



W.P(MD) No.19843 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 10.09.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MR.JUSTICE J.SATHYA NARAYANA PRASAD**

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S. Keerthana

... 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,
Madurai.

2. The Superintendent of Prisons,
Central Jail,
Palayamkottai. Tirunelveli.

3. The Commissioner of Police
Madurai
(R3 is impleaded by vide court order
dated 20.08.2024)

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of
India, praying this Court to issue a Writ of Certiorarified Mandamus,



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calling for the records relating to the Impugned order in 189/உத.2/2024 dated 03.07.2024 quash the same as bad in law and further direct the respondents 1 and 2 to grant ordinary leave for the period of 30 days to my husband namely Subash Chandra Bose,C.P. No.4980.

For Petitioner : Mr.S.M.A. Jinnah

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

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking to set aside the impugned order passed by the first respondent/Deputy Inspector General of Prison, Madurai Range, Madurai Central Prison Campus, Madurai in No. 189/உத.2/2024 dated 03.07.2024, by which order, the first respondent had rejected the representation of the petitioner seeking leave for her husband, Subash Chandra Bose, C.P. No.4980, confined at Central Jail, Palayamkottai.

2. When the writ petition came up for consideration on 20.08.2024, we noticed that there are past five other cases pending



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against the husband of the petitioner within Madurai city, in which the husband of the petitioner is also involved.

3. To get details about the same, we have *suomotu* impleaded the Commissioner of Police, Madurai City as the third respondent and directed counter to be filed on behalf of the Commissioner of Police.

4. In the affidavit filed in support of the writ petition, the petitioner had stated that the petitioner had to take fertility treatment and therefore the presence of her husband/C.P.No. 4980, Subash Chandra Bose is very much essential. She had stated that her husband is obedient and he has not indulged himself in any issues inside the prison. Therefore he is very much eligible to be considered for grant of leave either with or without escort.

5. A counter affidavit has been filed by the first respondent/Deputy Inspector General of Prison, Madurai Ranger, wherein he had stated that the husband of the petitioner was an accused



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in First Information Report in Crime No.1174 of 2020 on the file of the Keeraithurai Police Station, Madurai District and sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.1,00,000/- i/d to undergo six months simple imprisonment for the offence punishable under Section 8(c) r/w.20(b)(ii)(c) NDPS Act by the Principal Special Court for EC and NDPS Act Cases, Madurai in C.C. No.279 of 2021 by judgment dated 18.08.2022. It had been stated that in view of that particular involvement in an offence under NDPS Act, the husband of the petitioner is not eligible for ordinary leave as per Rule 21(b), 21(h)(3) and 35 of Tamil Nadu Suspension of Sentence Rules, 1982. It had also been stated that the representation seeking leave had been rejected by the Deputy Inspector General of Prisons, Madurai Range, Madurai vide order dated 03.07.2024. It had been stated that the husband of the petitioner had not satisfied any of the eligibility criteria. It had also been stated that there are five other cases pending trial against the husband of the petitioner, which are as follows:

1) Crime No.415 of 2018 - B4 Keeraithurai Police Station for the offences under Sections 114,115,286,120(b)and 34(b) of Explosives Substance Act



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2) Crime No.443 of 2015 - B4 Keeraithurai Police Station for the offences under Sections 147,148, 302 and 506(ii) of IPC

3) Crime No.338 of 2022 - Perumalpuram Police Station for the offences under Sections 42,45(2) of Prison Act

4) Crime No.1109 of 2017 - E4 Anna Nagar Police Station for the offences under Section 120(b),147,148,302 and 506(ii) of IPC

5) Crime No.1391 of 2018 - Avaniyapuram Police Station for the offences under Section 120(b), 147,294(b),307, 506(ii) of IPC

6. Reliance has been placed on Rule 35 of the Tamil Nadu Suspension of Sentence Rules. According to this Rule, if there are previous cases pending, leave cannot be granted. Reliance had also been placed on per Rule 21(h)(3), according to which, if there is a conviction under NDPS Act, there would be a deterrent for the grant of ordinary leave. Further reliance has been placed on Rule 22(1)(b) of the Tamil Nadu Suspension of Rules, 1982 which stipulates that ordinary leave can be granted only after completion of two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years. The husband of the petitioner was



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sentenced ten years rigorous imprisonment, hence it is contended that the petition has to be dismissed.

