



W.P(MD)No.16949 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.07.2024

CORAM:

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

W.P(MD)No.16949 of 2024

V.Mayandi

... Petitioner

-VS-

1.The Deputy Inspector General of Prison
and Correctional Services Department,
Madurai Range, Madurai.

2.The Jail Superintendent,
Central Prison,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to call for the records relating to the impugned order vide No.340.wu.tha.2/2024, dated 19.07.2024 on the file of the first respondent and quash the same and consequently direct the respondents to release the petitioner's son namely Veerendran, S/o.Mayandi (CP No.1675) on an ordinary leave (parole) for a month in the light of his representation, dated 06.07.2024 on the file of the second respondent.



W.P(MD)No.16949 of 2024

WEB COPY

For Petitioner : Mr.R.Venkateswaran
For Respondents : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

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

The present Writ Petition is filed challenging the impugned order passed by the first respondent, dated 19.07.2024 and quash the same and consequently, direct the respondents 1 & 2 to grant ordinary leave for the period of 30 days to the petitioner's son namely Veerendran, s/o.Mayandi (CP No.1675).

2. The case of the petitioner is that his son was convicted by the I Additional Sessions Court/Special Court for NDPS Act Cases, Madurai in C.C.No.237 of 2022, dated 30.03.2023 for 10 years and to impose a fine of Rs.1,00,000/-. The petitioner's son was arrested on 26.06.2021 and he was not granted bail during the trial and he has been languishing in jail for the past 3 years. The petitioner suddenly fell ill due to ischemic heart disease, congestive cardiac failure. The petitioner's son presence is necessary for giving treatment to the petitioner and other family needs. Hence, the petitioner had applied for



W.P(MD)No.16949 of 2024

WEB COUNCIL

Ordinary Leave for his son. The first respondent has rejected the request of the petitioner stating that the petitioner's son had involved in NDPS Act case and hence, as per Rule 21(3)(h) of Suspension of Sentence Rule, he is not eligible for Ordinary Leave and also under 22(1)(b) of the Suspension of Sentence Rule, he has not completed minimum required period of 2 years of imprisonment. Challenging the said rejection order, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner's son was arrested on 26.06.2021 and he has been languishing in jail for the past 3 years. He would further submit that Principal Seat of this Court in W.P.No.18574 of 2024, holding that Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982, empowers the State Government to exempt the prisoner from all or any of the provisions of these rules, has granted Ordinary Leave to a convict under NDPS Act and in yet another judgment in W.P(MD)No.28831 of 2023 this Court holding that the said Rules is a piece of subordinate legislation made by Executive arm in exercise of rule making powers inter-alia under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' and such



W.P(MD)No.16949 of 2024

subordinate legislation which has not gone through the law making or legislative drill/legislative grind cannot in any manner abridge much less denude the constitutional powers of this Court and by invoking constitutional powers have granted leave to the prisoner. He would further submit that the petitioner's son is languishing in jail for the past 3 years and would seek for setting aside the impugned order.

4. The learned Additional Public Prosecutor appearing for the respondents would submit that the petitioner's husband though was arrested on 26.06.2021, he has been convicted only on 30.03.2023 and sentenced for 10 years. He would further submit that the petitioner's son has not completed minimum required period of 2 years and thereby, the first respondent has rejected the plea of the petitioner. Further, as per the Probationary Officer report, the reason for leave sought for is said to be correct. He further submitted that if this Court invoking under Article 226 of the Constitution of India and granting leave, the prisoner may be directed to go along with necessary escorts since he has been convicted for an offence of NDPS Act.



W.P(MD)No.16949 of 2024

WEB COPY

5. We have heard the learned Counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

6. In a similar circumstances, the Principal Seat of Madras High Court in W.P.No.18574 of 2024 holding that Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982, empowers the State Government to exempt the prisoner from all or any of the provisions of these rules, has granted Ordinary Leave to a convict under NDPS Act and further this Court in W.P(MD)No.28831 of 2023 holding that the said Rules is a piece of subordinate legislation made by Executive arm in exercise of rule making powers inter-alia under Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' and such subordinate legislation which has not gone through the law making or legislative drill/legislative grind cannot in any manner abridge much less denude the constitutional powers of this Court and by invoking constitutional powers have granted leave to the prisoner. In this case, the case of the petitioner's son also stands on the same footing.



W.P(MD)No.16949 of 2024

WEB COPY

7. Taking into consideration the request of the petitioner and also taking into sympathetic and humanitarian consideration, this Court is inclined to direct the respondents to grant Ordinary leave for 7 days to the prisoner with necessary escorts.

8. In the result,

(i) The writ petition is allowed.

(ii) The impugned order dated 19.07.2024, passed by the first respondent, is set aside.

(iii) The convict prisoner, namely, Veerendran, S/o.Mayandi (C.P.No.1675) now confined under Central Prison, Madurai shall be granted ordinary leave for a period of seven (7) days.

(iv) He shall report back to the Superintendent of Prison, Central Prison, Madurai on completion of leave period.



WEB COPY



W.P(MD)No.16949 of 2024

(v) Necessary escorts shall be provided to accompany the convict prisoner.

(vi) The escort charges shall be borne by the petitioner and if necessary, the same shall be adjusted from the income earned by the convict prisoner during the imprisonment period.

(vii) The petitioner shall produce all necessary documents, along with a copy of this order, before the jail authorities.

(viii) During the leave period, the convict prisoner shall abide by all the conditions prescribed in the jail manual.

(ix) No costs.

[A.D.J.C., J.] [K.R.S., J.]
31.07.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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W.P(MD)No.16949 of 2024

WEB COPY

To:

- 1.The Deputy Inspector General of Prison
and Correctional Services Department,
Madurai Range, Madurai.
- 2.The Jail Superintendent,
Central Prison,
Madurai.



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W.P(MD)No.16949 of 2024

A.D.JAGADISH CHANDIRA, J.
AND
K.RAJASEKAR, J.

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W.P(MD)No.16949 of 2024

31.07.2024