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W.M.P.No.28194 of 2023
in W.P.No.25730 of 2023

W.M.P.No.28194 of 2023

in

W.P.No.25730 of 2023

M.SUNDAR, J.

and

R.SAKTHIVEL, J.

[Order of the Court was made by M.SUNDAR, J.]

This order will now dispose of the captioned 'Writ Miscellaneous Petition' ['WMP' for the sake of brevity, convenience and clarity].

2. Captioned WMP has been filed with a prayer for extension of leave which is for a prison inmate which has been granted by this Court in and by order dated 01.09.2023 in W.P.No.25730 of 2023. To be noted, the 01.09.2023 order made in W.P.No.25730 of 2023 has since been reported in **2023:MHC:3983** (Neutral Citation) of this Court. 2023:MHC:3983

Bhuvaneswari's case reads as follows:



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W.M.P.No.28194 of 2023
in W.P.No.25730 of 2023

2023:MHC:3983



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W.P.No.25730 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

W.P.No.25730 of 2023

Bhuvaneswari
W/o.S.Dhanapal

.. Petitioner

Vs.

1. The Secretary
Government of Tamil Nadu
Home Department
Fort St.George
Chennai-600 009.
2. The Deputy Inspector General of Prison
Prison Department
Whannels Road, Ansari Estate
Egmore, Chennai-600 008.
3. The Superintendent of Prisons
Central Prison, Coimbatore
Coimbatore - 641 018.
4. The Inspector of Police
District Crime Branch
Salem.

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<https://www.mhc.tn.gov.in/judis>



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Respondents

Petition filed under Article 226 of the Constitution of India praying writ of mandamus directing the respondents to direct the respondents to grant parole for petitioner's husband by names S. Dhanapal (Convict No. 23926) S/o Chellaiyan, aged about 60 years, who is now under incarceration at Central prison Coimbatore for a period of 2 months for taking medical treatment based on petitioner's representation dated 25.05.2023.

For Petitioner	:	Mr.B.Shruthan
For Respondents	:	Mr.E.Raj Thilak Additional Public Prosecutor

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

This order will now dispose of the captioned writ petition.

2. Factual matrix in a nutshell is that petitioner's spouse Mr.S.Dhanapal son of Mr.Chellaiyan is a convict prisoner (Convict No.23926) now lodged in Central Prison, Coimbatore; that petitioner's spouse shall hereinafter be referred to as 'said convict prisoner' for the sake of convenience and clarity; that said convict prisoner was convicted and imposed 7 years sentence vide CrI.A.No.105 of 2019 on the file of III

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Additional District and Sessions Court, Salem; that petitioner sent a representation on 25.05.2023 requesting for 30 days ordinary leave saying that said convict prisoner is suffering from heart disease, Type 2 Diabetes and has a raw wound is in his right foot; that a medical opinion from a private hospital has been obtained which is to the effect that said convict prisoner has to take treatment for three months failing which health issues may worsen; that captioned writ petition has been filed in this Court on 29.08.2023 with a mandamus prayer qua grant of leave for said convict prisoner.

3. Issue notice.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor accepts notice for respondents and submits, on instructions, that 25.03.2023 representation of petitioner has been rejected in and by an order dated 09.06.2023 bearing reference No.11109/tha.ku.3/2023 made by third respondent [hereinafter 'impugned order' for the sake of convenience].

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5. Considering the facts, circumstances of the case and taking into account the fact that the ground on which leave has been sought has not been subjected to disputation or contestation, we shall be embarking upon a legal drill of testing the impugned order though the main prayer is for Mandamus.

6. Considering the limited scope of case on hand, main writ petition was taken up with the consent of both sides though the matter is in the Admission Board.

7. We examined the impugned order and we find that the only reason for rejection of leave plea is Rule 22(1)(b) of 'the Tamil Nadu Suspension of Sentence Rules 1982' [hereinafter 'said Rules' for the sake of convenience and clarity] which says that two years of imprisonment in cases of prisoners sentenced to imprisonment for a period exceeding five years but not more than fourteen years is imperative for grant of ordinary leave.

