

W.P(MD)No.31327 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 03.01.2025

CORAM

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

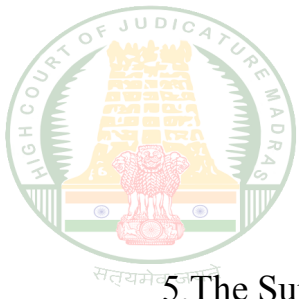
W.P(MD)No.31327 of 2024

Regina Begum

... Petitioner

Vs.

- 1.The State represented by
The Principal Secretary to Government,
Home, Prohibition & Excise (Prison – IV)
Department,
Fort St.George,
Chennai – 600 009.
- 2.The Director General of Prisons and
Correctional Services,
O/o.Tamil Nadu Prisons Headquarters,
Whannels Road,
Egmore,
Chennai – 600 008.
- 3.The Deputy Inspector General of Prisons,
Trichy Range,
Race Course Road,
Trichy – 620 023.
- 4.The Superintendent of Prisons,
Central Prison, Trichy – 620 020.



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5.The Superintendent of Police,
Collectorate,
Master Plan Complex,
Tiruvarur – 610 004.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent vide his proceedings in No. RO.TRY/453/MuVu/2024, dated 14.09.2024 and quash the same as illegal and void consequently grant 25 days ordinary leave without police escort to petitioner's son Margith Alikhan, S/o.Rukkun Basha (C.P.No. 24146-P.I.D.No. 419256) confined at Central Prison, Trichy forthwith considering the petitioner's representation dated 19.06.2024.

For Petitioner : Mr.C.Karthikeyan

For Respondents : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

Heard both sides.

2.The petitioner's son Margith Ali khan is undergoing life sentence in Central Prison, Trichy. One Yasmin, D/o.Abdullah, Perumbakkam has come forward to marry him. 15.01.2025 has been fixed as the date of marriage. The



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marriage is to be solemnized at Nagore Dargah. The petitioner wants 25 days of ordinary leave without escort for her son.

3.The prisoner was convicted and sentenced on 23.04.2022. He has so far spent 2 years 7 months in prison. Since he has not completed 3 years since the imposition of sentence on him, he will not be entitled to ordinary leave. Therefore, the petitioner's request for grant of ordinary leave is rejected.

4.We wondered if emergency leave can be granted to enable the prisoner to marry. Of course, right to marriage and found a family has been recognised as human right. Article 16(1) of the UDHR, 1948 to which India is a signatory, stipulates that “*Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family*”. This right is also affirmed by Article 23(2) of the International Covenant on Civil and Political rights.

5.The Supreme Court of the United States in **Turner v. Safley, 482 U.S. 78, 107 S. Ct. 2254 (1987)** upheld the constitutional right of the prisoners to marry in the following terms :



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“It is settled that a prison inmate "retains those [constitutional] rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system." The right to marry, like many other rights, is subject to substantial restrictions as a result of incarceration. First, inmate marriages, like others, are expressions of emotional support and public commitment. These elements are an important and significant aspect of the marital relationship. In addition, many religions recognise marriage as having spiritual significance; for some inmates and their spouses, therefore, the commitment of marriage may be an exercise of religious faith as well as an expression of personal dedication. Third, most inmates eventually will be released by parole or commutation, and therefore most inmate marriages are formed in the expectation that they ultimately will be fully consummated. Finally, marital status often is a precondition to the receipt of government benefits (e. g., Social Security benefits), property rights (e. g., tenancy by the entirety, inheritance rights), and other, less tangible benefits (e. g., legitimation of children born out of wedlock). These incidents of marriage, like the religious and personal aspects of the marriage commitment, are unaffected by the fact of confinement or the pursuit of legitimate corrections goals &

6. We need not look for precedents in support of the proposition that a convicted prisoner too has the right to marry. The statutory rule recognises



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such a right. Rule 6 of Tamil Nadu Suspension of Sentence Rules, 1982 reads

WEB as follows:

***“6. Grounds for the grant of emergency leave. -
Emergency leave may be granted for attending death or serious
illness of father, mother, wife, husband, son, daughter, full
brother or full sister, as the case may be, or the wedding of the
prisoner or son, daughter, full brother or full sister of the
prisoner, as the case may be, [and for having delivery outside
the prison in the case of female pregnant prisoners.]”***

The above Rule expressly envisages that emergency leave can be granted not only for the wedding of the son, daughter, full brother or full sister of the prisoner but also for the wedding of the prisoner himself/herself. We are conscious that in certain jurisdictions (United Kingdom for instance), life convicts are not granted the right to marry. Such restrictions do make sense. But when the statutory rule holding the field does not make any distinction among the various categories of prisoners, it is not for the Court to introduce a distinction. When the statutory rule itself proposes, judges should not contrarily dispose!.

7. We direct the fourth respondent to grant 15 days emergency leave for the prisoner with necessary escort. The escort police shall be in civil dress.



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The petitioner has to furnish requisite proof to show that her son's wedding is to be solemnized at Nagore Dargah on 15.01.2025.

8.In this view of the matter, the impugned order is set aside. Accordingly, the convict prisoner is granted emergency leave for 15 days with necessary escort on the following conditions : -

(a)The convict prisoner, Margith Ali khan, S/o.Rukkun Basha [Convict Prisoner No.24146], now detained in the Central Prison, Tiruchirappalli, is granted emergency leave for fifteen (15) days from 06.01.2025 to 20.01.2025.

(b) The convict prisoner shall be released from the prison at 05.00 p.m., on 05.01.2025 and he shall return to the prison at 10.00 a.m., on 21.01.2025.

(c)The fourth respondent is directed to provide necessary escort to the convict from the Central Prison at the time when he leaves the prison and till such time, he returns to the prison. It is clarified that the cost involved in providing escort shall be deducted from out of the earnings of the convict.

(d) During the leave period, the convict prisoner shall abide by all the conditions prescribed in the Jail Manual.



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9. With the above direction, the Writ Petition stands allowed. No

costs.

[G.R.S., J.] [S.S.Y., J.]
03.01.2025

NCC : Yes / No
Internet : Yes / No
Index : Yes / No
MGA

Note: Issue order copy on 03.01.2025.

To

1. The Principal Secretary to Government,
Home, Prohibition & Excise (Prison – IV)
Department,
Fort St. George, Chennai – 600 009.
2. The Director General of Prisons and
Correctional Services,
O/o. Tamil Nadu Prisons Headquarters,
Whannels Road,
Egmore, Chennai – 600 008.
3. The Deputy Inspector General of Prisons,
Trichy Range, Race Course Road,
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Tiruvarur – 610 004.



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

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G.R.SWAMINATHAN, J

and

S.SRIMATHY, J.

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