

W.P.No.20596 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

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CORAM :

**THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE N.SENTHILKUMAR**

W.P.No.20596 of 2024

Usha

... Petitioner

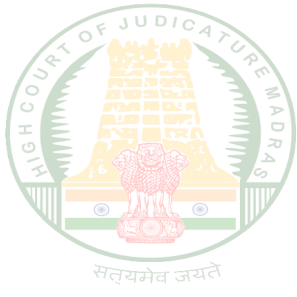
Vs.

1. The Director General of Police,
I.G. of Prisons,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.

2. The Superintendent of Prisons,
Central Prison,
Vellore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, directing the respondent to grant 28 days ordinary leave by without escort to the petitioner's husband Karthi S/o. Ramalingam @ Eli Ramalingam aged about 42 years, Convict Prisoner, Vellore Prison, Vellore.



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For Petitioner : Ms.S.Nadhiya

For Respondents : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

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

The writ petition has been instituted to direct the respondents to grant 28 days Ordinary Leave without escort to the husband of the petitioner Mr.Karthi S/o. Ramalingam @ Eli Ramalingam aged about 42 years, convict prisoner, Vellore Prison, Vellore.

2. The learned Counsel for the petitioner would submit that the petitioner being the wife of the prisoner submitted an application on 27.06.2024 to the respondents to grant 28 days ordinary leave to her husband/prisoner. Since it was not considered, the present writ petition came to be instituted.

3. The practice of filing premature writ petitions need not be entertained by the High Court unless there is an extraordinary circumstances. In normal course, the competent Authorities must be allowed to take a



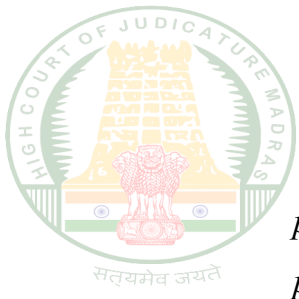
decision in accordance with the Rules and in the event of rejection, the cause would arise for the purpose of instituting writ proceedings. The practice of filing writ petition even before the expiry of the statutory period provided to the Authorities need not be entertained by the High Court. The competent Authorities must be allowed to exercise their powers in the manner contemplated under the Rules. Only in the event of an order of rejection, the cause would arise for filing the writ petition.

4. Regarding grant of leave, Tamil Nadu Suspension of Rules, 1982 contemplates procedures.

5. Rule 23 reads as under:

"23. Petition for ordinary leave - (1) The petition for ordinary leave shall be submitted by the prisoner or by a relative of the said prisoner to the [Deputy Inspector General of Prisons concerned] direct or sent through the Superintendent of Prison where the prisoner to whom leave is to be granted is confined.

(2) Each petition for ordinary leave shall be accompanied with a statement of the names of two sureties who are willing to execute the bond for the prisoner's release on leave and take care of the prisoner during the period of leave. In the petition, it shall be stated, among other things, the names and addresses of the



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prisoner's relative with whom he wishes to stay during his leave period.

6. Amended Rule 24 reads as under:

(4) For Rule 24, the following rule shall be substituted namely:

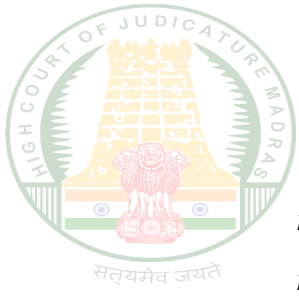
"24. Process of Petition: (1) All petitions for the grant of ordinary leave submitted to the superintendent of Prisons shall be referred to the Probation Officer concerned within three days of its receipt for reports on the advisability of the ordinary leave of the prisoner in question.

(2) (a) The Probation Officer shall personally enquire into and send his report to the Superintendent of Prisons in Form I within ten days of its receipt from the Superintendent of Prisons.

(b) In cases where the Probation Officer feels that the release on leave of a prisoner is likely to involve breach of peace in the locality, he shall consult the local Inspector of Police/Sub-Inspector of Police (Station House Officer), solely with a view to avoid any breach of peace and record the views of the Inspector of Police or Sub-Inspector of Police (Station House Officer) in the Form I.

(c) In respect of other cases, in which there is no likelihood of breach of peace, the Probation Officer shall send his report direct to the Superintendent of Prisons without consulting the local Inspector of Police or Sub-Inspector of Police (Station House Officer).

(3) On receipt of report from the Probation Officer, the Superintendent of Prisons, shall forward the petition along with the



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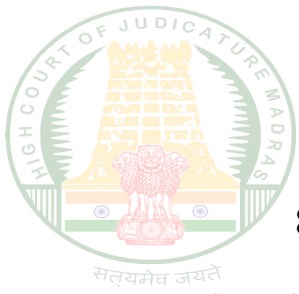
records such as the Nominal Roll of the prisoner, Check memorandum in Form II, statement showing the details of leave availed by the prisoner from the date of his conviction, a statement showing the offences committed by the prisoner and punishment awarded, and the Probation Officer's report within six days to the Deputy Inspector General of Prisons for orders;

(4) (a) The Deputy Inspector General of Prisons may, on consideration of the petition and the records and reports received along with the petition pass such orders as he deems fit within seven days of receipt of the proposal from the Superintendent of Prisons.

(b) In cases where all petitions submitted directly to the Deputy Inspector General of Prisons, the petition shall be forwarded to the Probation Officer concerned through the Superintendent of Prisons concerned within three days for further course of action.