8. A scanned reproduction of impugned order is as follows:

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DOI: 10.1002/pola.23242

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பேரவையுள் சான்றிதழ் அளவிற்குள் இது பதிவேண் பையுடையது. தனது உத்தரவு குறிப்பிட்டிருக்கிற காலத்தில் இவ்வாறு தவறாக தயார் செய்துள்ள 23220 தாள்கள் எதுவும் வெளியிடப்படவில்லை. எனவே, உத்தரவு மீறியதாக இவ்வாறு தயார் செய்துள்ள தாள்கள் கருதப்படவில்லை.

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WEB COPY 9. Learned Prosecutor, advertng to the impugned order submits that Rule 22(1)(b) of said Rules is the lone impediment and therefore, leave plea has been rejected.

10. After carefully considering the submission of both sides and examining the case file, we deem it appropriate to grant 30 days leave to said convict prisoner and reasons are as follows:

(i) The ground on which leave has been sought i.e., medical ailment has not been subjected to disputation or contestation;

(ii) Incarceration of said convict prisoner thus far has been uneventful / blemishless;

(iii) As regards Rule 22(1)(b) of said Rules, it is a piece of subordinate legislation made by Executive in exercise of Section 432(5) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.PC' for the sake of brevity and clarity] and constitutional powers of this Court cannot be constricted or stifled by such subordinate legislation. This means that Rule 22(1)(b) of said Rules is not an impediment as regards this Court granting



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leave.



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WEB COPY 11. We have perused the conviction, sentence and we find that case on hand would be an appropriate case to say that said convict prisoner will be given ordinary leave without escort but with a condition that said convict prisoner shall sign everyday in the forenoon session before jurisdictional Magistrate namely, Judicial Magistrate No.I, Attur and shall utilize the leave period only for the ground on which leave has been sought.

12. 30 days leave will be from 04.09.2023 at 10.30 a.m. to 03.10.2023 at 5.30 p.m. On 30 days elapsing, said convict prisoner shall surrender in the office of third respondent i.e., by dusk (5.30 p.m) on 03.10.2023.

13. Captioned Writ Petition is disposed of in the aforesaid manner with the aforementioned directives and observations. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
01.09.2023

Index : Yes

Speaking

Neutral Citation : Yes

P.S.: Though captioned writ petition is disposed of, Registry to list the

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**captioned writ petition under the cause list caption 'FOR REPORT' on
12.10.2023.**

M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

mk

To

1. The Secretary
Government of Tamil Nadu
Home Department
Fort St.George, Chennai-600 009.
2. The Deputy Inspector General of Prison
Prison Department
Whannels Road, Ansari Estate
Egmore, Chennai-600 008.
3. The Superintendent of Prisons
Central Prison, Coimbatore
Coimbatore - 641 018.
4. The Inspector of Police
District Crime Branch
Salem.
5. The Public Prosecutor
High Court, Madras.

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3. Adverting to aforementioned order, more particularly, paragraph 2 thereat, learned counsel submitted that the raw wound in the right foot of the prison inmate is yet to heal fully. He is convalescing and therefore, the plea for extension of leave is being made.

4. Mr.E.Raj Thilak, learned State Additional Public Prosecutor who accepts notice for all four respondents, responding to a query from this Bench, on instructions, submitted that the prison inmate has been complying with the condition we had put in place for leave vide paragraph 11 of aforementioned 01.09.2023 order.

5. We find that there is no dispute or contestation that the raw wound in the right foot is yet to heal fully.

6. As the prison inmate has complied with the condition and as there is no serious dispute or contestation about the raw wound not



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having healed fully, we accede to the prayer in the captioned WMP partly. To be noted, the prayer is extension by two months but we are extending the leave by a fortnight. To be noted, 30 days leave is to elapse on 03.10.2023. It is now extended and it shall elapse on 17.10.2023.

7. The prison inmate shall surrender in the office of third respondent on 18.10.2023 by dusk, i.e., by 5.30 p.m. The conditions put in place vide our order dated 01.09.2023 for the leave that is now operating will continue to apply for the extended period of a fortnight also.

8. Captioned WMP is disposed of in the aforesaid manner.

(M.S., J.) (R.S.V., J.)
29.09.2023

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M.SUNDAR, J.
and
R.SAKTHIVEL, J.

rsi

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in
W.P.No.25730 of 2023

Dated : 29.09.2023