



W.P(MD) No.22199 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date: 03.10.2024

CORAM

**THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN
and
THE HON'BLE MS.JUSTICE R.POORNIMA**

W.P(MD) No.22199 of 2024

Nanthini

... Petitioner

Vs

The Superintendent of Prison
Central Prison,
Madurai

... Respondent

PRAAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified mandamus calling for the records relating to the impugned order passed by the respondent in his proceedings in O.Mu.No.2199/Thaku.2/2023, dated 14.02.2023 and quash the same as illegal and consequently direct the respondent to grant the petitioner's husband namely Murugan @ Polimurugan, S/o.Palsami Convict Prisoner confined in Central Prison, Madurai emergency leave for 10 days.



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For Petitioner : Mr.T.A.Ebenezer
For Respondent : Mr.A.Thiruvadikumar
Additional Public Prosecutor.

ORDER

The writ petition has been filed in the nature of certiorarified Mandamus to call for the records relating to the orders passed by the respondent dated 14.02.2023 in O.Mu.No.2199/Thaku.2/2023 and grant leave to the husband of the petitioner namely Murugan @ Polimurugan, S/o.Palsami, Convict Prisoner No.868 and now confined at Central Prison, Madurai.

2. The husband of the petitioner had been convicted for the offences under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act in C.C. No. 429 of 2019 on 12.03.2021 and sentenced to undergo ten years rigorous imprisonment and a fine of Rs.1,00,000/- in default to undergo six months rigorous imprisonment. He had been in custody from 21.08.2019 from the date of his arrest. The reason why leave is sought is that his



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mother Karupayiammal aged about 76 years is in deadbed suffering loss of movement and eye sight. In this connection the husband of the petitioner had sought for emergency leave on 10.02.2023, but the same was rejected by an order dated 14.02.2023., which is now put in challenge.

3. We wanted a report to be forwarded by the Probationary Officer at Periyakulam relating to the health condition of the mother of the petitioner. A report dated 01.10.202 had been forwarded, wherein it had been stated that it had been informed on a personal visit to the house of the petitioner that eye operation had been done on the mother of the convict prisoner for that records are not available. It had been stated that there is no health related issues. However we wanted a further report from the Kumbum North Police Station , Theni District. A report had been forwarded by the Inspector of Police, wherein it had been stated that the mother of the convict prisoner is about 85 years and suffers from aged related issues and there are no medical health complications and that she is having the capability to her basic work and there are no medical records.



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4. The learned counsel for the petitioner, however argued that the mother of the convict prisoner is in deadbed and therefore, leave must be granted.

5. This statement runs contrary to the reports of both the Probationary Officer and the Inspector of Police, Kumbum North Police Station. Additionally we also note the fact that the husband of the petitioner has been convicted for the offence under Section 8(c) r/w. 20(b)(ii)(C) of NDPS Act. The attraction of 8(c) would come only when he had been in possession of commercial quantity of narcotics substances. Among other reasons stated, it had also been stated that the appeal against the conviction is still pending before this Court. Therefore he is not eligible for leave as per Rule 2(4) of Tamil Nadu Suspension of Sentence Rules, 1982.

6. The learned counsel appearing for the petitioner placed reliance on the order by passed by the Division Bench of the Principal Bench in W.P.No.23319 of 2024 in the case of ***Keerthna .vs. The Deputy***



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Inspector General of Prisoner, Prison Head Quarters, Egmore, Chennai and others and argued that placing reliance on Rule 2(4) of Tamil Nadu Suspension of Sentence Rules, 1982 may not withstand judicial scrutiny.

7. One distinguishing factor in this case is that the husband of the petitioner had been convicted for an offence under the provisions of NDPS Act. That being a special legislation it comes under the exemption. In the order forwarded by the learned counsel for the petitioner referred supra, there is no indication as to the nature of offence in which the convict prisoner therein was involved in.

8. We are of the firm view that if the offence is either under the NDPS Act or the POCSO act or offence under any Special Acts due regards has to be given to the reality of the fact that the offender might be part of a larger group of persons and there could be a possibility of escaping and violating the terms of grant of leave.



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9. The only reason advanced is that the mother of the convict prisoner is in deadbed which reason, from the documents available are not made out. Though it could be stated that we have placed a presumption that the husband of the petitioner could be a member of a group and that he would escape, still we are confident that we have taken into consideration all factors as we had an experience of a convict to whom we had granted leave having violated the leave condition.

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

(C.V.K., J.) (R.P, J.)
03.10.2024

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

To

1. The Superintendent of Prison
Central Prison,
Madurai
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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