



W.P.(MD).No.7386 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.08.2023

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CORAM

**THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR**

W.P.(MD).No.7386 of 2023

Kavitha

.. Petitioner/
Wife of the detenu

Vs.

1.The State represented by its
The Secretary to Government of Tamilnadu,
Department of Home,
Fort St.George,
Chennai – 600 009.

2.The Director Inspector General of Prison,
Madurai Range,
Madurai – 625 001.

3.The Superintendent,
Palayamkottai Central Prison,
Palayamkottai – 620 020.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for the records pertaining to the Impugned Order No.421/Tha.Ku.2/2022 dated 25.01.2023, issued by



the 3rd respondent and quash the same and consecutively direct the respondents to grant leave for 40 days without escort to the detenu, Chelladurai S/o.Rajendran, life convict No.2260 prematurely, confined at Central Prison, Palayamkottai.

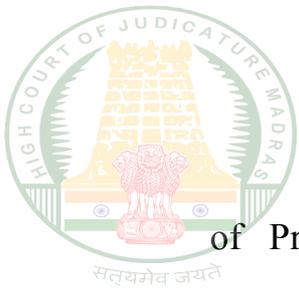
For Petitioner : Mr.R.Narayanan

For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

(Order of the Court was made by M.S.RAMESH,J.)

When the petitioner herein had sought for grant of ordinary leave for her husband, namely, Chelladurai, who is a life convict prisoner (Life Convict No.2260) and confined at Central Prison, Palayamkottai, her request was rejected by the third respondent through the impugned order dated 25.01.2023, predominantly, on the ground that while her husband was earlier granted emergency leave on 01.07.2019 for three days, he had absconded and accordingly, proceedings were initiated for an offence under Section 224 IPC in Crime No.296/2019. It is further stated that in view of the Circular of the Additional Director General of Police/Inspector General



of Prisons in No.26594/PS.4/2017 dated 15.12.2017, the petitioner's husband will not be entitled for grant of any sort of leave, since he had faced prosecution for the offence under Section 224 IPC in the past five years. Challenging the said order, the present Writ Petition has been filed.

2. The case in Crime No.296/2019 had culminated into S.T.C.No.604/2022, in which the petitioner's husband was acquitted through a judgment dated 01.08.2022 by the learned District Munsif Cum Judicial Magistrate, Sengottai.

3. The Circular of the Additional Director General of Police/Inspector General of Prisons dated 15.12.2017, which was relied upon in the impugned order, reads as follows:

“No.26594/PS.4/2017 *O/o.Additional Director General of
Police/Inspector General of Prisons,
Chennai – 8.
Dated : 15.12.2017*

*Sub : Prisons – Granting of leave to prisoners –
instructions – issued – Regarding.*

*Ref: This office memo No.26594/PS4/2017, dated –
13.10.2017.*



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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 preceeding 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”



WEB COPY 4. A perusal of the aforesaid Circular would suggest that the Circular may cover the prisoners, who are either facing prosecution under Section 224 IPC or who have already faced prosecution under Section 224 IPC. The Circular does not state as to what is the sanctity of an acquittal order passed in cases of offence under Section 224 IPC. 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 IPC. If that be so, the Circular of the Inspector General of Prisons, insofar as it relates to the term “faced cases under Section 224 IPC”, 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.

5. The petitioner, in her affidavit filed in support of the present Writ Petition seeking for leave for her husband, has stated that owing to her poor financial status, she is unable to pay the school fees of her son and



therefore, seeks for the presence of her husband to arrange money from his friends or relatives for their expenses. Rule 20 of the Tamil Nadu Suspension of Sentence Rules, 1982 (hereinafter referred to as “Rules”), provides for grant of ordinary leave to a prisoner on various circumstances, including a situation for making arrangements for the admission of the children of the convict in the school or college.

6. Under the amended Rule 22(2)(c) of the Rules, the convict, who has completed 6 years of imprisonment and not exceeding 14 years of imprisonment, would be entitled for grant of 28 days of ordinary leave. It is not in dispute that the petitioner's husband has completed 10 years and has not exceeded 14 years of imprisonment. Thus, he would be entitled for 28 days of ordinary leave, in accordance with the amended Rule 22(2)(c) of the Rules.

7. In the light of the above findings and observations, the impugned order dated 25.01.2023 on the file of the third respondent is set aside. Consequently, there shall be a direction to the second respondent herein to



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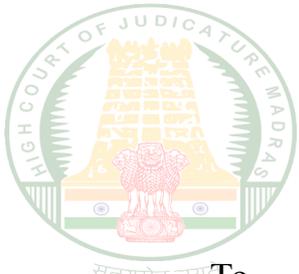
grant ordinary leave to the petitioner's husband, namely, Chelladurai (Life Convict No.2260), for a period of 28 days commencing from 19.08.2023, without escort. While passing such orders, the second respondent herein is at liberty to impose reasonable conditions, including the condition for the petitioner's husband to report before the Inspector of Police, Courtrallam Police Station, Tirunelveli District, twice daily at 10.00 AM and 6.00 PM, for the entire period of the ordinary leave. On completion of the leave period, he shall report and surrender before the second/third respondent.

8. Accordingly, the Writ Petition stands allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
17.08.2023

NCC : Yes / No
Index : Yes / No
Lm

Note: Issue order copy by 18.08.2023.



To
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1. The Secretary to Government of Tamilnadu,
The State,
Department of Home,
Fort St.George,
Chennai – 600 009.
2. The Director Inspector General of Prison,
Madurai Range,
Madurai – 625 001.
3. The Superintendent,
Palayamkottai Central Prison,
Palayamkottai – 620 020.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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VERDICTUM.IN



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and
M.NIRMAL KUMAR,J.

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