



W.P.(MD) No.8770 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA
and
THE HONOURABLE MR.JUSTICE K.RAJASEKAR**

**W.P.(MD) No.8770 of 2024
and
W.M.P.(MD) No.8006 of 2024**

Malliknisha

... Petitioner

-vs-

The State represented by its

- 1.The Secretary to Government of Tamil Nadu
Home Department
Fort St.George, Chennai-600 009
- 2.The Deputy Inspector General of Prison
Trichy Zone, Trichy Central Prison
Trichy-620 020
- 3.The Superintendent
Trichy Central Prison
Trichy-620 020

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order bearing No.106/Mu.Vu/2024, dated 18.03.2024, passed by



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the second respondent and quash the same and consequently direct the respondents to grant ordinary leave for 21 days without escort to the detenue, Siddiq @ Abu Bakkar, son of Ahamed Moideen, aged about 70 years, Convict No.24111, detained at Central Prison, Trichy.

For Petitioner : Ms.K.Akshaya

For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

[Order of the Court was made by A.D.JAGADISH CHANDIRA, J.]

The order dated 18.03.2024, passed by the second respondent, rejecting the petitioner's representation seeking to grant 21 days ordinary leave to her husband / convict, is under challenge in this writ petition.

2. The case of the petitioner is that her husband Siddiq @ Abu Bakkar was convicted by the learned Judicial Magistrate No.I, Kumbakonam, by Judgment dated 30.09.2021 in S.T.C.Nos.1850 to 1852, 1866, 1870 and 1904 of 2019, for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for one year and to



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pay the cheque amount of Rs.22,67,000/- as compensation, in default to undergo simple imprisonment for three months for each case. The said conviction and sentence was also confirmed by the Appellate Court, namely, Additional District and Sessions Court (FTC), Kumbakonam. On revision, this Court had directed the sentence imposed on the petitioner's husband to run concurrently. Since the petitioner's husband had not paid the fine amount, now he is undergoing the default sentence of three months simple imprisonment. In such circumstances, the petitioner had applied for grant of 21 days ordinary leave, without escort, to her husband / convict, to attend the marriage of their second son, which is fixed on 28.04.2024. However, the second respondent, without considering the fact that the convict has completed the substantive sentence period, by the impugned order dated 18.03.2024, had rejected the petitioner's request on the ground that he is not eligible for grant of ordinary leave.

3. Learned counsel for the petitioner would submit that Rule 2(4) of the Tamil Nadu Suspension of Sentence Rules, 1982 defines the term “Sentence” as follows:

“Sentence’ means a sentence as finally fixed on appeal or revision or otherwise and includes an aggregate



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of more sentence than one. Sentences in default of fine shall not be taken into consideration while fixing eligibility for being released on leave.”

4. Learned counsel for the petitioner would further submit that the petitioner's husband has completed the substantive sentence period and what remains only is default sentence and therefore, the petitioner's husband is eligible for grant of ordinary leave.

5. Learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that the second respondent finding that it is not a fit case for grant of ordinary leave to the convict, had rejected the petitioner's request.

6. Heard the learned counsel on either side and perused the materials available on record.

7. On perusal of the materials available on record, we find that the petitioner's husband was convicted by the learned Judicial Magistrate No.I, Kumbakonam, by Judgment dated 30.09.2021 in S.T.C.Nos.1850 to



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1852, 1866, 1870 and 1904 of 2019, for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo simple imprisonment for one year and to pay the cheque amount of Rs.22,67,000/- as compensation, in default to undergo simple imprisonment for three months for each case. The said conviction and sentence was also confirmed by the Appellate Court, namely, Additional District and Sessions Court (FTC), Kumbakonam. On revision, this Court had directed the sentence imposed on the petitioner's husband to run concurrently. As on date, the petitioner's husband has completed the substantive sentence period and he is undergoing the default sentence. As per Rule 2(4) of the Tamil Nadu Suspension of Sentence Rules, 1982, the term "Sentence" does not include the default sentence period. Therefore, we are of the view that the petitioner's husband is entitled for grant of ordinary leave and the impugned order is liable to be set aside.

8. In the result,

- (i) The writ petition is allowed.
- (ii) The impugned order dated 18.03.2024, passed by the second respondent, is set aside.



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- (iii) The convict prisoner, namely, Siddiq @ Abu Bakkar, son of Ahamed Moideen, aged about 70 years, (Convict No.24111) shall be granted ordinary leave for a period of twenty one (21) days from 26.04.2024 to 16.05.2024 without escort.
- (iv) During the said leave period, he shall report before the Inspector of Police, Thoraipakkam Police Station, Chennai, every Monday and Thursday at 06.30 p.m., without fail.
- (v) He shall report back to the Superintendent of Prison, Central Prison, Trichy / third respondent, by 10.00 a.m., on 17.05.2024, without fail.
- (vi) The petitioner shall produce all necessary documents, along with a copy of this order, before the jail authorities.
- (vii) During the leave period, the convict prisoner shall abide by all the conditions prescribed in the Jail Manual.



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(viii) No costs. Consequently, connected miscellaneous petition is closed.

[A.D.J.C., J.] [K.R.S., J.]

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

Note to Office:

- (i) Mark a copy of this order to the
Inspector of Police, Thoraipakkam
Police Station, Chennai.
- (ii) Issue order copy today.

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To:

- 1.The Secretary to Government of Tamil Nadu,
Home Department,
Fort St.George, Chennai-600 009.
- 2.The Deputy Inspector General of Prison,
Trichy Zone, Trichy Central Prison,
Trichy-620 020.
- 3.The Superintendent,
Trichy Central Prison,
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