



W.P.Crl.No.728 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2025

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.P.Crl.No.728 of 2025
and
W.P.M.P.Crl.No.335 of 2025

Bowsul Huthya
W/o.Zakir Hussain

... Petitioner

Vs.

1. The Home Secretary,
Home Department (Prison),
Secretariat, Fort St.George,
Chennai – 600 009.
2. The Inspector General of Prisons,
Prison Head Quarters,
Egmore, Chennai – 600 008.
3. The Superintendent of Prison,
Central Prison I,
Puzhal, Chennai – 600 066.

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying to issuance of Writ of Certiorarified Mandamus, calling for the records relating to the proceedings by the 3rd respondent dated 31.07.2025 and quash the same and consequently direct the 3rd respondent



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to grant 28 days ordinary leave without escort to the petitioner's husband Zakir Hussain, S/o.Haider Ali (Convict No.6724), who is presently confined in Central Prison-I, Puzhal, Chennai.

For Petitioner : Mr.P.M.Basil

For Respondents : Mr.R.Muniyapparaj,
Additional Public Prosecutor,
assisted by Mr.M.Sylvester John

ORDER

[Order of the Court was made by P.VELMURUGAN, J.,]

This Writ Petition has been filed challenging the impugned proceedings dated 31.07.2025, rejecting the representation of the petitioner's husband Zakir Hussain, S/o.Haider Ali (Convict No.6724), presently confined at Central Prison-I, Chennai, seeking ordinary leave for a period of 30 days.

2. The petitioner is the wife of the life convict prisoner, Zakir Hussain, S/o.Haider Ali. The said Zakir Hussain was convicted on 18.05.2015 by the Court of Negombo, Sri Lanka, for the offences under Sections 54a(b), 54a(c) and 54a(d) of the Poisons, Opium and Dangerous Drugs (Amendment) Act and was sentenced to undergo three



life imprisonments. Initially he was confined in Welikada Prison, Baseline Road, Colombo, Sri Lanka. Thereafter, under the provisions of the Repatriation of Sentenced Prisoners Rules, 2004, he was transferred from Sri Lanka to India and confined in Central Prison – I, Puzhal, Chennai, pursuant to G.O.(Ms)No.209, Home (Prison –V) Department, dated 13.03.2017.

3. According to the petitioner, her husband Zakir Hussain has already undergone more than thirteen years of incarceration, including the period of imprisonment undergone in Sri Lanka. While so, the convict prisoner submitted a representation dated 10.07.2025 seeking grant of 30 days' ordinary leave, predominantly on the grounds that his wife (petitioner herein), is suffering from ailments requiring uterus surgery and that his presence is required to make financial arrangements for the surgery and also for their son's college education. However, his request was rejected *vide* impugned proceedings dated 31.07.2025, solely on the ground that the convict prisoner was convicted for the offences under the NDPS Act and sentenced to three life imprisonment by Sri Lanka, and therefore, he is not eligible for ordinary leave as per Rule 22(1) and Rule



21(h)(3) of the Tamil Nadu Suspension of Sentence Rules, 1982

hereinafter referred to as 'TNSOS Rules']. This rejection order is assailed in the present writ petition, besides seeking a direction to the third respondent to grant 28 days' ordinary leave without escort to the convict prisoner.

4. Learned counsel for the petitioner submitted that the petitioner's husband, the convict prisoner, has already undergo more than thirteen years of incarceration and that in similar cases, the Division of Bench of this Court has considered and granted ordinary leave to convict prisoners convicted under the NDPS Act. He further submitted that although the constitutional validity of Section 32-A of the NDPS Act has been upheld by the Hon'ble Apex Court in the case of ***Dadu Alias Tulsidas Vs. State of Maharashtra***, reported in ***(2000) 8 Supreme Court Cases 437***, the same does not curtail the powers of the competent authorities to grant parole or the powers of the Court to suspend the sentence pending appeal. Therefore, the denial of the benefit sought by the convict prisoner is arbitrary, based on a total misunderstanding of legal position, and unsustainable in law. Hence, the convict prisoner is entitled to ordinary leave, and the prison authorities cannot deprive the convict prisoner of such statutory and legal entitlement.



5. The learned Additional Public Prosecutor, relying on the decisions of the Hon'ble Apex Court and this Court, supported the impugned proceedings. It was contended that earlier Division Benches of this Court, relying on the judgment of Hon'ble Apex Court in ***Dadu's case (supra)***, had granted ordinary leave to the convict prisoners, who were convicted under NDPS Act by exercising powers under Article 226 of the Constitution of India. However, it was submitted that Section 32-A of the NDPS Act created an unreasonable distinction between prisoners convicted under the NDPS Act and the prisoners convicted under other statutes.