(5) In any event, the whole process of disposal of petition should not exceed twenty eight days from the date of receipt of petition."

7. The above rules unambiguously stipulates that the petition for ordinary leave shall be submitted by the prisoner or by the relative of the said prisoner to the Deputy Inspector General of Prisons concerned direct or sent through the Superintendent of Prison where the prisoner to whom leave is to be granted is confined.



8. The process of petition has been well enumerated under Rule 24 and the whole process of disposal of leave petition should not exceed 28 days from the date of receipt of petition as per Rule 24 (5). Therefore, processing of petition has been clearly stipulated and each Authority under the Rules are bound to exercise their powers in the manner contemplated under the said Rules. The Authorities are expected to avoid unnecessary delay, in view of the fact that right to avail leave by the prisoners need not be denied.

9. In all cases wherever an application seeking leave is filed either by the prisoners or by the relative, the petition is to be processed within the time limit as contemplated under the Rules and an order must be passed on merits and in accordance with law. Reasons must be assigned for the purpose of rejecting the petition. At the outset, speaking order must be passed while granting or rejecting leave, since the reasons are live link for decisions.

10. Unnecessary writ petitions are filed before the High Court even before expiry of the statutory time limit provided under the Rules to the Authorities to dispose of the leave petitions. In such circumstances, the writ petitions are not entertainable, since it is not only premature but no cause has



arisen. In the absence of establishing any cause, writ petitions are not maintainable. Except in extraordinary circumstances un-receipt of leave petitions seeking ordinary leave, the Authorities must be allowed to take a decision by following due procedures and on merits.

11. The Authorities are duty bound to process the leave applications submitted by the prisoners or their relatives in accordance with the Rules and the same are to be processed strictly in adherence with the time limits stipulated under Rule 24 of the Tamil Nadu Suspension of Sentence Rules, 1982. The Authorities failing in their duties to perform the statutory obligations are to be viewed seriously. Such lapses are to be construed as official lapses, dereliction of duty and negligence warranting disciplinary action against the Officials concerned. The right of the prisoners is to be protected by the Prison Authorities. Therefore, adhering of the Rules in its strict sense are mandatory.

12. In the present case, the petitioner filed an application seeking leave on 27.06.2024. The writ petition was filed on 15.07.2024, even before the date of expiry of the statutory period as per the Rules to dispose of the leave



petition by the Competent Authority under the Tamil Nadu Suspension of Sentence Rules, 1982. Thus, the present writ petition is premature on the date of filing. However, we are inclined to take an exception in the present case, since during the pendency of the present writ petition, the statutory period expired and again remanding the matter become unnecessary.

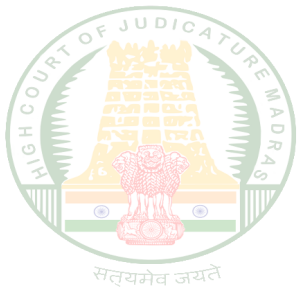
13. The learned Additional Public Prosecutor appearing on behalf of the respondents would submit that the prisoner is eligible for ordinary leave for 21 days.

14. In view of the facts and circumstances, we are inclined to pass the following orders;

(1) The convict prisoner viz., Karthi S/o. Ramalingam @ Eli Ramalingam, aged about 42 years, confined at Central Prison, Vellore is hereby granted ordinary leave for a period of 21 days, without escort commencing from **06.09.2024** on the following conditions.

(i) The Convict Prisoner shall be released on 06.09.2024 at 10.00 am and surrender before the Superintendent of Prison, Central Prison, Vellore on 26.09.2024 at 05.30 p.m.

(ii) The Convict Prisoner is directed to report before the



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Inspector of Police, Guduvancheri Police Station once in a week during the period of leave.

(iii) The Convict Prisoner shall utilize the leave only for the ground on which it has been granted and shall not indulge in any other activities.

(2) The 1st respondent / the Director General of Prisons is directed to issue consolidated instructions to all the Subordinate Prison Authorities to ensure that the leave applications filed by or on behalf of the prisoners are processed scrupulously in accordance with the Rules and decisions are taken within a period of 28 days as contemplated under Rule 24(5) of the Tamil Nadu Suspension of Sentence Rules, 1982.

(3) Failure in complying with the Tamil Nadu Suspension of Sentence Rules, 1982 regarding adherence of time limit contemplated is to be construed as lapse, dereliction of duty or negligence, as the case may be and appropriate disciplinary actions are to be initiated against the Officials, who all are responsible for such misconduct.

(4) The writ petitions filed prematurely before expiry of the statutory time limit of 28 days as contemplated under the Tamil Nadu Suspension of



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Sentence Rules, 1982 are not entertainable for grant of ordinary leave.

Applications for emergency leave are to be considered forthwith by the Competent Authority without causing any delay. An order of rejection of leave application would provide a cause for instituting the writ petition challenging the same.

15. With the above directions, the writ petition stands **disposed of**. No costs.

[S.M.S., J.] [N.S., J.]
29.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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1. The Director General of Police,
I.G. of Prisons,
Gandhi Irwin Road,
Egmore,
Chennai - 600 008.
2. The Superintendent of Prisons,
Central Prison,
Vellore.
3. The Public Prosecutor,
Madras High Court,
Chennai - 104.
4. The Inspector of Police,
Guduvancheri Police Station.



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VERDICTUM.IN



W.P.No.20596 of 2024

S.M.SUBRAMANIAM, J.
AND
N.SENTHILKUMAR, J.

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Order in
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