

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

and

THE HONOURABLE MS.JUSTICE V.M. VELUMANI

H.C.P.No.964 of 2020

Radhakrishnan (Male/45),
S/o. Duraisamy,
Life Convict Prisoner
(C.T. No. -0631),
Salem Central Prison,
Hasthampatti.

... Petitioner

Vs

1. The Home Secretary (Prison)
Home Department, Secretariat,
Fort St. George,
Chennai.

2. The Additional Director General of
Prisons (ADGP),
Office of the ADGP, Gandhi Irwin Road,
CMDA Building,
Egmore, Chennai – 600 008.

3. The Superintendent of Prison,
Salem Central Prison,

Hasthampatti – 636 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Habeas Corpus directing the respondents to grant ordinary leave for a period of one month without escort to the petitioner namely, D. Radhakrishnan, S/o. Duraisamy, Life Convict Prisoner (C.T. No. -0631) aged 45 years, confined at Central Prison, Salem for the purpose of making the arrangements of medical treatment of his wife and to partition and sell the ancestral property for manage the daughters sutdy expenses before this Hon'ble Court and further directing the respondents to consider the detenu release immediately under the ordinary leave and for consequential orders.

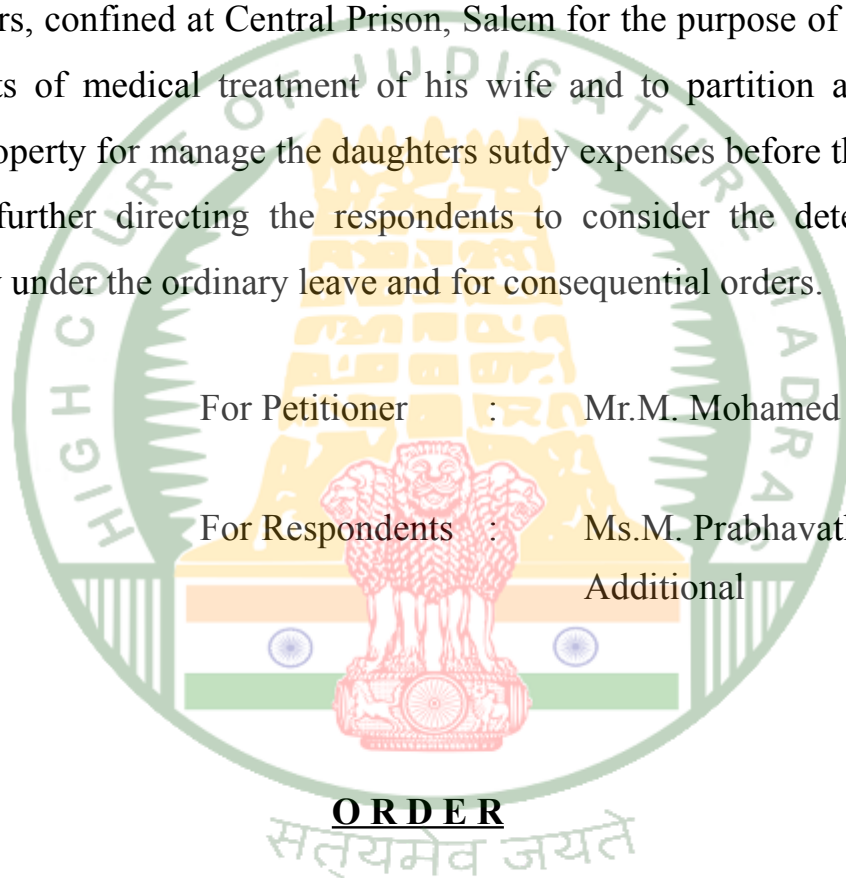
For Petitioner : Mr.M. Mohamed Saifulla

For Respondents : Ms.M. Prabhavathi,

Additional

Public

Prosecutor



ORDER

(Order of the Court was delivered by **N.KIRUBAKARAN, J**)

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The matter was heard through video-conferencing.

2.The petitioner is a life convict who seeks one month's ordinary

leave to treat his wife, who is suffering from incisional hernia and also to make

arrangements to meet the educational expenses of his daughters.

3. Heard Mr.M.Mohamed Saifullah, learned counsel for the petitioner and Ms. M. Prabhavathi, learned Additional Public Prosecutor for the respondents.

