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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.03.2024

CORAM:

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

W.P.(MD) No.3625 of 2024

S.Subha

... Petitioner/Wife of the detenu

-VS-

The State, represented by

1.The Deputy Inspector General of Prison,
Madurai Range,
Madurai – 625 001.

2.The Superintendent,
Palayamkottai Prison,
Palayamkottai – 627 007. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order bearing No.56/Vu/tha. 2/2024, dated 8.1.2024 passed by the first respondent and quash the same and consequently direct the respondents to grant ordinary leave for 30 days without escort to the detenue Sree Renga Rajan, son of Narayanan, aged about 45 years, Convict No.4433, detained at Central



Prison, Palayamkottai.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.S.Ravi,
Addl.Public Prosecutor

ORDER

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

The Writ Petition is filed seeking issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned order bearing No.56/Vu/tha.2/2024, dated 8.1.2024 passed by the first respondent and quash the same and consequently direct the respondents to grant ordinary leave for 30 days without escort to the detenue Sree Renga Rajan, son of Narayanan, aged about 45 years, Convict No.4433, detained at Central Prison, Palayamkottai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.



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3.The Petitioner is the wife of Life Convict, who was acquitted for the offence under Section 302 of IPC in S.C.No.178 of 2015, dated 29.4.2016, on the file of the Sessions Court, Nagercoil.Though the trial Court acquitted him, on appeal, preferred by the State, the High Court set aside the judgment of acquittal and convicted him to undergo Life sentence as per judgment made in CrI.A(MD)No.380 of 2016, dated 21.06.2019. Pursuant to the judgment of conviction, the husband of the Petitioner was confined to the prison on 27.6.2019. Aggrieved by the judgment of conviction, an appeal is filed before the Honourable Apex Court and the same is now pending. In the said circumstances, the Petitioner herein/wife of the convict made a request for ordinary leave on the ground that she has to prepare herself and the convict for fertility, which was discontinued after the convict was confined to prison. Further, she has also based her request for leave to make preparation for their livelihood.The said request has been declined by the prison authorities on the ground that Rule 2(4) and 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 does not provide power for granting ordinary leave to a convict, whose appeal is pending.

4.The learned counsel appearing for the Petitioner submitted



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that the above said rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 has been interpreted in ***Latha .vs. The State and another, by order of this Court made in W.P.No.6398 of 2023, dated 29.09.2023***, wherein, the Division Bench of this Court has held that the word pending trial, does not include pending appeal. The expression pending trial used in Rule 35 of the above Rules, 1982, does not include pending appeal before the Honourable Supreme Court and also referred to Rule 40 of the above said Rules which empowers the State Government to exempt any or all of the rules under the Tamil Nadu Suspension of Sentence Rules, 1982 and it directed the prison authorities to reconsider the request for granting leave. The learned counsel for the Petitioner further submitted that the Full Bench of this Court in ***Mrs.Megharaj vs. The State*** had considered the conjugal rights of life convict and had recommended the State to consider the request of deserving convicts to grant ordinary leave to have progeny.

5.This Court, after considering the judgment cited supra and the law governing the field, without advertng to the merits of the request, while confirming the impugned order, as in accordance with



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law, direct the prison authorities to direct the Government to consider and exercise the power under Rule 40 of the above said Rules, if a request from the convict or on behalf of the convict is made with necessary documents for grant of ordinary leave. If such request is made, the said request may be considered in the light of the observations made by the Division Bench of the Madras High Court in Latha's case and Full Bench Judgment in Megharaj case, cited supra.

6. With the above directions, the Writ Petition stands disposed of. No costs.

[G.J.,J.] [C.K.,J.]

05.03.2024

NCS : Yes/No
Index : Yes / No
Internet : Yes / No

vsn

To:

1. The Deputy Inspector General of Prison,
Madurai Range,
Madurai – 625 001.

2. The Superintendent,
Palayamkottai Prison,

5/7



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Palayamkottai – 627 007.

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



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

vsn

ORDER MADE IN
W.P.(MD) No.3625 of 2024

28.02.2024