

W.P.(MD).No.15423 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 12.07.2023

CORAM

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

W.P.(MD).No.15423 of 2023

Muppidathi

.. Petitioner/Wife of the
Prisoner

Vs.

1. The Deputy Inspector General of Prison,
Madurai Zone,
Madurai Central Prison,
Madurai – 625 001.

2. The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli – 627 002.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of Certiorarified Mandamus, to call for records pertaining to the impugned order No.1138/Vu.Tha.2/2023 dated 22.05.2023 passed by the 1st respondent and quash the same and consequently direct the respondents to grant 40 days of ordinary leave without escort to the petitioner's husband, Balachandar, convicted prisoner No.1253 confined in the Palayamkottai Central Prison.

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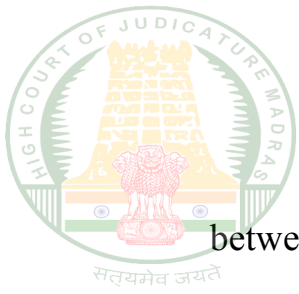
For Petitioner : Mr.R.Narayanan
For Respondents : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

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

The petitioner is the wife of one Balachandar, who is a convicted prisoner (Convict Prisoner No.1253) and is confined in Palayamkottai Central Prison. On the ground that she is suffering from severe health ailment and the doctor had advised her to undergo a surgery, for which purpose she requires physical and moral support, she had given a request to the second respondent herein seeking for ordinary leave for her husband.

2. The Probation Officer through his report dated 23.03.2023 had recommended for release of the petitioner's husband on ordinary leave. However, the Commissioner of Police, Tirunelveli City through his report dated 11.04.2023, has stated that there is no safety to the life of the petitioner's husband from the brothers of the victim girl and the son born



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between the complainant and the petitioner's husband and further, that the prisoner will abscond if released on ordinary leave. Based on the Commissioner's report, the first respondent herein had passed the impugned order dated 22.05.2023 rejecting the petitioner's claim. The said order of rejection is put under challenge in the present Writ Petition.

3. Under the amended Rule 22(2)(c) of the Tamil Nadu Suspension of Sentence Rules, 1982, a prisoner, who had completed three years and has below five years of imprisonment, will be entitled for 21 days of ordinary leave. The Deputy Inspector General of Prisons would be the competent authority to grant such ordinary leaves under Rule 19.

4. As per Rule 24 of the Tamil Nadu Suspension of Sentence Rules, 1982, the petitions for ordinary leave addressed to the Deputy Inspector General of Prisons shall be referred to the Probation Officer, who shall personally enquire into the likelihood of involvement of any breach of peace in the locality and thereafter, submit a report, in consultation with the local Sub Inspector of Police to the Superintendent of Prisons. The Deputy



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Inspector General of Prisons thereafter may consider the report and the other statements submitted with the report and pass appropriate orders.

5. In the report of the Probation Officer dated 23.03.2023, it is stated that the reason given for request is genuine and that since the release of the petitioner's husband would be welcomed by the people in the locality, namely, the petitioner and her relatives, a positive recommendation was made. The petitioner has also produced medical certificates of her health condition which evidences that the petitioner has been advised to undergo a surgery for some medical ailment in her stomach and that the physical presence of her husband is required for moral and emotional support.

6. While the Probation Officer prepares his report after personally enquiring into the likelihood of involvement of breach of peace in the locality, if the prisoner is let out on ordinary leave, the consultation with the local Sub Inspector of Police is also provided for under rule 24. This apart, Rule 24 does not envisage the requirement of a report from the Commissioner of Police in this regard. Even otherwise, the Commissioner's



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report dated 11.04.2023 only makes a vague statement that there could be a threat to the life of the petitioner's husband from the complainant, his son born through the complainant and the brothers of the complainant and also he may abscond. The report does not state that such information was gathered after such a discrete enquiry or information from other sources.

7. Accordingly, the impugned order dated 22.05.2023 on the file of the first respondent is quashed. Consequently, there shall be a direction to the respondents herein to grant ordinary leave to the petitioner's husband namely, Balachandar (convict prisoner No.1253) for 21 days with the following conditions:

(a) The respondents herein shall forthwith release the petitioner's husband, namely, Balachandar (convict prisoner No.1253) on ordinary leave for a period of 21 days commencing from 13.07.2023 till 02.08.2023;

(b) The convict prisoner shall report before Tirunelveli Town Police Station daily at 10.00 a.m. and 5.00 p.m. for the entire period of the ordinary leave;



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(c) He shall not leave the territorial boundaries of Tirunelveli District

during the period of his leave;

(d) He shall be of good behavior and shall not commit any offence during his leave;

(e) He shall not associate with bad character, or lead a dissolute life;

(f) He shall surrender himself to the Superintendent of Prison, Central Prison, Palayamkottai on expiry of leave or on recall and notwithstanding the expiry of the period of leave and return on **02.08.2023 at 05.00 p.m.**;

8. With the above conditions, this Writ Petition is allowed. There shall be no order as to costs.

(M.S.R.,J.) (M.N.K.,J.)
12.07.2023

NCC : Yes / No

Index : Yes / No

Lm

Note: Issue order copy by 12.07.2023.



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3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
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