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W.P.(MD).Nos.9491, 9321, 9465,
9646 & 17228 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

THE HONOURABLE MRS. JUSTICE T.V.THAMILSELVI

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

W.P.(MD).Nos.9491, 9321, 9465, 9646 & 17228 of 2024

and

W.M.P.(MD).Nos.8612, 16834, 8590, 8748 & 16833 of 2024

W.P.(MD).No.9491 of 2024:

T.Ramalakshmi

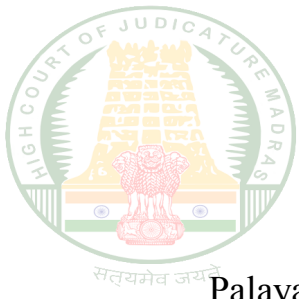
... Petitioner

Vs.

1.The State Represented by its
Principal Secretary to Government of Tamil Nadu,
Home Department,
Fort St. George,
Chennai – 600 009.

2.The Deputy Inspector General of Prison,
Madurai Range,
Madurai.

3.The Superintendent of Police,
Central Prison,



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PalayamKottai.

... Respondents

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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.9530/Tha.Hu/2/2024 dated 06.04.2024 passed by 2nd respondent and quash the same and consecutively direct the respondents to grant ordinary leave for 30 days to the detenu, Thirukumaran Son of Thangaraj (L.CT4988), who is now under incarceration at Central prison, Palayamkottai.

W.P.(MD).No.9321 of 2024:

C.Suganya

... Petitioner

Vs.

The State Represented by its

1.The Secretary to the Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.

2.The Deputy Inspector General of Prison,
Trichy Range,
Trichy – 620 020.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, to direct the respondents to



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grant ordinary leave for 30 days without escort to the petitioner's husband the
detenue, A.Chinnadurai S/o. Murugaiya, aged about 37 years, convict
No.22990, detained at Central Prison, Trichy.

W.P.(MD).No.9465 of 2024:

Malarkodi

... Petitioner

Vs.

1.The Secretary to Government,
Home Department (Prison),
Government of Tamil Nadu,
Secretariat,
St. George Fort,
Chennai – 9.

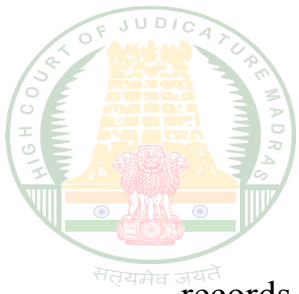
2.The Additional Director General of Police (Prisons) /
The Inspector General of Police,
Office of ADGP (Prisons) / I.G. of Prisons,
Thalamuthu Natarajar Maaligai,
Egmore, Chennai – 8.

3.The Deputy Inspector General of Prisons,
Prisons and Correctional Services Department,
Madurai Range,
Madurai.

4.The Superintendent of Prison,
Central Prison,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of Writ of Certiorarified Mandamus, calling for the



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records of the 3rd respondent impugned order in No.314/உத2/2024 dated 08.03.2024 and quash the same as illegal and consequently directing the respondents to grant one-month ordinary leave without escort to my husband namely Thangapandi S/o. Late Ponnaiya a convict prisoner (convict prisoner No.5858) now confined under Central Prison, Madurai, for the purpose of partition.

W.P.(MD).No.9646 of 2024:

Muthulakshmi

... Petitioner

Vs.

The State Represented by its

1.The Secretary to the Government of Tamil Nadu,
Department of Home,
Fort St. George,
Chennai – 600 009.

2.The Deputy Inspector General of Prison,
Trichy Range,
Trichy – 620 020.

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

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order bearing No.106/Mu.vu/2024, dated 15.03.2024, passed by the 2nd respondent and quash the same and



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consecutively direct the respondents to grant ordinary leave for 30 days without escort to Ramesh, S/o. Ganesan, aged about 35 years, Life Convict No.22994, detained at Central Prison, Trichy.

W.P.(MD).No.17228 of 2024:

K.Palanisamy

... Petitioner

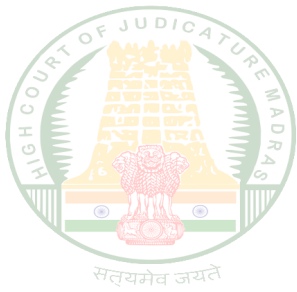
Vs.

