



W.P(MD) No.24358 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Date : 13.11.2024

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

W.P(MD) No.24358 of 2024

Balakrishnan

... Petitioner

Vs

- 1.The Additional Chief Secretary to the Government,
Home Prison (Home-IV),
Secretariat,
Chennai-600009.
- 2.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.
- 3.The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.
- 4.The Superintendent of Police,
Tirunelveli District.
(R4 is suo motu impleaded
vide order dated 13.11.2024
by GRSJ & RPJ)

... Respondents



W.P(MD) No.24358 of 2024

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned G.O.vide No.556 of 2024 dated 06.09.2024 passed by the Respondent No.1 and quash the same as illegal and consequently, direct the respondents to grant 40 days of ordinary leave without escort to the my son namely Prabhakaran who is a life convict prisoner in a murder case and languishing in Palayamkottai Central Jail for a period of 9 years.

For Petitioner : Mr.SMA.Jinnah

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

(Order of the Court was made by **G.R.SWAMINATHAN, J.**)

Heard both sides.

2. The petitioner is the father of the convict (No.4904). The petitioner's son is in incarceration in Central Prison, Palayamkottai. He was convicted for the offences under Sections 302, 396 & 497 of IPC. The petitioner sought ordinary leave for 40 days.



W.P(MD) No.24358 of 2024

3. It is obvious that as per Rule 21(b), a prisoner sentenced under Sections 392 to 402 of IPC is not eligible for ordinary leave. Of-course, under Rule 40, the Government may exempt any person from all or any of the provisions set out in Tamil Nadu Suspension of Sentence Rules, 1982. In this case, though the Government was mandated on two occasions, it chose to reject the petitioner's request. Challenging the said rejection order, the present writ petition has been filed.

4. The learned counsel appearing for the petitioner relied on the order dated 19.07.2023 made in W.P.No.21242 of 2023 (Akram Khan Vs. State) in support of his contention that notwithstanding the bar set out in Rule 21(b), a person can be granted ordinary leave. He also pointed out that the convict is in prison for more than 8 years and that his conduct in prison is also good.

5. We are not swayed by the said submission. Rule 21(b) is still in the statute book. It has not been struck down as ultra vires. When Rule 21 is holding the field, this court will not be justified in disregarding the same. Of-course, under Rule 40, the State can grant concession to any



W.P(MD) No.24358 of 2024

prisoner. In this case, the Government went into the issue and has chosen to negative the petitioner's request. This is a case involving murder for gain. Such a case will have to be viewed through different prism altogether.

6. However, taking note of the special facts and circumstance obtaining in this case, even while sustaining the impugned order and rejecting the petitioner's request for grant of ordinary leave for his son, we direct the second respondent to grant emergency leave for the petitioner's son. Accordingly, the convict prisoner is granted emergency leave for 7 days with single escort on the following conditions :-

(a)The convict prisoner, Prabhakaran [Convict Prisoner No.4904], now detained in the Central Prison, Palayamkottai, is granted emergency leave for seven (7) days from 19.11.2024 to 25.11.2024.

(b) The convict prisoner shall be released from the prison at 10.00 a.m., on 18.11.2024 and he shall return to the prison at 5.00 p.m., on 26.11.2024.

(c)The third respondent is directed to provide single escort to the convict from the Central Prison at



W.P(MD) No.24358 of 2024

the time when he leaves the prison and till such time, he returns to the prison. It is clarified that the cost involved in providing escort shall be deducted from out of the earnings of the convict.

(d) During the leave period, the convict prisoner shall abide by all the conditions prescribed in the Jail Manual.

7. With the above direction, the Writ Petition stands allowed. No costs.

(G.R.S., J.) (R.P., J.)
13.11.2024

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

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NOTE:Issue Order Copy on 14.11.2024



W.P(MD) No.24358 of 2024

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1. The Additional Chief Secretary to the Government,
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Secretariat,
Chennai-600009.
2. 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.
3. The Superintendent of Prison,
Central Jail,
Palayamkottai,
Tirunelveli District.
4. The Superintendent of Police,
Tirunelveli District.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



W.P(MD) No.24358 of 2024

G.R.SWAMINATHAN, J.
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W.P(MD) No.24358 of 2024

13.11.2024