



W.P.(MD) No.28570 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2024

CORAM:

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

W.P.(MD) No.28570 of 2023

Arumugam

... Petitioner

-vs-

1.The Deputy Inspector General of Prisons
Tiruchirappalli Range
Race Course Road
Tiruchirappalli-620 023

2.The Superintendent of Prisons
Central Prison
Tiruchirappalli-620 020

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records pertaining to the impugned order passed by the first respondent vide proceedings in No. 106/MuVu/2023, dated 29.09.2023 and quash the same as illegal and consequently to direct the respondents to grant 28 days ordinary leave to the



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petitioner Arumugam, son of Paramasivam, Convict No.17268, confined at Central Prison, Tiruchirappalli, within the time stipulated by this Court.

For Petitioner : Mr.C.Karthikeyan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The order dated 29.09.2023, passed by the first respondent, rejecting the petitioner's request for grant of ordinary leave, is under challenge in this writ petition.

2. It is the case of the petitioner, he was convicted by the learned Sessions Judge, Karur, by Judgment dated 29.11.2008 in S.C.No.84 of 2007, for the offence under Sections 302, 364 and 397 I.P.C., and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year rigorous imprisonment for the offence under Section 302 I.P.C.; to undergo five years rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo three months rigorous imprisonment for the offence under Section 364 I.P.C., and to undergo seven years rigorous imprisonment for the



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offence under Section 397 I.P.C. All these sentences were ordered to run concurrently. The appeal in CrI.A.No.98 of 2009 before this Court and SLP (CrI) Diary No.6383 of 2022 before the Honourable Supreme Court preferred by the petitioner challenging the conviction and sentence were dismissed confirming the conviction and sentence imposed by the Trial Court.

3. Further, according to the petitioner, his wife is taking care of the children and she is also suffering from cysts in uterus, which needs a surgery and therefore, he made a representation, dated 26.09.2023, to the first respondent through the second respondent, seeking 28 days ordinary leave. But, the same was summarily rejected by the first respondent *vide* order dated 29.09.2023, on the ground that the petitioner is convicted for the offence under Section 397 I.P.C., and under Section 224 I.P.C., in Crime No. 271 of 2023, on the file of Kulithalai Police Station.

4. Learned counsel for the petitioner would submit that the offence in Crime No.271 of 2013, on the file of Kulithalai Police Station, had taken place way back in the year 2013 and the petitioner was arrested and kept under custody on 22.03.2017 and therefrom, he is in incarceration for seven years.



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5. Learned counsel for the petitioner would further submit that the Circular of the Additional Director General of Police/Inspector General of Prisons, dated 15.12.2017, directs the Prison Authorities not to grant any sort of leave to the prisoners, who were absent on leave previously and facing/faced case under Section 224 I.P.C., in the past five years preceding the date of commencement of leave. However, the above offence under Section 224 I.P.C., is said to have been committed by the petitioner five years ago and hence, the said Government Order cannot be a bar for granting ordinary leave to the petitioner. Hence, the provisions of Rule 21(d)(5) of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter, referred to as “the 1982 Rules”) would not attract.

6. At this juncture, it would be beneficial to refer the Circular of the Additional Director General of Police/Inspector General of Prisons, dated 15.12.2017, which is extracted hereunder:

“No.26594/PS.4/2017

*O/o.Additional Director General of
Police/Inspector General of Prisons,
Chennai – 8*

Dated : 15.12.2017



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Sub : Prisons – Granting of leave to prisoners – instructions – issued – Regarding. Ref : This office memo No.26594/PS4/2017, dated – 13.10.2017.

In this office memo cited, instructions have been issued not to grant any sort of leave to those prisoners who were absent on leave previously and facing / faced case u/s 224 IPC. 2. In this connection, it is informed that during the course of meeting of Additional Director General of Police / Inspector General of Prisons with the Range Deputy Inspector General of Prisons and Superintendent of Prisons held on 11.12.2017, the matter was discussed in detail. All the Range Deputy Inspector General of Prisons and Superintendent of Prisons are instructed not to grant any sort of leave to the prisoner who were absent on leave previously and facing/faced case u/s 224 IPC in the past 5 years preceding the date of commencement of leave.

Sd/-Ashuthosh Shukla

*Addl. Director General of Police /
Inspector General of Prisons*

To:

All Deputy Inspector General of Prisons.

All Superintendent of Central Prisons,

Special Prisons for Women.