1.The Deputy Inspector General of Prison,
O/o. The Deputy Inspector General of Prison
and Correctional Service,
Madurai Range, Madurai Central Prison Campus,
New Jail Road,
Madurai.

2.The Superintendent of Prison,
Central Jail,
New Jail Road,
Arasaradi,
Madurai.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for records the impugned order passed by the respondent No.1 in எண்ணி.108/உத.2/2024 dated 19.07.2024 to set aside the same and further direct the respondent Nos.1 and 2 to grant ordinary leave for the period of 30 days to the petitioner's son namely Jothimurugan S/o. Palanisamy (CP.No.2193) who is convict in Sexual abuse case and languishing in the Central Jail, Madurai for past 2 ½ years.



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For Petitioners

: Mr.D.Selvam
(In WP.(MD)No.9491 of 2024)

: Mr.S.Manoharan
(In WP.(MD).Nos.9321
& 9646 of 2024)

: Mr.S.Srikanth
(In WP.(MD).No.9465 of 2024)

: Mr.SMA.Jinnah
(In WP.(MD).No.17228 of 2024)

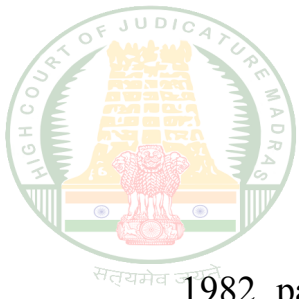
For Respondents

: Mr.Hasan Mohamed Jinna
State Public Prosecutor
Assisted by Mr.R.Muniyapparaj
Additional Public Prosecutor and
Mr.A.Damodaran
Additional Public Prosecutor and
Mr.E.Raj Thilak
Additional Public Prosecutor
(In 5 WPs)

COMMON ORDER

[Order of the Court is made by **S.M.SUBRAMANIAM, J.**]

The above writ petitions are referred before the larger Bench, in view of the conflicting views expressed by two Division Benches of this Court while interpreting Rule 35 of the Tamil Nadu Suspension of Sentence Rules,



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1982, particularly in W.P.No.10265 of 2021 (L.Wasib Khan v. State of Tamil Nadu) and in W.P.(MD)No.6398 of 2023 (Latha v. State of Tamil Nadu), the former declining the grant of ordinary/emergency leave to the prisoner concerned and the latter granting the relief sought to the prisoner concerned.

2. Heard the parties to the lis on hand.

3. The reference has been made to answer the following two issues:

(1) Whether during pendency of the appeal before the High Court/Special Leave Petition before Apex Court, the prisoner can be extended the benefit of Ordinary Leave or Emergency Leave under the Tamil Nadu Suspension of Sentence Rules, 1982, by exercising the powers under Article 226 of the Constitution of India?

(2) Whether the Tamil Nadu Suspension of Sentence Rules, 1982 as amended by G.O.(MS)No.205, Home (Prison-V) Department dated 25.04.2022 places an embargo on grant of ordinary leave under Rule 22 as explanation to Rule 22 states that the period of actual imprisonment shall be counted from the date of admission to prison as convict and not the date of arrest and whether the period of incarceration during remand or during trial could be counted while determining the length of sentence suffered by the convict?



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4. Considering the entire 1982 Rules to be a beneficial piece of legislation and every Rule requires to be interpreted in a liberal manner to achieve its object, of course, not in a negative sense, to the benefit of a prisoner, the larger Bench, in order to give a quietus to the controversy, is inclined to frame the following ancillary issues for consideration:

(3) Whether the Prison Authorities, specifically the Deputy Inspector General of Prisons or Superintendent of Prisons, as the case may be, is empowered to grant ordinary leave or emergency leave to a prisoner during the pendency of an appeal before the High Court or before the Hon'ble Supreme Court of India against the judgment of the trial Court?

(4) Whether the term “Sentence” defined under Rule 2(4) of the Tamil Nadu Suspension of Sentence Rules, 1982 shall prevail upon, or whether the competent authorities have to wait for the final verdict of the appellate Court in the appeal, even while considering an application made by the prisoner for grant of ordinary or emergency leave under Rule 22 of the said Rules?