4. Though Ms. M. Prabhavathi, learned Additional Public Prosecutor would oppose granting of leave to the petitioner on the ground that there are two cases pending against him and they are in trial stage, taking into consideration that the petitioner had already been granted leave in 2019, the health condition of his wife and also that he has to make arrangements for the educational expenses of his children, this Court is inclined to grant ten days leave to the petitioner commencing from 15.07.2020 till 24.07.2020 with escort.

5. Accordingly, the petitioner namely, D. Radhakrishnan, S/o. Duraisamy, Life Convict Prisoner (C.T. No. -0631) aged 45 years, confined at Central Prison, Salem shall be released on 15.07.2020 at 10a.m. with escort and he shall surrender before the Prison Authorities on 24.07.2020 at 5p.m. It is made clear that no charges should be collected from the convict.

6. The Jail Authorities during the said period shall provide proper escort to the convict in order to ensure his safety and security. They shall impose suitable conditions to that effect and the convict should also abide by the conditions imposed by the authorities concerned.

7. It is brought to the notice of this Court that the police officials who are accompanying the convicts are taking money in the name of charges. If it is happening, then it is illegal and it would amount to bribe. It is made clear that if any such incident is brought to the notice of this Court, then not only departmental proceedings would be taken against the concerned officials but also action under Prevention of Corruption Act would be taken. The convicts are already languishing in jail and do not have any source of livelihood and their families are already suffering. In spite of the same, these people are fleecing the convicts who come out on parole without any sympathy. Therefore, the Inspector General of Prisons is directed to make it clear that no amount shall be demanded from the convicts when they come out on parole and the convicts shall also be informed about the same so that if any such incident happens, the same can be promptly report to the authorities.

8. The learned counsel for the petitioner would submit that though the

wife of the petitioner had given a representation seeking ordinary leave on 18.09.2019, so far the said representation has not been considered and disposed of by the Authorities. As per Rule 19 of Tamil Nadu Suspension of Sentence Rules, 1982, the Government is the competent authority to issue order of release of prisoners on ordinary leave. The grounds for the grant of ordinary leave have been enumerated under Rule 20 of the said Rules, which is extracted as follows:

“20. Grounds for the grant of ordinary leave:

The grounds for the grant of ordinary leave to a prisoner shall be –

- (i) to make arrangements for the livelihood of his family and for the settlement of life after release;
- (ii) to make arrangements for the admission of the children in the school or college;
- (iii) construction or repairing the homestead;
- *[(iv) to make arrangements or to participate in the marriage of the prisoner, sons, daughters, full brother or full sisters, as the case may be, of the prisoner.
- (v) settling family disputes like partition, etc.,
- (vi) agricultural operations like sowing, harvesting etc;

and

- (vii) any other extraordinary reasons.]

(*substituted as per G.O.Ms. No. 2358 Home (Prison-V) dated 01.11.1989.)

9. Rule 22 of the said Rules speaks about “**Eligibility for Ordinary Leave**” and the same reads as follows:

(1) No prisoner shall be granted ordinary leave unless he has been sentenced by a court in this State to imprisonment for a term or imprisonment for life for an offence against any law other than a law relating to a matter to which the executive power of the Union Government extends and he has completed *(three years of imprisonment from the date of initial imprisonment.)

(2) The period of ordinary leave shall not exceed one month at a time unless it is extended by Government.

(3) The prisoner shall be granted the second spell of leave not exceeding one month after the completion of two years of imprisonment from the date on which he returns from the last ordinary leave.

(4) In cases of prisoners who have got a balance of three years to serve ordinary leave not exceeding one month for each of three years, the year being calculated from the date of his return to prison from last leave, shall be granted so as to enable them to make arrangements for settling the family life after release.”

10. The details to be given in the petition for ordinary leave

have been stated in Rule 23 and the same is extracted as hereunder:

“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 Government

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 prisoners' relatives with whom he wishes to stay during his leave period."

