Public Prosecutor

ORDER

DR.G.JAYACHANDRAN,J.
and
C.KUMARAPPAN,J.

The request of the petitioner to grant ordinary leave for 40 days without escort to her brother, who is a life convict, was negated by the prison authorities, vide proceedings dated 24.12.2023, on the ground that the petitioner's brother being convicted for the offence under Section 396 IPC, he is not entitled for ordinary leave as per Rule 21(b) of the Tamil Nadu Suspension of Sentence Rules, 1982. The rejection order is under challenge in the present Writ Petition.

2. The learned counsel appearing for the petitioner submitted that earlier when the representation dated 28.11.2023 seeking 30 days of ordinary leave was under consideration, the petitioner filed W.P.(MD).



W.P.(MD).No.1242 of 2024

No.31004 of 2023, wherein, this Court, taking note of the dictum laid down by this Court in the case of *Akram Khan Vs. The State of Tamil Nadu* and the case of *Sathyakala Vs. The State of Tamil Nadu*, directed the respondents to consider the said representation under Rule 19 and further observed that if any additional representation is given, the same may be considered by the second respondent by invoking Rule 10 of the Suspension of Sentence Rules. The said Writ Petition was disposed of on 22.12.2023, whereas, the impugned order was passed on 24.12.2023, after two days, which is the subject matter of the present Writ Petition, W.P.(MD).No.1242 of 2024.

3. No doubt, there is an embargo under Rule 21(b) to grant ordinary leave for a convict, who is in the prison for the offence committed under Section 396 IPC. However, this Court has time and again clarified, right from *Akram Khan's* case that the constitutional power of the High Court and Rule 40 of the Suspension of Sentence Rules enables both the Judiciary as well as the Executive to consider the request for leave in appropriate cases. This Court, in the case of the petitioner, had considered the legal position and passed the order dated 22.12.2023 in W.P.(MD).No.31004 of 2023.



W.P.(MD).No.1242 of 2024

4. The learned Additional Public Prosecutor relying upon the report of the Probation Officer submitted that there is a life threat to the convict, since his brother was murdered three years ago and further, since he is in prison for an offence under Section 396 IPC, the request for ordinary leave had not been considered favourably.

5. However, it is the duty of this Court to point out that in appropriate cases, the Executive should exercise the power under Rule 40 coupled with Rule 10 of the Suspension of Sentence Rules and pass orders granting leave to the convicts, who have completed the eligible period of incarceration, de hors of the offences committed by them, even if it is an offence not eligible for ordinary leave. This is also a fit case, where the authorities have to re-consider their decision of declining leave to the convict.

6. In view of the above, the petitioner is directed to make a fresh representation to the respondents/prison authorities seeking emergency leave for the convict under Rule 10 of the Suspension of Sentence Rules. On receipt of such representation, the respondents shall consider the same and pass appropriate orders on merits and in accordance with law within a period of seven (7) days thereafter.



W.P.(MD).No.1242 of 2024

7. With the above direction, this Writ Petition is disposed of. There

shall be no order as to costs.

(G.J.,J.) (C.K.,J.)
11.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison
and Correctional Services,
Madurai Range,
Madurai Central Prison Campus,
New Jail Road,
Madurai.

2.The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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W.P.(MD).No.1242 of 2024

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W.P.(MD).No.1242 of 2024

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