5. We have gone through the conflicting views expressed by the respective Division Benches in the above-mentioned cases. Pertinently, all the judgments in these cases were consolidated by the Division Bench of this



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Court in the case of *Latha vs. the State represented by the Deputy Inspector General of Prisons, Madurai Zone*¹.

ISSUE NOS.1 AND 3: GRANT OF ORDINARY/EMERGENCY LEAVE DURING PENDENCY OF APPEAL:

6. The Tamil Nadu Suspension of Sentence Rules, 1982 was notified in exercise of the powers conferred by the Sub-Section (5) of 432 of the Criminal Procedure Code, 1973 (corresponding to Section 473 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023). Rule 3 stipulates that leave is not a right. Therefore, no prisoner can claim leave as a matter of right. Instead, it is a concession granted to the prisoner in the context of reformation. Consequently, the competent authorities have to consider the leave application with reference to the eligibility and by following the due process as contemplated under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982.

7. Thus, we have no hesitation in holding that under Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, the competent Prison

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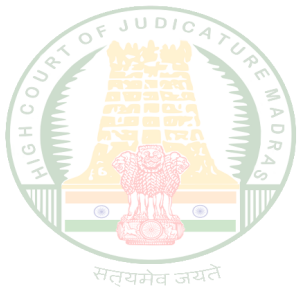
Authority is empowered to grant ordinary leave or emergency leave to a prisoner during the pendency of a criminal appeal before any of the Appellate Courts.

8. However, it is clarified that, if a prisoner is facing trial in any other case while undergoing the conviction period, then the Prison Authorities are empowered to reject the application *in limine* by exercising the powers conferred under Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982. To reiterate, a prisoner convicted in one case and facing criminal trial in other case is not eligible to avail leave from the hands of the Prison Authorities.

9. The Division Bench in ***Latha's*** case cited *supra* considered the observations made by the Apex Court in the case of ***Manokaran vs. State of Tamil Nadu***², wherein, the Hon'ble Supreme Court of India made the following observations:

“17. The next reason assigned in *Wasib Khan* for rejecting his request for grant of leave is the reference to *Manokaran's* case before the Hon'ble Supreme Court.

2. (2010) 15 SCC 562



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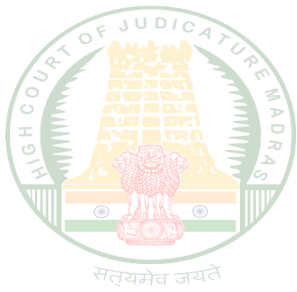
In consequence to *Manokaran's* case, the Additional Director General of Prisons had issued an office memorandum dated 21.10.2002, in which also, reliance of it has been placed. Such a reference in *Wasib Khan's* case, are as follows:

“12. Superadded, during the hearing of the case in *Manokaran vs. State of Tamil Nadu* [Crl.A. No.866 of 2000] on 01.10.2002, it came to the notice of the Supreme Court that in the State of Tamil Nadu, the convict prisoners were being granted parole/leave during the pendency of their appeal. This was frowned upon by the Supreme Court and the Joint Secretary to the Government was summoned. Apposite it is to extract the observations of the Supreme Court in the said order dated 01.10.2002:

“Mr.J.A. Syed Abdul Khader, Joint Secretary to Government of Tamil Nadu, Home Department, Chennai, is present in terms of the earlier orders of this Court. Mr. Khader regrets that unfortunately a practice has grown in the State of Tamil Nadu to act in the fashion as it has been effected in the matter under consideration. Mr. Khader, however, assures this Court that in future, the State Government would act strictly according to the requirements of the statute and not de hors. The question of continuity of there being any practice being followed henceforth would not arise and the same has been discarded by the State Government.”

13. Following this, the office of the Additional Director General of Prisons, issued an Office Memo No.43880/PS4/2002 dated 21.10.2002 which reads as under:

“The Superintendent is informed that the Supreme Court of India in C.A. No.866/2002, has



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observed that the practice being following in this State for granting leave to prisoners even for short duration during the pendency of their appeal is not in accordance with Tamil Nadu Suspension of Sentence Rules, 1982 and it is also contrary to the Constitution Bench judgment of Supreme Court in K.M. Nanavati vs. State of Bombay AIR 1961 SC 112. The Supreme Court of India has therefore ordered that in future no such short term release should be made by the competent authority without informing the Court in which the prisoner's appeal is pending and that this order of the Court should be scrupulously followed in future.