11. Rule 24 of the aforesaid Rules speaks about process of petition which is usefully extracted as follows:

"24. Process of petition:

All petitions for the grant of ordinary leave submitted to Government or to the Superintendent of Prison shall be referred to Probation Officer concerned for reports on the advisability of the ordinary leave of the prisoner in question. The Probation Officer shall personally enquire into and send his report to the Government or to the Superintendent in Form I. If 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 Sub-Inspector of Police, solely with a view to avoid any breach of peace and record the views of Sub-Inspector of Police in the said Form. 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 Government or to the Superintendent of Prisons without consulting the local Sub-Inspector of Police.

Where the petition has been submitted to the Superintendent of Prisons, he shall forward the petition along with the reports expeditiously to the Government for orders. The Government may, on consideration of the petition and reports, pass such orders as they deem fit.”

12. From the above, it is evident that there is no time limit fixed in the Rules for the disposal of the representation for ordinary leave. Only in Rule 24, it has been stated that when a petition is submitted to the Superintendent of Prisons, he shall forward the petition along with the reports expeditiously to the Government for orders. Except the mentioning of the word “expeditiously”, no time limit has been mentioned anywhere. Merely because, there is no time limit fixed in the aforesaid Rules for the disposal of the representation for ordinary leave, it does not mean that the Prison Authorities can sleep over the matter. The very purpose of giving the representation gets frustrated on account of the delay compelling the prisoners or their family members to approach the Court by filing writ petitions. The convicts and their families are already suffering because of incarceration and even the result of the representation is not given in time, it will be injustice to them. On account of failure to dispose of the representation for ordinary leave or not granting of ordinary leave/parole in time, the parties are compelled to file writ petitions by spending money and it would add insult to the injury.

13. In view of the above position, to mitigate the problems of the prisoners and their families, time limit has to be fixed. Whenever a representation for ordinary leave is received, either by the Government or by the Prison Authorities, the authorities shall get a report from the Probation Officer and Local Sub Inspector of Police, if necessary, within one week and along with the reports, the Prison Authorities shall forward the same to the Government for passing appropriate orders. After receipt of the representation, the Government shall pass appropriate orders and intimate the same to the relatives or family members of the prisoners or to the prisoners within a period of one week. The above two weeks time limit would do justice to the parties. The aforesaid time limit shall hold good and shall be scrupulously followed by the authorities concerned till Tamil Nadu Suspension of Sentence Rules are amended incorporating two weeks' time in the Rules for the disposal of the petition for grant of ordinary leave. It is made clear that if the parties are compelled to approach the Court on account of failure to dispose of the representation for ordinary leave within the time limit fixed by this Court, the expenses incurred for the legal proceedings initiated by the convicts or their family members shall be borne out by the authority, who failed to dispose of the representation in time.

14. In the result, while allowing the Habeas Corpus Petition granting ordinary leave to the petitioner from 15.07.2020 to 24.07.2020, the following directions are given:

(i) The Government is directed to make appropriate amendments in the Rules indicating two weeks' time limit for disposal of the representation for ordinary leave;

(ii) Till such amendment is made, the above time limit shall be in force and shall be scrupulously followed by the authorities;

(iii) If the time limit is not adhered to, it would amount to Contempt of Court and the parties are at liberty to approach this Court with contempt petition.

(iv) The expenses incurred by the parties for approaching the Court for not disposing the representation for ordinary leave shall be borne by the authority who failed to dispose of the representation.

15. Post the H.C.P. for reporting compliance on 27.07.2020.

(N.K.K.,J)

(V.M.V.,J)