// Forwarded by order//

Superintendent”



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7. Learned counsel for the petitioner would further submit that the Division Bench of this Court in W.P.(MD) No.7386 of 2023, based on the Circular of the Additional Director General of Police/Inspector General of Prisons, dated 15.12.2017, while dealing with a similar matter, observed that the Circular does not state as to what is the sanctity of an acquittal order passed in cases of offence under Section 224 I.P.C. Apparently, when a convict has been subjected to criminal proceedings and has been duly tried and acquitted, he cannot be termed to have committed an offence under Section 224 I.P.C. If that be so, the Circular of the Inspector General of Prisons, insofar as it relates to the term “faced cases under Section 224 I.P.C., would only refer to case of a person, who has been convicted for the offence. Thus, the reason assigned by the respondents in the impugned order, for rejection by placing reliance on the Circular of the Inspector General of Prisons, may not be correct.

8. The Superintendent of Prisons, Central Prison, Tiruchirappalli / second respondent has filed a detailed counter affidavit. The relevant portions of the counter affidavit are extracted hereunder:



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“3. With regard to the averments contained in the para 2, 2, 3, 4 & 5 of the affidavit, it is submitted that the petitioner Life Convict Prisoner No.17268 Arumugam son of Paramasivam, concerned in Kulithalai Police Station, Crime No.134/2006, u/s.302 IPC was convicted and sentenced to undergo imprisonment for life and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for 1 year, u/s 364 IPC Rigorous Imprisonment for 5 years, and to pay a fine of Rs.500/- in default to undergo Rigorous Imprisonment for 3 months and u/s 397 IPC-Rigorous Imprisonment for 7 year (Fine not paid) and these sentences were ordered to run concurrently by the District Sessions Judge, Karur in S.C.No. 84/2007, dated 29.11.2008 and the above said prisoner was admitted in Central Prison, Trichy on 29.11.2008.

4. On appeal, the above sentence was confirmed by the Hon'ble High Court of Judicature at Madras, Madurai Bench in Crl.A.No.98/2009, Dated:08.10.2010. On appeal before the Hon'ble Supreme Court of India at Delhi, in SLP (Crl) Diary No.6383/2022, Dated: 30.01.2023, the appeal was dismissed.

5. Further, it is submitted that the above said Life Convict prisoner had availed Court Leave/Emergency leave on various periods as per the order of Hon'ble High Court and Superintendent of Prisons as detailed below:



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S.No.	Leave Reason	Released Date	Returned Date	Availed Leaves
1)	Released on Emergency Leave to see his ailing father	25.12.2011	25.12.2011	01 day (with Police escort)
2)	Released on Emergency Leave to see his ailing father	08.03.2012	12.03.2012	03 days (with Police escort)
3)	Released on Emergency Leave to see his ailing father	16.05.2012	23.05.2012	06 days (with Police escort)
4)	Released on Emergency Leave to see his ailing father	21.07.2012	25.07.2012	03 days (with Police escort)
5)	Released on Emergency Leave to see his ailing father	12.11.2012	16.11.2012	03 days (with Police escort)
6)	Released on Emergency Leave to see his ailing father	08.02.2013	15.02.2013	06 days (with Police escort)
7)	Released on Emergency Leave to see his ailing father	11.06.2013	15.06.2023	3 days without escort Not returned Parole absent



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6.Further, it is submitted that the Life convict prisoner had released on emergency leave for three days from 11.06.2013 to see his ailing father but he did not return to this prison on due date (i.e.) 15.06.2013. Therefore, a case had been registered in Kulithalai Police Station, Crime No. 271/2013 for the offence under section 224 IPC. Then, he was recaptured and re-admitted in this prison on 22.03.2017. (Period – 3 years 9 months 14 days). The above said prisoner was released on bail on executing own bond for Rs.10,000/- by the Judicial Magistrate No.II, Kulithalai in CMP No.3252/2018, Dated:31.07.2018 for the offence u/s 224 IPC.

7.With reference to the averments contained in para No. 6&7 of the affidavit, It is submitted that the petitioner gave a representation dated 20.09.2023 in which the petitioner requested to grant 28 days ordinary leave without escort for his son Life Convict Prisoner No.17268 Arumugam son of Paramasivam. The petitioner representation was forwarded to the Deputy Inspector General of Prisons and correction services, Trichy Range, Trichy vide this office letter No. 18606/R4/2023 dated: 26.09.2023. The petitioner's representation was rejected by the Deputy Inspector General of Prisons and correction services, Trichy Range, Trichy vide letter No.106/CA/2023 dated:29.09.2023 in which it was stated that the petitioner was not eligible for 30 days ordinary leave as per the Rule No.21(d)(5) and 21(b) of Tamil



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Nadu Suspension of Sentence Rule 1982, and the same copy served to the petitioner also.

