



W.P.(MD) No.13248 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

CORAM:

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

W.P.(MD) No.13248 of 2024

Deepa

... Petitioner

-VS-

- 1.The Principal Secretary to Government
Home, Prohibition & Excise
(Prison-IV) Department
Fort St.George, Chennai-600 009
- 2.The Director General of Prisons
O/o.Tamil Nadu Prisons Headquarters
Whannels Road
Egmore, Chennai-600 008
- 3.The Deputy Inspector General of Prisons
Trichy Range
Race Course Road, Trichy-620 023
- 4.The Superintendent of Prisons
Central Prison, Trichy-620 020

... Respondents



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WEB C PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the impugned order passed by the third respondent vide her proceedings in No. 106/MuVu/2024, dated 10.06.2024 and quash the same as illegal and void, consequently direct the third respondent to grant 21 days ordinary leave without police escort to the petitioner's brother Elango, son of Natesan, Convict No.18517, confined at Central Prison, Tiruchirappalli, by considering the petitioner's representation, dated 30.04.2024 forthwith.

For Petitioner : Mr.C.Karthikeyan

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

ORDER

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

Prayer in this writ petition is to quash the order dated 10.06.2024, passed by the third respondent, rejecting the petitioner's representation dated 30.04.2024 seeking grant of 21 days ordinary leave for her brother, namely, Elango (Convict No.18517) and to grant him 21 days ordinary leave.



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2. The case of the petitioner is that her brother Elango is a convict and he is in incarceration pursuant to the Judgment dated 23.09.2010, passed in S.C.No.38 of 2009, by the learned Sessions Judge, Mahila Court, Tiruchirappalli. The appeals preferred by the convict against the conviction and sentence imposed on him before this Court as well as the Apex Court have been dismissed. Earlier, the convict was granted 21 days ordinary leave with effect from 09.09.2023 and he duly surrendered before the fourth respondent on 30.09.2023.

3. It is the further case of the petitioner that she is living with her husband in Bengaluru and her mother alone is residing in Tiruchirappalli and she is suffering from health ailments and she is bedridden and she is advised to take treatment as inpatient. Hence, the petitioner needs assistance of her brother (convict) for providing medical treatment to their mother. Hence, she made a representation, dated 30.04.2024, to the respondents seeking grant of 21 days ordinary leave to her brother (convict). However, the same has been rejected by the impugned order of the third respondent, on the ground that the convict has not completed cooling period of one year from the expiry of his earlier leave period. Therefore, the present writ petition.



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4. Learned Additional Public Prosecutor appearing for the respondents, on instructions, submitted that the appeals preferred by the convict challenging the conviction and sentence imposed on him have been dismissed by this Court as well as the Apex Court. Earlier, the convict was granted 21 days ordinary leave with effect from 09.09.2023 and he surrendered before the authority concerned on 30.09.2023 and therefore, the cooling period of one year is not yet over and he can avail ordinary leave only after expiry of the cooling period i.e. 01.10.2024.

5. This Court, in catena of decisions, has held that the Tamil Nadu Suspension of Sentence Rules, 1982 is a piece of Subordinate Legislation made by Executive in exercise of Rule making powers *inter alia* under Section 432(5) of the Code of Criminal Procedure, 1973 and therefore, such Subordinate Legislation, which has not even gone through Legislative grind in the Legislature, cannot in any manner abridge much less denude Constitutional powers of this Court. Even the Executive has been vested with powers *vide* Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 to exempt any person from all or any of the provisions of said Rules. Further, there is only three months to complete the cooling period.



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6. Taking into consideration the facts that the petitioner is residing in Bengalure along with her husband and her mother alone is residing in her native town and her mother is bedridden on account of health ailments and she needs medical treatment, we are inclined to direct the respondents 3 and 4 to grant fifteen days ordinary leave to the petitioner's brother.

7. Accordingly, the writ petition is disposed of with the following directions:

- (i) The respondents 3 and 4 are directed to grant fifteen days ordinary leave to the petitioner's brother, namely, Elango, (Convict No.18517) from 01.07.2024 to 15.07.2024, without escort.
- (ii) During the said leave period, he shall report before the Inspector of Police, Woraiyur Police Station, Tiruchirappalli, daily at 10.30 a.m., without fail.
- (iii) He shall report back to the Superintendent of Prison, Central Prison, Trichy / fourth



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respondent, by 10.00 a.m., on 16.07.2024, without fail.

- (iv) The petitioner shall produce all necessary documents, along with a copy of this order, before the jail authorities.
- (v) During the leave period, the convict prisoner shall abide by all the conditions prescribed in the Jail Manual.
- (vi) The convict shall utilize the leave only for the reason for which it has been granted and shall not partake in any other activities
- (vii) No costs.

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

26.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

Note to Office:

Mark a copy of this order to the Inspector of Police, Woraiyur Police Station, Tiruchirappalli District.

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K.RAJASEKAR, J.

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