13.07.2020

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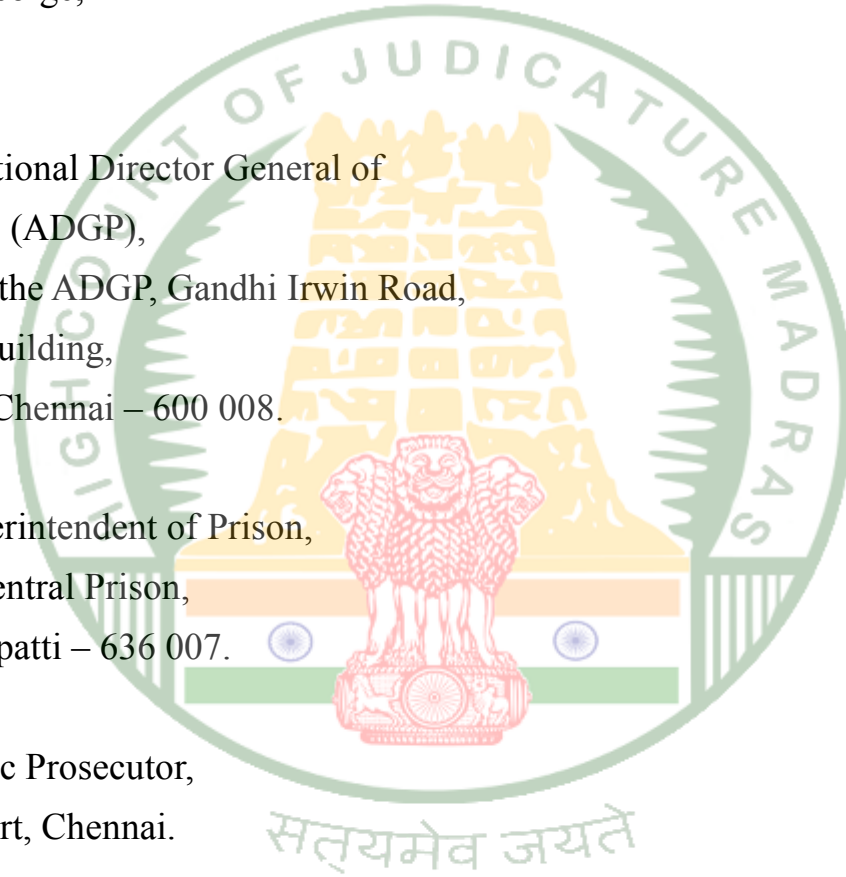
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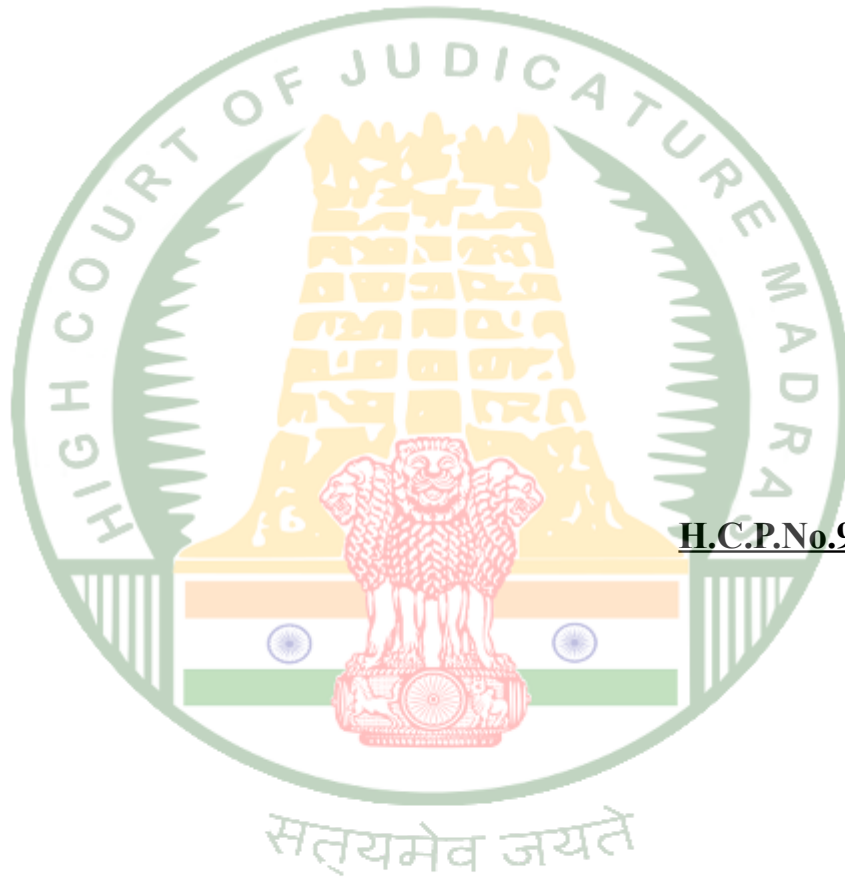
4. The Public Prosecutor,
High Court, Chennai.



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and
V.M. VELUMANI, J.

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