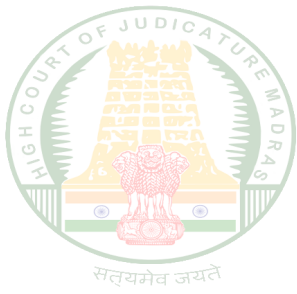
2. In this connection, the attention of the Superintendent is invited to Government letter no.66517/Prison.V/2000-15, Home Department dated 20.06.2002 communicated in this office endt.No.38245/PS4/2000 dated 04.08.2002 wherein the Government have clarified that for suspension of sentence of a convicted person whose appeal is pending, he has to approach only the Appellate Court or High Court.”

3. The Superintendent/Deputy Inspector General of Prisons should therefore act in accordance with the above orders of the Supreme Court of India and should desist from releasing any prisoner on emergency or ordinary leave when his appeal is pending before the appropriate Court without prior permission of the Court. If any violation is noticed in this regard, the Superintendent concerned will be liable for disciplinary action.

4. The receipt of this memo should be acknowledged.

BHOLA NATH
Additional Director General of Prisons”

14. In view of the above, *Wasib Khan* cannot be granted leave under the Sentence Suspension Rules and



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therefore, the second reason given in the
impugned order stands upheld.”

10. The Division Bench in *Latha's* case cited *supra* considered the
above observation in paragraph 25, which reads as under:

“25. When *Manokaran's* case had not dealt with
a prisoner being granted ordinary leave or emergency
leave, but rather being released on parole and the
undertaking given by the State Government before the
Hon'ble Supreme Court was only to the effect that the
Government would henceforth act strictly according to
the requirements of the statute and not *de hors*, we are
of the view that such an undertaking before the Hon'ble
Supreme Court in *Manokaran's* case will not be an
impediment for their consideration of an application
seeking for “emergency or ordinary leave” under the
provisions of the Tamil Nadu Suspension of Sentence
Rules, 1982. Thus, the second reasoning adopted in
Wasib Khan's case with reference to *Manokaran's* case
before the Hon'ble Supreme Court will also not have a
binding effect in this regard.”

11. The Division Bench in *Latha's* case cited *supra* has rightly
observed that the observation of the Hon'ble Supreme Court in



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Manokaran's case cited *supra* will not be an impediment for consideration of leave applications by the Prison Authorities during the pendency of a criminal appeal before any of the Appellate Courts. Therefore, **Manokaran's** case may not stand in the way of the Prison Authorities in considering the leave applications submitted under the Tamil Nadu Suspension of Sentence Rules, 1982.

12. In view of the above discussions this Court concurs with the view taken by the Division Bench in the case of **Latha** cited *supra*, which is the right proposition of law to be followed by the Prison Authorities, while dealing with the leave applications of the prisoners.

ISSUE NO.2: WHETHER THE PERIOD OF INCARCERATION DURING REMAND OR DURING TRIAL COULD BE COUNTED WHILE DETERMINING THE LENGTH OF SENTENCE SUFFERED BY THE CONVICT:

13. As far as remand prisoners are concerned, under law, they are under judicial custody. Therefore, a remand prisoner cannot be equated with



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a convicted prisoner. The Tamil Nadu Suspension of Sentence Rules, 1982 is about grant of leave to the convict prisoner and not to the remand prisoner.

14. Rule 21 of the Tamil Nadu Suspension of Sentence Rules, 1982 deals with “Non-eligibility for Ordinary Leave”.

15. Rule 22 of the Tamil Nadu Suspension of Sentence Rules, 1982 provides “Eligibility for Ordinary Leave”. It is not in doubt that the provision of the Tamil Nadu Suspension of Sentence Rules, 1982 should only be applicable to the convicted prisoners, not the remand prisoners. Consequently, neither the Prison Authorities nor the Courts are empowered under the Tamil Nadu Suspension of Sentence Rules, 1982, more specifically Rule 22 to reckon the period of incarceration during the remand or trial.