Rule No.21(b) Non-eligibility for ordinary leave

“Prisoners sentenced under section 392 to 402 of the Indian Penal Code (Central Act 45 of 1860);

Rule No.21(d)(5) Non-eligibility for ordinary leave

“Prisoners who are considered dangerous or who are involved in the following Prisons Offences;

- (1)assault;*
- (2)Outbreak;*
- (3)Riot;*
- (4)Mutiny;*
- (5)Escape;*
- (6)Instigation to serious violations of prison rules;*
- (7)Strike;*

The petitioner involved in escape i.e., parole absent. Hence he is not eligible for ordinary leave.”

9. Learned Additional Public Prosecutor appearing for the respondents, on instructions, would submit that as per the amendment *vide* SRO A-7/2023, dated 25.04.2022, Clause (i) has been added to Rule 21 of the 1982 Rules and as per the said amendment, the prisoners, who have not reported back to the prison after completion of the leave period, are also not



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entitled for grant of ordinary leave. Further, the petitioner is involved in the offence under Section 224 I.P.C., and in the original case, he has been convicted for the offence under Sections 302, 364 and 397 I.P.C., (Robbery) and therefore, he would seek for dismissal of this writ petition.

10. In reply, learned counsel for the petitioner would submit that the petitioner has not escaped from prison and that a case was registered against him under Section 224 I.P.C., for not returning back to the prison, after completion of the leave period. Further, the offence under Section 224 I.P.C., is said to have been committed by the petitioner on 15.06.2013, the date on which he was supposed to return back to the prison and that the amendment to the Rules came into effect from 25.04.2022 and the ground for rejection of ordinary leave may not be applicable to the present petitioner.

11. Learned counsel for the petitioner would further submit that as per the Circular of the Additional Director General of Police/Inspector General of Prisons, dated 15.12.2017, five years period has also been lapsed and therefore, the petitioner is entitled for grant of ordinary leave.



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12. Learned counsel for the petitioner would further submit that even as per Rule 22(1)(c) of the 1982 Rules, the petitioner is entitled for grant of ordinary leave as he is in imprisonment for nearly seven years from the completion of the last leave period.

13. At this juncture, it would be beneficial to refer Rule 22(1)(c) of the 1982 Rules, which is extracted hereunder:

“22.Eligibility for ordinary leave.

...

...

(c)Three years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding fourteen years and for life.”

14. In this regard, learned Additional Public Prosecutor fairly concedes that the offence under Section 224 I.P.C., has been taken place on 15.06.2013, the date on which the petitioner was supposed to return back to the prison and that the petitioner had earlier been released on emergency leave to see his ailing father on six occasions and in the seventh occasion, he was granted ordinary leave for three days without escort and during such time, he did not return back to the prison. He would further submit that if



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15. Heard the learned counsel on either side and carefully perused the materials available on record.

16. On perusal, it is seen that the petitioner was earlier released on emergency leave on six occasions and on the seventh occasion, he was released on emergency leave to seek his ailing father on 11.06.2013 for three days without escort and he was to report back to the prison on 15.06.2013. However, he had not reported to the prison. Therefore, based on the complaint, a case in Crime No.271 of 2013 was registered on the file of Kulithalai Police Station, for the offence under Section 224 I.P.C. However, in the said case, since the final report was not filed within the time limit, the learned Judicial Magistrate, by order dated 17.08.2023, had closed the first information report in Crime No.271 of 2013 on the ground of limitation under Section 167(5) Cr.P.C. The only objection raised by the first respondent is that the petitioner was granted emergency leave to see his ailing father on 11.06.2023 for three days and he was supposed to return back to the prison



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on 15.06.2023 and that he had not returned back to the prison. It is stated that as on date, five years has lapsed and as per Rule 22(1)(c) of the 1982 Rules, the petitioner is eligible for grant of ordinary leave and as per the Circular of the Additional Director General of Police/Inspector General of Prisons, dated 15.12.2017.

17. In view of the above,

- (i) The writ petition is allowed.
- (ii) The impugned order dated 29.09.2023, passed by the first respondent, is set aside.
- (iii) The second respondent is directed to grant ten days ordinary leave starting from 23.04.2024 to 02.05.2024.
- (iv) While passing such orders, the second respondent is at liberty to impose reasonable conditions on the petitioner including a condition for the petitioner to report before the Inspector of Police, Enungoor Police Station daily at 10.00 a.m., and 06.00 p.m., during the period of ordinary leave.



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- (v) On completion of the leave period, the petitioner shall report before the second respondent, without fail.
- (vi) No costs.

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

08.04.2024

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

krk

To:

- 1.The Deputy Inspector General of Prisons,
Tiruchirappalli Range,
Race Course Road,
Tiruchirappalli-620 023.
- 2.The Superintendent of Prisons,
Central Prison,
Tiruchirappalli-620 020.
- 3.The Inspector of Police,
Enungoor Police Station.



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AND
K.RAJASEKAR, J.

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