6. He further contended that the Hon'ble Apex Court in ***Tara Singh Vs. Union of India and others*** reported in ***(2016) 11 SCC 335***, has clarified that while *Dadu's Case (supra)* upheld the constitutional validity of Section 32-A of the NDPS Act, it does not confer an absolute right upon a convict to seek suspension of the sentence as a matter of right in all cases, nor does it dispense with the legal obligation of the Courts to exercise such power strictly within the parameters prescribed under Section 37 of the NDPS Act. It was further held that the constitutional powers exercised under Articles 72 and 161 of Constitution of India are



quite different than the powers exercised under a statute. It is relevant to extract paragraph No.20 of the said judgment, which reads as follows :

“20. The petitioners have invoked the power of this Court to grant the benefit of remission in exercise of power under Article 32 of the Constitution of India. Speaking plainly, the prayer is totally misconceived. It is urged in a different manner before us that the power exercised by this Court under Article 32 and Article 142 of the Constitution cannot be statutorily controlled. Though the argument strikes a note of innovation, yet the innovation in the case at hand cannot be allowed to last long, for it invites immediate repulsion. Section 32-A of the NDPS Act, as far as it took away the power of the Court to suspend the sentence awarded to the convict under the Act has been declared unconstitutional in *Dadu Case*. A convict can pray for suspension of sentence when the appeal is pending for adjudication. The aforesaid authority has upheld the constitutional validity of the section insofar as it takes away the right of the executive to suspend, remit and commute the sentence. Negation of the power of the Courts to suspend the sentence which has been declared as unconstitutional to suspend the sentence which has been declared as unconstitutional, as has been held in *Dadu case*, does not confer a right on the convict to ask for suspension of the sentence as a matter of right in all cases nor does it absolve the courts of their legal obligation to exercise the power of suspension within the parameters prescribed under Section 37 of the NDPS Act. The constitutional power exercised under Articles 72 and 161 is quite different than the power exercised under a statute.”

7. The learned Additional Public Prosecutor appearing for the respondents further contended that as per Rule 21(h)(3) of the TNSOS Rules, persons convicted for smuggling of commercial quantity of narcotic and psychotropic substances, are ineligible to seek for ordinary leave. In the present case, the convict prisoner was found guilty of



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illegally dealing with a commercial quantity of NDPS and he was initially convicted by the Court at Negombo, Sri Lanka, and he was therefore, considered as a convicted foreigner. It is further stated that pursuant to the Amendment of Tamil Nadu Suspension of Sentence Rules, 1982, issued *vide* G.O.Ms.No.205, Home (Prison-V), dated 25.04.2022, the convict prisoner is ineligible for grant of ordinary leave as per 21(j) and also contended he is also not eligible for ordinary as per Rule 21(h)(3) of TOSOS Rules. Therefore, the convict prisoner's request was rightly rejected by the third respondent. Hence, no interference with the impugned order is warranted by this Court.

8. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

9. A plain and conjoint reading of Rule 21(h) (3) of TNSOS Rules clearly discloses that prisoners convicted for offences involving commercial quantity under the NDPS Act are disqualified from being granted ordinary leave. The impugned proceedings, therefore, are strictly in consonance with the said statutory provision. Though the petitioner has assailed the impugned proceedings by placing reliance on certain earlier

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decisions of the Division Bench of this Court, as rightly pointed out by the learned Additional Public Prosecutor, the binding judgment of the Hon'ble Apex Court in *Tara Singh Vs. Union of India and others (supra)* was not taken into consideration in those cases.

10. Undoubtedly, Section 32-A of the NDPS Act, insofar as it took away the power of the Court to suspend the sentence of a convict, was held unconstitutional by the Apex Court in *Dadu's case (supra)*. Nevertheless, even in the said judgment, the Hon'ble Apex Court categorically held that the grant of leave is subject to the provisions of other applicable laws, jail manuals, or Government orders. In the present case, the authorities have acted strictly in accordance with Rule 21(h) (3) of TOSOS Rules, which expressly prohibits the grant of ordinary leave to prisoners convicted under the NDPS Act for offences involving commercial quantity.

11. In view of the aforesaid discussion, this Court finds no perversity, illegality or infirmity in the impugned proceedings passed by the third respondent. Accordingly, the Writ Petition stands dismissed. Consequently, connected miscellaneous petition is closed. No costs.



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12. No doubt, under Rule 19 of TOSOS Rules, the Deputy Inspector General of Prisons is the competent authority to consider the applications seeking for ordinary leave. Rule 24 mandates that such applications be forwarded to the Deputy Inspector General of Prisons, through the Superintendent of Prisons. In the present case, the Superintendent of Prisons, by invoking Rule 21(h) (3) and had straight away rejected the application.

13. Accordingly, the Superintendent of Prisons is hereby directed not to pass orders on applications seeking ordinary leave. Upon receipt of such applications, the Superintendent of Prisons, shall, within three days, forward it to the concerned Probation Officer for his report. On receipt of the report, the Superintendent of Prisons shall, within six days, transmit the application along with all relevant records to the Deputy Inspector General of Prisons, who shall consider and pass orders on merits and in accordance with law. The entire exercise shall be completed within twenty eight days from the date of receipt of the original petition seeking grant of leave.



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14. The petitioner is at liberty to approach the Government by invoking Rule 40 of TOSOS Rules and file an appropriate application. If such an application is made, the Government may consider the same on its own merits and in accordance with law.

(P.V., J.) (M.J.R., J.)
16.12.2025

Index: Yes/No
Neutral Citation: Yes/No
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To

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Chennai – 600 009.
2. The Inspector General of Prisons,
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**P.VELMURUGAN, J.,
and
M.JOTHIRAMAN, J.,**

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