16. Consideration of leave application under Tamil Nadu Suspension of Sentence Rules by reckoning the period of incarceration during remand or during trial does not arise at all. The scope of Tamil Nadu Suspension of Sentence Rules need not be expanded by the High Court so as to reckon the period of incarceration during remand or during trial. The provisions cannot



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be read down by the High Court unless the vires of the provision is under challenge before the High Court. The issue is answered accordingly.

ISSUE NO.4: INTERPRETATION OF “SENTENCE” UNDER RULE 2(4) OF THE TAMIL NADU SUSPENSION OF SENTENCE RULES, 1982:

17. Regarding the term “Sentence”, there may not be any difficulty, as the judgment of the Trial Court remains in force unless modified or altered by the Appellate Court in an appeal. Therefore, this Court is of the considered opinion that the word “Sentence” under Rule 2(4) of the Tamil Nadu Suspension of Sentence Rules, 1982, should be construed to mean that the judgment of the Trial Court is to be taken into consideration for reckoning the period of actual imprisonment, while considering the leave application filed by the prisoners.

18. Rule 35 deals with “Pending Cases”. Accordingly, no prisoner on whom a case is **pending trial** have been granted leave. The language employed under Rule 35 “pending trial” indicates that the said rule has no application with reference to criminal appeals pending either before the High



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Court or before the Hon'ble Supreme Court of India.

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19. The Division Bench in the ***Latha's*** case cited *supra* elaborately considered the conflicting views of various Division Benches of this High Court with reference to Rule 35 of the Tamil Nadu Suspension of Sentence Rules, 1982 and formed an opinion that the term used in Rule 35 is “Pending Trial” and not “Pending Appeal”. The object behind prohibiting a prisoner's release on leave when a case is pending trial is to ensure his presence before the competent Trial Court during the time of trial.

20. Rule 832 of the Tamil Nadu Prison Rules, 1983 cast a duty and responsibility on the Prison Authorities to produce a prisoner before the Court at the time of trial. This Court unable to comprehend as to how the term “Pending Trial” can be equated to that of an appeal, more particularly when it is not a statutory appeal under the Criminal Code.

21. More so, when a prisoner is remanded by the Court concerned, the Prison Authorities cannot exercise their powers to grant leave under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982. Since the



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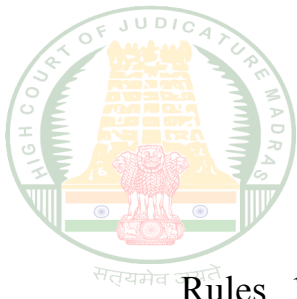
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remand prisoner is under judicial custody and the Court has remanded him/her until such time as required under law, the Court alone is empowered to grant bail or leave. Consequently, the Prison Authorities are not empowered to grant parole or leave, as the case may be under the provisions of the Tamil Nadu Suspension of Sentence Rules, 1982.

SCOPE OF RULE 40 OF THE TAMIL NADU SUSPENSION OF SENTENCE RULES, 1982:

22. Beyond Rules 22 and 35 of the Tamil Nadu Suspension of Sentence Rules, 1982, Rule 40 denotes “Power to Exempt”. Accordingly, the Government may exempt any person from all or any of the provision of these rules. Thus, the Government is empowered to grant exemption from all or any of the provisions of the rules.

23. Such power is conferred on the Government to mitigate certain emergency circumstances, if arises to a prisoner, warranting an urgent release. Emergency circumstances and mitigating circumstances depend on the facts of each case and to the subjective satisfaction of the Government for grant of exemption under Rule 40 of the Tamil Nadu Suspension of Sentence



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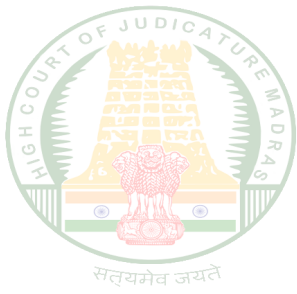
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Rules, 1982. This power can be exercised by the Government in deserving cases.