7. The Commissioner of Police, Madurai City has been impleaded as third respondent. A counter has been filed stating about the cases pending against the husband of the petitioner. He had also stated as follows :

“ The husband of the petitioner namely Subash Chandra Bose, Convict Prisoner No.4980 is not sustainable. The petitioner's husband is a notorious criminal having been involved in large number of grave cases and that he is an active participant in gang wars between thugs affiliated with Kali @ Vellakalai and Gurusamy affecting the peace and public tranquility of the City of Madurai and since the local intelligence revealed that his life itself is at stake, strong protest is being made on behalf of the Law Enforcing Agency not to grant him ordinary leave as prayed for and as such the present petition is liable for dismissal at the threshold”.



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8. These reasons are exclusive to the knowledge of the third respondent. Very strong reasons have been given seeking dismissal of the writ petition. The third respondent has also stated about the aforementioned provisions in the suspension of Sentence Rules.

9. The learned counsel appearing for the petitioner stated that escort may be provided during the period of leave to the husband of the petitioner. The learned counsel stated that the reason stated for leave is for fertility treatment for the petitioner herein and stated that it is the right of the petitioner to have such treatment and if such treatment is required the presence of her husband is very much essential and therefore the learned counsel argued that leave must be granted without escort.

10. The learned Additional Public Prosecutor, however, raised very strong objections stating the reasons stated by both the first and third respondents and objected to grant of leave. He also pointed out the cases pending against the husband of the petitioner and also stated that the husband of the petitioner was convicted under the NDPS



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Act and stated that those two facts would act as a bar in granting leave to the husband of the petitioner herein. It had also been pointed out by the learned Additional Public Prosecutor that the husband of the petitioner has not completed two years of imprisonment which is requisite since he had been convicted for a period of ten years. It is argued that therefore, as on date, the husband of the petitioner is not eligible to be considered for grant of leave.

11. We have considered the arguments advanced on either side. We have also gone through the records and the reasons advanced for grant of leave and also the submissions made in the counter affidavit filed by the third respondent.

12. On behalf of the first respondent the objection has been raised on three grounds, namely, that the husband of the petitioner had been involved and convicted under the NDPS Act, that there are five previous cases pending against the husband of the petitioner and that the husband of the petitioner had undergone sentence for a period of only two years and therefore at this stage leave cannot be granted.



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13. We place reliance on Rules 21(h)(3), 21(b) and 35 of the Tamil Nadu Suspension of Sentence Rules 1982 and G.O.Ms.. No.205 Home(Prison-V) dated 25.04.2022.

14. The fact that the husband of the petitioner had been convicted for the offence under the NDPS Act cannot be denied or disputed. He suffered imprisonment only on the basis of such conviction and he had been sentenced to under go ten years rigorous imprisonment. He has undergone imprisonment for only two years. The fact that there are five other cases registered against the petitioner cannot be denied or disputed. They are on record and the details had been given in the course of this order.

15. In view of all these reasons and also the very specific statement made on behalf of the third respondent that there is danger to the life of the petitioner herein and that there is every possibility of public peace and tranquility being affected. We after giving careful consideration, we are of the view that the Writ petition filed by the



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petitioner deserves an order of dismissal and the same is accordingly dismissed.

16. In the result, the Writ Petition stands dismissed.

(C.V.K., J.) (J.S.N.P, J.)
10.09.2024

Index : Yes / No

Internet : Yes / No

NCC : Yes / No

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To

- 1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison and
Correctional Services
Madurai Range, Madurai Central Prison Campus,
Madurai.
2. The Superintendent of Prisons,
Central Jail, Palayamkottai. Tirunelveli.
3. The Commissioner of Police
Madurai
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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C.V.KARTHIKEYAN, J.
and
J.SATHYA NARAYANA PRASAD, J.

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