



W.P(MD)No.16917 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**

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Lathiba Banu

... 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,
Madurai.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus to set aside the impugned order in RO-MDU/40/2024-G2, dated 21.05.2024, quash the same as bade in law and further direct the Respondent Nos.1 and 2 to grant ordinary leave for the period of 30 days to the petitioner's husband namely Haji Ali C.P.No.1807.



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For Petitioner : Mr.SMA.Jinnah
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 21.05.2024 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 husband namely Haji Ali C.P.No.1807.

2. The case of the petitioner is that her husband was convicted by the I Additional Sessions Court/Special Court for NDPS Act Cases, Madurai in C.C.No.237 of 2022, dated 30.04.2023 for 10 years and to impose a fine of Rs. 1,00,000/-. The petitioner's husband was arrested on 30.08.2021 and he was not granted bail during the trial and he has been languishing in jail for the past 4 years. The petitioner had applied for Ordinary Leave for her husband to settle the future education of her daughter, for marriage proposal of her daughter and also for the medical treatment of the petitioner. The first respondent has rejected the



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request of the petitioner stating that the petitioner's husband 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 husband was arrested on 30.08.2021 and he has been languishing in jail for the past 4 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 subordinate legislation which has not gone through the law making or



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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 husband is languishing in jail for the past 4 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 30.08.2021, he has been convicted only on 30.05.2023 and sentenced for 10 years. He would further submit that the petitioner's husband 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.



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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 husband also stands on the same footing.



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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 21.05.2024, passed by the first respondent, is set aside.

(iii) The convict prisoner, namely, Haji Ali, S/o.Mohammed Ali Jinnah (C.P.No.1807) 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.



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(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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To:

- 1.The Deputy Inspector General of Prison,
Madurai Range, Madurai Central Prison Campus,
New Jail Road, Madurai.
- 2.The Superintendent of Prison,
Central Jail,
Madurai.



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

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