24. A doubt has been raised as to whether Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 is a negative provision. One of the Division Benches of this Court held that it is a negative provision in the case of *M.Jeyammal vs. State and Others*³. The Division of this Court in the case of *Latha* considered the legal position in this regard. In paragraph 36 of the *Latha's* case cited *supra*, the Division Bench made the following observations:

“36. In the case of *M.Jeyammal (supra)*, Rule 40 was referred to as a negative power to grant exemption in a given case by holding that such powers to exempt will not confer any right on a prisoner, but is a discretion which is vested with the State. The Full Bench of *Yesu's* case has not referred to Rule 40 as a negative power. On the other hand, an example has been quoted for exemption of the entire Rules to prevent an eligible hardcore terrorist from obtaining leave. But, at the same time, *Yesu's* case also held that the

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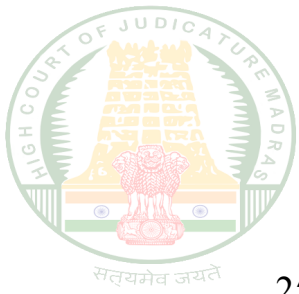
Government can exempt some of the provisions to enable a particular prisoner to be released on leave.

37.

38.

39.

40. There may be instances where a prisoner would have exhausted the maximum emergency leave in a year and still require grant of emergency leave on any of the grounds referred to in Rule 6 like serious illness of father, mother, wife, husband, son, daughter, etc., or to attend the wedding of his immediate family members or to a female pregnant prisoner for having delivery outside the prison. In such circumstances, Rule 40 cannot be interpreted in a negative sense, which would be totally against the object of the framing of the Rules. As held by the Hon'ble Supreme Court, a liberal interpretation should be given to Rule 40 so as to enable the Government to exempt any of its provisions or all of its provisions to the benefit of a prisoner also, rather than applying the exemption powers only for the purpose of denying grant of leave.”



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25. This Court is in complete agreement with the observations made by the Division Bench about Rule 40 of the Tamil Nadu Suspension of Sentence Rules, 1982 in **Latha's** case cited *supra* as stated above.

26. Reference answered accordingly.

27. The Registry is directed to place the writ petitions before the Court concerned for disposal on merits.

[S.M.S., J.]

[T.V.T.S., J.]

[S.M., J.]

24.01.2025

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Index : Yes / No

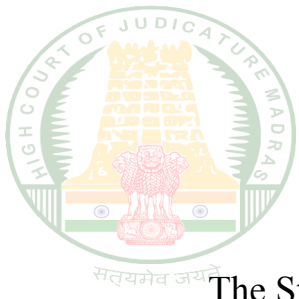
Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1.The Principal Secretary to Government of Tamil Nadu,
The State,
Home Department,
Fort St. George,
Chennai – 600 009.

2.The Secretary to the Government of Tamil Nadu,

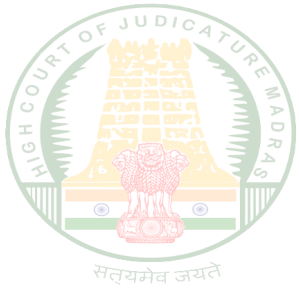


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The State,
Department of Home,
Fort St. George,
Chennai – 600 009.

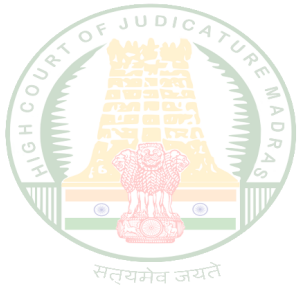
- 3.The Secretary to Government,
Home Department (Prison),
Government of Tamil Nadu,
Secretariat,
St. George Fort,
Chennai – 9.
- 4.The Additional Director General of Police (Prisons) /
The Inspector General of Police,
Office of ADGP (Prisons) / I.G. of Prisons,
Thalamuthu Natarajar Maaligai,
Egmore, Chennai – 8.
- 5.The Deputy Inspector General of Prison,
Madurai Range,
Madurai.
- 6.The Deputy Inspector General of Prison,
Trichy Range,
Trichy – 620 020.
- 7.The Superintendent of Police,
Central Prison,
PalayamKottai.
- 8.The Superintendent of Prison,
Central Prison,
Madurai.
- 9.The Superintendent ,
Trichy Central Prison,
Trichy – 620 020.



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